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CLASSIFIED INDEX

of

NATIONAL LABOR RELATIONS BOARD

DECISIONS

and

RELATED COURT DECISIONS

DECEMBER 1986

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PREFACE

The Board and court decision classifications and scope notes in this classified index have been prepared by the Board's Legal Research and Policy Planning Branch, Division of Advice, Office of the General Counsel, as a selective index to decisions issued by the Board and to related court decisions. They are in no sense official rulings or pronouncements of the Board, nor are they to be viewed as official interpretations of Board or court decisions.

The classification system used is that established by the Classification Outline for Decisions of the National Labor Relations Board and Related Court Decisions. As the format of this index publication renders it unsuitable for direct access to classification headings, reference should be made to the Classification Outline for the subject matter headings desired for research and for their associated numerical code identification. Instructions for the use of the Outline and this Index are contained in the preface of the Outline.

This publication covers Board decisions issued from January 1, 1985, through December 31, 1986 (part of Volume 273 through part of Volume 282) and contains court decisions issued during this period. No unreported court decisions are included. The index entries supplement those published in the publication of this same title dated June 1974, December 1976, December 1979, December 1982, and December 1984, which are available from the Superintendent of Documents, Washington, D.C. 20402.

Board decisions are cited by volume and folio number. Court decisions are cited by official reporter citation where available and by other commercial services when not available. JD references refer to Administrative Law Judge's decisions adopted by the Board under section 10(c) of the National Labor Relations Act, as amended, and section 102.48 of the Board's Rules and Regulations. DS references refer to Decisions by Stipulation issued by the Board upon approval of formal settlement agreements in unfair labor practice proceedings.

Copies of Decisions by Stipulation and Administrative Law Judge Decisions are available upon request directed to the Freedom of Information Officer, N.L.R.B., Washington, D.C. 20570, subject to payment of fees in accordance with the Agency fee schedule. Such requests should specify the case name, the date of issuance and the case number for each document requested. These decisions will also be available for inspection in the public reading room of the National Labor Relations Board, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. Copies will be available to any member of the public upon a payment of direct duplication costs.

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ABBREVIATIONS

affd	Affirmed
affg	Affirming
ALJ	Administrative Law Judge
ans	Answer
br	Brief
Bd	Board
C	Complaint
c/d	Cease and desist
c/d/b	Cease doing business
CongRec	Congressional Record
ct	Court
distg	Distinguished
D/O	Decision and order
E	Employer
Ee	Employee
enf/rev	Enforcement and review proceedings
Gc	General Counsel
inj	Injunction
LMRA	Labor Management Relations Act, as amended
mtn	Motion
NMB	National Mediation Board
opn	Opinion
P&M	Production and Maintenance
ptn	Petition
qcr	Question concerning representation
R	Representation
RD	Regional Director
R/O	Remedial order
R/R	Rules and Regulations
SCt	Supreme Court
SIC	Standard Industrial Classification
TRO	Temporary restraining order
U	Union
Us	Unions
ULP	Unfair labor practice(s)
w/o	Without
w/i	Within

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111 CONSTITUTIONALITY OF APPLICATION OF NLRA

0100 GENERALLY

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[federal statutes are to be construed to avoid doubt of their constitutionality, and, if statutory interpretations proposed by Bd would give rise to serious constitutional questions, the *affirmative intention of Congress clearly expressed must first be identified*]

5000 FIRST AMENDMENT TO CONSTITUTION

Tony & Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.——— (U.S. SCT, Apr. 1985)**

[application of FLSA's minimum wage requirements to nonprofit religious foundation operating commercial businesses held not to interfere w/free exercise of religious beliefs of associates working in commercial businesses and receiving payment in form of benefits instead of wages; First Amendment does not require exemption from government program unless, at minimum, inclusion in program actually burdens claimant's freedom to exercise religious beliefs; and application of FLSA, which does not require payment of cash wages, will work little change in associates' receipt of payment in form of benefits]

Tony & Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.——— (U.S. SCT, Apr. 1985)**

[application of FLSA's minimum wage requirements to nonprofit religious foundation operating commercial businesses held not to interfere w/free exercise of religious beliefs of associates working in commercial businesses and receiving payment in form of benefits instead of wages; even if foundation were to pay wages in cash, or if associates' beliefs precluded them from accepting statutory amount, associates are not prevented from returning amounts to foundation, if done voluntarily]

Tony & Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.——— (U.S. SCT, Apr. 1985)**

[application of FLSA's record keeping requirements to nonprofit religious foundation operating commercial businesses held not to violate First Amendments by inhibiting religious activity and fostering excessive government entanglement in religion, since FLSA's requirements apply only to commercial activities undertaken with *business purpose* and would have no impact on foundation's evangelical activities or on individuals engaged in volunteer work for other religious organizations; and bear no resemblance to kind of government surveillance ct has previously held unlawful!]

Sure-Tan, Inc., et al. v. N.L.R.B. **———U.S.——— (US S.CT, June 1984)**

[Es' contention that S.Ct's decision in *Bill Johnson's Restaurants, Inc. v. N.L.R.B.* mandates conclusion that their request to INS to enforce INA against their illegal alien Ees was an aspect of their First Amendment right to *ptn the Government for a redress of grievances* and may not be burdened under guise of enforcing NLRA, rejected; the right protected in that case was right of access to cts for 'redress of alleged wrongs', and Es herein did not invoke INS administrative process for such purpose; moreover federalism concerns are not at stake here as in that case]

Ellis et al. v. Railway Clerks, et al. **———U.S.——— (U.S. S.Ct, Apr. 1984)**

[where agency-fee-paying nonmembers in U shop objected to use of their contributions to particular U activities, ct held there was no constitutional barrier to allowing U to use their contributions for U's national conventions, U's social activities, and its monthly publication; U shop countenances significant infringement on First Amendment rights, and such interference is justified by governmental interest in industrial peace]

Ellis et al. v. Railway Clerks, et al. **———U.S.——— (U.S. S.CT, Apr. 1984)**

[where agency-fee-paying nonmembers in U shop objected to making contributions to U's social activities on basis of First Amendment rights, ct held it need not determine whether contributing money to such affairs is an act triggering First Amendment protection; to the extent it is, communicative content is not inherent in the act but stems from U's involvement in it; since the objection is that these are *Union* social hours, fact that Ee is forced to contribute does not increase infringement of First Amendment rights already resulting from compelled contributions to U]

Ellis et al. v. Railway Clerks, et al. **———U.S.——— (U.S. S.CT, Apr. 1984)**

[where agency-fee-paying nonmembers in U shop objected to making contributions to publication of U's monthly magazine and to U's national conventions on basis of First Amendment rights, ct held that, while both have direct communicative content and involve expression of ideas, there was little infringement of First Amendment rights beyond that already accepted, and none that is not justified by governmental interests behind U shop itself; expenses involved relate to U's collective bargaining work; and governmental interest in overcoming free-rider problem requires flexibility in U's use of compelled funds]

Ellis et al. v. Railway Clerks, et al. **———U.S.——— (U.S. S.CT, Apr. 1984)**

[where agency-fee-paying nonmembers in U shop objected to particular U contributions they were required to make, ct held fact that objecting Ees invoked First Amendment was insufficient reason to impose heightened standard of clear and convincing standard of proof rather than preponderance of evidence proof normally applicable in civil suits for damages; ct has held that U bears burden of proving what proportion of expenditures went to activities that could be charged to objecting Ees, and that no heightened standard is appropriate in such a situation]

Trustee of St. Joseph's College **282 NLRB No. 009**

[Bd declined jurisdiction over E (4 year college) founded by religious Order since College's mission is inextricably interwoven with indisputably religious mission of the Order because: (1) College is financially dependent on Order; (2) Order exercises considerable administrative control over E; and (3) Bishop of Portland possesses significant degree of control over E. Pervasiveness of Order's influence on teaching of E, even as to secular subjects, is apparent in certain requirements imposed on faculty of E. Very process of inquiry by Bd, would present substantial liklihood that rights guaranteed by constitution may be inpinged]

Trustee of St. Joseph's College **282 NLRB No. 009**

[to extent that *Barber-Scotia College*, 245 NLRB 406 (1979) and similar cases stand for proposition that *Catholic Bishop of Chicago*, 440 U.S. 490 (1979), does not apply to colleges and universities they are *overruled*]

Passaic Daily News t/a The Herald News **276 NLRB No. 078**

(Bd revised original remedy which ordered newspaper to publish a column prepared by Ee in order to avoid any First Amendment problem by ordering newspaper to restore Ee immediately to column writing duties and *decide* whether to publish Ee's column upon factors other than U or protected activity; such order does not compel publication *or* thrust Bd into editorial decision-making process and involves only an inquiry into E's motive, an inquiry which is constitutionally permissible)

Florida Gulf Coast Building Trades Council, AFL-CIO (The Edward J. Debartolo Corporation) **273 NLRB No. 172**

(contention that First Amendment protected U's handbilling of secondary Es to coerce them to c/d/b with other secondary Es and force those secondary Es to c/d/b with primary E rejected, since literal language of statute and applicable case law required finding a violation; further, Bd would not consider First Amendment issued since the Act prohibited the handbilling, and Bd presumed constitutionality of the Act it administered, and S.Ct had not asked Bd to consider the First Amendment issue)

Universidad Central De Bayamon v. N.L.R.B. **793 F.2d 383 (C.A. 1, June 1986)**

[divided en banc ct denied enforcement of Bd's bargaining order against church-operated university and w/drew prior enfg. opn (778 F.2d 922); ct divided over interpretation of *Catholic Bishop* (440 U.S. 490), withholding jurisdiction from secondary schools; 3 judges supported denial of enforcement based on risk of church/state entanglement, and other limitations on Bd's jurisdiction over university teachers; 3 judges suggested enforcement based on difference between teachers in pre-college schools and faculty at

5000—Cont.

universities and because religious function here was subordinate to that of providing secular education]

N.L.R.B. v. The Salvation Army of Massachusetts Dorchester Day Care Center ———F.2d——— (C.A. 1, May 1985)

[Bd properly asserted jurisdiction over day care center operated by Salvation Army, notwithstanding E's contention that to assert jurisdiction would pose significant risk that its First Amendment rights would be infringed, since day care center served purely secular function where function was primarily to provide care for children, not education, day care involved no religious instruction or indoctrination and teachers, children and parents were not chosen according to their religious affiliation]

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) 755 F.2d 5 (C.A. 2, Feb. 1985)

(contention that Sec. 9(b)(3), when interpreted, as here, to allow E to withdraw recognition after expiration of contract and rejection of its final offer from voluntarily recognized U representing guards and nonguards, violated U's and its member guards' First Amendment rights, rejected, since, balanced against the public interest, as found by Congress, infringement was minimal and their rights were not abrogated but simply made less attractive)

Volunteers of America, Los Angeles v. N.L.R.B. 777 F.2d 1386 (C.A. 9, Dec. 1985)

[Bd did not err in asserting jurisdiction over nonprofit religious alcohol detoxification center, since there was no significant risk the first amendment would be infringed where center was essentially secular, center's religious views were not imposed upon its Ees, Ees did not propagate E's religious doctrine and further, E's contention that its social programs were expressive of a religious philosophy and thus there was excesive entanglement, rejected, since the center's programs were carried out in a secular fashion]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ———F.2d——— (C.A. 9, Oct. 1984)

[ct declined to examine First Amendment issue as to U's handbills and newspaper ads directed at secondary E; ct must first address preliminary issue of coercion, resolution of which must await Bd's clarification of issue on remand; constitutional issues here are novel and complex, involving use of handbilling; constitutionality of restriction on handbills is more suspect than restraint on picketing which involves elements of conduct as well as communication of ideas; and application of 8(b)(4) to facts herein may infringe on other constitutional guarantees, freedom of press and freedom of association]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. 796 F.2d 1328 (C.A. 11, Aug. 1986)

[handbilling is protected by First Amendment even when designed to pressure others to act, but government has interest in certain forms of economic regulations, e.g. secondary boycotts and picketing, notwithstanding effects on rights of speech and association, as part of Congress' striking delicate balance between U's freedom of expression and neutral Ea', Ees', and consumers' freedom from coerced participation in industrial strife]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. 796 F.2d 1328 (C.A. 11, Aug. 1986)

[although labor picketing is entitled to less First Amendment protection than pure speech, because it involves patrolling a particular locality and may induce action, and communication which is merely a threat of retaliation based on misrepresentation and coercion is w/o First Amendment protection, handbilling herein, which was peaceful and orderly and involved none of non-speech elements justifying restrictions on picketing but instead relied entirely on persuasive force of idea it presented and left recipient free to act or not, was protected]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. 796 F.2d 1328 (C.A. 11, Aug. 1986)

[peaceful and orderly handbilling at mall entrance urging consumers to boycott all mall tenants because of allegedly substandard wages paid by one tenant's building contractor, not violation, since, absent non-speech elements permitting restrictions on labor picketing and in view of First Amendment protection afforded handbilling, construing Sec. 8(b)(4)(ii)(B) to prohibit handbilling raises serious constitutional questions requiring clearly expressed intent of Congress to prohibit nonpicketing labor publicity, which is not shown by legislative history of Sec. 8(b)(4) amendments]

5800 FIFTH AMENDMENT TO CONSTITUTION

In re Martha R. Kave 760 F.2d 343 (C.A. 1, Mar. 1985)

(privilege against self incrimination does not depend on nature of proceeding in which testimony is used, but rather on purportedly incriminatory nature of the interrogation; to invoke privilege, it is enough if there is reasonable possibility of prosecution, and if testimony, although falling short of proving crime in its entirety, will tend to conviction when combined with evidence from other sources)

In re Martha R. Kave 760 F.2d 343 (C.A. 1, Mar. 1985)

(alleged contemnor held entitled to full protection of fifth amendment against interrogation that was directed towards implicating her, through her own testimony, with acts that could lead, quite realistically, to her own criminal prosecution)

In re Martha R. Kave 760 F.2d 343 (C.A. 1, Mar. 1985)

(fifth amendment protects against compulsory surrender of (1) personal business records, (2) in possession of sole proprietor or practitioner, (3) only with respect to testimonial acts implicit in surrender itself)

In re Martha R. Kave 760 F.2d 343 (C.A. 1, Mar. 1985)

(sole practioner's refusal to produce personal business records held protected under fifth amendment, where production of records, which were in her possession, could have constituted incriminatory testimonial acts)

6300 TENTH AMENDMENT TO CONSTITUTION

7500 FOURTEENTH AMENDMENT TO CONSTITUTION

122 PURPOSE AND POLICY OF NLRA

0100 GENERALLY

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. ——— (U.S. S.Ct, Feb. 1986)

[basic purpose of Act is to preserve industrial peace]

3300 LEGISLATIVE HISTORY

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors 279 NLRB No. 068

[Ee's participation in U disciplinary proceeding against E's supervisor, held protected activity, notwithstanding proceeding may have violated 8(b)(1)(B) of the Act, since Ee was engaged in Sec. 7 activity of assisting U by participating in U meeting and was not a *perpetrator* of the proceeding; rather, U officials had initiated the proceeding; Congress's intent was that generally labor organizations and their agents, but not individual Ees, should be responsible for the unlawful practices of labor organizations]

Building Material and Dump Truck Drivers, Local 420, Teamsters (Gregg Industries) 274 NLRB No. 085

(U's offers to waive or lower initiation fees for Ee's who joined prior to election, violative of Sec. 8(b)(1)(A), since clear from legislative history Sec. 8(b)(1)(A) was intended to proscribe U solicitation of membership with threats of exacting higher fees later when maintenance of membership may be condition of employment, and Bd also relied on *Savair Mfg. Co.*, 414 U.S. 270, in concluding that conduct had reasonable tendency to coerce Ees who desired to refrain from joining or assisting U at time when they were w/i their Sec. 7 rights to do so and thus was w/i proscription of 8(b)(1)(A))

Moving Picture Projectionists Local No 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) 274 NLRB No. 006

(legislative history indicates purpose of Sec. 8(b)(5) is to prevent Us, by exorbitant initiation fees, from circumventing prohibition against closed shops; in attempting to achieve such purpose, Bd has determined that relevant wages are starting wages since Ees who pay initiation fees are those in lowest wage bracket; but Bd has never determined a standard ratio and, rather, has concluded in each case to decide whether under all circumstances, with due consideration for practices and customs, initiation fees required are either excessive or discriminatory)

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) 273 NLRB No. 148

(in enacting 8(b)(4), Congress was concerned with dual objectives of preserving right of labor organizations to bring pressure to bear on offending Es in primary labor disputes and of shielding unoffending Es and others from pressures in controversies not their own, and mere fact that language of this Section comprehends familiar patterns of a labor dispute, does not inexorably dictate that it excludes all variations from those patterns)

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)

[*Legislative histor of Section 8(a)(2) of NLRA makes clear that Congress intended it, much as Section 302 LRRA, to be provision prohibiting bribery and company dominated Us, not prohibiting kind of labor-management cooperation necessary to collective bargaining as giving paid time to U steward for performance of U duties*]

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers 778 F.2d 284 (C.A. 6, Dec. 1985)

[although Sec. 8(b)(1)(A) was modelled after Sec. 8(a)(1), its legislative history shows prohibition of interference with Ees' Sec. 7 rights was deleted lest any conversation or persuasion urging Ees to join U be found a ULP and has been interpreted by S.Ct to reach such *reprehensible* practices as violence, intimidation, reprisals and threats thereof, rather than *methods of peaceful persuasion*, and distinction between coercion and persuasion is explicitly legislated in Sec. 8(c)]

6700 SAVINGS PROVISION

133 RELATIONSHIP TO OTHER STATUTES AND PUBLIC POLICY

0100 GENERALLY

Meyers Industries, Inc. **281 NLRB No. 118**

[in connection with its refusal to find discharge for reporting safety violation to government agency unlawful, since not concerted activity, Bd stated that although it was its duty to construe labor laws so as to accomodate purposes of other federal statutes, Bd was not intended to be forum in to assist in enforcing other statutes and rectifying all injustices in workplace]

0600 SECTION 301 - SUITS FOR VIOLATION OF CONTRACT

0650 SUITS BY UNIONS

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. **———F.2d———**

(C.A. 9, June 1985)

[where, following contract's expiration and no new agreement, U filed state claim in district ct against E's labor relations consultants for tortious interference with prospective contractual relationship, ct held district ct improperly denied consultants' mtn to dismiss; 301(a) did not give district ct jurisdiction on ground implied contract existed because of past bargaining relationship; bargaining agreements expire according to own terms and, in view of 8(d) and national labor policy, parties have no implied obligation to enter into new agreement]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. **———F.2d———**

(C.A. 9, June 1985)

[in reversing and remanding decision to district ct found not to have jurisdiction under 301(a) over U's state law contractual tort claim which was found to be preempted, ct held that U's expired contract could not serve as basis for proper exercise of jurisdiction under 301(a), and that any obligation that E had to continue paying wages and making contributions while negotiating resulted from 8(a)(5) proscription against unilateral changes, and not from contract w/i definition of 301(a)]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. **———F.2d———**

(C.A. 9, June 1985)

[in reversing and remanding decision to district ct found not to have jurisdiction under 301(a) over U's state law contractual tort claim which was found to be preempted, ct declined to accept district ct's assumption of jurisdiction under 301(a) on ground that its operative language should be construed broadly to include w/i its scope tort action alleging *prospective* contractual relations]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. **———F.2d———**

(C.A. 9, June 1985)

[ct rejected U's attempt to justify district ct's exercise of 301(a) jurisdiction over U's state law claim on ground E used labor consultants to negotiate agreements and 301(a) should be interpreted broadly to alleviate problems arising from use of consultants to keep companies *U-free*; ct expressed no opinion as to legitimacy of U's claim concerning consultant problem and stated resolution thereof is best left to legislative and not judicial branch]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. **———F.2d———**

(C.A. 9, June 1985)

[ct rejected U's attempt to justify district ct's exercise of 301(a) jurisdiction over U's state law claim against E's labor consultants on ground consultants were independent third parties, and not E s agents, when they induced E to terminate long relationship with U; even if U's third party argument is valid, conduct which constituted essential element of U's state claim was very same conduct Bd had considered in rejecting U's ULP claim and, consequently, conduct is arguably covered by Act and state claim is preempted]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. **———F.2d———**

(C.A. 9, June 1985)

[in finding that district ct had no 301(a) jurisdiction over U's state law claim, ct held that, unlike case involving state claim arising from malpractice charge against U's counsel, whose resolution depended on standard of care attorney owes client and not on evaluation of conduct arguably covered by Act, U's state claim herein against E's labor consultants for tortious interference with contractual relationship between E and U involved element dealing with intricacies of bargaining process better left to Bd's exclusive jurisdiction]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. **———F.2d———**

(C.A. 9, June 1985)

[in finding that district ct did not have 301(a) jurisdiction over U's state claim, ct rejected U's contention that, even if conduct complained of in its state claim was arguably covered by Act and therefore preempted, state's interest in preventing tortious interference with contractual relationships warranted exception to exclusive jurisdiction rule; such interference is not so deeply rooted in local law that state's interest in enforcing it overrides interference with labor law that prosecution of state action would entail]

Bakers Union Local No. 4 of Greater St. Louis v. Schnuck Baking Company, Inc. **———F.Supp.———(DC E.D. MO, July 1985)**

[mtn to dismiss Sec. 301 suit brought to compel E to submit to contract's grievance arbitration procedure dispute assertedly over E's manning of bakery operation, granted, where dispute involved whether bakery department Ees were an accretion to existing warehouse store unit, a representational issue that formed basis of ULP charge filed by U that was dismissed by RD w/o appeal]

0675 SUITS BY EMPLOYEES

Allis-Chalmers Corp. v. Lueck **———U.S.———**

(U.S. S.CT, Apr. 1985)

[E's insurance claim, pursuant to self-funded (by E) disability plan in collective-bargaining agreement which established disability grievance procedure culminating in final and binding arbitration, dismissed for failure to make use of grievance procedure in agreement; questions relating to what parties to agreement agreed and what legal consequences were intended to flow from breaches of agreement, must be resolved by reference to uniform federal law rather than state tort law]

Allis-Chalmers Corp. v. Lueck **———U.S.———**

(U.S. S.CT, Apr. 1985)

[Sec. 301 (of NLRA) does not grant parties to collective-bargaining agreement ability to contract for what is illegal under state law; questions of contract interpretation, therefore underlie any finding of tort liability, regardless that state ct may choose to define tort as *independent* of any contract question; Congress has mandated that *federal law govern meaning given contract terms* in order to have unified federal body of labor-contract law]

Allis-Chalmers Corp. v. Lueck **———U.S.———**

(U.S. S.CT, Apr. 1985)

[since nearly any alleged willful breach of contract can be restated as tort claim for breach of good faith obligation under contract, arbitrator's role in every case could be bypassed if Section 301 is not understood to pre-empt such tort claims; rule that permitted individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness]

Allis-Chalmers Corp. v. Lueck **———U.S.———**

(U.S. S.CT, Apr. 1985)

[when resolution of state-law claim is substantially dependent upon analysis of terms of agreement made between parties in labor contract, that claim must either be treated as Section 301 claim, or dismissed as pre-empted by federal labor-contract law; complaint in instant case (tort action for breach

0675—Cont.

of duty to act in good faith brought in state ct) should have been dismissed for failure to make use of greivance procedure established in collective-bargaining agreement]

1200 SECTION 302(a) - RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

Imperial House Condominium, Inc. **279 NLRB No. 154**

[ALJ rejected E's defense to failure to contribute to Ees' health benefit funds on ground payments would have been illegal under 302(a) because contract had expired and statutory *written agreement* requirement for making payments lawful was not met; to accept such argument would ignore policy considerations underlying enactment of 302 and 8(a)(5) and would deter rather than enhance bargaining process]

Independent Stave Company, Inc. **278 NLRB No. 089**

[Sec. 302 no defense to withholding prize from winner of Ee contest because his grievances were subject of Bd charges, since it did not apply, and, if it did, matter would be exempt under Sec. 302(c)]

BASF Wyandotte Corporation **276 NLRB No. 175**

(it is appropriate for Bd to consider arguments concerning Section 302 of LMRA to extent they support, or raise possible defense to, ULP allegations)

BASF Wyandotte Corporation **274 NLRB No. 147**

(ALJ properly considered whether E's grant of privileges to U was violative of Section 302 of LMRA, which generally makes it illegal for E to pay money or other things to U or U officer, notwithstanding Bd has no authority to enforce Section 302; Bd is not precluded, in course of determining whether ULP has occurred, from considering arguments, to extent they support, or raise possible defense to ULP allegations, since if Bd refused to consider such arguments, Bd would risk placing party in position of being required to comply with conflicting statutory mandates)

BASF Wyandotte Corporation **274 NLRB No. 147**

(since both Section 302 and NLRA are enompassed in LMRA, it would be incongreous for Section 8 to be interpreted in isolation from Section 302, which is not so remote from matters dealt with by Bd that it is beyond Bd's competence to interpret)

BASF Wyandotte Corporation **274 NLRB No. 147**

(E's grant of privileges to U chairman which included 4 hours of paid time each workday for conducting U business including processing of grievances, use of office, telephone and copying machine, not violative of Section 302 of LMRA, thus not illegal subject of bargaining justifying unilateral withdrawal of privileges since w/i exception set forth in Section 302 (c)(1) in that privileges were granted by reason of chairman's service as Ee of E, nor did such grant of privileges amount to bribery of Ees' representatives at which Section 302 was aimed)

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**

[*Legislative history of Section 8(a)(2) of NLRA makes clear that Congress intended it, much as Section 302 LRRA, to be provision prohibiting bribery and company dominated Us, not prohibiting kind of labor-management cooperation necessary to collective bargaining as giving paid time to U steward for performance of U duties*]

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**

[test of illegality of payment by E to representative of its Ees as proscribed by Sction 302 of LMRA is not whether services for which paid were engaged in during paid period directly benefit E, but whether are to be engaged in by one who is bona fide Ee of E]

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**

[E's unilateral discontinuance of allowing U steward 4 hours per day of paid company time, office and telephone in order to conduct U business, unlawful, since grant of company time and facilities to U mandatory subject of bargaining and bargaining agreement provided for *reasonable amount of paid time* for U business and practice over last 5 years had been to grant above priviledges to steward; E's contentions that privileges were personal to predecessor steward, that contract provision illegal under Sec. 302 of LMRA and Sec. 8(a)(2) of NLRA, and that at any rate, there was only contract violation, rejected]

1400 SECTION 302(c) - EXEMPTION FROM APPLICABILITY OF 302(a)

Independent Stave Company, Inc. **278 NLRB No. 089**

[Sec. 302 no defense to withholding prize from winner of Ee contest because his grievances were subject of Bd charges, since it did not apply, and, if it did, matter would be exempt under Sec. 302(c)]

BASF Wyandotte Corporation **276 NLRB No. 175**

(Bd rejected E's argument that paid release time violates Section 302 of LMRA where factually similar case held that paid release time granted by E to U officials or committeemen administering contract did not violate Section 302, as it came w/i exception for payments made *by reason of* one's services as Ee)

BASF Wyandotte Corporation **274 NLRB No. 147**

(E's grant of privileges to U chairman which included 4 hours of paid time each workday for conducting U business including processing of grievances, use of office, telephone and copying machine, not violative of Section 302 of LMRA, thus not illegal subject of bargaining justifying unilateral withdrawal of privileges since w/i exception set forth in Section 302 (c)(1) in that privileges were granted by reason of chairman's service as Ee of E, nor did such grant of privileges amount to bribery of Ees' representatives at which Section 302 was aimed)

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**

[test of illegality of payment by E to representative of its Ees as proscribed by Sction 302 of LMRA is not whether services for which paid were engaged in during paid period directly benefit E, but whether are to be engaged in by one who is bona fide Ee of E]

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**

[Section 302(c)(1) exception of Section 302(a) of LMRA which permits payment by E to representative of its Ees when that person is Ee of E, and payment is compensation for services as Ee, is not limited to face to face meetings with management]

2500 LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT

Frye v. Steelworkers **767 F.2d 1216 (C.A. 7, July 1985)**

(issues underlying member's allegation that U violated his rights under Title I of LMRDA were fully and fairly litigated in earlier NLRB proceeding, and judgment on those issues was reached in a manner that would not have affected decision; thus, collateral estoppel precluded relitigation of issues where allegations made by GC in NLRB action were same as made by member in LMRDA action, ALJ in NLRB action reviewed all claims of procedural error raised in LMRA claim, as well as claims based on merit, or alleged lack thereof of charges and rendered decision no different than one that would be rendered by district ct in suit under LMRDA)

3000 MARITIME LAWS

Sea-Land Service, Inc. (Sea Operations) **280 NLRB No. 084**

[ship's captain, responsible for transmitting all communications from ship, interrogating and discharging radio officer about message he sent at sea requesting local Bd's phone number, violative, notwithstanding legitamacy of captain's inquiry in asking whether radio was used in unauthorized manner, repeated inquiries as to *why* dischargee asked for Bd's phone number were not relevant to captain's responsibilities regarding communication equipment. Basis for discharge did not distinguish between specific questions asked so that lawful and unlawful motives cannot be separated]

3400 SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

3500 EXECUTIVE ORDERS

3600 OCCUPATIONAL SAFETY AND HEALTH ACT

Hercules Incorporated **281 NLRB No. 130**

[prior OSHA investigation does not preempt Bd consideration of charge that E violated 8(a)(5) by refusal to allow U access to plant to investigate health and safety matters]

3700 URBAN MASS TRANSPORTATION ACT OF 1969

3800 INTERSTATE COMMERCE ACT

3900 IMMIGRATION AND NATURALIZATION ACT

Sure-Tan, Inc., et al. v. N.L.R.B. **———U.S.——— (US S.CT, June 1984)**

[Bd's enforcement of NLRA as to undocumented aliens found reconcilable with present Immigration and Nationality Act (INA), since the INA does not make employment of undocumented aliens illegal; application of NLRA also found to serve INA's purpose of preserving jobs for American workers, since, if Es realize that there will be no advantage under NLRA in preferring illegal aliens to legal resident workers, their incentive to hire illegal aliens is lessened, and aliens may have fewer incentives to enter the country in violation of INA]

3900—Cont.

Sure-Tan, Inc., et al. v. N.L.R.B. ——U.S.——
(US S.CT, June 1984)

[Es' contention that S.Ct's decision in *Bill Johnson's Restaurants, Inc. v. N.L.R.B.* mandates conclusion that their request to INS to enforce INA against their illegal alien Ees was an aspect of their First Amendment right to *ptn the Government for a redress of grievances* and may not be burdened under guise of enforcing NLRA, rejected; the right protected in that case was right of access to cts for 'redress of alleged wrongs', and Es herein did not invoke INS administrative process for such purpose; moreover federalism concerns are not at stake here as in that case]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[ct remanded to Bd for modification of its order which denied backpay to undocumented aliens who had not left U.S. during backpay period nor were subject of deportation proceedings. Ct held Bd erred when it interpreted *Sure-Tan* 467 U.S. 883, which deemed undocumented alien discriminatees who had left U.S. to be unavailable for work, and not entitled to packpay, and conditioned reinstatement on legal reentry, to mean that undocumented aliens never entitled to backpay and would require compliance officer to determine legality of each alien discriminatee's presence in U.S.]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[*undocumented aliens are entitled to protection of Act and when remaining in U.S. during backpay period, entitled to backpay. To deny undocumented aliens Bd remedies would encourage unscrupulous Es to hire undocumented workers; Congress intended to protect collective bargaining rights by ensuring that there is no subclass of workers nor would allowing backpay to aliens who work during backpay period encourage illegal entry or reentry to U.S.*]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[Bd exceeded its authority and expertise where its order would require compliance officers to determine immigration status of individual alien discriminatees, since would involve interpretation of complex immigration laws, a matter peculiarly w/i expertise of INS. Further, in view of significant procedual differences between deportation hearing and Bd compliance proceedings, if Bd's determination entitled to collateral estoppel in subsequent INS deportation proceeding, alien discriminatee could raise serious due process objections to compliance proceeding]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[Bd remedy which would deny backpay to discriminatees who were undocumented aliens would make hiring undocumented workers more attractive to unscrupulous Es thus undermining two major goals of Immigration Act i.d. prevention of loss of American workers' jobs, and protection of American workers' wage rates and working conditions]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[undocumented aliens entitled to protection of Act and are entitled to backpay when remaining in U.S. and available for work during backpay period, notwithstanding illegal entry into U.S. and contention such illegal aliens suffered no harm since they were not legally entitled to work]

4000 EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.——
(U.S. S.CT, July 1984)

[ct declined to decide whether state's prohibition of U's administration of its pension or welfare funds as sanction against U for noncompliance with state criteria concerning qualifications of casino industry U officials was preempted by ERISA; since state commission, in its discretion, chose not to impose sanction, ct was not presented with concrete application of state law and issue was not ripe for review; consequently, ct of appeals' holding that ERISA preempted state sanction is vacated]

5000 FEDERAL SERVICE CONTRACT ACT OF 1965

5600 PRIVACY ACT

U.S. Postal Service **280 NLRB No. 080**

[*Privacy Act* constitutes *a defense* to request for information under Section 8(a)(5) and (1) of Act *unless* disclosure of (requested) record would be for *routine use*]

U.S. Postal Service **280 NLRB No. 080**

[information in E's records (in instant case) may be disclosed under NLRA, to U as a *routine use* exception to Privacy Act in view of E's own acknowledged, published *routine use* exception under Privacy Act and its (E's) specific warning to applicants]

5800 FEDERAL WIRETAPPING STATUTE

6200 FREEDOM OF INFORMATION ACT (SEE 883-2500)

7000 EQUAL ACCESS TO JUSTICE ACT

7200 ANTITRUST STATUTES

7300 FEDERAL MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

7500 ECONOMIC STABILIZATION ACT OF 1971

7600 DAVIS BACON ACT

7700 FAIR LABOR STANDARDS ACT

Mario Saikhon, Inc. **278 NLRB No. 166**

[Ees engaged in *field packing* operation are Ees and not agricultural laborers w/i meaning of Act and Bd has jurisdiction over them. Definition of *harvesting*, cannot be stretched to encompass packing operation just because it is being performed in field because moving it to field has not changed nature of work. Bd guided by Dept. of Labor's interpretation of *Section 3(f) of FLSA*, in determining whether individual is Agricultural laborer. It is *nature of work*, and *not identity or purpose of E, that is controlling*]

7900 DECLARATORY JUDGMENT ACT

8100 RAILWAY LABOR ACT

Sky Cap, Inc. **281 NLRB No. 116**

[jurisdiction over E engaged in business of providing passenger baggage handling services under contract with eight airlines at Metropolitan Airport, asserted by National Mediation Board under provisions of Railway Labor Act]

Ground Handling, Inc. **278 NLRB No. 142**

[Bd dismissed ptn on jurisdictional grounds where E provided ground fleet services to air carriers through contract with county where, pursuant to Bd's request, National Mediation Bd advised Bd that, in view of nature of E's activities traditionally performed by Ees of carriers in airline industry, and degree of control exercised by airlines which E serves, activities and Ees performing such activities are subject to Railway Labor Act]

Ground Services, Inc., A Wholly-Owned Subsidiary of ARA Services, Inc. **276 NLRB No. 006**

(ptn to represent Ees of E providing ground fleet service to air carriers, dismissed for lack of jurisdiction, where Bd advised by National Mediation Board that Ees sought by petitioner were subject to Railway Labor Act)

8200 BANKRUPTCY STATUTES

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ——U.S.——
(U.S. S.Ct, Feb. 1984)

[Bd is precluded from, in effect, enforcing terms of collective-bargaining agreement by filing ULP charges against debtor-in-possession for violating Sec. 8(d) of NLRA by modifying or terminating unexpired labor agreement. Though Bd's action is nominally one to enforce Sec. 8(d), practical effect of enforcement action would be to require adherence to terms of agreement, but filing of ptn in bankruptcy means that agreement is no longer enforceable. Consequently, Bd enforcement under these circumstances would run directly counter to express provisions of Bankruptcy Code]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ——U.S.——
(U.S. S.Ct, Feb. 1984)

[debtor-in-possession does not need to comply with mid-term contract modification procedures set forth in Sec. 8(d) because bargaining agreement is not enforceable contract w/i meaning of 8(d); therefore, because modification accomplished by operation of law (Bankuptcy Code) and not by unilateral action of E, it follows that debtor-in-possession need not comply with provisions of Sec. 8(d) prior to seeking Bankruptcy Ct's permission to reject agreement]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ——U.S.——
(U.S. S.Ct, Feb. 1984)

[debtor-in-possession does not commit ULP when, after filing bankruptcy ptn but before Bankruptcy Ct approved rejection of bargaining agreement, it unilaterally modifies or terminates one or more provisions of contract, notwithstanding contract provided that it was binding on parties or successors even though bankruptcy should supervene]

8200—Cont.

Otten Truck Line; United Star Express, Inc.; and Claude Hayes, an Individual **282 NLRB No. 073**
[modifications of *NLRB v. Bildisco & Bildisco*, contained in Bankruptcy Amendments and Federal Judgeship Act of 1984 do not apply to instant case since ptn (for bankruptcy) was filed prior to their legislative enactment]

Antoine's Inc., A California Corporation, d/b/a Antoine's of Beverly Hills **280 NLRB No. 142**
[mtn for summary judgment granted where respondent's answer to Notice to Show Cause stated it had filed bankruptcy ptn but failed to deny committing ULP or explain failure to contact Regional Office about answer or extension of time to file answer, and instituting bankruptcy proceedings does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; Bd proceedings fall w/i 11 USC Sec. 362(b)(4) and (5) exception to automatic stay provision for governmental unit proceedings to enforce its police or regulatory powers]

Michele Rena, and Its Alter Ego, Rite Style Merchandising, Inc., T/A Rite Style Fashions **280 NLRB No. 072**
[fact Respondent had filed chapter 11 bankruptcy reorganization ptn did not constitute good cause for its failure to file timely answer to complaint, thus mtn for summary judgment granted since allegations of complaint deemed to be admitted]

J & B Smith Company, Inc. **280 NLRB No. 057**
[contention made first time in exception to ALJ's decision that ptn in bankruptcy triggered automatic stay and that Bd's enforcement of ALJ's D/O would be *in derogation* of Bankruptcy Code's protection of respondent, rejected since Bd proceedings fall w/i exceptions to automatic stay provisions]

Can-Do, Inc. **279 NLRB No. 108**
[while mindful that recently enacted bankruptcy statute modified S.Ct's *Bildisco* decision, Bd held statute did not apply to cases such as that herein where intervening bankruptcy ptn was filed in summary judgment proceeding prior to its enactment]

Rebel Coal Company, Inc., and Richlands Supply Corp. **279 NLRB No. 022**
[E's mtn to dismiss C on grounds that Bankruptcy Ct had discharged E of all liabilities except those approved by ct, of which liability for ULPs was not one, denied since nothing in Order of Bankruptcy Ct precluded E from proceeding further in matter]

Evans Plumbing Co. **278 NLRB No. 089**
[service company found successor to plumbing company where it took over latter's operations, hiring a majority of its Ees from plumbing company's Ees with knowledge of latter's ULPs; successor's obligations not affected by predecessor's bankruptcy proceeding]

Evans Plumbing Co. **278 NLRB No. 089**
[allegations of gross backpay found true and accurate where E failed to specifically deny backpay specification and state basis for disagreement or to bring inaccuracy to ALJ's attention at hearing when given opportunity to do so, relying instead on its mtn to dismiss because its filing of ptn in bankruptcy allegedly operated as stay to backpay proceeding]

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos **277 NLRB No. 39**
(contention bargaining order violated automatic stay of Bankruptcy Code, 11 U.S.C. Sec. 362)

Ohio Container Service, Inc.; Myron E. Wasserman, Trustee in Bankruptcy **277 NLRB No. 025**
(trustee in bankruptcy of Respondent E ordered to remedy stipulated violations of Sections 8(a)(1) and (3) by Respondent; nothing in *Bildisco* 104 S.Ct 1188 which would preclude ordering this remedy, since *Bildisco* was concerned with alleged Section 8(a)(5) contractual violations)

Ohio Container Service, Inc.; Myron E. Wasserman, Trustee in Bankruptcy **277 NLRB No. 025**
(trustee in bankruptcy's mtn to stay ULP proceedings pursuant to Bankruptcy code, rejected, since Bd's jurisdiction to hear and determine charges of ULPs is exempted from automatic stay of provisions of Bankruptcy Act under exception of 11 U.S.C. 362(b)(4))

Herbert Rogers, Esquire, Trustee In Bankruptcy To Bristol Clothing Manufacturing Co., Inc. **276 NLRB No. 111**
(GC's mtn to strike answer of trustee in bankruptcy to second amended C and mtn for summary judgment based on E's failure, as debtor-in-possession, to answer such C, and on trustee's answer's failure to meet Bd's R/R requirements, denied, where, although trustee, rather than E, filed ans to second amended C, E's answer to first amended C answered allegations in second amended C containing substantially same allegations as those in first, and E's ans thus raised litigable issues; and denial was appropriate in view of special role of trustee)

Tucson Yellow Cab, Inc., A Debtor In Possession **275 NLRB No. 032**
(no violation, where E unilaterally failed to make payments into U's pension trust fund after it had filed ptn in bankruptcy, in view of *NLRB v. Bildisco and Bildisco* 104 S.Ct 1188, 115 LRRM 2805)

Edwin Odum d/b/a The Phoenix Company **274 NLRB No. 146**
(Congress nullified *Bildisco*, 104 S.Ct 1188, which held that filing Chapter 11 ptn renders collective-bargaining agreement unenforceable by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, July 10, 1984)

Lake Castings, Inc. **274 NLRB No. 040**
(mtn for summary judgment granted, in view of E's trustee in bankruptcy failure to file answer, insofar as complaint alleged violation of Sections 8(a)(5) and (1) by failing to make premium payments for medical insurance for unit Ees prior to filing of bankruptcy ptn; however, mtn denied and that portion of complaint remanded to RD which alleged violation by failure to make insurance premium payments on or after date of filing bankruptcy ptn in view of *Bildisco* 104 S.Ct 1188, which held debtor-in-possession does not committ ULP when it unilaterally rejects or modifies bargaining agreement before bankruptcy ct approves formal rejection)

Maruldo Asphalt Paving, Inc. **274 NLRB No. 018**
(mtn for default judgment denied, notwithstanding E's failure to answer backpay specification which alleged E's liability for fringe benefit contributions for second half of 1982 and third quarter of 1983 and which stated that E had filed for bankruptcy August 3, 1983, and case remanded for investigation into circumstances surrounding bankruptcy ptn filing, since E's liability for contributions for third quarter of 1983 could not be determined in absence of indication that E had formally accepted contract after filing the ptn and that Bankruptcy Ct had permitted E's rejection of the contract)

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 224**
(Respondent Corporation required to enforce terms and conditions of applicable (labor) contract only until date on which Respondent Corporation filed its ptn for bankruptcy. See *NLRB v. Bildisco & Bildisco*, 104 S.Ct. 1188 (1984). Contractual backpay remedy, awarded by Bd, fully restores status quo prior to filing of bankruptcy ptn)

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 224**
(Bankruptcy amendments and Federal Judgeship Act of 1984, enacted by Congress on 10 July 1984, does not apply to cases in which bankruptcy ptn was filed prior to its enactment)

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-6-86**
[issue of whether Sec. 8(d) may be used to enforce post-bankruptcy ptn contract should be determined by analyzing policies and provisions of Bankruptcy Code. Code treatment of transactions between debtor-in-possession and third parties after bankruptcy ptn filed supports view that Code favors enforceability both with respect to assumed pre-petition contracts and contracts negotiated post-ptn. Code favors enforceability of post ptn contracts as a means of establishing confidence in debtor-in-possession and encouraging third parties to do business with debtor]

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-6-86**
[upon reconsideration in light of *NLRB v. Bildisco*, 459 U.S. 1145, debtor-in-possession's changes in provisions in regard to permanent replacement of strikers after expiration of contract, but prior to filing of bankruptcy ptn, unlawful since debtor-in-possession had assumed contract post ptn]

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-6-86**
[upon reconsideration in light of *NLRB v. Bildisco*, 459 U.S. 1145, debtor-in-possession unilateral changes in provisions regarding U's access to plant and wages and benefits prior to expiration of contract, and prior to filing of bankruptcy ptn, unlawful, since debtor in possession assumed contract post ptn]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[where E unlawfully refused to execute extension agreement negotiated by multi-E association and filed ptn in bankruptcy but continued its business under guise of alter ego company, ALJ held that since ptn was filed after effective date of enactment of Bankruptcy Amendments and Federal Judgeship Act, extension agreement was enforceable against E; moreover, since E's alter ego company was not shown to have been brought into that proceeding; any remedy pertaining to it was unaffected]

Mark Manufacturing Corp. **JD-373-85**
[E's failure to give pay raises and checkoff U dues, on grounds that pending bankruptcy litigation and *NLRB v. Bildisco*, 104 S.Ct. 1188 allowed its actions, violative, since E abrogated bargaining agreement before bankruptcy ptn was filed and did not submit any proposal to the U, after filing ptn, to modify bargaining agreement, as required by Bankruptcy Amendments of 1984]

8200—Cont.

Metro Force Security, Ltd.; and Metro Force Security, Ltd., Debtor in Possession — **JD-(NY)-130-85**

[violation, where debtor-in-possession failed to comply with bargaining agreement provisions as to wages, contributions to welfare fund, payment for sick days, and remission of U dues and initiation fees deducted from Ees' wages, since default occurred after passage of 1984 Bankruptcy Amendments, PL 98-353, which provides that debtor-in-possession may not unilaterally alter bargaining agreement, but must first comply with notice and other requirements set forth therein]

Indianhead Truck Line, Inc. — **JD-271-85**

(E unlawfully refused to bargain over effects of closure of its freight operations where U's secretary-treasurer stated to E *we have to sit down and work out a closing agreement*, and E replied that agreement *had to be worked out by bankruptcy ct*, since E is not relieved of its obligation to bargain over effects of its decision because it has become debtor-in-possession under Bankruptcy Act and believes it would be unable to meet U's financial demands; E's subsequent invitation to U to bargain did not bar finding of violation and ordering remedy for prior violation)

Ambassador Convalescent Center, Inc. Debtor-In-Possession In Bankruptcy — **JD-319-85**

(refusing to grant wage increase as required by executed agreement, violative, notwithstanding E's argument that agreement was void because E, debtor-in-possession, did not seek or obtain approval of bankruptcy ct where ct was not required to approve agreement)

U. S. Truck Company, Inc. — **JD-111-85**

(unilateral changes by E, who was debtor-in-possession, after effective date of bankruptcy ct order authorizing rejection of bargaining agreement, not unlawful, under *NLRB v. Bildisco and Bildisco*, 104 S.Ct 1188. However, E had obligation to bargain regarding new contract)

U. S. Truck Company, Inc. — **JD-111-85**

(1984 amendments to Bankruptcy Act which modified *Bildisco*, 104 S.Ct 1188, in regard to debtor-in-possession's rejection of bargaining agreement do not apply to cases where bankruptcy ptn filed prior to enactment of amendments)

E. G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. — **JD-168-85**

(Bd enforcement proceeding in ct of appeals has been held to be proceeding by governmental unit to enforce its regulatory power w/i meaning of provisions of Bankruptcy Act, and hence is not subject to automatic stay provision of that Act; and instant backpay proceeding is part and parcel of process leading to enforcement ptn filed in ct of appeals and, hence, falls under same exemption)

N.L.R.B. v. Superior Fowarding, Inc. — **762 F.2d 695 (C.A. 8, May 1985)**

(bankruptcy ct had discretion and authority to enjoin federal regulatory proceedings when those proceedings would threaten debtor's estate, and when ct has jurisdiction over ptn in bankruptcy under 28 U.S.C. Sec. 1471)

N.L.R.B. v. Superior Fowarding, Inc. — **762 F.2d 695 (C.A. 8, May 1985)**

(expenses incurred in defending against ULP charges held to constitute threat to assets of debtor's estate given the time and effort of management to defend 52 ULP charges)

N.L.R.B. v. Superior Fowarding, Inc. — **762 F.2d 695 (C.A. 8, May 1985)**

(bankruptcy ct can enjoin Bd from filing or processing ULP charges arising from modification of contract since, if Bd can neither file charges against nor find debtor-in-possession guilty of ULP for unilaterally rejecting or modifying contract, certainly it cannot proceed with hearings on ULP charges arising under that contract)

N.L.R.B. v. Superior Fowarding, Inc. — **762 F.2d 695 (C.A. 8, May 1985)**

(whether alleged ULP stems from debtor's rejection or modification of bargaining agreement or from debtor's failure to bargain over terms of new contract, is question of contract construction, one of law, to be determined by bankruptcy ct when debtor petitions ct to enjoin Bd proceedings notwithstanding contention that Bd is exclusive forum for determining whether conduct falls w/i *Bildisco* protected conduct)

Shanrod Construction and John Shane (Debtor) — **_____ F.Supp._____ (BC W.D. NY, Aug. 1985)**

[Bankruptcy Ct (ct) stayed Bd from holding ULP hearing filed against debtor-in-possession (debtor) before debtor filed ptn under Chap. 11, holding that under 11 U.S.C. Sec. 1113 ct and only ct had authority to determine issue of whether debtor could reject collective bargaining agreement, an executory agreement]

8300 FOREIGN SOVEREIGN IMMUNITY ACT OF 1976

8400 FEDERAL COMMUNICATIONS ACT

8500 FEDERAL ANTI-INJUNCTION STATUTE

8600 FEDERAL TAX CODE

8700 STATE STATUTES

8701 GENERALLY

Baker et al. v. General Motors Corp. et al — **____ U.S. ____ (U.S. S.Ct, July 1986)**

[state law denying unemployment compensation to laid-off Ees who, by paying U dues, financed strikes at other locations that led to their layoffs, not pre-empted by federal law, notwithstanding right to make such payments is protected by Sec. 7; Ees found to have voluntarily caused own unemployment, as there was meaningful connection between Ees' decision to pay dues, ensuing strikes and their own layoffs, and layoffs were untainted by any unlawful conduct by E; histories of NLRA and Title IX of SSA show that Congress intended to allow such conflict between federal law and state unemployment compensation law]

Baker et al. v. General Motors Corp. et al — **____ U.S. ____ (U.S. S.Ct, July 1986)**

[state may either refuse or provide unemployment compensation to strikers responsible for own unemployment, or to workers laid off by reason of labor dispute in which they have no interest or responsibility whatsoever]

Allis-Chalmers Corp. v. Lueck — **____U.S.____ (U.S. S.CT, Apr. 1985)**

[E's insurance claim, pursuant to self-funded (by E) disability plan in collective-bargaining agreement which established disability grievance procedure culminating in final and binding arbitration, dismissed for failure to make use of grievance procedure in agreement; questions relating to what parties to agreement agreed and what legal consequences were intended to flow from breaches of agreement, must be resolved by reference to uniform federal law rather than state tort law]

Allis-Chalmers Corp. v. Lueck — **____U.S.____ (U.S. S.CT, Apr. 1985)**

[Sec. 301 (cf NLRA) does not grant parties to collective-bargaining agreement ability to contract for what is illegal under state law; questions of contract interpretation, therefore underlie any finding of tort liability, regardless that state ct may choose to define tort as *independent* of any contract question; Congress has mandated that *federal law govern meaning given contract terms* in order to have unified federal body of labor-contract law]

Allis-Chalmers Corp. v. Lueck — **____U.S.____ (U.S. S.CT, Apr. 1985)**

[when resolution of state-law claim is substantially dependent upon analysis of terms of agreement made between parties in labor contract, that claim must either be treated as Section 301 claim, or dismissed as pre-empted by federal labor-contract law; complaint in instant case (tort action for breach of duty to act in good faith brought in state ct) should have been dismissed for failure to make use of greivance procedure established in collective-bargaining agreement]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company — **275 NLRB No. 186**

(in determining that assistant manager at coal mine was not supervisory, ALJ relied on Sec. 2(11) of Act rather than state's coal mining law which assertedly should be basis for considering Ee supervisory)

8733 RIGHT TO WORK STATUTES

Dubose Masonry, Inc. — **279 NLRB No. 125**

[Ees in Texas, a *Right to Work* state, may not be required to maintain U membership in order to work for particular E]

8900 FEDERAL RULES OF CIVIL PROCEDURE

M. J. Santulli Mail Services, Inc. — **281 NLRB No. 170**

[FRCP are not applicable to Bd's administrative hearings which are governed by APA]

Shrewsbury Motors, Inc. — **281 NLRB No. 081**

[applicant's mtn for sanctions under rule 11 of Federal Rules of Civil Procedure, based on contention that GC's position in EAJA proceeding misrepresented position of memorandum issued by GC's Division of Advice on which withdrawal of complaint based in underlying case, which memorandum was previously unavailable to applicant and that GC's position unsupported by law or fact, rejected, since rule not applicable to Bd proceedings]

Starlite Cutting, Inc. and Its Alter Ego Petal Pink Novelty, Inc.; and Joseph Fornaro, an Individual — **280 NLRB No. 120**

[although rule that backpay held in escrow for unavailable discriminatee be returned to respondent if discriminatee not located w/i 1 year may result in forfeiture, discriminatee has no entitlement to backpay, since it is a remedy that is public, not private right, and discriminatee has no property right in award pending his receipt of it; also on his showing by preponderance of

8900—Cont.

evidence compelling reasons for not coming forward timely, Bd would find exception and let him claim award, so that rule is flexible and consistent with federal practice in class actions]

9000 TITLE VII OF THE CIVIL RIGHTS ACT

United States Postal Service 281 NLRB No. 138

[Sec. 9(a)'s guarantee of U's opportunity to be present at adjustment of grievances by E and Ee must prevail over EEO administrative regulations providing for anonymity of aggrieved Ee at precomplaint stage of proceedings, where same matters were subject of EEO precomplaint and grievance, and EEO regulations' purpose of protecting identity of aggrieved Ee from E was not served by preventing U from being present at meeting concerning settlement of EEO precomplaint involving same subject matter as grievance which U was responsible for adjusting]

United States Postal Service 281 NLRB No. 139

Central Broadcast Company 280 NLRB No. 056

[E's mtn to take judicial notice of, or reopen record to consider, decisions of EEOC and Oklahoma Human Rights Commission finding of no reasonable cause to believe E had discriminated against Ee, denied, since decisions were rendered under statutes with different definitions, policies, and purposes from those of NLRA, and E did not show that either agency considered or could have considered E's allegedly unlawful layoff of Ee; additionally, E did not explain its delaying until September the filing of decisions issued in June by the above governmental bodies]

9100 SOCIAL SECURITY ACT-MODEL CITIES PROGRAM

9500 MINE SAFETY AND HEALTH ACT

9600 CIVIL SERVICE REFORM ACT OF 1978

Springfield Transit Management, Inc. 281 NLRB No. 124

[E's claim of constitutional disability on part of RD to issue C because of Civil Service Reform Act establishing Senior Executive Service, rejected, since E did not overcome presumption that RD, like other judicial or quasi-judicial officers, are unbiased, nor was it specifically shown that there was either inherently or demonstrably conflict of interest in application of Civil Service Reform Act to RDs, or in impact of that Act on their decisions]

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147

[constitutionality of Senior Executive Service as applied to NLRB RDs' performance of their duties upheld, notwithstanding contention Senior Executive Service injected substantial personal, financial, and other irrelevant and impermissible interests into administration and enforcement of Act by RD so as to offer possible temptation to decide with bias for or against any issues presented to average person performing quasi judicial or administrative prosecutial function]

N.L.R.B. v. Ohio New and Rebuilt Parts, Inc. and/or Mel's Battery, Inc. 760 F.2d 1443 (C.A. 6, Apr. 1985)

[record in instant case did not support blanket allegation of Es that Bd's appraisal system offered incentive to RDs to perform their duties with bias toward outcomes that would enhance their opportunity to receive performance award; provisions of Civil Service Reform Act of 1978, creating Senior Executive Service and applied to RDs, are valid constitutional enactments and Es did not establish that they had been deprived of due process or equal protection of law in ULP proceedings]

9700 ALL WRITS ACT

144 CONSTRUCTION

5000 LEGISLATIVE HISTORY

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors **279 NLRB No. 068**

[Ee's participation in U disciplinary proceeding against E's supervisor, held protected activity, notwithstanding proceeding may have violated 8(b)(1)(B) of the Act, since Ee was engaged in Sec. 7 activity of assisting U by participating in U meeting and was not a *perpetrator* of the proceeding; rather, U officials had initiated the proceeding; Congress's intent was that generally labor organizations and their agents, but not individual Ees, should be responsible for the unlawful practices of labor organizations]

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) **273 NLRB No. 148**

(Bd has jurisdiction over U picketing on behalf of independent contractors for improved leasing arrangement with E notwithstanding U's contention that such picketing was not *labor dispute* since Bd's jurisdiction is not defined or limited by 2(9), and term *labor dispute* does not appear in 8(b)(4) so as to limit Bd's jurisdiction over illegal boycotts; further, neither language of 8(b)(4) nor legislative history confined scope of that Section to *labor disputes*, and Congress, recognizing that illegal boycotts take many forms, intended prohibition to reach broadly)

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) **755 F.2d 5 (C.A. 2, Feb. 1985)**

(where local U representing only E's guards and other guards in armored car industry was merged into local U representing guards and nonguards, and E voluntarily recognized latter U, E's withdrawing recognition after contract had expired and U had rejected E's final offer, not violative; Sec. 9(b)(3) language and legislative history provide sufficient support for Bd's conclusion that Congress knowingly decreased stability of bargaining relationships involving such Us to protect guards from potential for division of loyalty between E and fellow U members)

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[federal statutes are to be construed to avoid doubt of their constitutionality, and, if statutory interpretations proposed by Bd would give rise to serious constitutional questions, the *affirmative intention of Congress clearly expressed must first be identified*]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[peaceful and orderly handbilling at mall entrance urging consumers to boycott all mall tenants because of allegedly substandard wages paid by one tenant's building contractor, not violation, since, absent non-speech elements permitting restrictions on labor picketing and in view of First Amendment protection afforded handbilling, construing Sec. 8(b)(4)(ii)(B) to prohibit handbilling raises serious constitutional questions requiring clearly expressed intent of Congress to prohibit nonpicketing labor publicity, which is not shown by legislative history of Sec. 8(b)(4) amendments]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[legislative history of Sec. 8(b)(4) and amendments contains no clearly expressed intent of Congress to prohibit distribution of handbills urging secondary boycott]

7500 COURT INTERPRETATION OF STATUTORY PROVISIONS

N.L.R.B. v. Longshoremen's ILA **———U.S.——— (S.CT, June 1985)**

[in finding Rules on Containers agreement in shipping industry and its enforcement by U as having lawful work preservation objective in face of technological changes involving containerized cargo, ct followed normal presumption of *stare decisis* in cases of statutory interpretation, where Congress had not altered statutory provisions at issue in 18 years since ct first ruled thereon, no new evidence was offered regarding Congress original intent, and management and labor have relied on work-preservation doctrine to guide their bargaining]

Allis-Chalmers Corp. v. Lueck **———U.S.——— (U.S. S.CT, Apr. 1985)**

[Sec. 301 (of NLRA) does not grant parties to collective-bargaining agreement ability to contract for what is illegal under state law; questions of contract interpretation, therefore underlie any finding of tort liability, regardless that state ct may choose to define tort as *independent* of any contract question; Congress has mandated that *federal law govern meaning given contract terms* in order to have unified federal body of labor-contract law]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. **———U.S.——— (U.S. S.Ct, Feb. 1984)**

[Bd is precluded from, in effect, enforcing terms of collective-bargaining agreement by filing ULP charges against debtor-in-possession for violating Sec. 8(d) of NLRA by modifying or terminating unexpired labor agreement. Though Bd's action is nominally one to enforce Sec. 8(d), practical effect of enforcement action would be to require adherence to terms of agreement, but filing of ptn in bankruptcy means that agreement is no longer enforceable. Consequently, Bd enforcement under these circumstances would run directly counter to express provisions of Bankruptcy Code]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. **———U.S.——— (U.S. S.Ct, Feb. 1984)**

[debtor-in-possession does not need to comply with mid-term contract modification procedures set forth in Sec. 8(d) because bargaining agreement is not enforceable contract w/i meaning of 8(d); therefore, because modification accomplished by operation of law (Bankuptcy Code) and not by unilateral action of E, it follows that debtor-in-possession need not comply with provisions of Sec. 8(d) prior to seeking Bankruptcy Ct's permission to reject agreement]

Carpenters, Local 1597 (W. G. Clark Construction Co.) **JD-(SF)-155-85**

(Bd's reservoir doctrine that every supervisor is a potential *reservoir* from which his or her E may in need draw collective bargaining and grievance-handling services, not decided by S.Ct as to whether doctrine is compatible with Contressional purpose underlying Section 8(b)(1)(B))

Adventist Living Centers, Inc. d/b/a River Pines Communicty Health Center v. N.L.R.B. **———F.Supp.———(DC N.D. IL, Mar. 1985)**

[claim of denial of a constitutional right which is not *transparently frivolous* can be asserted in a district ct notwithstanding Section 10 of Act, as means of obtaining judicial review of Bd rulings]

155 AMENDMENTS OF NLRA

2000 CONSTITUTIONALITY OF AMENDMENTS

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[federal statutes are to be construed to avoid doubt of their constitutionality, and, if statutory interpretations proposed by Bd would give rise to serious constitutional questions, the *affirmative intention of Congress clearly expressed must first be identified*]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[peaceful and orderly handbilling at mall entrance urging consumers to boycott all mall tenants because of allegedly substandard wages paid by one tenant's building contractor, not violation, since, absent non-speech elements permitting restrictions on labor picketing and in view of First Amendment protection afforded handbilling, construing Sec. 8(b)(4)(ii)(B) to prohibit handbilling raises serious constitutional questions requiring clearly expressed intent of Congress to prohibit nonpicketing labor publicity, which is not shown by legislative history of Sec. 8(b)(4) amendments]

4000 EFFECTIVE DATE OF APPLICATION

6000 RETROACTIVE APPLICATION

8000 EFFECT OF AMENDMENTS

166 SEPARABILITY OF PROVISIONS

177 STATUTORY DEFINITIONS

0800 *PERSON*

1600 EMPLOYER

1633 PERSONS FOUND TO BE EMPLOYERS

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**

[where E, in total control of his business as sole proprietor, continued business through new company, which was E's own business creation, ALJ held new company was alter ego to E and was merely disguised continuance of E's sole proprietorship used by E in effort to avoid its duties under U contract]

1633-2500 Separate employers

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) **JD-86-85**

(trucking firm and company leasing drivers to trucking firm held neither single nor joint E where trucking firm neither affected nor codetermined, together with leasing company, any essential terms and conditions of employment of drivers; rather, both companies were indivddual, unrelated Es and persons for purposes of 8(b)(4))

1633-5000 Combinations of employers

1633-5017 Independent contractors

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) **280 NLRB No. 082**

[general agency principles, paramount among which is the *right-to-control*, apply to determination whether individual is Ee or independent contractor]

1633-5050 Parent and subsidiary

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**

[jurisdiction asserted over E found joint-E with its subsidiaries and affiliated companies since E co-determined terms and conditions of employment where E's director of labor relations negotiated unlawful agreement for other Es and other Ee had otherwise conceded all necessary jurisdictional facts]

1633-5073 Double-breasted operations

Crest Floors & Plastics, Inc. **274 NLRB No. 185**

(sole proprietorship of president of family-owned corporation to which outside craftsmen were transferred to avoid high unionized labor costs found single E with, and *alter ego* of, the corporation in view of common ownership and management, closely related operations, centralized labor relations, and proprietorship's functioning as adjunct of corporation's previously established business)

N.L.R.B. v. DMR Corp. and Harrill Electric Contractors, Inc. **795 F.2d 472 (C.A. 5, July 1986)**

[*double-breasted* cases relied on by E in its attack on order were distinguished by Bd's finding of U animus; Es did not constitute double-breasted operation: two companies *operating in different economic climates*, one U and one non U]

1633-5075 Single integrated enterprise

Pan American Grain Company, Inc. and Bulk Terminal Operations, Inc. **281 NLRB No. 019**

[E selling grains and feed nonretail and E providing stevedoring services found single integrated business enterprise and single E in view of common ownership, officers and directors, control of labor relations, shared offices, and interrelationship of operations where stevedoring E was operated as department of other E]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks **279 NLRB No. 121**

[manufacturer of garments which delivered cut goods to affiliated contractors for assembly and then made delivery of finished products to customers and contractors held single integrated enterprise in view of common ownership ultimately vested in individual who exercised day to day control over operations and labor relations of all companies, physical integration, fact payroll checks drawn on which ever company's account convenient, and funds of different corporation intermingled, and all companies had same bookkeeper]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. **279 NLRB No. 091**

[two companies, one engaged in manufacture and installation of ornamental iron and structual steel items, and other in masonry and concrete construction, constituted single integrated enterprise where at same address, same individuals served as officers of both corporations, joint insurance on officials of both companies, one E worked only one job at which other company played no part, one company did renovation for other company at cost, one company issued checks to other company's suppliers and subcontractors, and paid that company's bills if it was short of funds]

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-380-85**

[unionized company and newly formed non-U company held single integrated E and latter held alter ego and disguised continuance of old company, where both companies were in same business with centralized control of labor relations; they had common ownership, management, business, purpose, equipment, premises, telephone number, customers, and suppliers; they operated with same supervisor of field operations; and owner of old company transferred his business to his daughter with no reasonable semblance of negotiations or formalities, and joined her in operating more profitable non-U company]

St. Charles Interiors Inc.; d/b/a GML Drywall, etc. **JD-447-84**

(although terms single integrated enterprise and *alter ego* are sometimes used interchangeably, Bd and cts understand distinction between them; thus, to determine whether 2 companies are integrated involves consideration of whether there is common ownership, common management, interrelation of 2 companies, and centralized control of labor relations; and whether 2 companies are *alter ego* normally involves finding something more, such as one being *distinguished continuance* of the other)

15th Avenue Iron Works, Inc. **JD-(NY)-141-84**

(manufacturer of structural steel items and general contractor found single, integrated enterprise where steel manufacturer was organized by general contractor, had same officers and shareholders, employed Ees who were transferred from general contractor and looked to it for advice on labor relations and work performance, performed tasks interrelated with those of general contractor, and performed only one job in which general contractor played no role)

Quality Plastic Molds, Inc., and Titan Enterprises, Corp. **JD-(NY)-143-84**

(designer and manufacturer of plastic molds found single integrated enterprise and single E in view of common ownership, control, management, business purpose and premises, centralized labor relations, and high degree of integration)

N.L.R.B. v. Carson Cable TV; et al. **795 F.2d 879 (C.A. 9, July 1986)**

[although appropriateness of unit is distinct issue from that of scope of E's operation, factors involved in evaluating each question substantially overlap; thus, finding that Es are single integrated E is relevant to assessment of functional integration in determining appropriateness of unit]

1633-5091 Employer associations

The Big East Conference **282 NLRB No. 050**

[E basketball conference composed of nine member schools found not joint E with its member schools nor multi-E bargaining association where member schools did not select or contract with officials whose representative status was at issue herein; since member schools did not employ referees, E did not act as multi-E association]

1633-7500 Employer alter ego

Landhill Press, Inc., and Rotary Business Systems, Inc., its Alter Ego and Successor **282 NLRB No. 058**
[2 companies found to be *alter egos*, notwithstanding they did not utilize same plant, where they had substantially identical management, same business purpose, operations, substantially same equipment, same customers, identical supervisory staff, common ownership, and purpose of activating second E was to avoid dealings with U]

Oklahoma City Eastern Express, Inc., and its alter ego, B & B Lines, Inc. **281 NLRB No. 125**
[overlapping ownership of 19.8% and 100% in original entity and one alleged to be alter ego, respectively is too insignificant to render corporate ownership substantially identical]

Hawg-N-Action, Inc. & J. L. Excavating, Inc. **281 NLRB No. 013**
[*substantially identical* ownership of two Es established for purpose of finding them alter egos of each other where same individual owned 50-percent of one E and 100-percent of other E]

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) **280 NLRB No. 149**
[E found not alter ego and disguised continuance of former E where former E's discontinuance was bona fide and there was no substantial identity of ownership and managerial control between former E and E]

Hiysota Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[corporation operating coal mine and related corporation engaged in processing and nonretail sale of coal held not alter egos, in view of both corporations' lack of common business purpose, operations, supervision, equipment, premises and customers, and absence of evidence of unlawful motivation; Bd noted that showing of unlawful motivation is not essential to finding of alter ego status; rather, presence or absence of unlawful motivation is but one factor that Bd considers in weighing circumstances of any particular case]

Alabama Metal Products, Inc., and Its Alter Ego Delta Laminating, Inc. **280 NLRB No. 123**
[newly formed company manufacturing products utilized by cabinet manufacturing company held not alter ego of latter company where, although having substantially identical ownership, companies had separate management, supervision, and business purpose, as well as operation, equipment, and customers]

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. **280 NLRB No. 021**
[non-unionized corporation held alter ego of unionized corporation owned by its owner's older brother, since it was formed to avoid obligations of U contract where younger brother was under 20 years and only ostentsible owner, Ees were recruited from U company on condition that they work on non-U basis, new corporation was located in adjacent building, and some same individuals that had been associated with unionized company hired by new company as management and supervisors]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks **279 NLRB No. 121**
[debtor in possession and individual in whom ownership of companies ultimately vested and who was in control of their labor relations and day to day operations held alter ego of companies, which were deemed to be single integrated enterprise, and individual held personally liable, where there was attempted concealment of integrated nature and control of corporations under control of individual]

Las Villas Produce, Inc. and Carmelo P. Caldero, Individually **279 NLRB No. 120**
[individual held alter ego of E where he was E's sole owner, was its principal operating chief, and formulated and executed all labor relations policies]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. **279 NLRB No. 073**
[company formed to purchase E which was in financial difficulties held alter ego of seller E, notwithstanding lack of identical ownership, since sale was sham for purpose of allowing seller to operate non-U and repudiate bargaining obligations, where seller's owner remained as manager and vice-president under terms of very favorable 5 year contract and oversaw operations, seller furnished buyer working capital and guaranteed obligations of buyer's corporation, and new company operated with substantially same Ee complement and supervisors, in same building with same equipment, and served same customers]

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[lease agent who operated truck terminal formerly operated by other Respondent in trucking business held alter ego of other Respondent, since deemed disguised continuance of Respondent, not withstanding separate ownership, workman's compensation, pay and benefits; in view of anti-U motivation in decision to turn operation of terminal over to agent, substantial support given to lease agent by other Respondent in that no down payment required, counseling given on customers which lease agent continued to serve exclusively, lease agent's awareness equipment to be sold to another lease agent, trucks bore same logo, and same internal procedures used]

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[*identical ownership not required as condition since qua non to support finding of alter ego. Substantial identical ownership along with similar showing in other relevant factors may reveal it. Bd will address as pertinent to that issue, apparent relationship between the two entities, operation itself, equipment, Ees and supervision. Each case must rest on own facts*]

Elevator Sales and Service, Inc. **278 NLRB No. 094**
[new family business was *alter ego* of old E, where there was common ownership, management, operation and control by family members, common business purpose, customers and Ees, and significant business dealings between them which were not bona fide arm's length transactions]

Evans Plumbing Co. **278 NLRB No. 009**
[service company found alter ego of plumbing company in view of common management control w/i small family corporation, common business purpose, premises, and equipment, carryover of supervisors and certain Ees, and closely held stock]

Mar-Kay Cartage, Inc. and Contemporary Delivery Systems, Inc. **277 NLRB No. 152**
(trucking firm held alter ego of firm which had terminated operations, since purpose of termination and formation of new company was to avoid dealing with U, firms both performed delivery services in same geographical area for essentially same customers, same individual who was son of owner of one firm and husband of owner of other firm had supervision over labor relations of both firms, worked full time at both companies while owners only worked part-time, made substantial contribution to purchase of equipment, and his and family's sole income was from company, thus making him in effect owner)

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos **277 NLRB No. 39**
(Co. incorporated 3-1/2 years previously, but only became operational, at same facility and with same management as Respondent after Respondent's bank account garnisheed in satisfaction of judgment obtained by U pension fund, held not alter ego of Respondent E, notwithstanding similarities in management, business purposes, and equipment, where there were critical differences in ownership, albeit there were family relationships, nature of operations, and customers; further, all work was performed by owners, and no Ees of Respondent employed)

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(cleaning company found *alter ego* of defunct cleaning business in view of substantially identical ownership and control at time of formation and common business purpose, management, operations, equipment, customers, and supervision)

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**
(E found alter ego where, following termination of predecessor E's automobile dealership franchise agreement, directors, officers and stockholders were essentially same and similarities existed in regard to supervision, management and operation)

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) **276 NLRB No. 046**
(purchaser held not alter ego of seller, notwithstanding contention that departures from normal business procedures would indicate less than arms-length relationship where, although both Es had common business purpose and arguably common customers, there was no common ownership, no common management or supervision, and no common premises and equipment; and it could in no way be deemed that purchaser, a going operation for over 6 years at time of purchase, was created so as to enable seller to evade its responsibilities under Act at present time)

O. Voorhees Painting Co. and O.V. International, Inc. **275 NLRB No. 114**
(two Es, held not alter egos notwithstanding common ownership with substantially same officers and directors and occupying same premises where they had no common business purpose, as shown by one E's business, remodeling, being broader than that of other E, painting and also E involved in remodeling, operated on nation-wide basis in contrast to stricktly local operation of E involved in painting)

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**
(debtor and debtor in possession held *alter egos* where both entities were authorized by Bankruptcy Ct to operate same concern and were alike in all respects)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(sole proprietorship of president of family-owned corporation to which outside craftsmen were transferred to avoid high unionized labor costs found single E with, and *alter ego* of, the corporation in view of common ownership and management, closely related operations, centralized labor relations, and proprietorship's functioning as adjunct of corporation's previously established business)

1633-7500—Cont.

Contee Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**

(two companies spun off by E engaged in mining sand and gravel and producing ready-mix concrete, to which E transferred its ready-mix concrete operations and tractor-trailer operations respectively, found successors to, single E with, and alter egos of transferring E in view of their common financial control, chief executive officer, centralized labor relations, interrelation of operations and management, and fact same work was done by same Ees using same equipment in same location for same ultimate customers)

L & J Equipment Company, Inc. and Willow Tree Coal Company **274 NLRB No. 005**

(notwithstanding entity controlled by parents furnished financial and material assistance and assumed much of risk involved in entity established by their children, no alter ego or single E relationship found as entities were totally independent with respect to their operations and control of labor policies)

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-380-85**

[purpose behind creation of alleged alter ego must be considered; however, anti-U motivation is not sine qua non for finding alter ego status, but intent to evade U obligations has invariably been present in decisions where Bd has found alter ego status]

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-380-85**

[unionized company and newly formed non-U company held single integrated E and latter held alter ego and disguised continuance of old company, where both companies were in same business with centralized control of labor relations; they had common ownership, management, business, purpose, equipment, premises, telephone number, customers, and suppliers; they operated with same supervisor of field operations; and owner of old company transferred his business to his daughter with no reasonable semblance of negotiations or formalities, and joined her in operating more profitable non-U company]

Hillcrest Packing Co., Inc. Larry Waslow, Assignee and Gold Star Meat Packers, Inc. **JD-331-85**

[E, engaged in meat packing and processing, which was incorporated to effect change of name, and minimize damage to Respondent's reputation after its suppliers were convicted of shipping diseased cancerous meat, held alter ego of Respondent and liable for backpay, where it engaged in same operations at same facility, provided essentially same services to same customers, with substantially same management, supervision, and where sole owner of Respondent owned 50% of purported alter ego, and made most decisions regarding business of purported alter ego]

Hillcrest Packing Co., Inc. Larry Waslow, Assignee and Gold Star Meat Packers, Inc. **JD-331-85**

[Respondent's Assignee for benefit of creditors liable for backpay to same extent trustee in bankruptcy would be liable in same situation. But assignee not held alter ego or successor E since not given full authority to operate business and exercise all powers necessary to administration of business]

Stroman Construction Company **JD-367-85**

[construction and excavating companies found alter egos in view of same incorporators, stockholders, officers, directors, and director of labor relations, interchange of Ees and equipment, one firm's performance of work awarded to other firm, payment of one firm's Ees from other firm's payroll, and absence of legitimate purpose for formation of second firm, creating inference that purpose was to evade contractual obligations]

LeRic Floor Covering, Inc., and Richard E. Fackler d/b/a REF Carpet Service and Installation Alter Egos **JD-79-85**

(unionized and non-U E not *alter egos* of each other, since they have separate identities, customers, creditors, debtors, resources, and sources of labor, and their Ees lack sufficient community of interest to constitute a single appropriate unit where the regularity of employment, conditions of employment, and kind of work done for the two Es differs)

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**

(newly formed corporation held alter ego of bankrupt E where ownership and control of both companies, involving members of same family, were substantially identical; new corporation constituted little more than change in name of bankrupt E, and relationship between both was anything but at arm's length; bankrupt E's official was founding principal of new corporation, and purported ownership and control by one family member was pure subterfuge; business purpose and customers of both Es were substantially identical, and substantial difference in size of Es' operations did not preclude finding of alter ego status)

St. Charles Interiors Inc.; d/b/a GML Drywall, etc. **JD-447-84**

(although terms single integrated enterprise and *alter ego* are sometimes used interchangeably, Bd and cts understand distinction between them; thus, to determine whether 2 companies are integrated involves consideration of whether there is common ownership, common management, interrelation of 2 companies, and centralized control of labor relations; and whether 2 companies are *alter ego* normally involves finding something more, such as one being *distinguished continuance* of the other)

St. Charles Interiors Inc.; d/b/a GML Drywall, etc. **JD-447-84**

(three companies held *alter egos* of each other, where, after 1 of the companies went of business, 2 other companies were created so that family business could be continued in more profitable fashion by paying unit Ees piece rates instead of contractual rate, and by not contributing to fringe benefits; nothing in 3 companies' relationship was at arms' length; and neither of created companies was ever an independent entity)

Coal Systems, Inc. and W. Julian Scalf Engineering & Construction Co., Inc. **JD-452-84**

(corporation engaged as subcontractor at construction job held *alter ego* of the subcontractor who formerly performed such work, where sole owner of predecessor held controlling interest in other corporation with his wife, was president of both companies, and controlled labor relations policies and business operations of both companies; it was sole owner of predecessor who terminated predecessor's activity on job, laid off its Ees and then installed the second company on same jobsite, using same equipment and Ees who were recently laid off by predecessor to continue where predecessor had left off)

Goodman Piping Products, Inc. v. N.L.R.B. **741 F.2d 10 (C.A. 2, June 1984)**

[nonU company started by owner of unionized company which went out of business found alter ego of unionized business although first company was owned by the husband and second company by his wife, where the companies had substantially identical management, supervision, customers, business purpose and ownership]

Walter N. Yoder & Sons, Inc. **754 F.2d 531 (C.A. 4, Feb. 1985)**

(with regard to alter ego question, ct's inquiring focuses on *whether the two enterprises have substantially identical management, business purpose, operation, equipment, customers, supervision and ownership*)

N.L.R.B. v. Allcoast Transfer, Inc. and Ward Moving and Storage, Inc. **780 F.2d 576 (C.A. 6, Jan. 1986)**

[factors relevant to finding of alter ego status include whether two enterprises have substantially identical management, business purpose, operation, equipment, customers, supervision and ownership]

N.L.R.B. v. Allcoast Transfer, Inc. and Ward Moving and Storage, Inc. **780 F.2d 576 (C.A. 6, Jan. 1986)**

[moving and storage company held alter ego of company that organized it where two enterprises had identical management and supervision, centralized control of operational and labor relations policies, substantially identical business purpose and operations as well as substantially identical equipment and Ees; circumstances so strongly supported finding of alter ego status that Bd could infer that E intended to avoid U obligations w/o further inquiry into E intent]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego **804 F.2d 934 (C.A. 6, Nov. 1986)**

[ct enforced Bd's order against partnership as alter ego of corporation where all aspects of corporation were carried over to partnership which began operations before corporation filed for bankruptcy, and only differences between corporation and partnership were that partnership did not hire U Ees, and one individual had ownership interest in partnership while another individual was sole owner of corporation]

N.L.R.B. v. Dane County Dairy, et al. **795 F.2d 1313 (C.A. 7, July 1986)**

[alter ego doctrine, involving 2 nominally separate business entities treated as though single, continuous E, is applied to prevent E from gaining unearned advantage in labor activities simply by altering corporate form as in disguised continuance of old E, etc.; alter ego relationship has been based on substantially identical business purposes, equipment, type of customers, etc.; also, alter ego criteria have been equated with basic indicia for finding single E, although more must be shown for alter ego status; and alter ego relationship can exist even absent evidence of common ownership]

N.L.R.B. v. Dane County Dairy, et al. **795 F.2d 1313 (C.A. 7, July 1986)**

[since ct review of Bd decisions is deferential, Bd's finding that affiliated companies are alter ego of E must be upheld if it is reasonable and supported by substantial evidence on record as a whole; ct may not displace Bd's choice between 2 fairly conflicting views, even though ct would justifiably had made different choice had matter been before it *de novo*]

N.L.R.B. v. Dane County Dairy, et al. **795 F.2d 1313 (C.A. 7, July 1986)**

[affiliated companies held alter ego of E in view of (1) familial control constituting common ownership and control; (2) individual's control and management of all affiliates and control of their labor relations; (3) existence

1633-7500—Cont.

of integrated enterprise with identical purpose, operating out of same facility, sharing and exchanging equipment and Ees, having common administrative staff, and having same customers serviced with same equipment; and (4) improper motivation as evidenced by individual's hostility to U and Bd, involvement in other ULPs, and attempt to rid himself of U]

N.L.R.B. v. Dane County Dairy, et al. **795 F.2d 1313 (C.A. 7, July 1986)**

[affiliated companies held alter ego of E, notwithstanding contention that enterprises involved were separate and distinct entities having no connection with each other, where respondents failed to present evidence rebutting GC's deposition and documentary evidence either with their mtn in opposition to summary judgment or with their mtn to reconsider; and allegations of alter ego status in C were deemed to be admitted as true by respondents' failure to file timely answer]

N.L.R.B. v. Electrical Workers Local Union #46 **793 F.2d 1026 (C.A. 9, July 1986)**

[alter ego situation arises when E creates entity through which it channels its operations with purpose of avoiding obligations of bargaining agreement; and alter ego E will be bound by bargaining contract entered into by parent and U]

1642 SINGLE EMPLOYER

Georjan, Inc. and/or Fort Mason Enterprises, Inc. and/or Latrobe Speedway **281 NLRB No. 129**

[three Es held single-E where one individual was in charge of all operations, employed Ees, supervised them and paid Ees, albeit from different bank accounts]

Pan American Grain Company, Inc. and Bulk Terminal Operations, Inc. **281 NLRB No. 019**

[E selling grains and feed nonretail and E providing stevedoring services found single integrated business enterprise and single E in view of common ownership, officers and directors, control of labor relations, shared offices, and interrelationship of operations where stevedoring E was operated as department of other E]

Hiwasta Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**

[corporation operating coal mine and related corporation engaged in processing and nonretail sale of coal held single E, in view of common ownership, common management, centralized control of labor relations, and interrelationship of their operations]

Alabama Metal Products, Inc., and Its Alter Ego Delta Laminating, Inc. **280 NLRB No. 123**

[manufacturing company and newly formed company providing products utilized by manufacturing company held not single E where of 4 factors to be evaluated in determining whether 2 companies constitute single E, common management and centralized control of labor relations, with latter factor considered critical to single E finding, were absent; factors of common ownership and, assuming it existed, interrelationship of operations were insufficient to establish single E status]

B & P Trucking, Inc. **279 NLRB No. 092**

[meat processor and distributer and trucking operation found single E in view of common ownership and management, centralized control of labor relations, and interrelationship of operations]

Rebel Coal Company, Inc., and Richlands Supply Corp. **279 NLRB No. 022**

[E engaged in strip mining and sale of coal found single E with seller of supplies where they shared common ownership and management and common control of labor relations; there was complete interrelation of operations between two, and there was complete absence of arm's length relationship between them]

American Stores Packing Company, A Division of Acme Markets, Inc. **277 NLRB No. 190**

[two companies, one of which was wholly owned subsidiary of other, held single E in view of their common ownership and management, interrelated operations and centralized control of labor relations]

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**

(coal strip mining company and its wholly owned subsidiary providing reclamation services to company at its mining site held single E, since relationship between both companies fell far short of being *arms length* dealing, where there was complete integration of mining company's administrative, management, and financial resources with subsidiary's operation at every level; and labor relations of both companies were determined solely by mining company's officials)

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**

(six partnerships which were interrelated as to ownership, operations, management and control of labor relations for apartment building and functioning as single enterprise with one chief operating manager found single E)

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**

(E and its alter ego E together with third E found single E where members of same family owned all three businesses, all of which had virtually identical corporate management, and one member of family was overall manager of Es and responsible for formulating and implementing personnel and labor relations policies)

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**

(two Es found single E in view of shared office, telephone, and office Ees, ownership by same family, same president/manager who made personnel decisions for both, and interrelation of operations as shown by one E's Ees performing work for which other E had obtained the contract)

National Metalcrafters, Inc. and National Lock Corp. and Keystone Consolidated Industries, Inc. **276 NLRB No. 014**

(parent company and its 2 subsidiaries held single integrated E where all 3 companies had common officers and same individuals as members on boards of directors; parent controlled business of subsidiaries, approved and funded relocation of subsidiaries, and parent and subsidiaries were held out to customers, stockholders, Ees and general public as one E)

Glover Bottled Gas Corp. **275 NLRB No. 096**

(E selling, servicing, and leasing material-handling equipment, E converting motor vehicles and selling propane gas wholesale and retail, E selling bottled gas, and parent corporation found single E where 3 Es had principal offices at same address, 3 subsidiaries were owned by parent, officers and directors of all Es were substantially identical, grievances were brought to persons involved in management of all Es, corporate administrator of all Ees was involved in hiring and firing, credit management and health and welfare program administration were centralized, and 1 E's Ees served accounts and made deliveries and repairs of another E's customers)

Ozark Properties, Inc. d/b/a Holiday Inn **274 NLRB No. 096**

(two motels which were sole proprietorships, held single E, where they were owned and operated by single individual who was also the sole shareholder, motels were centrally operated through use of computer system, payroll account and bookkeeping system and sole shareholder set general wage rates and performance standards for both motels)

Conte Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**

(two companies spun off by E engaged in mining sand and gravel and producing ready-mix concrete, to which E transferred its ready-mix concrete operations and tractor-trailer operations respectively, found successors to, single E with, and alter egos of transferring E in view of their common financial control, chief executive officer, centralized labor relations, interrelation of operations and management, and fact same work was done by same Ees using same equipment in same location for same ultimate customers)

L & J Equipment Company, Inc. and Willow Tree Coal Company **274 NLRB No. 005**

(notwithstanding entity controlled by parents furnished financial and material assistance and assumed much of risk involved in entity established by their children, no alter ego or single E relationship found as entities were totally independent with respect to their operations and control of labor policies)

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **273 NLRB No. 189**

(six partnerships which owned apartment buildings held single E where they were sufficiently interrelated in operations, management, and control of labor relations)

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-380-85**

[unionized company and newly formed non-U company held single integrated E and latter held alter ego and disguised continuance of old company, where both companies were in same business with centralized control of labor relations; they had common ownership, management, business, purpose, equipment, premises, telephone number, customers, and suppliers; they operated with same supervisor of field operations; and owner of old company transferred his business to his daughter with no reasonable semblance of negotiations or formalities, and joined her in operating more profitable non-U company]

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) **JD-86-85**

(trucking firm and company leasing drivers to trucking firm held neither single nor joint E where trucking firm neither affected nor codetermined, together with leasing company, any essential terms and conditions of employment of drivers; rather, both companies were individual, unrelated Es and persons for purposes of 8(b)(4))

1642—Cont.

Quality Plastic Molds, Inc., and Titan Enterprises, Corp. **JD-(NY)-143-84**
(designer and manufacturer of plastic molds found single integrated enterprise and single E in view of common ownership, control, management, business purpose and premises, centralized labor relations, and high degree of integration)

Walter N. Yoder & Sons, Inc. **754 F.2d 531 (C.A. 4, Feb. 1985)**
(relevant facts considered by cts on single E issue are (1) interrelation of operations, (2) common management, (3) centralized control of labor relations and (4) common ownership)

N.L.R.B. v. Carson Cable TV; et al. **795 F.2d 879 (C.A. 9, July 1986)**
[Bd's determination that separate cable TV systems and their managing company constituted single E was supported by finding that effective control over labor relations was centralized in managing company, notwithstanding that system managers had day-to-day control over labor relations at *worker level*]

N.L.R.B. v. Carson Cable TV; et al. **795 F.2d 879 (C.A. 9, July 1986)**
[separate cable TV systems and company conducting management and administrative activities for them held single E, in view of common ownership, central control of significant aspects of their labor relations and operations, and company's direction of their management]

N.L.R.B. v. Carson Cable TV; et al. **795 F.2d 879 (C.A. 9, July 1986)**
[under deferential substantial evidence standard, ct affirmed Bd's determination that Es constituted single E, since it was reasonable to conclude that there was absence of arm's length relationship between Es]

1642-0100 Generally

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**
[*owner of neutral E* who was member of U held *person* w/i meaning of subsection (ii) of Section 8(b)(4) of Act, and U fining him, violative, since purpose is to induce Ee to withhold services from neutral E for unlawful secondary objective; i.e. force neutral to c/d/b with primary; further, fining individual as owner is also violative as natural consequence of fine imposed on him was to force him, as neutral E to c/d/b with other Es with whom U had dispute]

Kenneth L. Hand Sr. d/b/a Neighborhood Roofing and Contracting, and Kenneth L. Hand Jr. and Sylvia Hand d/b/a Farrand Park Services **276 NLRB No. 081**
(notwithstanding that two E entities were not commonly owned, fact that both operations were managed by son of owner of one entity [*close family connection*) and that one operation was *wholly the fiscal creature* of the other, as well as absence of *arm's length* relationship between involved entities support finding that two involved entities were a single E)

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) **276 NLRB No. 046**
(Us' request for remand to ALJ, who had found no alter ego or successorship status presented as 8(b)(7)(C) defenses by U, on ground ALJ had failed to consider Us' further defense that Es involved were single E or joint Es, denied; indicia for finding single E are same as those on which ALJ based determination regarding alter ego status; and, in order to establish that Es were joint Es, it must be shown that they codetermined matters concerning essential terms and conditions of employment which Us failed to do)

N.L.R.B. v. Carson Cable TV; et al. **795 F.2d 879 (C.A. 9, July 1986)**
[ct considered 4 relevant factors enunciated by Bd for determining single E status of multiple Es: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership, noting that Bd has stressed first 3 factors, in particular presence of control of labor relations because such factors tend to show *operational integration;* while no one factor is controlling, presence of all 4 factors is not necessary to finding single E status; and ultimate determination of such status depends on all circumstances of case]

1650 JOINT EMPLOYERS

The Big East Conference **282 NLRB No. 050**
[E basketball conference composed of nine member schools found not joint E with its member schools nor multi-E bargaining association where member schools did not select or contract with officials whose representative status was at issue herein; since member schools did not employ referres, E did not act as multi-E association]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**
[jurisdiction asserted over E found joint-E with its subsidiaries and affiliated companies since E co-determined terms and conditions of employment where E's director of labor relations negotiated unlawful agreement for other Es and other Ee had otherwise conceded all necessary jurisdictional facts]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle **280 NLRB No. 043**
[separate enterprises consisting of partnerships and proprietorship, having some interrelationship on ownership, partnership, and work performance level held not joint E, where enterprises exerted no significant control over same Ees by sharing or codetermining essential terms and conditions of employment of Ees in question]

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers **279 NLRB No. 116**
[operator of coal mine and E engaged in construction work for mining company not joint Ees absent common ownership or management, where normal functions of E such as hiring, firing processing of grievances, negotiation and administration of contract, granting of vacations and leaves of absence were never performed by mining company for construction company, nor did mining company exercise any control over how construction work was done]

Emeryville Trucking, Inc. **278 NLRB No. 153**
[joint E relationship found between E that leased trucks and licensed common carrier where first E had control over dispatch and discipline of drivers]

Pacific Mutual Door Company **278 NLRB No. 120**
[E, wholesaler and distributor of millwork, found joint E with E from which it leased drivers where wholesaler and distributor shared sufficient control over drivers provided by leasing E to drive its trucks and deliver its merchandise, to evidence joint E status]

O. Voorhees Painting Co. and O.V. International, Inc. **275 NLRB No. 114**
(two companies held joint Es of unit Ees at projects in one local area where same Ees worked for and were paid by both companies)

Storall Manufacturing Company, Inc. **275 NLRB No. 039**
(E supplying temporary Ees and related administrative paperwork, skill qualifying, interviewing, reference, verification, payroll, and insurance for E's reinstituted night shift under subcontracting agreement found agent of E, rather than joint E with E)

Clinton's Ditch Cooperative Co., Inc. **274 NLRB No. 103**
(joint E relationship found between E which utilized drivers of another E and the other E, where first E effectively disciplined drivers and gave orders directly to drivers which directly affected their wages)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(E operating security agency in one state who obtained contract to provide guard services in another state but had no license from such state to do so, and E operating security agency w/i state with whom out-of-state E entered into written agreement to lease former E's corporate name and use of shoulder patches for specified period and for specified sum of money, held not joint Es, where in-state E did not in any manner share or determine with out-of-state E those matters governing essential terms and conditions of employment)

LeRic Floor Covering, Inc., and Richard E. Fackler d/b/a REF Carpet Service and Installation Alter Egos **JD-79-85**
(unionized and non-U Es not joint Es where they do not share control over labor relations, Ee tenure, wages, benefits, working conditions, equipment, resources, supplies, or finances, comprise separate business entities, and were not shown to have compensated Ees for work done for unionized E by paycheck of non-U E as alleged)

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) **JD-86-85**
(trucking firm and company leasing drivers to trucking firm held neither single nor joint E where trucking firm neither affected nor codetermined, together with leasing company, any essential terms and conditions of employment of drivers; rather, both companies were individual, unrelated Es and persons for purposes of 8(b)(4))

Clinton's Ditch Cooperative Co., Inc. v. N.L.R.B. **778 F.2d 132 (C.A. 2, Dec. 1985)**
[U's contention that E was joint-E with subcontractor who took over E's trucking operations and E had duty to bargain when it chose another subcontractor, rejected and E's unilateral decision to change subcontractors not violative, since E did not have sufficient control over Ees of first subcontractor where E did not continue to play any role in hiring or firing, E did not directly administer discipline to drivers, subcontractor provided almost all benefits to drivers and E had only indirect, limited connection to problems of pay and other aspects of labor relations]

N.L.R.B. v. Longshoremen's, etc., Local 333 (Rukert Terminals Corporation, etc.) **764 F.2d 234 (C.A. 4, June 1985)**
(ct found no basis for U's contention that Es should be considered joint E of crane operators, since one E did not exercise any control over Ees of other E operating crane and operations of the Es were not functionally integrated)

1650—Cont.

Carrier Corporation v. N.L.R.B. 768 F.2d 778 (C.A. 6, July 1985)

](w)here two or more Es exert significant control over the same Ees--where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment - they constitute joint Es' w/i the meaning of the NLRA)

1650-0100 Generally

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[U's contention that original contractor and replacement contractor were allies or joint Es and that therefore disputed clause had no secondary object or effect, rejected where job taken over by replacement contractor was not given to it by original contractor, but rather was awarded to it by general contractor after original contractor lost job; fact that replacement contractor succeeded original contractor on project and that they were part of same multi-E bargaining unit did not make them joint Es]

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046

(Us' request for remand to ALJ, who had found no alter ego or successorship status presented as 8(b)(7)(C) defenses by U, on ground ALJ had failed to consider Us' further defense that Es involved were single E or joint Es, denied; indicia for finding single E are same as those on which ALJ based determination regarding alter ego status; and, in order to establish that Es were joint Es, it must be shown that they codetermined matters concerning essential terms and conditions of employment which Us failed to do)

M. L. Witcher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers JD-74-86

[in *joint E* situations Bd standard is whether two Es *...share or codetermine those matters governing essential terms and conditions of employment.* Hiring and supervision were basic legal considerations in establishment of *joint E* concept in instant case]

1667 SUCCESSOR EMPLOYERS

Shoreline South Intermediate Care, Inc.; Inland Pacific, Inc. 276 NLRB No. 095

(notwithstanding factors indicating successorship, Bd held no successorship existed, where E retained only 16 of former E's Ees in total complement of 58 Ees, several of whom were never in bargaining unit or were on probation)

Renaissance West Community Mental Health Center 276 NLRB No. 050

(private, nonprofit corporation held successor to operation providing mental health services under contract with city-county mental health board in specified geographic area, where corporation performed same services for same clients in same area as predecessor did, using all Ees and supervisors of predecessor, and performed such services at same business address w/o any hiatus)

Louis Pappas' Homosassa Springs Restaurant, Inc. 275 NLRB No. 213

(E held successor notwithstanding major thrust of operations changed from hotel, attraction park, and bait store with restaurant only incidental to total operations under previous E, to restaurant under new E since successorship obligations are not defeated by mere fact that only portion of former U-represented operation is subject to sale or transfer to new owners so long as Ees in conveyed portion constitute separate appropriate unit, and they comprise majority of unit under new operation)

Louis Pappas' Homosassa Springs Restaurant, Inc. 275 NLRB No. 213

(date for determining U majority status is date new E commences full scale operations with representative complement of Ees whether or not hoped for expansion has been fully achieved. Here, E, with no hiatus, immediately began full scale operations at restaurant employing majority of Ees who were formerly unit members. Changes to menu and remodeling facilities not so significant as to change date)

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. 273 NLRB No. 189

(E held successor notwithstanding E did not continue at least majority of Ees of predecessor in its workforce, where E continued same business as its predecessor and E's failure to hire predecessor's Ees was because of their U affiliation)

Szabo Food Service, Inc. JD-434-84

(E held successor, notwithstanding E did not continue with at least majority of Ees of predecessor in its work force, where employment industry remained same and former Ees of predecessor would have constituted majority of successor E's work force in absence of E's discriminatory hiring policy)

N.L.R.B. v. Fall River Dyeing & Finishing Corp. 775 F.2d 425 (C.A. 1, Oct. 1985)

[purchaser of company's equipment who did not assume predecessor's liabilities or acquire trade name and which operated out of one of company's buildings, held successor, notwithstanding hiatus of 7 months, change from three shifts to two, reduction in number of supervisors, and fact purchaser operated exclusively as commission dryer of fabric and did not continue converter work performed by seller, since both types of work involved essentially same production process and reduction in size of operation was not essential change in employing enterprise]

N.L.R.B. v. Jeffries Lithograph Company, a subsidiary of Ticor Printing Group, Inc. 752 F.2d 459 (C.A. 9, Jan. 1985)

(in determining when new E has achieved *substantial and representative compliment* of ees, Bd considers 5 factors, no one controlling: 1) whether job classifications designated for operations were filled or substantially filled; 2) whether operation was in normal or substantially normal production; 3) size of complement on date of normal production; 4) time expected to elapse before substantially larger complement would be at work; and 5) relative certainty of E's expected expansion)

1667-0100 Generally

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) 280 NLRB No. 149

[E held neither *Burns* nor *Golden State* successor to predecessor E where owner-operators and nonowner drivers working for E were not Ees of E]

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders 280 NLRB No. 133

[so long as predecessor Ees at alleged successor's plant are majority of Ees in successor unit, alleged successor may properly be considered to be successor E]

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders 280 NLRB No. 133

[in finding successor, Bd did not consider material factor the fact that successor employed only half the number of supervisors that predecessor employed or that only one of the employed supervisors came from predecessor, or that job classifications substantially reduced, in light of same products produced in same plant with same equipment even though on much reduced scale]

American Press, Inc. 280 NLRB No. 109

[new owner's failure to hire its predecessor's Ees will not defeat claim of successorship if such failure is shown to have been motivated by former Ees' U affiliation]

IMS Manufacturing Company, Inc. 278 NLRB No. 079

[E held successor E and obligated to bargain with U upon demand, where E operated plant for same purpose as predecessor, purchased 80% of predecessor's equipment, utilized same manufacturing procedures, albeit with minor modifications, served essentially same customers as predecessor, hired majority of predecessor's Ees and there was only 11 day hiatus in operations]

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046

(purchaser held not successor to seller since one of the requirements under *Burns* doctrine is that for the representative period majority of successor's E's Ees be composed of Ees from former E's work force, and such requirement had not been met herein)

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046

(U's contention that purchaser was successor E under Bd cases which hold that E can be found successor even w/o majority of purchaser's Ees being composed of predecessor's Ees, if purchaser has established hiring policy in order to keep from becoming *Burns* successor, rejected, since all other factors for finding successorship must be present before proceeding to question of illegal hiring policy)

Tooling and Equipment International Corporation, Successor to Automotive Pattern Company JD-334-85

(hiatus in operations only one factor in overall analysis of successorship status. However, only significant when other substantial changes exist and it bears on Ees' desire for continued representation. Successorship finding defeated if during hiatus, successor totally dormant, engaged in activities associated with termination of operations, or engaged in totally dissimilar activities)

Abramo Fish Co. Ltd. JD-222-85

(in case involving purchaser's alleged refusal to recognize and bargain with U representing seller's Ees, date when purchaser took effective control of business, rather than date of formal title transfer almost a month later, was date on which successorship, if any, should be based)

Abramo Fish Co. Ltd. JD-222-85

(in considering continuity of employment as factor in determining successorship, ALJ held Ees, who worked during period from date purchaser effectively assumed control of seller's business to date purchaser became formal owner of business about a month later, were Ees of purchaser and not of seller, and therefore purchaser did not retain substantially same work force as formerly employed by seller)

1667-0100—Cont.

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor 785 F.2d 195 (C.A. 7, Mar. 1986)

[there is, and can never be, a formal definition of successor. Factors can be identified, but the determination in each case involves the facts and the labor policy at issue]

N.L.R.B. v. Jeffries Lithograph Company, a subsidiary of Ticor Printing Group, Inc. 752 F.2d 459 (C.A. 9, Jan. 1985)

(successorship law does not focus on whether new E has become bigger and better business; instead law focuses on whether business operations, *as they impinge on U membership, remain essentially same after the transfer of ownership. Standing alone, magnitude of change is irrelevant)*

1667-5000 Same employing industry

Concom of Missouri 282 NLRB No. 037

[E found successor, notwithstanding E's changes in working conditions that it implemented with its takeover of predecessor, since changes did not effect continuation of employing enterprise]

Cal-Am Partners d/b/a Amscot Coal 281 NLRB No. 027

[E found successor to joint venture, notwithstanding bankruptcy of joint venture and hiatus in operations, where joint venture had not lost control over its existence in bankruptcy, hiatus was for one season only, work was not materially altered, E was 50 percent owned by predecessor and employed same supervisors and Ees to perform same operations on new equipment and produce same product for same customers in same plant at same location, and Ees showed continued desire for continued U representation by paying dues during hiatus]

Big R Distributors, Inc. d/b/a Shoppers Choice 280 NLRB No. 148

[purchaser of inventory and fixtures of store held successor and obligated to recognize and bargain with U, where it continued in same business, employed same manager and assistant manager, Ee complement performed same functions and 3 out of 5 Ees hired by purchaser when it took over operations were represented by U when Ees of seller, notwithstanding 2 out of 3 of those hired were in layoff status from seller, where they had reasonable expectation of recall]

Aquabrom, Division of Great Lakes Chemical Corp., as Successor to Bromine Division, Drug Research, Inc.; Tesco Chemicals, Inc. 280 NLRB No. 066

[on ct remand, Bd held that E was successor where changes in E's operations had no effect on Ees' job classifications, skills, or duties except in one minor respect involving 6 Ees; moreover, other long term changes, establishing absence of successorship status, occurred well after E hired representative complement of Ees]

American Stevedoring Company 280 NLRB No. 088

[E which contracted to perform delivery services for retailer held successor to E which had previously furnished service to stores, and obligated to bargain with U which had represented Ees of predecessor, since making same deliveries, using same trucks which retailer's parent company had brought from previous contractor, notwithstanding predecessor was licensed carrier that supplied full carier service and owned vehicles that were making deliveries while successor had contract only to supply drivers for one E's trucks and was not carrier, and that successor hired no Ees of predecessor, since refusal to hire was because of Ees' U membership]

American Stevedoring Company 280 NLRB No. 088

[E which contracted to perform delivery service for retailer held successor to E which had previously furnished service to stores, and obligated to bargain with U which had represented Ees of predecessor, notwithstanding no Ees of successor had been Ees of predecessor, where successor did not inform Ees of predecessor it was hiring Ees to perform their former jobs and sought applicants through newspaper ad which concealed E's identity, thus out of successor's initial work force of 21 only 9 Ees of predecessor applied, and none were hired inasmuch as E specifically refused to hire because of U membership]

American Press, Inc. 280 NLRB No. 109

[E-purchaser held successor E in view of being in same business as seller, servicing substantial number of seller's former customers, using same plant, machinery, equipment, and methods of production as was used by seller, offering same product formerly manufactured by seller, and having same jobs and working conditions w/i unit as existed under seller]

Croley Coal Corporation and South Harlan Coal Co., Inc. 280 NLRB No. 104

[E purchased predecessor's stock, ran the business two or three weeks before stock transfered, and retained all predecessor's foremen and Ees w/o their submitting job applications]

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. 280 NLRB No. 021

[E held successor to company whose assets it purchased and obligated to honor contract predecessor had with U, where there was continuity of operation with same Ees and working conditions, and purchaser made contributions to U's benefit and productivity funds, and while it complained about what it believed to be onerous provisions of contract, never indicated it would not abide by contract]

Plateau Coal Sales, Inc. 279 NLRB No. 156

[employing industry not substantially same notwithstanding new E engaged in same business, at same facility, with essentially same equipment, Ees have requisite skills to perform work of new E, 1 supervisor from old hired as superintendent of new operation, and new E committee itself to hire from pool of Ees of old E since new E did not operate preparation plant which was 90% of primary operation of old E, new E set up to handle output of owners' mines only, 1 shift instead of 2 formerly, no contractual arrangement between Es (new E acquired lease from 3rd party) and hiatus of 2-1/2 months from shutdown of old to startup of new operation]

H.H.H. Enterprises, Inc., d/b/a Stephenson Haus 279 NLRB No. 139

[purchaser who assumed operation of restaurant w/o hiatus and w/o charge of name until some months later held successor E, and obligated to bargain with U, which represented Ees of predecessor E where upon assumption of operation, it hired all Ees of predecessor E w/o change of working conditions]

Cutter Dodge, Inc. 278 NLRB No. 083

[purchaser of auto dealership held successor of seller and obligated to recognize U which had represented Ees of seller since at time U requested recognition buyer had employed substantial and representative complement of its work force, majority of which had previously worked for respondent E's predecessor in appropriate unit notwithstanding E's contention that determination of its majority status should be delayed because it had not yet commenced its own new car preparation operation nor hired Ees to operate it]

Kou Fu, Inc. d/b/a Peng Teng 278 NLRB No. 050

[buyer which operated restaurant on same premises as seller using part of same name used by seller, with same chef and manager, serving essentially same clientele, and advertised its reopening after renovation as return, held successor E to seller, notwithstanding majority of its Ees were not Ees of seller, since buyer refused to hire some Ees of seller based on its U animus; nor was ALJ bound by fact U acceded to buyer's demand that it be treated as new E and thus buyer was able to insist on freedom to choose Ees]

District 30, Mine Workers and Local 1834 (TCH Coal Company) 278 NLRB No. 045

[*no successorship* where Energy Co. reactivated coal mine previously operated by coal company since Energy Co. had no financial dealings with predecessor company, hired none of predecessor's Ees, utilized different process employing its own machinery and equipment to extract coal, and utilized entirely different supervision to operate coal companymine]

Matlack, Inc. 278 NLRB No. 036

[E providing hauling services for distributor held successor to distributor's predecessor hauler, where successor continued same hauling operation with mere change in ownership w/o any essential change in working conditions, with virtually all of predecessor's Ees still performing unit work]

Evans Plumbing Co. 278 NLRB No. 009

[service company found successor to plumbing company where it took over latter's operations, hiring a majority of its Ees from plumbing company's Ees with knowledge of latter's ULPs; successor's obligations not affected by predecessor's bankruptcy proceeding]

Cuello Industries, Inc., d/b/a Scroll Casual A Wholly Owned Subsidiary of Sunline Industries, Inc. 278 NLRB No. 005

[purchaser of metal patio furniture manufacturer's assets, name, materials, accounts, machinery and equipment, successor E where it continued to manufacture same product in same location with some of same Ees using same machinery and equipment in same way after shutdown in operations of only a few weeks]

Taylor Stone d/b/a Eastone of Ohio, Inc. 277 NLRB No. 187

[E held successor and obligated to bargain with U which had represented Ees of another E, in view of substantial continuity of employing enterprise, where, at time U requested recognition, all of its unit Ees had been employed by other company, it was engaged in same busiess at same plant, using same equipment and methods of production to manufacture same product, and majority of its suppliers and customers were same as those of other company, notwithstanding U's failure to negotiate contract with predecessor E, subsequent 2 month strike and 6 month close of plant]

Radok Enterprises, Inc. 277 NLRB No. 101

(E who purchased commission routes from predecessor E (father), held successor, where majority of Ees hired worked for predecessor; products in main were purchased from predecessor and bore its label as before; delivery trucks, though purchased from predecessor, continued to bear logo of predecessor and continued to be parked, fueled and serviced by predecessor; and notwithstanding successor did not engage in dairy processing or wholesale, delivery as did predecessor since change in scale of operation must be extreme before it will alter finding of successorship)

1667-5000—Cont.

Presidents Island Steel and Wire, Inc. **277 NLRB No. 005**
(purchaser of companies' assets including plant and equipment held successor and obligated to bargain, notwithstanding purchase of additional equipment in order to expand volume of business, where w/o significant hiatus purchaser engaged in same business operation at same location, selling same product to substantially same customers, and where majority of its Ees were Ees of company whose assets it purchased)

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**
(six partnerships which constituted single E as to business of operating apartment house found successor E to prior owner in view of continuity of business operation of same facility with same work force doing same jobs under same supervisor using same equipment and operating methods and offering same services; work force found same although several of predecessor's Ees were unlawfully bribed by successor to quit and were not rehired by successor)

Trucking Water Air Corporation **276 NLRB No. 158**
(E engaged in interstate and intrastate transportation of freight found successor to E previously engaged in same business using same facilities at same locations, serving same customers, employing substantially same work force to perform same duties using same office and shop equipment and same motor vehicles; although successor reduced amount of space it used, it initially used same amount as predecessor and further paid nothing for use of vehicles and equipment for first six months)

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) **276 NLRB No. 046**
(purchaser held not successor to seller, even though much of same machinery and equipment was used with same production methods, and same product was produced, since employing industry did not remain substantially the same after purchase, where purchaser did not use same plant, same jobs did not exist under same working conditions, and same supervisors were not employed)

Royal Vending Services, Ltd. **275 NLRB No. 173**
(purchaser of company's assets found successor E in view of *continuity of operations* where w/o hiatus company employed same Ees to provide same services to same customers using same equipment at same location; purchaser's contention that it was not successor because Ee turnover rendered Ee complement unrepresentative, it intended to change locations, and it lost customers rendering it less able to fulfill obligations to bargain with U, rejected)

Inland Container Corporation **275 NLRB No. 60**
(E held successor notwithstanding 2 1/2 month hiatus between closing of predecessor and commencement of successor E's operations, where hiatus may have been necessary at least inpart because of E's discriminatory hiring policies and plant renovations; however, renovations E made were insufficient to negotiate *substantial continuity* of employing enterprise as new machinery was introduced and work done did not alter machinery's fundamental character but was in nature of long overdue repairs)

Eastern Connecticut Health Services, Inc. d/b/a New London Convalescent Home **274 NLRB No. 204**
(successorship found where E admittedly purchased another E's property and business, continued to operate same business at same location providing same services w/o interruption and employing Ees, a majority of whom had been Ees of the other)

Conte Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(two companies spun off by E engaged in mining sand and gravel and producing ready-mix concrete, to which E transferred its ready-mix concrete operations and tractor-trailer operations respectively, found successors to, single E with, and alter egos of transferring E in view of their common financial control, chief executive officer, centralized labor relations, interrelation of operations and management, and fact same work was done by same Ees using same equipment in same location for same ultimate customers)

Abramo Fish Co. Ltd. **JD-222-85**
(purchaser of business held not successor to seller where factors indicating successorship did not outweigh factors indicating that there was substantial change in continuity of employing industry, in view of change in operations comprising substantial alteration in nature of employing industry; expansion of operating capacity to almost 4 times that of seller; purchaser's different methods of production, substantially different customers, and expansion from local to long-distance market; and fact that purchaser did not employ majority or substantial number of seller's Ees)

Flexible Foam Products, Inc. **JD-100-85**
(purchaser of E's equipment for producing one product which lessed 10% of E's space and hired a very few of E's Ees, not successor to E where, despite similarities of work force, location, supervision and product, there was no continuity of employing industry in view of four-month hiatus between operations, Ers' lack of expectations of employment with purchaser, substantial difference in scope of operations in areas affecting Ees' desires about U representation, namely size of work force, working conditions, and nature of jobs)

Flexible Foam Products, Inc. **JD-100-85**
(sublessor of one kind of E's equipment and a fourth of its space not successor since, although sublessor used some of same equipment, supervisors, and Ees, there was no continuity of employing industry because there was a five-month hiatus between operations, no expectation of re-employment by Ees, and difference in basic product resulting in significant change in size of work force and nature of jobs)

Great Plains Furniture Industries, Inc. **JD-14-85**
]in order to determine whether E is successor w/i meaning of successorship doctrine, Bd has traditionally looked to the following criteria to determine existence of continuity of in employing enterprises: (1) business operations, (2) plant, (3) work force, (4) jobs and working conditions, (5) supervisors, (6) machinery, equipment, and methods of production and (7) product or service)

Great Plains Furniture Industries, Inc. **JD-14-85**
(purchaser held successor E and obligated to bargain with U which represented Ees of seller, notwithstanding purchaser had begun to derive income from distributing other products which it did not manufacture, changed quality and cost of its product line, as well as suppliers, where at time of bargaining demand majority of purchaser's Ees had been employed by seller, Ees were doing same work in virtually same job classifications, using same equipment and machinery in same plant under same working conditions and suprvision, in order to make same product)

Aquabrom, Division of Great Lakes Chemical Corp., as Successor To Bromine Division, Drug Research, Inc. Tesco Chemicals v. N.L.R.B. **746 F.2d 334 (C.A. 6, Oct. 1984)**
[where Bd had ordered present E to bargain based on prior E's refusal to do so w/o deciding whether present E was prior E's successor and asked ct to hold present E in contempt for not complying with ct order enforcing Bd's bargaining order, ct decided that, despite special master's hearing on successorship, Bd was proper forum to determine successorship and remanded case to Bd to determine successorship and whether E's claimed structural changes in operations rendered it not liable as successor]

N.L.R.B. v. Jeffries Lithograph Company, a subsidiary of Ticor Printing Group, Inc. **752 F.2d 459 (C.A. 9, Jan. 1985)**
(ct uses two-part test to determine if successor or not: 1) Does E conduct essentially same business as former E; and 2) is majority of work force former Ees or would have been absent refusal to hire because of U animus. As to part 1, one factor considered by Bd is use of old plant for 10 months by new E, and notwithstanding E in process of refurbishing new, larger facility which it planned to move into, new E's use of old plant was factor in finding successor)

N.L.R.B. v. Jeffries Lithograph Company, a subsidiary of Ticor Printing Group, Inc. **752 F.2d 459 (C.A. 9, Jan. 1985)**
(hiring only supervisor of old operation is indicia that E conducting essentially same business as former E notwithstanding E also hired additional supervisors)

Food and Commercial Workers, Local 152 v. N.L.R.B. **768 F.2d 1463 (C.A. D.C., July 1985)**
]even entirely new E at given place of employment may be required to recognize and bargain with previously recognized or certified bargaining representative of Ees of that place of employment if substantial continuity of employing industry. In such circumstances, new E is deemed successor and may escape duty to recognize and bargain only if genuine doubt as to whether U has majority support in unit)

Food and Commercial Workers, Local 152 v. N.L.R.B. **768 F.2d 1463 (C.A. D.C., July 1985)**
(in determining whether E is successor, and obligated to recognize and bargain with U; *essential inquiry is whether operations, as they impinge on U members, remains essentially same after transfer of ownership. Focus of analysis is not on continuity of business structure in general, but rather on particular operations of business as they affect members of relevant bargaining unit)*

Food and Commercial Workers, Local 152 v. N.L.R.B. **768 F.2d 1463 (C.A. D.C., July 1985)**
(purchaser of stock of meat packing company which operated portion of sellers facilities after hiatus of year and half, held successor and obligated to recognize and bargain, notwithstanding hiatus, reduction to single shift and consequent reduction in Ees, change to strictly kosher products and in top management after stock transfer, since none of these changes resulted in substantial transformation of operations, affected Ee's attitude towards repesentation or E's obligation towards U)

1672 BANKRUPTCY TRUSTEE OR DEBTOR-IN-POSSESSION

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ——U.S.—— (U.S. S.Ct, Feb. 1984)

[debtor-in-possesion is same entity which existed before bankruptcy ptn (not new entity or alter ego) but empowered to deal with its contracts and property in manner it could not have done w/o filing ptn]

Hiysota Fuel Co., Inc., Debtor-In-Possession, et al. 280 NLRB No. 089

[debtor-in-possession held empowered with full authority to continue business of E in bankruptcy, and to constitute *the same entity* as E]

Ohio Container Service, Inc.; Myron E. Wasserman, Trustee in Bankruptcy 277 NLRB No. 025

(debtor-in-possession is viewed as same entity which existed before filing of bankruptcy ptn)

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession 275 NLRB No. 044

(debtor and debtor in possession held *alter egos* where both entities were authorized by Bankruptcy Ct to operate same concern and were alike in all respects)

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego JD-(NY)-6-86

[*issue of whether Sec. 8(d) may be used to enforce post-bankruptcy ptn contract should be determined by analyzing policies and provisions of Bankruptcy Code. Code treatment of transactions between debtor-in-possession and third parties after bankruptcy ptn filed supports view that Code favors enforceability both with respect to assumed pre-petition contracts and contracts negotiated post-ptn. Code favors enforceability of post ptn contracts as a means of establishing confidence in debtor-in-possession and encouraging third parties to do business with debtor*]

1683 STATUTORY EXCLUSIONS FROM EMPLOYER STATUS

1683-5000 State or political subdivision

The Big East Conference 282 NLRB No. 050

[jurisdiction asserted over E, basketball conference composed of nine member schools, notwithstanding two of its nine member schools were public institutions, where their designated representatives on conference Board could not control operations of E and E was not created directly by state]

Cape Girardeau Care Center, Inc. 278 NLRB No. 143

[Bd applies two-part test to determine whether E is a *political subdivision*; (1) whether E was *created directly by state, so as to constitute department or administrative arm of government,* or (2) whether E is *administered by individuals who are responsible to public officials or to the general public*]

Cape Girardeau Care Center, Inc. 278 NLRB No. 143

[jurisdiction asserted over E, a not-for-profit corporation operating mnursing home, where (1) neither state nor any of its political subdivision or agencies created E; instead, E sought county approval to obtain tax-exempt bonds to finance sale of nursing home, and (2) E's policy-making officials had no accountability to public inasmuch as county did not appoint E's directors but simply gave ministerial approval to their appointment which was further effort to insure tax-exempt financing of sale of nursing home]

Cape Girardeau Care Center, Inc. 278 NLRB No. 143

[in asserting jurisdiction over E, a not-for-profit corporation operating nursing home found not to constitute political subdivision, Bd noted, among other things, that county lacked control over E, E was not county nursing home and county provided no funds or other support to E, and E determined its own fee schedules and budgets and was not required to submit such documents to county]

Cape Girardeau Care Center, Inc. 278 NLRB No. 143

[in asserting jurisdiction over E, a not-for-profit corporation operating nursing home found not to constitute political subdivision, Bd noted, among other things, that county had no control over E's daily operations or its labor relations policies, E's board of director's and Ees were not on county payroll and had different health insurance and pension plans from those of county Ees, and E had no power of eminent domain or subpoena power and paid property taxes to county]

St. Jude Industrial Park Board v. N.L.R.B. 760 F.2d 223 (C.A. 8, Apr. 1985)

(Bd, with S.Ct approval, has limited *political subdivision* exemption to entities that are either: (1) created by state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate)

St. Jude Industrial Park Board v. N.L.R.B. 760 F.2d 223 (C.A. 8, Apr. 1985)

(Park Board set up to manage industrial park held not political subdivision notwithstanding City ratified its creation by adopting ordinance, since Park Board not create to constitute department or administrative arm of city government but was more in nature of business arrangement and city has retained very little control over Park Board affairs; further, Park Board is not administered by individuals who are responsible to public officials or general electorate as half of members are appointed by company in park and who cannot be removed by City)

St. Jude Industrial Park Board v. N.L.R.B. 760 F.2d 223 (C.A. 8, Apr. 1985)

(City did not exercise sufficient control over labor relations of Park Board where Park Board Ees received higher wages than City Ees and terms of employment and work supervision of Ees of Park Board are effectively controlled by lessee-appointed members of Park Board)

1683-6200 Nonprofit hospitals

Renaissance West Community Mental Health Center 276 NLRB No. 050

(jurisdiction asserted over private, nonprofit corporation under contract with city-county mental health board to provide mental health services in specified geographic area, where corporation was health care institution w/i meaning of Act; its receipt of federal funds, coming from out-of-state sources, demonstrated that its operation had substantial impact on commerce; and, since it had complete control over its personnel and labor relations, it was engaged in commerce w/i meaning of Act)

1683-7500 Persons subject to Railway Labor Act

Sky Cap, Inc. 281 NLRB No. 116

[jurisdiction over E engaged in business of providing passenger baggage handling services under contract with eight airlines at Metropolitan Airport, asserted by National Mediation Board under provisions of Railway Labor Act]

ARA Ground Services, Inc. 280 N.L.R.B. No. 062

[R ptn involving E engaged in business of providing ground services to air carriers at airport, dismissed, since National Mediation Bd advised Bd that, based on nature of activities and degree of control by airlines, activities and Ees performing them were subject to Railway Labor Act]

Ebon Services International, Inc. 277 NLRB No. 136

(Bd asserted jurisdiction over E engaged in providing cleaning services to four airlines at international airport, where National Mediation Board advised Bd that E was independent company that was not owned or controlled by any carrier subject to Railway Labor Act)

2400 EMPLOYEE (SEE 440-1760 AND 460-5000 FOR DEFINITION OF EMPLOYEE TYPES AND CATEGORIES)

2401 GENERALLY

Dave Castellino & Sons 277 NLRB No. 050

(demonstrators picketing E at construction site held statutory Ees engaged in protected activity, where demonstrators included members of working class and unsuccessful applicants for employment with E, and were demonstrating in protest of E's alleged failure to comply with statutory duty and contractual commitment to provide work force composed of 50 percent of area residents, thereby protesting or seeking to influence E's hiring policies and practices)

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)

[coercion of former Ee, violation where he had been laid off unlawfully and was therefore considered Ee under the Act, which states that an *employee* includes *any individual whose work has ceased as a consequence of, or in connection with. . . any unfair labor practice*]

2401-5000 Any employee other than those specifically exempted

Sure-Tan, Inc., et al. v. N.L.R.B. ——U.S.—— (US S.CT, June 1984)

[undocumented aliens held to come w/i broad statutory definition of *Ee* under NLRA, since they are not among workers expressly exempted by Congress; categorizing them as protected Ees furthers NLRA's purpose of encouraging and protecting collective bargaining process, as their acceptance of jobs on substandard terms can depress terms for other workers, and to exclude them from participation in U activities and protections against E intimidation would create a subclass of workers w/o a comparable stake in legally resident co-workers' collective goals, thereby eroding Ee unity and impeding effective collective bargaining]

2401-6600 Entitlement of relatives of management to protection of Act

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— (U.S. S.CT, Feb. 1985)

[ct held E's reliance on Sec. 2(3) which excludes from Act's definition of *employee any individual employed by his parent or spouse,* in support of position that Bd had no authority to exclude Ee-relatives from unit, was misplaced; such person is completely outside scope of statute and may not invoke its protection; family members who fall w/i Act's broad definition of *employee,* however, have no statutory right to be included in units under

2401-6600—Cont.

Sec. 9(b); and Bd is free to exclude from unit persons who are statutory *employees* otherwise protected by Act]

2401-6700 Entitlement of managerial employees to protection of the Act

Airport Distributors, Inc. — 280 NLRB No. 091

[Ee holding 10 percent of E's stocks and assertedly discharged for violating E work rule held not divested of protection of Act by his stock ownership which was not determinative factor of unprotected status; rather, degree of participation in management and/or labor policy was relevant; here, there was no evidence that individual received any preference because of his stock ownership or that he participated in formulation of any policies involving management or Ee relations]

2401-6750 Tests for managerial status

The Cooper Union For The Advancement of Science and Art — 273 NLRB No. 214

(faculty members at professional educational institution found not managerial in part because they constituted numerical minority on most of the governance committees and constituted something less than voting majority on about half of them; and proportion of faculty members who voted on committees is further reduced in some cases by administrators' voting on committees in contravention of terms of governance)

The Cooper Union For The Advancement of Science and Art — 273 NLRB No. 214

(faculty members at professional educational institution found not managerial in part because faculty's role on administrative committees was not indicative of extensive faculty authority where each committee is chaired by dean who sets agenda and may prevent committee from meeting, as dean once did, for 4 years; administrative committees played extremely limited role in personnel, financial, and other nonacademic matters; and full-time faculty members constituted voting minority on one school's administrative committee)

The Cooper Union For The Advancement of Science and Art — 273 NLRB No. 214

(faculty members at professional educational institution found not managerial in part because, while faculty exercises considerable authority in number of academic areas, such authority is not only not absolute, but frequently has been made ineffective by administration in such areas as creation and/or elimination of entire degree or special admissions programs w/o faculty input, approval, or over faculty opposition; exclusion from academic governance of large proportion of faculty for number of years; amendment of governances w/o faculty vote; and administrators' chairing of, and active participation in, committees)

The Cooper Union For The Advancement of Science and Art — 273 NLRB No. 214

(in finding faculty members at professional educational institution not managerial, Bd held that, unlike *Yeshiva* faculty and faculties involved in subsequent Bd decisions, faculty herein lacked substantial input into nonacademic matters such as budget, facilities planning, and personnel decisions; in this regard Bd noted particularly that decisions on hiring, promotion, tenure, and retention of teaching staff were frequently made in absence of faculty recommendations, and when they were made following faculty recommendations, those recommendations were frequently rejected)

2401-6750-3300 Is aligned with management so as to be in potential conflict with fellow employees

N.L.R.B. v. Action Automotive, Inc. — ———U.S.——— (U.S. S.CT, Feb. 1985)

[Bd considers variety of factors in deciding whether Ee's familial ties are sufficient to align his interests with management and thus warrant his exclusion from unit; for instance, Ee who resides with or is financially dependent on relative who owns or manages business is typically excluded; and the greater the family involvement in ownership or management, the more likely Ee-relative will be viewed as aligned with management and hence excluded]

N.L.R.B. v. Action Automotive, Inc. — ———U.S.——— (U.S. S.CT, Feb. 1985)

[in deciding whether Ee's familial ties are sufficient to align his interests with management and thus warrant his exclusion, Bd is always concerned with whether Ee receives special job-related benefits such as high wages or favorable working conditions; when other criteria satisfy Bd that Ee-relative's interests are aligned with management, however, he may be excluded even though he enjoys no special job-related benefits]

N.L.R.B. v. The Cooper Union For The Advancement of Science and Art — 783 F.2d 29 (C.A. 2, Jan. 1986)

[faculty members of private, non-profit, educational institution, Ees rather than managers or supervisors, where they were not aligned with management and did not effectively recommend or exercise control over academic or nonacademic affairs, and administration implemented changes in such core academic areas as curriculum and unilaterally revised governances and terms and conditions of employment]

2401-6750-6700 Engages in employer's policy making or exercises independent discretion in performance of duties

American International College — 282 NLRB No. 016

[unit of full-time faculty at college held inappropriate, as faculty was managerial and excluded from coverage of Act, since it made effective decisions in majority of critical areas relied on by S.Ct in *Yeshiva University* (144 U.S. 672), where faculty, through their participation on faculty committees, as departmental chairpersons, and as members of faculty as a whole, effectively determined curriculum and academic policies and standards of college and exerted significant influence in decisions regarding hiring, tenure, and evaluation of their fellow faculty members]

Marymount College of Virginia — 280 NLRB No. 050

[in unit clarification proceeding, E's contention that new position of *program coordinator* should be excluded from unit as managerial or supervisory, rejected, since *program coordinators* did not exercise control over areas indicative of managerial or supervisory status where they performed only informal and casual recommendations for hire of faculty, did not determine courses to be taught, did not evaluate faculty members and were not involved in financial or economic planning]

Marymount College of Virginia — 280 NLRB No. 050

[in unit clarification proceeding, E's contention that professional librarians should be excluded from existing unit as managerial or supervisory, rejected, since they did not exercise control over areas indicative of managerial or supervisory status where none of the librarians had authority to evaluate Ees, establish salaries, grant time-off, hire or fire personnel or otherwise engage in the management of the library]

David Walcott Kendall Memorial School a/k/a Kendall School of Design — 279 NLRB No. 042

[ptn for clarification of unit of faculty members at art and technical school seeking to have them declared managerial Ees dismissed, since faculty did not formulate or effectuate management practices, particularly in view of fact individual faculty members' did not make decisions regarding their own classes, including determining course content and text, take field trips, cancel class, or substitute teacher w/o obtaining permission. Service on committees which made recommendations with varying results not indicia of managerial status since administration retained tight control of committees]

David Walcott Kendall Memorial School a/k/a Kendall School of Design — 279 NLRB No. 042

[chairpersons at technical school held not managerial Ees and included in unit of faculty members, notwithstanding sat on dean's council which ostensibly had authority to make decisions not made in regular committee structure, evaluated faculty, decided whether teachers from other departments might teach in their departments, prepared schedules, budgets, made recommendations on hiring, since not clear what use made of faculty evaluations, chairpersons had no greater role in curriculum committee than othan other members, control over their departments and time spent in functions other than teaching limited]

U.S. Pollution Control, Inc. — 278 NLRB No. 042

[pollution control specialist employed by E engaged in hazardous waste disposal, not managerial, notwithstanding he bid on work for E, since he did not exercise significant independent discretion and authority where he consulted with corporate headquarters before making bid]

The Cooper Union For The Advancement of Science and Art — 273 NLRB No. 214

(faculty members at professional educational institution found not managerial in part because faculty's role in negotiating reintegration of humanities faculty into degree-granting schools was not indicative of strong faculty involvement in institutional policy making; rather, creation of separate humanities faculty, its persistence as isolated group for 4 years, followed by its reintegration into system, is more illustrative of ability of administration to effectively resist faculty pressure than of faculty's active participation in institution-wide decision making)

The Cooper Union For The Advancement of Science and Art — 273 NLRB No. 214

(in finding faculty members at professional educational institution not managerial, Bd held fact that faculty members are actively involved in making more routine academic decisions such as substitution of one course for another and admission of individual applicants to one of the schools, did not rise to level *of representing management interests by taking or recommending discretionary policy*, or *formulating and effectuating management policies by expressing and making operative decisions of their E* w/i meaning of *Yeshiva*)

N.L.R.B. v. The Cooper Union For The Advancement of Science and Art — 783 F.2d 29 (C.A. 2, Jan. 1986)

[faculty members of private, non-profit, educational institution, Ees rather than managers or supervisors, where they were not aligned with management and did not effectively recommend or exercise control over academic or nonacademic affairs, and administration implemented changes in such core academic areas as curriculum and unilaterally revised governances and terms and conditions of employment]

2401-6750-6700—Cont.

N.L.R.B. v. Louisville Gas & Electric Company 760 F.2d 99 (C.A. 6, Apr. 1985)

(data records analyst at utility company who simply monitor pollution findings, flag violations and draft possible remedial solutions, held nonmanagerial, as they have no authority to make fundamental decisions about whether or how company will comply with Clean Air Act; thus, their duties do not reflect level of discretionary action or decision making consistent with S.Ct's decision in Yeshiva University, 444 U.S. 672 (1980))

Maccabees Mutual Life Insurance Company v. N.L.R.B. 757 F.2d 767 (C.A. 6, Mar. 1985)

(insurance company's contention that RD should have clarified unit to exclude as managerial E's claims representatives, whose positions replaced those of E's former claims examiners, rejected, and Bd bargaining order enforced where RD, contrary to E's contention, did consider degree of representatives' discretion and found it *somewhat illusory*, and, although RD did apply older cases, as contended, he did note that the tasks of E's representatives were not essentially unlike those of claims adjusters in earlier insurance company cases)

N.L.R.B. v. Lewis University 765 F.2d 616 (C.A. 7, June 1985)

(fact that expired contract contained management rights clause reserving to management all power, right, authority, duty and responsibility to and for management and operation of university and therefore faculty members merely exercise independent professional judgment but that college policies are established and implemented pursuant bargaining agreement with university's administration dominating decision making process by virtue of management rights clause, rejected, as faculty members formulate and implement major educational policies almost all of which are adopted by administration)

N.L.R.B. v. Lewis University 765 F.2d 616 (C.A. 7, June 1985)

(faculty members at university held managerial where as *faculty convened* they approved proposals and recommendations emanating from faculty committees regarding student admission policies, graduation requirements, grading guidelines, faculty tenure, workloads, promotions, hiring and final budget notwithstanding administration had veto power over recommendations as overwhelming majority of these proposals were adopted and implemented; thus faculty members clearly represent management interests by taking or recommending discretionary actions that effectively control or implement educational policies of college)

N.L.R.B. v. Lewis University 765 F.2d 616 (C.A. 7, June 1985)

(assertion that decisions of full-time faculty members not managerial, but rather independent judgments exercised in faculty members' own interest, rejected, since faculty's professional interest-as applied to governance at a university-cannot be separated from those of the institution)

N.L.R.B. v. Lewis University 765 F.2d 616 (C.A. 7, June 1985)

(assertion that because final authority invested not in faculty, but in administration and therefore faculty members not managerial, rejected, as ultimate authority has never been thought to be prerequisite to supervisory or managerial status. Relevant consideration is effective recommendation or control rather than final authority)

Noranda Aluminum, Inc. 751 F.2d 268 (C.A. 8, Dec. 1984)

(nurses at aluminum plant not managerial, where they primarily treat Ees' injuries and illnesses, administer routine physical examinations, and maintain records under direction of nursing services supervisor and part-time physician; they had no independent authority to purchase medicine and equipment, their discretion was limited to applying their professional medical skills, any conflict of interest between their responsibilities and loyalty to the U was insufficient to exclude them from coverage, and they had access to personnel and medical records but did not help set labor relations)

2401-6800 Confidential employee

Local No. 980, Automobile Workers (Local 32, Office Employees) 280 NLRB No. 161

[*labor nexus*requirement not met and secretary to U found not to be confidential Ee, notwithstanding U's contention that she had labor relations duties concerning U's members, where she played no role with respect to labor relations between U and its own Ees]

Terraillon Corp. 280 NLRB No. 037

[secretary to vice-president and highest U.S. official of E, who handled E's correspondence with NLRB and labor attorneys, held not confidential Ee and eligible to vote where vice-president was not responsible for formulating labor relations or personnel policies, which were established by his superiors abroad, nor was secretary present at conferences with labor counsel; found not significant was her occasional typing of letters to or filing of letters from labor counsel]

Intermountain Rural Electric Association 277 NLRB No. 003

(secretary to director of engineering department held not confidential Ee with labor nexus, where director's duties consisted of no more than occasional contribution to possible management decision-making which was inadequate to show responsibility or regular involvement in labor policy function; director's relationship to secretary did not exhibit any evidence of sharing of management policy or entrusting her with information relative to labor relations formulation; and single instance of note-taking at management meeting and typing 3 memos of uncertain labor policy content are inadequate basis for finding confidential status)

2401-8700 Foreign nationals or illegal aliens

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[ct remanded to Bd for modification of its order which denied backpay to undocumented aliens who had not left U.S. during backpay period nor were subject of deportation proceedings. Ct held Bd erred when it interpreted *Sure-Tan* 467 U.S. 883, which deemed undocumented alien discriminatees who had left U.S. to be unavailable for work, and not entitled to packpay, and conditioned reinstatement on legal reentry, to mean that undocumented aliens never entitled to backpay and would require compliance officer to determine legality of each alien discriminatee's presence in U.S.]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[*undocumented aliens are entitled to protection of Act and when remaining in U.S. during backpay period, entitled to backpay. To deny undocumented aliens Bd remedies would encourage unscrupulous Es to hire undocumented workers; Congress intended to protect collective bargaining rights by ensuring that there is no subclass of workers nor would allowing backpay to aliens who work during backpay period encourage illegal entry or reentry to U.S.*]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[undocumented aliens entitled to protection of Act and are entitled to backpay when remaining in U.S. and available for work during backpay period, notwithstanding illegal entry into U.S. and contention such illegal aliens suffered no harm since they were not legally entitled to work]

2401-9000 Professional union organizers

Pillod of Mississippi, Inc. 275 NLRB No. 117

(Ee who was also paid U organizer at time of hire held *employee* w/i meaning of Act)

2401-9900 Other

Tony and Susan Alamo Foundation, et al. v. Secretary of Labor ———U.S.——— (U.S. SCT, Apr. 1985)

[associates working in various commercial businesses operated by religious foundation, who receive no cash wages but are provided with food, clothing, shelter, and other benefits held *Ees* w/i meaning of FLSA, notwithstanding protestation of associates themselves that their work in commercial businesses was voluntary performance of services for foundation, since test of employment under FLSA is one of *economic reality*, and fact that compensation was primarily in form of benefits, rather than cash, is immaterial inasmuch as such benefits are wages in another form]

Dave Castelliro & Sons 277 NLRB No. 050

(demonstrators engaged in picketing E held to fall w/i statutory definition of Ee, where demonstrators included members of working class generally and unsuccessful applicants for employment with E)

2414 INDICIA OF EMPLOYEE STATUS

2414-2200 Control and supervision of methods, terms, and conditions of work

La Salle Investment Co., Ltd., d/b/a Cafe La Salle 280 NLRB No. 043

[individual performing work at E's commercial building held independent contractor rather than Ee, where E retained only right to control result and not means used by individual in obtaining result; manner of doing work listed by E was up to individual who had right to work whenever he chose to do so outside normal business hours; he was paid flat rate, could subcontract janitorial work, and had no state and federal taxes withheld from his pay; and E's furnishing of cleaning supplies did not outweigh factors establishing independent contractor status]

Mission Foods Corporation 280 NLRB No. 026

[E's *jobbers* (route salesmen) held Ees and not independent contractors since, although the Jobbers agreement with E, on its face is indicative of independent contractor arrangement, record clearly establishes that E retains rights of control over manner and means by which jobbers perform their jobs, and jobbers' arrangement with E lacks any of basic entrepenurial characteristics found in true independent contractor relationships. E alone sets and adjusts jobbers' routes, sets prices, customers to be serviced, disciplines jobbers,

2414-2200—Cont.

have no proprietary interest in routes as they cannot sell them and E can charge them unilaterally]

H & H Pretzel Company — 277 NLRB No. 143
(dealers of snack food distributor found Ees rather than independent contractors, where dealers lack investment or proprietary interest in business, using E's supplies and vehicles leased through E; E can unilaterally terminate their contract, prohibits their selling other Es' goods, compels them to attend meetings, transfers money in their business, performs their obligations when they do not, and determines their workweek, frequency of customer calls, cleanliness, or carrying unapproved advertising)

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. — 766 F.2d 812 (C.A. 3, July 1985)
(E's agent's Ees, held Ees of E rather than agent, since Ees were subservants of agent and agent was in turn a servant of E where E exerted control over agent by providing all operating expenses of agent, by establishing number of Ees to work each shift, by establishing all work schedules for Ees and by handling all grievances arising from Ees)

2414-3300 Right of control, not exercise thereof, is determinative

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) — 280 NLRB No. 082
[general agency principles, paramount among which is the *right-to-control*, apply to determination whether individual is Ee or independent contractor]

H & H Pretzel Company — 277 NLRB No. 143
(dealers of snack food distributor found Ees rather than independent contractors, where dealers lack investment or proprietary interest in business, using E's supplies and vehicles leased through E; E can unilaterally terminate their contract, prohibits their selling other Es' goods, compels them to attend meetings, transfers money in their business, performs their obligations when they do not, and determines their workweek, frequency of customer calls, cleanliness or carrying unapproved advertising)

Pierre's Vending Company, Inc. — 274 NLRB No. 184
(in determining whether individuals are Ees or independent contractors, Bd applies common law right-of-control test (control only results to be achieved then person is independent contractor or if in addition E controls means to be used in attaining result then individual is Ee). Here evidence concerned results to be achieved (truck repairs by experienced mechanic) rather than exercise of right-to-control means of achieving them)

2414-5500 Control of equipment furnished by employer

H & H Pretzel Company — 277 NLRB No. 143
(dealers of snack food distributor found Ees rather than independent contractors, where dealers lack investment or proprietary interest in business, using E's supplies and vehicles leased through E; E can unilaterally terminate their contract, prohibits their selling other Es' goods, compels them to attend meetings, transfers money in their business, performs their obligations when they do not, and determines their workweek, frequency of customer calls, cleanliness or carrying unapproved advertising)

2414-9900 Other

Airport Distributors, Inc. — 280 NLRB No. 091
[Ee holding 10 percent of E's stocks and assertedly discharged for violating E work rule held not divested of protection of Act by his stock ownership which was not determinative factor of unprotected status; rather, degree of participation in management and/or labor policy was relevant; here, there was no evidence that individual received any preference because of his stock ownership or that he participated in formulation of any policies involving management or Ee relations]

2428 CONTINUATION OR LOSS OF EMPLOYEE STATUS

2428-2500 Individuals whose work has ceased as result of labor dispute

U.S. Mineral Products Co. — 276 NLRB No. 022
(permanently replaced economic strikers' entitlement to reinstatement is limited to being put on preferential hiring list with E not being required to reinstate economic striker unless and until his former job or its equivalent comes open by termination or expansion. However, once striker accepts permanent employment elsewhere, he ceases to be Ee of E and is no longer entitled to reinstatement rights)

2428-2550 Obtained regular and substantial employment elsewhere

2428-2550-2500 Before reinstatement denied

Lone Star Industries, Inc. — 279 NLRB No. 078
[E's obvious failure to discharge its burden in establishing that Ee had obtained comparable employment as basis for excluding him from possible recall made E's action violative, since E disqualified for reinstatement those Ees it deemed on basis of *insufficient information* to have obtained comparable employment where basis was whether Ee was employed in *same type of job, with competitor*, but no further check as to wages, benefits, job assignments, etc.]

2428-5000 Individuals whose work has ceased as result of ULP

Ballou Brick Company v. N.L.R.B. — 798 F.2d 339 (C.A. 8, July 1986)
[coercion of former Ee, violation where he had been laid off unlawfully and was therefore considered Ee under the Act, which states that an *employee* includes *any individual whose work has ceased as a consequence of, or in connection with. . . any unfair labor practice*]

2428-7500 Individuals whose work has ceased as result of nondiscriminatory interruption or termination of employment

Thomas Steel Company — 281 NLRB No. 060
[former Ee included in term *employee* defined under Sec. 2(3) of Act]

2456 STRIKERS

2456-5000 ULP strikers

Radio Electric Service Company — 278 NLRB No. 078
[strike motivated, in part, by E's refusal to grant Ees their Christmas bonus held ULP strike]

Wilder Construction — 276 NLRB No. 104
(E's withdrawal of recongition from U when Ees went out on economic strike because E and U were unable to reach full agreement on terms of collective-bargaining agreement, violative and strike, subsequently was ULP strike, since E foreclosed possibility of entering into collective-bargaining agreement)

Morning Star International, Inc. — JD-209-86
[while there was no orderly meeting at which Ees had voted upon formal motion to strike because of specific ULPs, Ees who joined strike held ULP strikers where it was clear E's ULPs caused strike as evidenced by Ees' testimony that E's anti-U speech, work rules issued by E, and its failure to recognize U prompted strike; and at least 1 picket sign gave E's commission of ULPs as reason for strike]

2456-6700 Economic strikers

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. — 281 NLRB No. 117
[Ees who were on layoff status prior to strike held economic strikers where they received E's solicitation to return to work during strike and manifested their intent to join strike by engaging in picketing; fact that E may not have been aware of Ees' picketing did not detract from finding that picketing constituted reasonable notice that Ees were striking since such over action, which reasonably would make E aware, did not depend on E's actual knowledge and was controlling]

Wilder Construction — 276 NLRB No. 104
(E's withdrawal of recongition from U when Ees went out on economic strike because E and U were unable to reach full agreement on terms of collective-bargaining agreement, violative and strike, subsequently was ULP strike, since E foreclosed possibility of entering into collective-bargaining agreement)

U.S. Mineral Products Co. — 276 NLRB No. 022
(permanently replaced economic strikers' entitlement to reinstatement is limited to being put on preferential hiring list with E not being required to reinstate economic striker unless and until his former job or its equivalent comes open by termination or expansion. However, once striker accepts permanent employment elsewhere, he ceases to be Ee of E and is no longer entitled to reinstatement rights)

2456-8300 Replaced economic strikers

Medallion Kitchens, Inc. — 277 NLRB No. 175
[economic strikers should not be equated to laid-off Ees because economic strikers enjoy statutory right to reinstatement with no time limit set on exercise of reinstatement rights]

2484 STATUTORY EXCLUSIONS FROM EMPLOYEE STATUS

2484-1200 Any individual employed as an agricultural laborer

2484-1201 Generally

2484-1201-2500 FLSA Sec. 3(f) sole criterion for defining 'agricultural laborer'

Mario Saikhon, Inc. — 278 NLRB No. 166
[Ees engaged in *field packing* operation are Ees and not agricultural laborers w/i meaning of Act and Bd has jurisdiction over them. Definition of *harvesting*, cannot be stretched to encompase packing operation just because it is being performed in field because moving it to field has not changed nature

2484-1201-2500—Cont.

of work. Bd guided by Dept. of Labor's interpretation of *Section 3(f) of FLSA*, in determining whether individual is Agricultural laborer. It is *nature of work*, and *not identity or purpose of E, that is controlling*]

2484-1225 Tests

2484-1225-2500 Nature of work alone not test

Mario Saikhon, Inc. **278 NLRB No. 166**

[Ees engaged in *field packing* operation are Ees and not agricultural laborers w/i meaning of Act and Bd has jurisdiction over them. Definition of *harvesting*, cannot be stretched to encompass packing operation just because it is being performed in field because moving it to field has not changed nature of work. Bd guided by Dept. of Labor's interpretation of *Section 3(f) of FLSA*, in determining whether individual is Agricultural laborer. It is *nature of work*, and *not identity or purpose of E, that is controlling*]

2484-1275 Activities not exempt as agricultural

2484-1275-5000 Growing, packing and/or distributing produce or horticultural products

Mario Saikhon, Inc. **278 NLRB No. 166**

[Ees engaged in *field packing* operation are Ees and not agricultural laborers w/i meaning of Act and Bd has jurisdiction over them. Definition of *harvesting*, cannot be stretched to encompass packing operation just because it is being performed in field because moving it to field has not changed nature of work. Bd guided by Dept. of Labor's interpretation of *Section 3(f) of FLSA*, in determining whether individual is Agricultural laborer. It is *nature of work*, and *not identity or purpose of E, that is controlling*]

2484-3700 'Any individual employed by his parent or spouse'

Central Broadcast Company **280 NLRB No. 056**

[Ee listed as *sec/traffic/billing/news/Disc Jockey* at country music radio station excluded from unit of announcers where she did no announcing work, had had only one 30-second report that she called in broadcast, and was not a statutory Ee but an *individual employed by (her) parent*, her father being president and sole stockholder of E]

B.R.B. Iron Works, Inc. **JD-(NY)-84-85**

(son of 50% co-owner of closed corporation (E) not eligible to vote in Bd election, since he is not Ee w/i meaning of Act)

2484-5000 Independent contractor

2484-5033 Indicia of status

2484-5033-0100 Generally

The Big East Conference **282 NLRB No. 050**

[basketball officials held independent contractors where they invested time and money in advancing their careers, sold their skill and expertise and had some control over their own earnings]

Precision Bulk Transport, Inc. **279 NLRB No. 060**

[*Bd uses common law right of control test to determine whether individuals are Ees or independent contractors*]

Precision Bulk Transport, Inc. **279 NLRB No. 060**

[owner-operators who leased their equipment to E held independent contractor notwithstanding lease provides leased equipment *shall be exclusively possessed and controlled by E and used in E's business* and that E *shall be responsible for operation of such equipment*, (above language consistent with lease requirements mandated by I.C.C.) and will not be used for any purpose other than conducting E's business w/o E's permission, where other evidence showed that owner-operators enjoy certain freedoms and bear certain risks consistent with operation of independent business and E giving up right-to-control performance of their services]

Precision Bulk Transport, Inc. **279 NLRB No. 060**

[despite lease language that gives E control beyond that imposed by law and limits owner-operators who leased equipment to E of their entrepreneurial freedom, owner-operators held independent contractors where they purchased and owned their rigs, paid higher percentage of gross than Ee, paid for own fuel and maintenance at place of their own choosing, determine own work schedules and delivery rates, can accept or reject trips, negotiated trip leases with other Es, not promised any set number of trips, must obtain required licenses, E did not provide FICA, unemployment or workers' compensation contributions on their behalf or impose discipline]

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) **276 NLRB No. 077**

[*in determining whether individuals are Ees or independent contractors under Act, Bd is required to apply common law agency principles. Under this approach, there is no shorthand formula, or magic phrase that can be applied to find answer, but all incidents of relationship must be assessed and weighed with no one factor being decisive*)

Don Bass Trucking, Inc. **275 NLRB No. 163**

(fact that state regulations substantially dictate terms of employment can not constitute E control over drivers)

Pierre's Vending Company, Inc. **274 NLRB No. 184**

(fact that E did not withhold state or Federal taxes, although not determinative, is nonetheless relevant to determination of independent contractor status)

Pierre's Vending Company, Inc. **274 NLRB No. 184**

(mechanic-Ee held independent contractor notwithstanding he prepared checklist of completed repairs as work was not inspected which showed concern was over results achieved rather than exercise of right to control means of achieving them)

2484-5033-0133 Amount of control reserved by person for whom work is done

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) **280 NLRB No. 149**

[in finding tractor lessors were independent contractors, Bd overruled *Robbins Motor Transportation, Inc.* 225 NLRB 761 (1975); *Mitchell Bros. Truck Lines*, 249 NLRB 476 (1980); and *Radicks Interstate, Inc.* 255 NLRB 1073 (1980), to extent that they may indicate that control stemming from governmental requirements is determinative factor in assessment of independent contractor versus Ee status]

Mission Foods Corporation **280 NLRB No. 026**

[E's *jobbers* (route salesmen) held Ees and not independent contractors since, although the Jobbers agreement with E, on its face is indicative of independent contractor arrangement, record clearly establishes that E retains rights of control over manner and means by which jobbers perform their jobs, and jobbers' arrangement with E lack any of basic entrepenurial characteristics found in true independent contractor relationships. E alone sets and adjusts jobbers' routes, sets prices, customers to be serviced, disciplines jobbers, have no proprietary interest in routes as they cannot sell them and E can charge them unilaterally]

Precision Bulk Transport, Inc. **279 NLRB No. 060**

[*where one for whom services are performed retains right to control manner and means by which result is to be accomplished, relationship is one of employment; while, on other hand, where control is reserved only as to result sought, relationship is that of independent contractor. Resolution of this question depends on facts of each case and no one factor is determinative*]

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) **276 NLRB No. 077**

(owner-operators of excavation equipment with whom general contractor had agreement to perform foundation excavation work held independent contractors, since general contractor retained no control over manner in which work performed, but merely informed them of lines and grades for excavation, owner operators determined own hours of operation, whether to hire own Ees, made all arrangements for acquisition and maintenance of own equipment, assumed liability for operations; further, general contractor made no withholdings or payments for workmen's compensation, unemployment or social security

Pierre's Vending Company, Inc. **274 NLRB No. 184**

(in determining whether individuals are Ees or independent contractors, Bd applies common law right-of-control test (control only results to be achieved then person is independent contractor or if in addition E controls means to be used in attaining result then individual is Ee). Here evidence concerned results to be achieved (truck repairs by experienced mechanic) rather than exercise of right-to-control means of achieving them)

Atlantic Interstate Messengers, Inc. **274 NLRB No. 171**

(owner-operator drivers for interstate delivery service found Ees rather than independent contractors where they are disciplined for insubordination, fined for improper recordkeeping, must wear uniforms, may not grow beards, must keep records not required by government agencies, cannot refuse job assignments, and may not deviate from the order or pickups and deliveries established by the dispatcher)

Ace Cab Company, d/b/a Checker Cab Company, Marcella Cab Company and Manchester Cab Company **273 NLRB No. 186**

(notwithstanding long term usuage of words *employer-employee* in describing their relationship and number of E restrictions over drivers (sale of vehicles, attire, variety of dischargeable offenses and widespread use of dispatch system by drivers), drivers held independent contractors since most of rules drivers operated under dictated by either insurance or city regulations, E doesn't pay wages, withhold taxes or keep records regarding hours, and only income of E is flat fee drivers pay to display E emblem and use dispatch system)

Castricone Contractors, Inc. **JD-(NY)-80-85**

(Ee not independent contractor notwithstanding he signed paper stating he was being paid for subcontract work where evidence shows E directed Ee's work on a day to day basis, Ee's hours, and supplied and controlled any necessary equipment)

2484-5033-0133—Cont.

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. 766 F.2d 812 (C.A. 3, July 1985)

(E's agent's Ees, held Ees of E rather than agent, since Ees were subservants of agent and agent was in turn a servant of E where E exerted control over agent by providing all operating expenses of agent, by establishing number of Ees to work each shift, by establishing all work schedules for Ees and by handling all grievances arising from Ees)

ARA Leisure Services, Inc. v. N.L.R.B. 782 F.2d 456 (C.A. 4, Jan. 1986)

[*tableheads*--venders of novelty items at concessions at sports areana who had ehlpers who assisted them--held supervisors in employ of E which operated concessions under lease agreement, rather than independent contractors, where leaseholder/operator made payroll dedictions for taxes, social security and workmens' compensation, *tableheads* completed employment application, signed in and out, abided by company rules, were subject to discipline by E; leaseholder/operator which retained right to control tablehead/helper relationship and received 90% of gross receipts]

2484-5033-0167 Lessee status

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) 280 NLRB No. 149

[in finding tractor lessors were independent contractors, Bd overruled *Robbins Motor Transportation, Inc.* 225 NLRB 761 (1975); *Mitchell Bros. Truck Lines,* 249 NLRB 476 (1980); and *Redicks Interstate, Inc.* 255 NLRB 1073 (1980), to extent that they may indicate that control stemming from governmental requirements is determinative factor in assessment of independent contractor versus Ee status]

2484-5067 Specific operations

2484-5067-2000 Contract drivers

Mission Foods Corporation 280 NLRB No. 036

[E's *jobbers* (route salesmen) held Ees and not independent contractors since, although the Jobbers agreement with E, on its face is indicative of independent contractor arrangement, record clearly establishes that E retains rights of control over manner and means by which jobbers perform their jobs, and jobbers' arrangement with E lacks any of basic entrepenurial characteristics found in true independent contractor relationships. E alone sets and adjusts jobbers' routes, sets prices, customers to be serviced, disciplines jobbers, have no proprietary interest in routes as they cannot sell them and E can charge them unilaterally]

Precision Bulk Transport, Inc. 279 NLRB No. 060

[owner-operators who leased their equipment to E held independent contractor notwithstanding lease provides leased equipment *shall be exclusively possessed and controlled by E and used in E's business* and that E *shall be responsible for operation of such equipment,* (above language consistent with lease requirements mandated by I.C.C.) and will not be used for any purpose other than conducting E's business w/o E's permission, where other evidence showed that owner-operators enjoy certain freedoms and bear certain risks consistent with operation of independent business and E giving up right-to-control performance of their services]

Precision Bulk Transport, Inc. 279 NLRB No. 060

[despite lease language that gives E control beyond that imposed by law and limits owner-operators who leased equipment to E of their entreprenurial freedom, owner-operators held independent contractors where they purchased and owned their rigs, paid higher percentage of gross than Ee, paid for own fuel and maintenance at place of their own choosing, determine own work schedules and delivery rates, can accept or reject trips, negotiated trip leases with other Es, not promised any set number of trips, must obtain required licenses, E did not provide FICA, unemployment or workers' compensation contributions on their behalf or impose discipline]

Don Bass Trucking, Inc. 275 NLRB No. 163

(fact that state regulations substantially dictate terms of employment can not constitute E control over drivers)

Don Bass Trucking, Inc. 275 NLRB No. 163

(owner-drivers held independent contractors where they own their own trucks which they purchase privately, maintain and repair own trucks, purchase own fuel, pay E to park trucks on E's premises, may reject assignments from E, determine own work schedules and routes and are free to perform services for other carriers when not engaged by E)

General Teamsters and Food Processing Local 87, Teamsters (Harry Shain, an Individual) 273 NLRB No. 225

(owner operates of trucks held independent contractors where they had substantial financial investment, had opportunity to make profit based on own initiative, often worked for several contractors, and absent E's retention of right to reject owner-operators vehicles which failed to meet standards)

2484-5067-3500 Delivery drivers

Atlantic Interstate Messengers, Inc. 274 NLRB No. 171

(owner-operator drivers for interstate delivery service found Ees rather than independent contractors where they are disciplined for insubordination, fined for improper recordkeeping, must wear uniforms, may not grow beards, must keep records not required by government agencies, cannot refuse job assignments, and may not deviate from the order or pickups and deliveries established by the dispatcher)

2484-5067-4700 Owner-operators

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) 280 NLRB No. 149

[in finding tractor lessors were independent contractors, Bd overruled *Robbins Motor Transportation, Inc.* 225 NLRB 761 (1975); *Mitchell Bros. Truck Lines,* 249 NLRB 476 (1980); and *Redicks Interstate, Inc.* 255 NLRB 1073 (1980), to extent that they may indicate that control stemming from governmental requirements is determinative factor in assessment of independent contractor versus Ee status]

Precision Bulk Transport, Inc. 279 NLRB No. 060

[owner-operators who leased their equipment to E held independent contractor notwithstanding lease provides leased equipment *shall be exclusively possessed and controlled by E and used in E's business* and that E *shall be responsible for operation of such equipment,* (above language consistent with lease requirements mandated by I.C.C.) and will not be used for any purpose other than conducting E's business w/o E's permission, where other evidence showed that owner-operators enjoy certain freedoms and bear certain risks consistent with operation of independent business and E giving up right-to-control performance of their services]

Precision Bulk Transport, Inc. 279 NLRB No. 060

[despite lease language that gives E control beyond that imposed by law and limits owner-operators who leased equipment to E of their entreprenurial freedom, owner-operators held independent contractors where they purchased and owned their rigs, paid higher percentage of gross than Ee, paid for own fuel and maintenance at place of their own choosing, determine own work schedules and delivery rates, can accept or reject trips, negotiated trip leases with other Es, not promised any set number of trips, must obtain required licenses, E did not provide FICA, unemployment or workers' compensation contributions on their behalf or impose discipline]

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) 276 NLRB No. 077

(owner-operators of excavation equipment with whom general contractor had agreement to perform foundation excavation work held independent contractors, since general contractor retained no control over manner in which work performed, but merely informed them of lines and grades for excavation, owner operators determined own hours of operation, whether to hire own Ees, made all arrangements for acquisition and maintenance of own equipment, assumed liability for operations; further, general contractor made no withholdings or payments for workmen's compensation, unemployment or social security

2484-5067-6000 Taxicab drivers

Ace Cab Company, d/b/a Checker Cab Company, Marcella Cab Company and Manchester Cab Company 273 NLRB No. 186

(notwithstanding long term usuage of words *employer-employee* in describing their relationship and number of E restrictions over drivers (sale of vehicles, attire, variety of dischargeable offenses and widespread use of dispatch system by drivers), drivers held independent contractors since most of rules drivers operated under dictated by either insurance or city regulations, E doesn't pay wages, withhold taxes or keep records regarding hours, and only income of E is flat fee drivers pay to display E emblem and use dispatch system)

2484-5067-7000 Newspaper dealers

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. 277 NLRB No. 032

(on remand *delivery contract holders* at newspaper who purchased papers for resale and delivered individual papers and bundles of papers to remote areas, held to be independent contractors, where no E insignia on contract holders' vehicles, not required by E to obtain insurance, submit reports on time and mileage, or instructed when or where to pick up papers; E did not accept return of papers or withhold taxes for contract holders; notwithstanding E provided them weekly stipend, required delivery at reasonable hours, noted customer complaints, and required customer lists be submitted)

2484-5067-8400 University faculty

Trustees of Boston University 281 NLRB No. 113

[department chairmen and faculty at university held managerial Ees under *Yeshiva* standard, where faculty had absolute authority over grading, teaching methods, graduation requirements, and student discipline; also, faculty almost always effectively controlled matriculation requirements, curriculum, academic calendars, and course schedules, and played effective and determinative role in recommending faculty hiring, tenure, promotions, and reappointments, and, in particular, had authority to effectively veto curriculum and personnel decisions, all of which enumerated matters were important facets of university policy]

2484-5067-8400—Cont.

Trustees of Boston University **281 NLRB No. 115**
[in determining that department chairmen and faculty at university were managerial Ees under *Yeshiva* standard, Bd held fact that ultimate authority for decision making at university rested with president and board of trustees did not alter fact that, in practice, faculty decisions on all those policy matters were effected in great majority of instances; nor did fact that administration occasionally made and implemented policy decisions w/o faculty input detract from collegial managerial authority exercised by faculty]

2484-7500 'Any individual employed by an employer subject to Railway Labor Act'

Ground Services, Inc., a Wholly-Owned Subsidiary of ARA Services, Inc. **276 NLRB No. 006**
(ptn to represent Ees of E providing ground fleet service to air carriers, dismissed for lack of jurisdiction, where Bd advised by National Mediation Board that Ees sought by petitioner were subject to Railway Labor Act)

3200 'REPRESENTATIVE'

3900 'LABOR ORGANIZATION'

3925 PREREQUISITES

3925-2000 Employee participation--organization need not be composed exclusively of employees

Texas Bus Lines, Inc. **277 NLRB No. 075**
(Ee committee found to constitute labor organization where it was elected by Ees, met and dealt with E concerning wages and other terms and conditions of employment, and dealt with E concerning two grievances)

3925-4000 Purpose of dealing with employers with regard to employee working conditions

Texas Bus Lines, Inc. **277 NLRB No. 075**
(Ee committee found to constitute labor organization where it was elected by Ees, met and dealt with E concerning wages and other terms and conditions of employment, and dealt with E concerning two grievances)

Renaissance West Community Mental Health Center **276 NLRB No. 050**
(U held labor organization where it had bargaining agreements with 41 private nonprofit Es; it represented Ees covered by such agreements which had provisions relating to wages, hours, and conditions of employment; and at duly conducted U meetings Ees represented by U discussed terms and conditions of agreements before ratifying them)

Sears, Roebuck and Co. **274 NLRB No. 055**
(communications committee instituted by company manager, without knowledge of U campaign, which met with E to increase company efficiency held not labor organization where committee was not Ee representative or advocate, committee did not deal with E on behalf of Ees and Ees on committee were not selected by their fellow Ees; all of Ees, on rotation basis, were to participate on committee)

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) **273 NLRB No. 148**
(U held labor organization and subject to proscriptions of 8(b)(4) applicable to *labor disputes,* notwithstanding activities were on behalf of independent contractors rather than statutory Ees, since U admitted in ans it was albor organization w/i meaning of Act, and fact that U's ultimate objective was improved leases for group of independent contractors, rather than *mere customary union objectives,* cannot shield U if conduct is otherwise unlawful)

3950 TYPES OF LABOR ORGANIZATIONS

3950-7200 Organizations dominated, assisted, supported, or instigated by employer

Sears, Roebuck and Co. **274 NLRB No. 055**
(communications committee instituted by company manager, without knowledge of U campaign, which met with E to increase company efficiency held not labor organization where committee was not Ee representative or advocate, committee did not deal with E on behalf of Ees and Ees on committee were not selected by their fellow Ees; al! of Ees, on rotation basis, were to participate on committee)

3950-7700 Organizations subject to influence, domination or control by supervisors

North Shore University Hospital **274 NLRB No. 188**
(on ct remand, Bd vacated prior D/O, dismissed C and revoked Certification of Representative and found that nurses association should not be considered differently from other labor organizations regarding conflict of interest engendered by supervisors' active participation in association, lack of insulation of collective-bargaining process from governance of organization and lack of mechanism to assist Es from violating Sec. 8(a)(2) through supervisory Ees participation in association's affairs)

3975 SUCCESSOR LABOR ORGANIZATIONS

Arizona Pork Products, Inc. **279 NLRB No. 167**
[E's rejecting U's request for recognition and bargaining violation, notwithstanding allegedly inadequate assurance of ballot secrecy in U predecessor's merger election involving U's properly becoming successor to benefits of certification]

Hotel & Restaurant Employees, Local 2 v. N.L.R.B. **735 F.2d 1152 (C.A. 9, June 1984)**
[where Bd had found no violation by E's refusal to bargain with local U into which six local Us had been merged, because resulting local was not successor to the six locals involved and thus there was no *continuity of representation,* where members of only one local were shown to have had the opportunity to vote on the merger, ct remanded case to the Bd to focus on significance of fact all six local memberships had voted approval of merger negotiations and consider whether this approval implied approval of the merger itself so as to support finding of successorship and violation]

3987 EFFECT OF DISAFFILIATION, AFFILIATION, OR MERGER

Springfield Hospital **281 NLRB No. 076**
[U did not cease to exist when it became independent of int'l U of which it was a division and accepted separate charter from AFL-CIO, where such action taken under provisions of its constitution and approved by referendum, notwithstanding unit Ees did not vote in any type of election on this disaffiliation or acceptance of charter, since unit members not members of petitioner's U at that time, and no changes have been made in how petitioner handles grievances, administers and negotiates contracts, organizing Ees, etc.; thus, no change in essential identity of bargaining representative which would require vote on question of continuity of representation]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**
[in determining whether U involved in affiliation has remained esenetially the same or has changed so substantially as to require new R election depends on number of factors which Bd generally considers, including *structure, administration, officers, assets, membership, autonomy, by-laws, size,* and it looks for changes *in the rights and obligations of U's leadership and membership, and in relationships between putative bargaining agent, its affiliate, and E*]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**
[E unlawfully refused to bargain with independent U after it affiliated with international, since affiliation did not significantly change U's identity where bargaining unit and officers, as well as those responsible for negotiating and processing grievances, remained the same; retention of such key personnel was important since continuity is then likely to be preserved; and U stated that it will honor any existing contractual commitments to E and that its activities will continue to be governed for most part by its own constitution and by-laws]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**
[notion that qcr is created simply by increase in local U's bargaining power as result of its a/w larger U has no express basis in Act and has been rejected by Bd; and S.Ct's decision in *Financial Institution* likewise suggests that increase in U's bargaining power is not, standing alone, determinative of whether affiliation raises qcr, since there may be variety of reasons why local U might seek to affiliate, and S.Ct has noted that Bd has recognized that U *must remain largely unfettered in its organizational quest for financial stability and aid in the negotiating process*]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**
[in finding that E unlawfully refused to bargain with independent U after it a/w international, ct held that determination of whether continuity exists is fact-specific determination to be made by Bd in first instance after considering particular effect of orgnizational change; and S.Ct has explicitly rejected argument that affiliation *by itself* necessarily changes U's identity and results in Ees being represented by different organization; rather, S.Ct asserted that unless qcr is raised affiliation vote is purely internal U affair]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**
[where substantial evidence supported Bd's finding that affiliation of independent U with international did not raise qcr, ct held that, since Congress has entrusted Bd with authority to interpret and implement Act, ct has generally allowed Bd wide latitude to construe its provisions and to determine how best to effectuate Act's policies, especially in areas implicating, as here, agency expertise; and thus such Bd decision should be sustained as long as it is not irrational or inconsistent with Act]

3987—Cont.

Hotel & Restaurant Employees, Local 2 v. N.L.R.B. 735 F.2d 1152 (C.A. 9, June 1984)

[where Bd had found no violation by E's refusal to bargain with local U into which six local Us had been merged, because resulting local was not successor to the six locals involved and thus there was no *continuity of representation,* where members of only one local were shown to have had the opportunity to vote on the merger, ct remanded case to the Bd to focus on significance of fact all six local memberships had voted approval of merger negotiations and consider whether this approval implied approval of the merger itself so as to support finding of successorship and violation]

4700 COMMERCE

Tony and Susan Alamo Foundation, et al. v. Secretary of Labor ————U.S.———— (U.S. SCT, Apr. 1985)

[in suit brought under FLSA by religious foundation operating various commercial business, ct held admixture of religious motivations did not alter business's effect on commerce; as found by lower ct, foundation's businesses competed with ordinary commercial enterprises and payment of substandard wages would give foundation and similar organizations an advantage over their competitions, which is kind of *unfair method of competition* FLSA was intended to prevent]

5500 AFFECTING COMMERCE

Jim Miller, A Sole Proprietor, d/b/a Action Drywall JD-(SF)-136-86

[Bd asserted jurisdiction over dry wall constractor at housing project for military personnel located on military base, notwithstanding E did not meet Bd's administrative direct or indirect outflow or inflow standards, since w/i Bd's statutory jurisdiction inasmuch as commerce of base included in determination of effect on commerce where work was performed on military base and involved work necessary for providing on base housing, thus labor dispute arising in situation would enmesh base operations, and also E meets Bd's discretionary national defense standard since E's work exerted substantial impact on national defense]

6200 UNFAIR LABOR PRACTICE

7000 LABOR DISPUTE

7067 STRIKE

7067-3300 Economic strike

Service Electric Company 281 NLRB No. 107

[economic strike did not end despite U giving E notice to that affect, because strikers dis not offer to return to work, and because no evidence that any striker, personally or through their bargaining representative, ever took action that could be said to evidence an abandonment of their statutory right to future employment with E with result E had to continue employing replacements]

Reichhold Chemicals, Inc. 277 NLRB No. 073

(strike to protest failure to reach bargaining agreement held not ULP strike, and E's permanent replacement of strikers not unlawful, where failure to reach agreement was not due to alleged unlawful *surface bargaining* on part of E, but to lawful hard bargaining)

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152

(strike held economic rather than ULP strike since no connection between E's ULPs, absent discussion of ULPs at strike vote, or other evidence ULPs were contributing cause to strike, but rather Ees told that vote to reject E's contract proposals which included 15% reduction in pay would be vote for strike)

SCA Services of Georgia, Inc. 275 NLRB No. 120

(strike found economic, rather than ULP, strike, since there was no causal connection between E's only two ULPs and the strike, the strikers' testimony indicated that they struck because E had not agreed to a contract, their picket signs indicated that they were striking for better wages and working conditions, and U's strike settlement proposal dealt with economic issues, rather than resolution of ULPs)

7067-3350 Conversion to ULP strike

Cartridge Actuated Devices, Inc. 282 NLRB No. 066

[in accord with *Trading Port, Inc.* 219 NLRB 298 and *Drug Package Co.,* 222 NLRB 108, ALJ held strike, basically economically motivated when called but occurring following withholding of recognition, was ULP strike]

Ashe Brick Company 280 NLRB No. 162

[economic strike converted to ULP strike by E's unlawful withdrawal of recognition which precluded possibility of parties entering into bargaining agreement]

Zartic, Inc. 277 NLRB No. 171

[hiring replacements rather than recalling economic strikers from preferential hiring list converted strike to ULP strike]

Forest Grove Lumber Company 275 NLRB No. 144

(economic strike not converted to ULP strike since strike prolonged only by economic differences of parties; no causual connection between E's unlawful bypassing of U by dealing directly with Ees which did not have any impact upon bargaining process, and prolongation of strike)

New Hope Industries, Inc., and Its Alter Ego and Owner Emil Brandt Thiac JD-(ATL)-61-85

(Ees striking to protest E's failure to meet scheduled pay dates held protected activity and further, Ees continuation of that strike in protest over their discharges for striking converted strike from economic strike to ULP strike)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 782 F.2d 7 (C.A. 1, Jan. 1986)

[economic strike converted to ULP strike when strike continued after E unlawfully refused to execute multi-E bargaining agreement; causal link between ULP and strike evident where upon reaching of agreement between U and multi-E bargaining group, thus meeting Ees' economic demands, all striking Ees in industry except Ees of E, which refused to sign agreement, ended strike]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor 785 F.2d 195 (C.A. 7, Mar. 1986)

[economic strike by predecessor's Ees converted to ULP strike by predecessor's refusal to provide U financial information and successor E held liable therefor, where successor E had knowledge of ULP and since strike was motivated primarily because of wages, predecessor's ULP evidenced had faith bargaining which had effect of precluding settlement of strike which could have expedited settlement of the wage issue]

7067-6700 Unfair labor practice strike

Reichhold Chemicals, Inc. 277 NLRB No. 073

(strike to protest failure to reach bargaining agreement held not ULP strike, and E's permanent replacement of strikers not unlawful, where failure to reach agreement was not due to alleged unlawful *surface bargaining* on part of E, but to lawful hard bargaining)

Storall Manufacturing Company, Inc. 275 NLRB No. 039

(strike caused by E's unlawful threats, no-solicitation rule, collection of U authorization cards, unilateal changes, refusal to recall laid off Ees, and refusal to supply requested information, ULP strike)

Tectonic Industries, Inc. JD-(NY)-100-84

(strike held ULP strike where E, but its unilateral action in changing conditions and terms of employment, secured what it had been unable to secure at bargaining table, i.e. total control over E's operations and therefore did not enter into negotiations with sincere desire to reach agreement, and failure to do so was due to E's pattern of bargaining in bad faith)

7067-6750 Causal relation of ULP must be shown

St. John's General Hospital of Allegheny County--- ADR Center 281 NLRB No. 157

[strike held ULP shtrike where in protest of E's refusal to recognize and bargain with U certified to represent its Ees]

Port Plastics, Inc. 279 NLRB No. 050

[strike held ULP strike, where strike was precipitated by e's bad faith bargaining conduct and thus strike was caused *in whole or in part* by E's ULP]

Dayton Auto Electric, Inc. 278 NLRB No. 080

[strike held ULP strike since caused and prolonged by E's unlawful layoffs and refusal to recognize U]

Radio Electric Service Company 278 NLRB No. 078

[strike motivated, in part, by E's refusal to grant Ees their Christmas bonus held ULP strike]

Bozzuto's, Inc. 277 NLRB No. 100

(strike held ULP strike where ULPs, which commenced before strike vote, had pronounced impact)

Washington Materials, Inc., t/a Buffalo Concrete; et al. 276 NLRB No. 040

(strike held ULP strike since strike was caused in part by Es' refusal to provide U with information during bargaining concerning any possible double-breasted operations where U negotiator told Ees at time strike vote was taken that he could not justify recommending acceptance of Es' proposals until information was supplied and Ees responded by rejecting proposals and voting to strike)

Gatliff Business Products, Inc. and RBD Service Corporation 276 NLRB No. 060

(strike due to mass layoff of Ees, ULP strike)

Forest Grove Lumber Company 275 NLRB No. 144

(economic strike not converted to ULP strike since strike prolonged only by economic differences of parties; no causual connection between E's unlawful bypassing of U by dealing directly with Ees which did not have any impact upon bargaining process, and prolongation of strike)

7067-6750—Cont.

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(strike found economic, rather than ULP, strike, since there was no causal connection between E's only two ULPs and the strike, the strikers' testimony indicated that they struck because E had not agreed to a contract, their picket signs indicated that they were striking for better wages and working conditions, and U's strike settlement proposal dealt with economic issues, rather than resolution of ULPs)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(strike which was begun in protest against discriminatory discharge of fellow Ee for U activity and was prolonged and aggravated by respondents' continuing ULPs found ULP strike)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. **782 F.2d 7 (C.A. 1, Jan. 1986)**
[economic strike converted to ULP strike when strike continued after E unlawfully refused to execute multi-E bargaining agreement; causal link between ULP and strike evident where upon reaching of agreement between U and multi-E bargaining group, thus meeting Ees' economic demands, all striking Ees in industry except Ees of E, which refused to sign agreement, ended strike]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor **785 F.2d 195 (C.A. 7, Mar. 1986)**
[economic strike by predecessor's Ees converted to ULP strike by predecessor's refusal to provide U financial information and successor E held liable therefor, where successor E had knowledge of ULP and since strike was motivated primarily because of wages, predecessor's ULP evidenced bad faith bargaining which had effect of precluding settlement of strike which could have expedited settlement of the wage issue]

7084 DISPUTES NOT WITHIN STATUTORY DEFINITION

7084-7500 Dispute regarding independent contractors' leasing arrangement

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) **273 NLRB No. 148**
(Bd has jurisdiction over U picketing on behalf of independent contractors for improved leasing arrangement with E notwithstanding U's contention that such picketing was not *labor dispute* since Bd's jurisdiction is not defined or limited by 2(9), and term *labor dispute* does not appear in 8(b)(4) so as to limit Bd's jurisdiction over illegal boycotts; further, neither language of 8(b)(4) nor legislative history confined scope of that Section to *labor disputes*, and Congress, recognizing that illegal boycotts take many forms, intended prohibition to reach broadly)

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) **273 NLRB No. 148**
(U held labor organization and subject to proscriptions of 8(b)(4) applicable to *labor disputes*, notwithstanding activities were on behalf of independent contractors rather than statutory Ees, since U admitted in ans it was albor organization w/i meaning of Act, and fact that U's ultimate objective was improved leases for group of independent contractors, rather than *mere customary union objectives*, cannot shield U if conduct is otherwise unlawful)

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) **793 F.2d 323 (C.A. D.C., June 1986)**
[Bd properly asserted jurisdiction in case involving U picketing of general contractors on behalf of independent contractors for better leasing agreement terms, since Bd's jurisdiction is not circumbscribed by Sec. 2(9) which merely defines *labor dispute* as it appears elsewhere in Act, and Bd's task was not to identify conventional labor dispute but was, instead, to measure U's conduct against specific provisions of Act defining ULPs]

7800 'NATIONAL LABOR RELATIONS BOARD'

8500 'SUPERVISOR'

8501 GENERALLY

B & W Machine & Welding Company **JD-(SF)-107-86**
[burden of proving supervisory status rests on party asserting such status]

8501-2000 Existence of statutory power controlling

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer **281 NLRB No. 161**
[individual need not actually exercise any given authority to qualify as a supervisor, it is the *authority* to act independently that is determinative rather than the exercise of that authority]

Opelika Foundry **281 NLRB No. 121**
[*individual with statutory supervisory authority does not lose his/her status simply because they infrequently exercise their authority*]

8501-4000 Functions, duties, and authority, rather than titles significant

Terraillon Corp. **280 NLRB No. 037**
[clerical did not become supervisor and ineligible to vote upon her promotion to *office manager*, where her actual duties did not change; her taking calls regarding Ees' absences and keeping leave records were merely ministerial functions, and she had no authority to grant time off or arrange schedules, nor did she hire and fire or effectively recommend doing so]

Iron Mountain Forge Corp. **278 NLRB No. 038**
[*titles and symbols do not constitute a person supervisor, but use of title is probative evidence of supervisory title*]

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
]*demotion* of supervisors to position of leadmen held not to have converted them into rank-and-file Ees, where supervisors continued to possess and exercise same functions and responsibilities they previously had; and mere change in title was not controlling in determining whether their functions satisfied statutory definition of supervisor)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(Ee's title of *face boss* at coal mine held not controlling in determining his supervisory status)

B & W Machine & Welding Company **JD-(SF)-107-86**

8501-6000 Voting in election not conclusive

Programming & Systems, Inc. **275 NLRB No. 157**

8501-7000 Performance of unit work not controlling

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(fact that supervisors at coal strip mining site operated equipment along with Ees held not to alter their supervisory status, where situation was due to shutting down of mining operations in order to devote all efforts to performance of delinquent reclamation work which state agency had ordered to be done; and situation was temporary one which can be analogized to supervisors performing unit work during strike or lockout)

8520 INDICIA OF SUPERVISORY STATUS

8520-0100 Generally

Opelika Foundry **281 NLRB No. 121**
[*statutory indicia in Section 2(11) of Act are in disjunctive and only one need exist to confer statutory status on individual*]

Feralloy West Corporation and Pohang Steel America d/b/a Feralloy West Company **277 NLRB No. 114**
(possession of any one of Sec. 2(11) indicia suffices to confer supervisory status, provided that authority is exercised with independent judgment on behalf of management and not in routine manner; thus, exercise of *some supervisory* authority does not confer supervisory authority on an Ee)

N.L.R.B. v. Chicago Metallic Corporation **794 F.2d 327 (C.A. 9, July 1986)**
[Ee who technically may not satisfy statutory criteria of Sec. 2(11) nevertheless may be accorded supervisory status when he is perceived to be supervisor by other Ees]

8520-0800 Authority to hire, discipline, assign, etc.

Ballou Brick Co. **277 NLRB No. 009**
(Ee held supervisor rather than leadman-Ee since he had authority to assign work which required use of independent judgment where Ee instructed Ees to run machines, told them when to start and stop and did not consult with management in exercising these functions)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(sole Ee in dairy department at E's grocery store, held supervisory, where his actions were exercise of supervisory authority and not merely advice of senior Ee, in view of numerous instances in which he disciplined, assigned, and responsibly directed Ees)

People's Transportation Service, Inc. and Minute Man Transit, Inc. **276 NLRB No. 047**
(fact that Ee sometimes would talk to certain Ees about their deficiencies did not constitute discipline so as to make Ee a supervisor where conduct was only a relay of supervisor's instruction and such discipline was never made part of any Ee's personnel file)

Uptilt, Inc. **276 NLRB No. 065**
(individual from whom Ees had been instructed to take orders, who had issued written reprimands, and had authority to terminate Ees)

8520-0800--Cont.

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(dispatcher's at trucking firm authority to hire not established by his hiring of temporary Ees, since he called from list of equally qualified drivers at random)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(power to discipline not established where verbal warning by purported supervisor had no effect on Ee's record)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(authority to transfer not established by merely informing Ees of their assignments)

Steffer Brothers **JD-269-86**
[dispatcher at excavation, demolition, and trucking operation who, although lacking some of the other supervisory indicia, had authority over mechanic, overseeing his work and repirmanding him at will, held supervisory]

N.L.R.B. v. KDFW-TV, Inc., A division of times Mirror Corporation **790 F.2d 1273 (C.A. 5, June 1986)**
[directors, producers, associate producers and assignment editors employed by TV station, not supervisors, because they possessed none of enumerated statutory powers. Nor did these Ees *responsibly direct* other Ees exercising independent judgment in doing so. Though incumbents did direct other Ees, to do so responsibly means to be held fully accountable and responsible for work product and performance of other Ees which they were not. Any directions they gave other Ees were in nature of routine technical or aesthetically motivated commands executed by Ees acquainted with production plans]

8520-1600 Power 'effectively to recommend'

Iron Mountain Forge Corp. **278 NLRB No. 038**
[leadmen held supervisors, notwithstanding no authority to hire, fire or discipline Ees, where they received higher wages, responsible for safety program, exercised independent judgment in preparing evaluations which constituted effective recommendation as to treatment of Ees, exercised independent judgment in directing Ees, assigned work to Ees including deciding which Ees would be temporarily transferred, and in view of fact if leadmen not held supervisors there would be disproportionate number of Ees to supervisors; further, continuing use of term supervisor for leadmen in Ee handbook and on evaluation form held leadmen out to Ees as supervisors]

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(sole Ee in dairy department at E's grocery store, held supervisory, where his actions were exercise of supervisory authority and not merely advice of senior Ee, in view of numerous instances in which he effectively recommended hire and discharge of Ees)

The Mower Lumber Company and/or Its Subsidiary Newera Resources Corp. **276 NLRB No. 086**
(Ees from whom E sought opinions as to skills and qualifications of prospective Ees, held not supervisory or agents of E, where there was no evidence that these opinions were the only source of information E relied on in making its hiring decisions; however, even if E relied solely on opinions of these Ees, no evidence that these Ees considered prospective Ees' U activity in formulating their recommendations or that E requested Ees to consider U activity in their recommendations)

George C. Foss Company v. N.L.R.B. **782 F.2d 1407 (C.A. 9, Jan. 1985)**
(individual held Ee and not supervisor where he did not exercise authority to hire, fire, transfer, suspend or discharge Ees or adjust grievances notwithstanding he assigned workers to particular jobs w/i project and participated in E's decisions to promote or layoff Ees as work assignments did not involve exercise of independent judgment (received daily instructions from superiors and general contractor) and his alleged *effective recommendations* about layoffs and promotions were informal *discussions* with and *suggestions* to those superiors)

8520-2400 Responsible direction

Iron Mountain Forge Corp. **278 NLRB No. 038**
[leadmen held supervisors, notwithstanding no authority to hire, fire or discipline Ees, where they received higher wages, responsible for safety program, exercised independent judgment in preparing evaluations which constituted effective recommendation as to treatment of Ees, exercised independent judgment in directing Ees, assigned work to Ees including deciding which Ees would be temporarily transferred, and in view of fact if leadmen not held supervisors there would be disproportionate number of Ees to supervisors; further, continuing use of term supervisor for leadmen in Ee handbook and on evaluation form held leadmen out to Ees as supervisors]

Reichhold Chemicals, Inc. **275 NLRB No. 203**
(although change in functions and duties of forman chief operators may not have been substantial, in instant case, specific vesting of greater authority and use of independent judgment to direct Ees is sufficient to show jobs (of 3 shift supervisors) were supervisory w/i meaning of Act)

B.R.B. Iron Works, Inc. **JD-(NY)-84-85**
(Ee, son of co-owner of E, who is highest paid Ee, views himself, and is viewed by Ees, as supervisor, has more than routine discretion in assigning work, held supervisor, notwithstanding Ee had no authority to hire, fire, suspend, discipline or give Ees permission to leave early or take time off)

N.L.R.B. v. KDFW TV, Inc., A division of times Mirror Corporation **790 F.2d 1273 (C.A. 5, June 1986)**
[directors, producers, associate producers and assignment editors employed by TV station, not supervisors, because they possessed none of enumerated statutory powers. Nor did these Ees *responsibly direct* other Ees exercising independent judgment in doing so. Though incumbents did direct other Ees, to do so responsibly means to be held fully accountable and responsible for work product and performance of other Ees which they were not. Any directions they gave other Ees were in nature of routine technical or aesthetically motivated commands executed by Ees acquainted with production plans]

Carrier Corporation v. N.L.R.B. **768 F.2d 778 (C.A. 6, July 1985)**
(dispatcher at trucking company held supervisor since he *responsibly directed* drivers by giving drivers their schedules and for routing and re-routing drivers when necessary and exercised independent judgment by sometimes departing from customer priority listing of E)

8520-3200 Training, instruction and inspection functions

Uptilt, Inc. **276 NLRB No. 065**
(individual from whom Ees had been instructed to take orders, who had issued written reprimands, and had authority to terminate Ees)

8520-3900 Adjustment of grievances

People's Transportation Service, Inc. and Minute Man Transit, Inc. **276 NLRB No. 047**
(fact that Ee reported driver complaints over paycheck discrepancies to management did not constitute grievance resolution so as to make Ee a supervisor)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(authority to adjust grievances not established by couple of attempts by purported supervisor to pacify complaining Ees or U)

8520-4700 'Independent judgment' in exercise of authority

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer **281 NLRB No. 161**
[individual need not actually exercise any given authority to qualify as a supervisor, it is the *authority* to act independently that is determinative rather than the exercise of that authority]

Eskaton Sunrise Community **279 NLRB No. 012**
[test of responsible direction does not depend on *complexity or difficulty* of the work, but rather that alleged supervisor exercises independent judgment w/o consultation with higher management]

Iron Mountain Forge Corp. **278 NLRB No. 038**
[leadmen held supervisors, notwithstanding no authority to hire, fire or discipline Ees, where they received higher wages, responsible for safety program, exercised independent judgment in preparing evaluations which constituted effective recommendation as to treatment of Ees, exercised independent judgment in directing Ees, assigned work to Ees including deciding which Ees would be temporarily transferred, and in view of fact if leadmen not held supervisors there would be disproportionate number of Ees to supervisors; further, continuing use of term supervisor for leadmen in Ee handbook and on evaluation form held leadmen out to Ees as supervisors]

People's Transportation Service, Inc. and Minute Man Transit, Inc. **276 NLRB No. 047**
(fact that Ee advanced credit to drivers was not evidence of managerial authority since such conduct was done pursuant to established E-policy and involved no discretion on Ee's part)

Reichhold Chemicals, Inc. **275 NLRB No. 203**
(although change in functions and duties of forman chief operators may not have been substantial, in instant case, specific vesting of greater authority and use of independent judgment to direct Ees is sufficient to show jobs (of 3 shift supervisors) were supervisory w/i meaning of Act)

N.L.R.B. v. KDFW-TV, Inc., A division of times Mirror Corporation **790 F.2d 1273 (C.A. 5, June 1986)**
[directors, producers, associate producers and assignment editors employed by TV station, not supervisors, because they possessed none of enumerated statutory powers. Nor did these Ees *responsibly direct* other Ees exercising independent judgment in doing so. Though incumbents did direct other Ees, to do so responsibly means to be held fully accountable and responsible for work product and performance of other Ees which they were not. Any directions they gave other Ees were in nature of routine technical or aesthetically motivated commands executed by Ees acquainted with production plans]

8520-4700—Cont.

George C. Foss Company v. N.L.R.B. 752 F.2d 1407 (C.A. 9, Jan. 1985)
(individual held Ee and not supervisor where he did not exercise authority to hire, fire, transfer, suspend or discharge Ees or adjust grievances notwithstanding he assigned workers to particular jobs w/i project and participated in E's decisions to promote or layoff Ees as work assignments did not involve exercise of independent judgment (received daily instructions from superiors and general contractor) and his alleged *effective recommendations* about layoffs and promotions were informal *discussions* with and *suggestions* to those superiors)

8520-6200 Substitution for supervisor

Latas De Aluminio Reynolds, Inc. 276 NLRB No. 147
(substituting for supervisor while supervisors were on vacation or away receiving training for 2 weeks in one year and 4 to 5 months in following year, held Ee rather than supervisor and challenge overruled, in absence of regularity of substitution, since sporadic assumption of supervisory duties, during vacation periods of supervisor is not sufficient to establish supervisory status; further, unlike supervisor, Ee was paid on weekly basis, received shift differential, punched timecard, and was assigned toolbox)

8520-7000 Ostensible authority

Wilco Business Forms, Inc. 280 NLRB No. 154
[receiving and inventory clerk at plant that manufactures, sells and distributes business forms, held supervisor, notwithstanding he spent one-third of time doing nonsupervisory work, had no authority to hire, fire, discipline, suspend, layoff, recall, promote or evaluate Ees, where he directed Ees in their work, was held out as supervisor by upper management, Ees believed he attended supervisory meetings, knew about decisions by management before rank-and-file did, granted time off and signed time cards]

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(sole Ee in dairy department at E's grocery store, held supervisory, where his actions were exercise of supervisory authority and not merely advice of senior Ee, in view of fact that he gave appearance of supervisory status in eyes of Ees by having keys to store, access to manager's office, inclusion in management meetings, authority to approve customer's personal checks and rainchecks, and on 2 nights closed store and for last several hours of day was highest person in authority present)

Willie Abernathy and Michael Abernathy d/b/a Abernathy Scrap Metal JD-(SF)-172-85
(individual who had been employed by E and had participated in hiring of 2 Ees, held supervisor, and his actions during time he was on disability compensation imputed to E where he had title *superintendent*, was present on E's property during period of disability, supervised construction on E's premises, gave orders to Ees, and thus reasonable to assume that individual was receiving compensation in some form from E during this period)

B.R.B. Iron Works, Inc. JD-(NY)-84-85
(Ee, son of co-owner of E, who is highest paid Ee, views himself, and is viewed by Ees, as supervisor, has more than routine discretion in assigning work, held supervisor, notwithstanding Ee had no authority to hire, fire, suspend, discipline or give Ees permission to leave early or take time off)

8520-7800 Ratio to supervised employees

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013
[E's unilateral *reclassification of its (motel) desk clerks to supervisory positions, violative, where conduct, coupled with E's other ULPs and coinciding with other violative layoffs effectuated decimation of unit. Evidence discloses no* justifiable reason for such conduct and record evidence suggests there would be 1:1 ratio of supervisors to unit Ees]

Iron Mountain Forge Corp. 278 NLRB No. 038
[leadmen held supervisors, notwithstanding no authority to hire, fire or discipline Ees, where they received higher wages, responsible for safety program, exercised independent judgment in preparing evaluations which constituted effective recommendation as to treatment of Ees, exercised independent judgment in directing Ees, assigned work to Ees including deciding which Ees would be temporarily transferred, and in view of fact if leadmen not held supervisors there would be disproportionate number of Ees to supervisors; further, continuing use of term supervisor for leadmen in Ee handbook and on evaluation form held leadmen out to Ees as supervisors]

8520-9200 Unless found supervisor, shop without supervisor

Rapid Armored Truck Corp. 281 NLRB No. 057
[*account executive* at armored truck delivery company who was salaried, whose responsibilities included solicitation of new accounts, pricing contracts, and opening vault, who set up drivers' routes, resolved Ees' problems, and was only responsible official present during 4 to 4-1/2 hours per day and on weekends, thus if he was found not to be supervisor, E would be w/o supervision during those periods]

People's Transportation Service, Inc. and Minute Man Transit, Inc. 276 NLRB No. 047
(E's contention that Ee must be found supervisory or there would be no supervisor over E's night operations, rejected, where E's operation was loosely run w/o supervisors during certain times of the day and day supervisor handled all emergency problems that occurred at E's facility during the night)

Oil Field Construction Company JD-(SF)-104-86

N.L.R.B. v. KDFW-TV, Inc., A division of times Mirror Corporation 790 F.2d 1273 (C.A. 5, June 1986)
[directors, producers, associate producers, and assignment editors held not supervisors notwithstanding if disputed classifications held nonsupervisory would mean TV station left unsupervised at night and on weekends, since other admitted supervisors are generally available for consultations at such times; moreover, many decisions regarding after hours operations are made during weekdays; and finally it is reasonable to conclude that highly skilled technical Ees employed at TV station did not require constant or close supervision]

8520-9300 Attendance at supervisors' meetings

Wilco Business Forms, Inc. 280 NLRB No. 154
[receiving and inventory clerk at plant that manufactures, sells and distributes business forms, held supervisor, notwithstanding he spent one-third of time doing nonsupervisory work, had no authority to hire, fire, discipline, suspend, layoff, recall, promote or evaluate Ees, where he directed Ees in their work, was held out as supervisor by upper management, Ees believed he attended supervisory meetings, knew about decisions by management before rank-and-file did, granted time off and signed time cards]

Eskaton Sunrise Community 279 NLRB No. 012
[since attendance at supervisors' meetings is indicia of supervisory status, failure to attend supports finding of nonsupervisory status]

8540 TYPES OF EMPLOYEES FOUND SUPERVISORY (BY SIC)

8540-1500 Building construction - general contractors and operative builders

United Electrical & Mechanical, Inc. 279 NLRB No. 034
[leadman over pipefitting crew for electrical and mechanical contractor in building and construction industry]

United Electrical & Mechanical, Inc. 279 NLRB No. 034
[leadman over plumbing crew for electrical and mechanical contractor in building and construction industry]

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048
(foremen for general building contractors, supervisory where they had authority to exercise independent judgment and management perogatives, including responsibility for first step in adjusting grievances and ability to effectively recommend increase in crew size and termination of Ees who did not respond to their discipline or verbal warnings)

8540-1700 Construction - special trade contractors

Plumbers, Local 469 (Valley Mechanical, Inc.) 281 NLRB No. 089
[field superintendant for plumbing contractor]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[foreman at manufacturer and installer of structual and ornamental iron and steel items who received higher wages than other individuals employed by E, directed Ees, assigned overtime, granted permission to leave work early and discharged Ees]

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Employers 277 NLRB No. 142
(alleged salesman of concrete construction contractor, supervisory where he was in charge of rectifying E's failure to comply with Davis-Bacon wage and job classification requirements on federal military installation)

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Employers 277 NLRB No. 142
(superintendent on all projects of concrete construction contractor, supervisory where he exercised authority to hire and fire Ees on project, assigned them work, and responsibly directed their work utilizing independent judgment)

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Employers 277 NLRB No. 142
(project superintendent of concrete construction contractor, supervisory where he assigned Ees work, informed them that he was running the project for E, and ordered them to stop working because job, allegedly, was shutting down)

MacDonald Miller Company 277 NLRB No. 079
(individual found construction foreman, rather than service mechanic, and thus supervisory where he assigned a journeyman and observed his work, attended weekly construction meetings, had independent authority to purchase material and order certain equipment, received foreman's wages, and

8540-1700—Cont.

was directed by U business representative to resign his U stewardship upon being promoted to foreman)

Jim Miller, A Sole Proprietor, d/b/a Action Drywall JD-(SF)-136-86
[foreman for drywall subcontractor on housing project where he used independent judgment in exercising power to discharge Ees]

Steffer Brothers JD-269-86
[dispatcher at excavation, demolition, and trucking operation who, although lacking some of the other supervisory indicia, had authority over mechanic, overseeing his work and repirmanding him at will, held supervisory]

N.L.R.B. v. Electrical Workers, Local 340 780 F.2d 1489 (C.A. 9, Jan. 1986)
[alleged working foreman employed by electrical contractor found supervisor in view of his job assignment duties and layoff decisions]

8540-2300 Apparel and other finished products made from fabrics and similar materials

Country Crest Creations, Ltd. JD-271-86
[floor manager of bedding manufacturer, supervisory in view of power to effectively recommend wage increases and discharge of new hires and authority to responsibly direct and transfer Ees]

8540-2700 Printing, publishing, and allied industries

Wilco Business Forms, Inc. 280 NLRB No. 154
[receiving and inventory clerk at plant that manufactures, sells and distributes business forms, held supervisor, notwithstanding he spent one-third of time doing nonsupervisory work, had no authority to hire, fire, discipline, suspend, layoff, recall, promote or evaluate Ees, where he directed Ees in their work, was held out as supervisor by upper management, Ees believed he attended supervisory meetings, knew about decisions by management before rank-and-file did, granted time off and signed time cards]

Interchecks Incorporated, A Subsidiary of United Graphics, Inc. JD-(SF)-23-85
(lead operator at company engaged in printing of bank checks, supervisory)

8540-2800 Chemicals and allied products

Reichhold Chemicals, Inc. 275 NLRB No. 203
(although change in functions and duties of forman chief operators may not have been substantial, in instant case, specific vesting of greater authority and use of independent judgment to direct Ees is sufficient to show jobs (of 3 shift supervisors) were supervisory w/i meaning of Act)

8540-3000 Rubber and miscellaneous plastics products

Ro-Lab Rubber Co., Inc. 279 NLRB No. 057
[working foreman employed by producer of rubber products]

Reeves Brothers, Inc. 277 NLRB No. 153
[leadmen of E engaged in manufacture of chemical foam products]

8540-3400 Fabricated metal products, except machinery and transportation equipment

Opelika Foundry 281 NLRB No. 121
[individual *in charge* of pattern department at manufacturer of cast iron and plastic screws and type curb, valve and roadway boxes, who interviewed and effectively recommended hiring applicants, effectively recommended wage increases for several Ees, assigned and oversaw work of department, decided priorities of jobs, was considered by Ees in department to be supervisor, held supervisor, notwithstanding he had not promoted, disciplined any Ees, or dealt with any grievances]

Evans St. Clair, Inc. 278 NLRB No. 065
[*temporary* shift supervisor of E manufacturing weather stripping parts, supervisor where he was salaried, understood that he was to *run the shift*, and testified that E's written description of *production supervisor* accurately reflected his duties]

8540-3700 Transportation equipment

General Motors Corporation, Truck and Coach Division JD-108-85
(foreman at manufacturer of trucks and busses who put Ee on notice, i.e. first step of disciplinary alert, was salaried and did not punch time clock)

8540-4200 Motor freight transportation and warehousing

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152
(dispatcher at trucking company, since he exercised no independent judgment in direction of drivers, had no authority to transfer, hire or discipline drivers; contention that his refusal to grant Ees time off and had cards printed which stated his title was vice-president of operations, were indicia of supervisory status, rejected)

Spencer Trucking Corporation 274 NLRB No. 206
(dispatcher of trucking corporation who is also son-in-law of E's owner, supervisory where he in effect, determined drivers wages through trip assignment direction for which Ees were paid portion of tariff)

Carrier Corporation v. N.L.R.B. 768 F.2d 778 (C.A. 6, July 1985)
(dispatcher at trucking company held supervisor since he *responsibly directed* drivers by giving drivers their schedules and for routing and re-routing drivers when necessary and exercised independent judgment by sometimes departing from customer priority listing of E)

8540-4700 Transportation services

Atlantic Interstate Messengers, Inc. 274 NLRB No. 171
(dispatcher for interstate delivery service, supervisory)

N.L.R.B. v. Sherwood Trucking Company 775 F.2d 744 (C.A. 6, Oct. 1985)
[director of operations for drayage subcontractor of air freight business]

8540-4800 Communication

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118
[Radio Station Assistant Program Director]

8540-5100 Wholesale trade - nondurable goods

Coamano Brothers, Inc. d/b/a Ethnic Produce 275 NLRB No. 038
(manager of corporation engaged in non-retail sale of produce, supervisory)

8540-5300 General merchandise stores

Heck's Inc. 277 NLRB No. 098
]*department manager* at retail store held supervisor, notwithstanding had no authority to hire, fire or discipline Ees and fact primary duties were checking, pricing and stocking merchandise, where he trained Ees and also assigned and delegated work using own judgment, participated in scheduling of hours and vacation periods, attended supervisors' meetings; further, *department managers* had different benefits, always worked daytime schedule, and received paid sick leave)

8540-5400 Food stores

Superior Warehouse Grocers, Inc. 277 NLRB No. 010
(frontline manager at store selling groceries and sundries)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(sole Ee in dairy department at E's grocery store, held supervisory, where his actions were exercise of supervisory authority and not merely advice of senior Ee, in view of numerous instances in which he disciplined, assigned, and responsibly directed Ees)

Save Mart of Modesto, Inc. JD-(SF)-25-85
(meat department manager at one of E's chain of grocery stores)

8540-5800 Eating and drinking places

Berkeley Marina Restaurant Corporation d/b/a HS Lordships, A Subsidiary of Specialty Restaurant Corporation 274 NLRB No. 178
]*bar manager* at bar-restaurant, notwithstanding arguable whether he ever formally accepted promotion to bar manager and spent almost entire workday performing work of bartender, where upon being offered position he assumed additional duties and was accorded privileges, possessed some authority over Ee grievances, oversaw work of Ees and effectively recommended wage increase)

Bombay Palace of Westchester, Inc. JD-(NY)-81-85
[wife of sole owner of restaurant, supervisory where she has authority to hire, grants promotions, authorizes vacations, give instructions to staff, criticizes and compliments their performance, and meets with them to discuss their grievances and problems]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[chefs, head cooks, and other personnel bearing *executive* titles in eating and/or hotel establishments]

Statewide Industrial Catering, Inc. JD-(NY)-139-85
[kitchen manager for E engaged in business of providing catering services to public schools]

8540-5900 Miscellaneous retail

Glover Bottled Gas Corp. 275 NLRB No. 096
(sales manager for bottled gas service company who had same authority as when she was office manager, supervisory)

ARA Leisure Services, Inc. v. N.L.R.B. 782 F.2d 456 (C.A. 4, Jan. 1986)
[*tableheads*--venders of novelty items at concesstions at sports areana who had ehlpers who assisted them--held supervisors in employ of E which operated concessions under lease agreement, rather than independent contractors, where leaseholder/operator made payroll dedictions for taxes, social security and workmens' compensation, *tableheads* completed employment application, signed in and out, abided by company rules, were subject to discipline by E; leaseholder/operator which retained right to control tablehead/helper relationship and received 90% of gross receipts]

8540-6500 Real estate

8540-6500—Cont.

Concourse Village, Inc. **276 NLRB No. 004**
(superintendents of individual buildings in cooperative apartment complex, supervisory where they exercise authority to issue disciplinary warnings to maintenance Ees having definite and severe effect on Ees' employment status)

Concourse Village, Inc. **276 NLRB No. 004**
(assistant maintenance director of cooperative apartment complex where building superintendents, found supervisory herein, report to him, and he issues disciplinary warnings to maintenance Ees which may result in discharge)

8540-7000 Hotels, rooming houses, camps, and other lodging places

D & D Development Co., Inc. d/b/a Anaheim Town and Country Inn **282 NLRB No. 034**
[bookkeeper-assistant manager at company engaged in operating hotel]

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) **281 NLRB No. 065**
[assistant chief engineer employed by E at its hotel and gambling casino held supervisor, since he is in charge of E s operating engineers]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[chefs, head cooks, and other personnel bearing *executive* titles in eating and/or hotel establishments]

Youngstown Hospitality Co., d/b/a Howard Johnson's Motor Lodge **JD-3-86**
[supervisor at motel]

Youngstown Hospitality Co., d/b/a Howard Johnson's Motor Lodge **JD-3-86**
[night auditor/management trainee at motel]

Knott Hotel Corporation, d/b/a Viscount Hotel at Lax **JD-(SF)-92-85**
(swing shift supervisor in coffee shop at hotel)

8540-7200 Personal services

The Royal Sonesta, Inc. d/b/a Royal Laundry **277 NLRB No. 085**
]*supervisors* at laundry facility)

8540-7300 Business services

Rapid Armored Truck Corp. **281 NLRB No. 057**
[*executive vice-president* of armored truck company who was in effect in charge of E's overall operations]

Rapid Armored Truck Corp. **281 NLRB No. 057**
[*account executive* at armored truck delivery company who was salaried, whose responsibilities included solicitation of new accounts, pricing contracts, and opening vault, who set up drivers' routes, resolved Ees' problems, and was only responsible official present during 4 to 4-1/2 hours per day and on weekends, thus if he was found not to be supervisor, E would be w/o supervision during those periods]

Rapid Armored Truck Corp. **281 NLRB No. 057**
[individual who handled public relations and was sales representative for armored truck delivery company held supervisor, notwithstanding never sole manager present at facility at any given time, since he had authority to assign, reassign, transfer and reprimand Ees, where gave orders to Ee drivers as to their stops and schedules, resolved Ee's security problems and reprimanded Ees for deficiences in performance]

Burns International Security Services, Inc. **278 NLRB No. 070**
[lieutenants in guard service held supervisors, and excluded from unit, based on their authority to suspend guards, notwithstanding they had no authority to hire or fire]

Burns International Security Services, Inc. **278 NLRB No. 070**
[sergeants in guard service held supervisors, since they played significant role in evaluating and disciplining guards where they trained, retrained, evaluated probabtionary guards, have authority to give oral and writtenreprimands, notwithstanding no authority to suspend Ees]

Walter Garson, Jr & Associates **276 NLRB No. 137**
(individuals at E engaged in direct mail marketing services who presented Ees with job orders, reported tomanagement on status of jobs, reviewed Ees' work, and during period of U organization were clothed with apparent authority and so positioned by E to be recognized by Ees as its agents with respect to personnel matters, particularly with respect to U organizing efforts)

8540-7500 Automotive repair, services, and garages

Budget Rent A Car of Washington, Inc. **276 NLRB No. 032**
(lot supervisor for car rental agency)

Tomco Carburetor Company **275 NLRB No. 001**
(foreman at plant which rebuilt carburetors, supervisory, where he made all work assignments, was salaried and paid substantially more than hourly employees, and effectively recommended personnel actions)

8540-7800 Motion pictures

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(advertising coordinator at facility engaged in management of motion picture theaters)

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(assistant to manager of accounts payable for E engaged in management of mtn picture theaters)

Motion Picture Projectionists, Local 150, Stage Employees (Landmark Theatre Corporation) **JD-(SF)-36-86**
[assistant manager at motion picture theater]

8540-7900 Amusement and recreation services, except motion pictures

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) **281 NLRB No. 065**
[assistant chief engineer employed by E at its hotel and gambling casino held supervisor, since he is in charge of E's operating engineers]

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(lieutenant of security at hotel and gambling casino operation)

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(sous chef at hotel and gambling casino operation)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(treasurer of box office at outdoor concert theater)

American Federation of Musicians; Miami Federal of Musicians, Local 655 (Royal Palm Dinner Theatre, Ltd.) **275 NLRB No. 097**
(music director for dinner theatre)

8540-8000 Health services

8540-8050 Nursing and personal care facilities

Eskaton Sunrise Community **279 NLRB No. 012**
[*lead housekeeper* or *homemaker* at nursing home]

8540-8060 Hospitals

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[assistant administrator at hospital]

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[department heads at hospital]

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[obstetrics supervisor at hospital]

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[supervisor of emergency room at hospital]

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[supervisor of nurses in medical/surgery department at hospital]

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[supervisor of ICU-CCU at hospital]

Uniontown Hospital Association **277 NLRB No. 144**
(hospital's clinical coordinators, supervisory where they routinely assigned Ees under hospital's *team nursing* system, were in charge during their supervisor's absence, were paid at higher rate than nurses, received no overtime pay, evaluated staff for discharge and promotion, and assigned staff activities and responsibilities)

Uniontown Hospital Association **277 NLRB No. 144**
(hospital's chief anesthetist, supervisory where she effectively supervised ten full-time anesthetists and had discretionary authority to assign them)

Uniontown Hospital Association **277 NLRB No. 144**
(hospital's assistant director, staff development, supervisory where she effectively recommended Ees for discipline or promotion)

West Florida Hospital, Inc. **273 NLRB No. 177**
(evening coordinator in operating room)

8540-8200 Educational services

Programming & Systems, Inc. **275 NLRB No. 157**
(department heads, at private educational institution held supervisors where they have and exercise authority in interest of E, control over teachers' lesson plans, conduct in classrooms and affectively recommend retention of teachers in their respective departments)

Programming & Systems, Inc. **275 NLRB No. 157**
(part-time data processing teacher held supervisor where he transferred teachers from one assignment to another when necessary, reprimanded teachers and evaluated teachers)

8540-9200 Justice, public order, and safety

Sebco Security Co., Inc. **JD-50-85**
(position of sergeant at security service)

8560 INDICIA OF NONSUPERVISORY STATUS

8560-0100 Generally

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company — 275 NLRB No. 186

(in determining that assistant manager at coal mine was not supervisory, ALJ relied on Sec. 2(11) of Act rather than state's coal mining law which assertedly should be basis for considering Ee supervisory)

8560-1000 Routine direction derived from skill and experience

Sonat Marine, Inc., Interstate Oil Transportation Co., Mariner Towing Co., IBC Co. — 281 NLRB No. 020

[*assistant engineers* employed by E engaged in business of transporting petroleum products by tug and barge along East Coast of U.S. not supervisors, since only control they exercise over other Ees or cadets is that derived from their superior experience, and such control does not show supervisory status]

N.L.R.B. v. KDFW-TV, Inc., A division of times Mirror Corporation — 790 F.2d 1273 (C.A. 5, June 1986)

[directors, producers, associate producers and assignment editors employed by TV station, not supervisors, because they possessed none of enumerated statutory powers. Nor did these Ees *responsibly direct* other Ees exercising independent judgment in doing so. Though incumbents did direct other Ees, to do so responsibly means to be held fully accountable and responsible for work product and performance of other Ees which they were not. Any directions they gave other Ees were in nature of routine technical or aesthetically motivated commands executed by Ees acquainted with production plans]

N.L.R.B. v. Health Care Logistics, Inc. — 784 F.2d 232 (C.A. 6, Feb. 1986)

[assistant shop supervisor employed by manufacturer of medical cabinets, nonsupervisory where he worked alone, his discretion was unrelated to work of fellow Ees, and he passed on routine instructions to Ees or advised them on basis of his seniority and experience also to count him as supervisor would create out of balance supervisor-to-Ee ratio]

N.L.R.B. v. First Union Management, Inc. — 777 F.2d 330 (C.A. 6, Nov. 1985)

[2 alleged to be supervisors because of their seniority and engineering experience found to be only *leadmen* since they do not make assignments in a supervisory capacity. E pays them by the hour and they spend most of their time working with their tools alongside their fellow engineers]

N.L.R.B. v. Island Film Processing Co., Inc., d/b/a Kahala Kai Photo Service — 784 F.2d 1446 (C.A. 9, Mar. 1986)

George C. Foss Company v. N.L.R.B. — 752 F.2d 1407 (C.A. 9, Jan. 1985)

(individual held Ee and not supervisor where he did not exercise authority to hire, fire, transfer, suspend or discharge Ees or adjust grievances notwithstanding he assigned workers to particular jobs w/i project and participated in E's decisions to promote or layoff Ees as work assignments did not involve exercise of independent judgment (received daily instructions from superiors and general contractor) and his alleged *effective recommendations* about layoffs and promotions were informal *discussions* with and *suggestions* to those superiors)

8560-1500 Lack of authority to hire, discipline, assign, etc.

Terraillon Corp. — 280 NLRB No. 037

[clerical did not become supervisor and ineligible to vote upon her promotion to *office manager*, where her actual duties did not change; her taking calls regarding Ees' absences and keeping leave records were merely ministerial functions, and she had no authority to grant time off or arrange schedules, nor did she hire and fire or effectively recommend doing so]

U.S. Pollution Control, Inc. — 278 NLRB No. 042

[pollution control specialist employed by E engaged in hazardous waste disposal not supervisor, notwithstanding he interviewed and recommended hiring casuals who assisted him, where his supervisor made final hiring decision after independent review of casuals' applications, and his role was to ensure personal compatability with casuals assisting him]

Feralloy West Corporation and Pohang Steel America d/b/a Feralloy West Company — 277 NLRB No. 114

]*production supervisor* at flat-rolled steel processing plant held not supervisory, where he signs and issues written and oral reprimands, but only on plant manager's authority)

Feralloy West Corporation and Pohang Steel America d/b/a Feralloy West Company — 277 NLRB No. 114

]*production supervisor* at flat-rolled steel processing plant held not supervisory, where he lacked authority to assign overtime work independent of plant manager who decided when and if overtime was to be worked; and in manager's absences, Ee used preestablished seniority list and overtime signup list to make assignments)

Alamo Cement company — 277 NLRB No. 108

Churchill's Catering Corporation d/b/a Churchill's Restaurant — 276 NLRB No. 087

(long-time purported head busboy at restaurant who did more than other busboys by serving as interpreter for E and restaurant personnel with Mexican Ees held to have position analogous to that of leadman rather than supervisor; while in some instances he obtained and assessed applicants for busboy positions making incidental and advisory recommendations, he had nothing to do with hiring of several, if not most, busboys, and his additional duty arising from his English and Mexican language ability did not elevate him to supervisory status)

N.L.R.B. v. KDFW-TV, Inc., A division of times Mirror Corporation — 790 F.2d 1273 (C.A. 5, June 1986)

[directors, producers, associate producers and assignment editors employed by TV station, not supervisors, because they possessed none of enumerated statutory powers. Nor did these Ees *responsibly direct* other Ees exercising independent judgment in doing so. Though incumbents did direct other Ees, to do so responsibly means to be held fully accountable and responsible for work product and performance of other Ees which they were not. Any directions they gave other Ees were in nature of routine technical or aesthetically motivated commands executed by Ees acquainted with production plans]

N.L.R.B. v. Island Film Processing Co., Inc., d/b/a Kahala Kai Photo Service — 784 F.2d 1446 (C.A. 9, Mar. 1986)

8560-2000 Absence of subordinates

Heck's Inc. — 277 NLRB No. 098

(individual held not supervisor during period in which he worked alone in department after individuals he had supervised had been removed)

N.L.R.B. v. Health Care Logistics, Inc. — 784 F.2d 232 (C.A. 6, Feb. 1986)

[assistant shop supervisor employed by manufacturer of medical cabinets, nonsupervisory where he worked alone, his discretion was unrelated to work of fellow Ees, and he passed on routine instructions to Ees or advised them on basis of his seniority and experience also to count him as supervisor would create out of balance supervisor-to-Ee ratio]

8560-2800 Performance of duties directed toward quality of patient care

Eskaton Sunrise Community — 279 NLRB No. 012

[persons in health care jobs who give direction to other Ees and perform tasks in exercise of their professional judgment incidental to treatment of patients are not statutory supervisors]

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers — 275 NLRB No. 131

(LPN charge nurses held not supervisors where they perform tasks involving patient care including direction of aides that are technical in nature involving use of independent judgment. In exercising such judgment, LPNs are not aligned with management but with Ees since such direction as contingent and accessory to exercise of professional care in treating patients which is not exercise of authority motivated by E's interest. Furthermore, they only call in Ees to work pursuant to formulated policies)

8560-3000 Direction of occasional or temporary helpers

George C. Foss Company v. N.L.R.B. — 752 F.2d 1407 (C.A. 9, Jan. 1985)

(individual held Ee and not supervisor where he did not exercise authority to hire, fire, transfer, suspend or discharge Ees or adjust grievances notwithstanding he assigned workers to particular jobs w/i project and participated in E's decisions to promote or layoff Ees as work assignments did not involve exercise of independent judgment (received daily instructions from superiors and general contractor) and his alleged *effective recommendations* about layoffs and promotions were informal *discussions* with and *suggestions* to those superiors)

8560-4000 Relaying of orders and information; assignment of work

Electronic Data Systems International Corporation — 278 NLRB No. 014

[assisting supervisor by intermittedly getting work for Ees who needed it, ministerial, routine function]

Feralloy West Corporation and Pohang Steel America d/b/a Feralloy West Company — 277 NLRB No. 114

]*production supervisor* at flat-rolled steel processing plant held not supervisory, where his assignment of work did not require use of independent judgment but involved routine and clerical duties, merely serving as conduit for management instructions)

8560-4000—Cont.

Feralloy West Corporation and Pohang Steel America d/b/a Feralloy West Company **277 NLRB No. 114**
[*production supervisor* at flat-rolled steel processing plant held not supervisory, since his assignment of work was exercised sporadically and irregularly in routine manner involving no use of independent judgment, where he had limited authority, in plant manager's rare absences, to fill position of absent Ee or to transfer Ees to higher paying position for short periods)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(temporary manager at coal mine not supervisory where he was mere conduit in relaying manager's orders)

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers **275 NLRB No. 131**
(LPN charge nurses held not supervisors where they perform tasks involving patient care including direction of aides that are technical in nature involving use of independent judgment. In exercising such judgment, LPNs are not aligned with management but with Ees since such direction as contingent and accessory to exercise of professional care in treating patients which is not exercise of authority motivated by E's interest. Furthermore, they only call in Ees to work pursuant to formulated policies)

N.L.R.B. v. KDFW-TV, Inc., A division of times Mirror Corporation **790 F.2d 1273 (C.A. 5, June 1986)**
[assignment editors at TV station not supervisors, though able to change assignments, since they could only do so in absence of their supervisor, and supervisor could subsequently overrule change]

8560-5000 Limited or sporadic exercise of supervisory power

Opelika Foundry **281 NLRB No. 121**
[*individual with statutory supervisory authority does not lose his/her status simply because they infrequently exercise their authority*]

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[office manager at retail grocery store who performed bookkeeping work, and occassionally filled in for supervisors, where she had no authority to hire, fire, transfer, suspend, or discipline Ees; nor did her occassional exercise of supervisory authority when filling in for supervisors make her supervisor under Act]

Latas De Aluminio Reynolds, Inc. **276 NLRB No. 147**
(substituting for supervisor while supervisors were on vacation or away receiving training for 2 weeks in one year and 4 to 5 months in following year, held Ee rather than supervisor and challenge overruled, in absence of regularity of substitution, since sporadic assumption of supervisory duties, during vacation periods of supervisor is not sufficient to establish supervisory status; further, unlike supervisor, Ee was paid on weekly basis, received shift differential, punched timecard, and was assigned toolbox)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(Ee who acted as hostess-cashier at restaurant held not supervisory where she acted in that capacity irregularly and sporadically, approximately once or twice a month)

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers **275 NLRB No. 131**
(LPN charge nurses held not supervisors where they perform tasks involving patient care including direction of aides that are technical in nature involving use of independent judgment. In exercising such judgment, LPNs are not aligned with management but with Ees since such direction as contingent and accessory to exercise of professional care in treating patients which is not exercise of authority motivated by E's interest. Furthermore, they only call in Ees to work pursuant to formulated policies)

Blue Island Newspaper Printing, Inc. **273 NLRB No. 208**
(individual found nonsupervisory where she occasionally and on an irregular, rather than a scheduled, basis substituted for absent supervisors but did not spend a regular and substantial portion of her working time performing supervisory tasks)

8560-6000 Substitution for supervisor

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[office manager at retail grocery store who performed bookkeeping work, and occassionally filled in for supervisors, where she had no authority to hire, fire, transfer, suspend, or discipline Ees; nor did her occassional exercise of supervisory authority when filling in for supervisors make her supervisor under Act]

Alamo Cement company **277 NLRB No. 108**

Alert Steel Products Company **JD-39-85**
(substitute for supervisor during latter's vacation who performed no duties peculiar to supervisors, not supervisory)

8560-8000 Making of factual reports

Feralloy West Corporation and Pohang Steel America d/b/a Feralloy West Company **277 NLRB No. 114**
[*production supervisor* at flat-rolled steel processing plant held not supervisory, where he did not make effective recommendations to discipline Ees but instead performed essentially clerical function of keeping record of absences and tardiness which he submitted to plant manager who, while making no independent investigation, reviewed submitted records and approved issuance of reprimands; thus, Ee's *recommendation* of discipline amounted to nothing more than relaying of information to manager)

8560-9000 Recommendations reviewed by supervisors

Feralloy West Corporation and Pohang Steel America d/b/a Feralloy West Company **277 NLRB No. 114**
[*production supervisor* at flat-rolled steel processing plant held not supervisory, where he did not make effective recommendations to discipline Ees but instead performed essentially clerical function of keeping record of absences and tardiness which he submitted to plant manager who, while making no independent investigation, reviewed submitted records and approved issuance of reprimands; thus, Ee's *recommendation* of discipline amounted to nothing more than relaying of information to manager)

N.L.R.B. v. KDFW-TV, Inc., A division of times Mirror Corporation **790 F.2d 1273 (C.A. 5, June 1986)**
[assignment editors at TV station not supervisors, though able to change assignments, since they could only do so in absence of their supervisor, and supervisor could subsequently overrule change]

George C. Foss Company v. N.L.R.B. **752 F.2d 1407 (C.A. 9, Jan. 1985)**
(individual held Ee and not supervisor where he did not exercise authority to hire, fire, transfer, suspend or discharge Ees or adjust grievances notwithstanding he assigned workers to particular jobs w/i project and participated in E's decisions to promote or layoff Ees as work assignments did not involve exercise of independent judgment (received daily instructions from superiors and general contractor) and his alleged *effective recommendations* about layoffs and promotions were informal *discussions* with and *suggestions* to those superiors)

8580 TYPES OF EMPLOYEES FOUND NONSUPERVISORY (BY SIC)

8580-1200 Bituminous coal and lignite mining

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(temporary manager at coal mine)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(individual at coal mine holding title of mine manager and mine examiner)

8580-1700 Construction - special trade contractors

Cherokee Heating and Air Conditioning Co. **280 NLRB No. 044**
[head of sales service department of heating and air conditioning company, not supervisor, notwithstanding her *override commission* on department sales and fact she was held out to Ees as supervisor, where she received same pay as other sales representatives, her record keeping, reporting, and expense reimbursement authorizations were routine and ministerial, and she was granted no specific supervisory authority]

The Zack Company **278 NLRB No. 134**
[foreman of sheet metal subcontractor at construction site]

McEver Engineering, Inc. **275 NLRB No. 128**
(leadman for company engaged in engineering and construction business)

Local Union No. 246, Plumbers (Ray M. Marlin, a sole proprietor d/b/a Marlin Mechanical) **JD-(SF)-23-86**
[journeyman plumber for plumbing contractor in building construction industry]

8580-2000 Food and kindred products

State Garden Celery Company, Inc. **JD-243-84**
(individual who acted as interpreter during hiring of Spanish speaking individuals and who was used as conduit to convey instructions to Spanish speaking Ees, but exercised no control over Ees and possessed none of the indicia of supervisor)

8580-2300 Apparel and other finished products made from fabrics and similar materials

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. **281 NLRB No. 068**
[printing machine operator at manufacturer of custom prints in garment industry]

8580-2300—Cont.

Judy Hornby Designs, Inc. **279 NLRB No. 168**
[machinist at garment manufacturer, notwithstanding paid higher than other machinists, and assisted other Ees, since she had no authority to hire or fire nor exercised independent judgment]

8580-2700 Printing, publishing, and allied industries

Bowne of Houston, Inc. **280 NLRB No. 132**
[assistant foreman in composing department of E engaged in legal and financial printing]

8580-3000 Rubber and miscellaneous plastics products

Reeves Brothers, Inc. **277 NLRB No. 153**
[technician for E engaged in manufacture of chemical foam products]

8580-3200 Stone, clay, glass, and concrete products

Alamo Cement company **277 NLRB No. 108**
(assistant chief chemist at cement manufacturing plant, nonsupervisory where he spent most of his time doing unit work, lacked authority to hire and discharge or other supervisory authority, and, although he substituted for chief chemist in latter's absence, merely acted as experienced operator helping less experienced Ees)

Alamo Cement Company **277 NLRB No. 034**
(control operators at cement plant, nonsupervisory where they had been so found in prior Bd case, their duties remained the same, and, with one exception, all material evidence was available and could have been litigated in prior proceeding; moreover, evidence showed them only as experienced technical Ees giving directions to Ees who were not directly responsible to them)

Marion Center Supply, Inc. **277 NLRB No. 026**
(individual employed by E which sells ready-mix concrete, pre-cast concrete products and other building supplies and hauls coal and related products, and works 4-1/2 days out of 5 as a driver, mechanic, batch plant operator and yard worker, non-supervisory)

8580-3300 Primary metal industries

Feralloy West Corporation and Pohang Steel America d/b/a Feralloy West Company **277 NLRB No. 114**
[*production supervisor* at flat-rolled steel processing plant)

8580-3400 Fabricated metal products, except machinery and transportation equipment

Chicago Metallic Corporation **273 NLRB No. 207**
(assistant leadman employed by E engaged in manufacture and distribution of *cross-T's and main runners* for acoustic ceilings, nonsupervisory)

B & W Machine & Welding Company **JD-(SF)-107-86**
[most senior machinist at machine shop]

N.L.R.B. v. Chicago Metallic Corporation **794 F.2d 527 (C.A. 9, July 1986)**
[assistant production leadman and maintenance leadman for manufacturer of steel superstructure for ceilings]

8580-3500 Machinery, except electrical

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**
(dispatcher of technicians for E engaged in selling, servicing, and renting business copying machines, nonsupervisory where her direction of and assignment of work to technicians was routine, her inquiries as to their arrival were made at direction of an officer, and her reports were compilations of statistics about technicians' operations w/o conclusions as to quality of their work)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**
(director of technical services for E engaged in selling, servicing, and renting business copying machines, nonsupervisory notwithstanding fact that he, as well as managers, interviewed technicians applying for jobs and once effectively recommended hiring one of them, since these actions reflected his seniority and experience rather than supervisory responsibility in absence of other supervisory authority)

8580-3700 Transportation equipment

Advance Development & Manufacturing Corporation **275 NLRB No. 036**
(foreman at machine shop for E specializing in producing launching and arresting gear for aircraft carriers)

Zemco Manufacturing Company **JD-446-84**
(quality control inspector who was also shipping clerk for manufacturer of truck chassis parts)

Zemco Manufacturing Company **JD-446-84**
(setup men who were leadmen in fittings department of manufacturer of truck chassis parts)

Zemco Manufacturing Company **JD-446-84**
(welder who was leadman for manufacturer of truck chassis parts)

Zemco Manufacturing Company **JD-446-84**
(setup and maintenance man for manufacturer of truck chassis parts)

8580-3900 Miscellaneous manufacturing industries

Gull, Inc. **279 NLRB No. 127**
[lead man at plant manufacturing indicators and other electronic instruments for military and commercial aircraft]

8580-4200 Motor freight transportation and warehousing

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(assistant dispatcher at trucking company who fulfilled dispatcher's duties in absence of dispatcher, held not supervisor, inasmuch as dispatcher was held not to be supervisor)

8580-4400 Water transportation

Sonat Marine, Inc., Interstate Oil Transportation Co., Mariner Towing Co., IBC Co. **281 NLRB No. 020**
[*assistant engineers* employed by E engaged in business of transporting petroleum products by tug and barge along East Coast of U.S. not supervisors, since only control they exercise over other Ees or cadets is that derived from their superior experience, and such control does not show supervisory status]

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**
[tugboat captains held Ees w/i meaning of Section 2(3) of the Act where over 90% of their work was performed w/i a harbor where captains maintained constant radio contact with shore-based supervisors]

8580-4800 Communication

Central Broadcast Company **280 NLRB No. 056**
[*production director* of commercials to be broadcast by country music radio station, not supervisor where he prepared commercials himself or *assigned* their preparation to other individuals by whom he was assisted but for whose work he was not responsible, since he lacked any supervisory indicia and did not even routinely direct them]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**
[Radio Station News Director]

Radio Broadcasting Co. **277 NLRB No. 121**
(shop manager employed by E engaged in sale, leasing and servicing of communication devices)

Radio Broadcasting Co. **277 NLRB No. 121**
(head bookkeeper employed by E engaged in sale, leasing and servicing of communication devices)

Radio Broadcasting Co. **277 NLRB No. 121**
(office manager employed by E engaged in sale, leasing and servicing of communication devices)

N.L.R.B. v. KDFW-TV, Inc., A division of times Mirror Corporation **790 F.2d 1273 (C.A. 5, June 1986)**
[directors, producers, associate producers and assignment editors employed by TV station, not supervisors, because they possessed none of enumerated statutory powers. Nor did these Ees *responsibly direct* other Ees exercising independent judgment in doing so. Though incumbents did direct other Ees, to do so responsibly means to be held fully accountable and responsible for work product and performance of other Ees which they were not. Any directions they gave other Ees were in nature of routine technical or aesthetically motivated commands executed by Ees acquainted with production plans]

8580-4900 Electric, gas, and sanitary services

U.S. Pollution Control, Inc. **278 NLRB No. 042**
[pollution control specialist employed by E engaged in hazardous waste disposal not supervisor, notwithstanding he interviewed and recommended hiring casuuals who assisted him, where his supervisor made final hiring decision after independent review of casuals' applications, and his role was to ensure personal compatability with casuals assisting him]

The Detroit Edison Company **275 NLRB No. 158**
(group leader under meter-reading supervisor at electric utility)

8580-5100 Wholesale trade - nondurable goods

C & L Warehouse & Distributing Corp. **275 NLRB No. 148**
(warehouse checker of E engaged in warehousing and distributing of wearing apparel nonsupervisory notwithstanding family relationship to management)

8580-5400 Food stores

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[office manager at retail grocery store who performed bookkeeping work, and occassionally filled in for supervisors, where she had no authority to hire, fire, transfer, suspend, or discipline Ees; nor did her occassional exer-

8580-5400—Cont.

cise of supervisory authority when filling in for supervisors make her supervisor under Act]

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[*produce manager at retail grocery store who never bargained with suppliers, did not set prices on produce, had no authority to schedule, nor hire, transfer, fire, authorize raises or effectively recommend any of the above*]

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(meat department managers at grocery stores)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
]*stock manager* or *head stock clerk* at grocery store who was nothing more than *glorified stocker*)

8580-5800 Eating and drinking places

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(hostess-cashier at restaurant)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(purported heal busboy at restaurant)

Bonanza Sirloin Pit **275 NLRB No. 54**
(assistant manager at public restaurant)

8580-5900 Miscellaneous retail

Glover Bottled Gas Corp. **275 NLRB No. 096**
(senior clerk in collection department of bottled gas service company who declined E's offer of position of credit manager, nonsupervisory)

N.L.R.B. v. Island Film Processing Co., Inc., d/b/a Kahala Kai Photo Service **784 F.2d 1466 (C.A. 9, Mar. 1986)**
[part-time checker for E selling souvenir photographs to tourists, nonsupervisory, notwithstanding his alleged pre-election conversion to salaried manager, where he never took action in unusual circumstance w/o consulting E as to how to proceed, never effectively recommended hiring, firing, or increasing pay of Ees, and testified that he became an *on call* Ee]

8580-6500 Real estate

Concourse Village, Inc. **276 NLRB No. 004**
(handymen who substitute for building superintendents who are supervisors, found nonsupervisory, since they assume none of the superintendents' supervisory authority when substituting for them)

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a I.R.R. Realty Co. **273 NLRB No. 189**
(superintendent at apartment building)

8580-7000 Hotels, rooming houses, camps, and other lodging places

Joseph A. Perry d/b/a Holiday Inn-Glendale **277 NLRB No. 145**
(assistant housekeepers in hotel found nonsupervisory where they had to consult with higher management when any problems arose)

Youngstown Hospitality Co., d/b/a Howard Johnson's Motor Lodge **JD-3-86**
[sales representative at motel]

8580-7300 Business services

Electronic Data Systems International Corporation **278 NLRB No. 014**
[*lead computer operator* at E who provided computerized data processing and related services, where he continued to punch time clock whereas supervisors did not, was not given any pay differential]

Tecom, Inc. **277 NLRB No. 038**
]*support section work leader* at E engaged in providing maintenance services to U.S. National Emergency Training Center)

8580-8000 Health services

8580-8050 Nursing and personal care facilities

Eskaton Sunrise Community **279 NLRB No. 012**
[persons in health care jobs who give direction to other Ees and perform tasks in exercise of their professional judgment incidental to treatment of patients are not statutory supervisors]

Eskaton Sunrise Community **279 NLRB No. 012**
[mere evaluation by licensed vocational nurse employed at nursing home of lower care practitioners held not sufficient to establish supervisory status]

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers **275 NLRB No. 131**
(LPN charge nurses held not supervisors where they perform tasks involving patient care including direction of aides that are technical in nature involving use of independent judgment. In exercising such judgment, LPNs are not aligned with management but with Ees since such direction as contingent and accessory to exercise of professional care in treating patients which is not exercise of authority motivated by E's interest. Furthermore, they only call in Ees to work pursuant to formulated policies)

Beverly Enterprises d/b/a Beverly Manor Convalescent Centers **275 NLRB No. 131**
(LPN charge nurses performing minor admonitory role by making verbal corrections does not rise to level of participation in disciplinary action to confer supervisory status and neither does handling grievances by relying on personal relationships to Ees to resolve problems informally where, if not so resolved, problems are reported to higher authority)

8580-8060 Hospitals

Uniontown Hospital Association **277 NLRB No. 144**
(hospital's infection control coordinator, nonsupervisory where she effectively recommended changes but lacked authority to direct or discipline Ees or correct their mistakes)

Uniontown Hospital Association **277 NLRB No. 144**
(hospital's staff development instructor, nonsupervisory where she assisted in the supervising of activities of educational programs and teaching but was not shown to have supervisory authority otherwise)

Western Medical Enterprises, Inc., d/b/a ARA Living Center, Verdugo Vista Convalescent Hospital **JD-(SF)-54-85**
(individual employed as assistant director of nursing who screened applicants for employment, made changes in Ees' work schedules and had authority to grant overtime, held not statutory supervisor, since screening of applicants was routine clerical function, changing work schedules was simply ministerial task of following policy set by E and individual had never exercised authority to grant Ees overtime)

8580-8200 Educational services

Programming & Systems, Inc. **275 NLRB No. 157**
(student counselor, who checked students' attendance records with aid of 2 clerks not supervisor, since evidence presented that Ee never exercised any supervisory authority but *merely worked with clerks in order to better serve needs of students at E school*)

N.L.R.B. v. The Cooper Union For The Advancement of Science and Art **783 F.2d 29 (C.A. 2, Jan. 1986)**
[faculty members of private, non-profit, educational institution, Ees rather than managers or supervisors, where they were not aligned with management and did not effectively recommend or exercise control over academic or nonacademic affairs, and administration implemented changes in such core academic areas as curriculum and unilaterally revised governances and terms and conditions of employment]

8580-8900 Miscellaneous services

Volt Information Sciences, Inc. **274 NLRB No. 047**
(self-taught technician servicing camera equipment and leads who passed on supervisor's orders, assigned work and did some preliminary interviewing of applicants for E engaged in providing information sciences field services found nonsupervisory)

9300 'PROFESSIONAL EMPLOYEES'

9700 HEALTH CARE INSTITUTIONS

9701 GENERALLY

Kirksville College of Osteopathic Medicine, Inc. **274 NLRB No. 121**
(primary focus of legislative debates surrounding 1974 health care amendments was the need to avoid interruptions in the delivery of health care services and towards this end, Congress provided in 8(g) that special strike notice provisions be applicable and cautioned Bd not to allow undue proliferation of bargaining units; Congress further indicated that term *health care institution* should be construed broadly, *Albany Medical College* 239 NLRB 853, overruled)

9712 HOSPITALS

Kirksville College of Osteopathic Medicine, Inc. **274 NLRB No. 121**
(contention that Ees of hospital share community of interest separate from college and unit limited to hospital Ees is only appropriate unit, rejected and appropriate unit includes Ees of hospital *and* college, since hospital and college combined is *health care institution* w/i meaning of 2(14) of Act where Ees in several departments serve both hospital and college in highly integrated manner and because a strike among any group of Ees would have profound effect upon functioning of hospital, policy dictates that no lone between college and hospital be drawn; *Albany Medical College*, 239 NLRB 853, overruled)

188 AUTHORITY AND STRUCTURE OF NLRB AS AGENCY

0100 GENERALLY

2000 ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)

[primary purpose of APA requirement that agency's decisions include reasons or basis for its conclusions on all material issues of law is to impose discipline upon agency itself, assuring that it has undergone process of reasoned decision-making rather than haphazardly reached result that could (on one or another basis of analysis) be sustained; to achieve primary purpose, *post hoc rationalization* of why agency could have come out the way it did will not suffice]

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)

[in finding that Bd failed to meet APA requirement that agency's decision include its reasons or basis for its conclusions, ct held case herein was not one where legal issue raised is not substantial, e.g., there is no apparent conflict in earlier cases or reasons for departure therefrom are clear so that issue would not be *material* w/i meaning of APA, or failure to address it would come w/i meaning of APA's exemption of harmless error]

4000 RELATIONSHIP TO OTHER GOVERNMENTAL AGENCIES

Louton, Inc., t/a/ The Original Oyster House 281 NLRB No. 154

[Bd to furnish IRS with copy of supplemental decision in view of claimant's income tax disclosures contrary to factual findings concerning his tip income]

4050 OTHER FACTFINDING AGENCIES

4050-3300 Board not bound by findings of state unemployment compensation tribunal

Garrison Valley Center, Inc. 277 NLRB No. 164

(state agency's decision (Maryland Dept. of Employment and Training Board of Appeals) which found Ee quilty of gross misconduct, not controlling (on Bd), since determination rendered under statute with different definitions, policies, and purpose from NLRA; Bd decision, as well as that of ALJ *must be based upon independent consideration and evaluation of the evidence received in this ULP proceeding*)

Rayglo Corporation d/b/a The Dirt Digger, Inc. 274 NLRB No. 157

(unemployment compensation decision, in claim resulting from same picketing protesting change of working conditions involved in ULP charge and which held that Ees had voluntarily quit, not determinative of what constitutes quit under NLRA, and although decision admitted into evidence, not controlling on issue of whether Ees quit or were discharged)

6000 THE BOARD

6001 GENERALLY

6001-5000 Responsible for development of national policy under NLRA

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) 281 NLRB No. 065

[where conflict exists between Bd's and ct decision, ALJ must follow Bd]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[Bd has authority to apply general presumptions as part of its responsibility to formulate rules to fill interstices of broad statutory provisions of the Act; however, only if presumption is rational and consistent with the Act and its application is supported by substantial evidence on the record as a whole will an order of the Bd be enforced]

6033 AUTHORITY UNDER STATUTE

6033-2000 Conduct elections and certify results

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[*Rules with respect to filing objection to election conduct and mentod of investigating them, are all Bd made rules. Bd has discretion to interpret those rules as requiring strict compliance. NLRA confers on Bd, not on cts, responsibility for supervising choice of bargaining representative*]

Smith and Smith Aircraft Company v. N.L.R.B. ———F.2d——— (C.A. 10, May 1984)

[*Congress has entrusted Bd with wide degree of discretion in establishing procedure and safeguards necessary to insure fair and free choice of bargaining representatives by Ees*]

6033-4000 Adjudicate ULP allegations

6033-4001 Generally

Thomas Steel Company 281 NLRB No. 060

[E's request for award of attorney's fees and costs *in responding to the General Counsel's bad faith exceptions* in ULP case, denied, since such claim can only be filed under EAJA]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[determination of what circumstances justify discrimination inherent in any award of superseniority, w/i Bd's discretion]

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B. ——— F.Supp.———(DC N.D. IL, Mar. 1985)

[*developing a factual record in a labor dispute is a task peculiarly w/i the competence of the Bd*]

6033-4050 Not affected by other means of adjustment or prevention

Wolverine Porcelain Enameling Company and Gregory Crampton, Its Trustee in Bankruptcy Under Chapter 7 of The Bankruptcy Act JD-299-85

(Bd has authority to adjudicate acts alleged to be ULPs that occurred prior to petition for bankruptcy)

6033-6000 Prescribe remedies

6033-6001 Generally

Ohio Container Service, Inc.; Myron E. Wasserman, Trustee in Bankruptcy 277 NLRB No. 025

(GC's issuing of backpay specification prior to entry of Bd's order directing payment of backpay or ct decree enforcing such order, upheld since parties had reached stipulation on amounts of backpay, which they would have been free to do even absent backpay specification)

John Cuneo, Inc. 276 NLRB No. 012

(U did not have right to challenge failure of GC to include additional claimant in backpay specification; Bd had delegated to GC authority to carry out its intent that its orders be properly implemented and U failed to take timely appeal to Bd from GC's determination)

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[U's contention that its filing of a grievance cannot be basis for ULP charge, rejected, since Bd is fully empowered to enjoin pursuit of a grievance where its object is enforcement of illegal contractual provision such as that he rein granting U officials superseniority solely because of their status]

6033-6001-6700 Authority under Section 10(c)

Martin J. Barry Company 278 NLRB No. 056

[order directing E, who was admitted *Burns* successor, to execute and implement contract agreed to by predecessor and make Ees whole for failure to so implement, contravened 10(c) of the Act and Bd was w/o remedial autority to so order, since, under principles of *H.K. Porter*, 397 U.S. 99 (1970), Bd lacks remedial authority to impose contractual terms involuntarily on either party to a collective bargaining agreement]

6033-8000 Rulemaking authority

6033-8050 Specific rules (see also subject matter affected by rule)

6033-8050-2118 Rule 102.118

Malta Construction Company **276 NLRB No. 171**
(Rule 102.118(a) clearly provides GC with obligation to refuse to disclose certain evidence unless excepted by Sec. (b) or (c))

6067 DELEGATION OF AUTHORITY

6067-6000 To Regional Directors

Coastside Scavenger Company **273 NLRB No. 198**

Telephone Commerical Employees Union v. Arthur Eisenberg, RD (NLRB) **587 F.Supp. 546 (DC E.D. IL, July 1984)**
[Section 3(b) of the Act provides *Bd may review any action of RD delegated to him*]

6067-7000 To executive secretary

National Brands of Ft. Lauderdale, Inc. **277 NLRB No. 089**
(mtn for summary judgment in ULP proceeding granted, notwithstanding E's argument that Bd's Associate Executive Secretary had no standing, in underlying R case, to deny mtn to reopen record on alleged misrepresentations in pre-election letter, since Associate Executive Secretary, who signed denial of mtn, did so *by direction of the Board*

6067-8000 To General Counsel

John Cuneo, Inc. **276 NLRB No. 012**
(U did not have right to challenge failure of GC to include additional claimant in backpay specification; Bd had delegated to GC authority to carry out its intent that its orders be properly implemented and U failed to take timely appeal to Bd from GC's determination)

Coastside Scavenger Company **273 NLRB No. 198**

7500 QUORUM REQUIREMENTS

8000 THE GENERAL COUNSEL

8033 STATUTORY AUTHORITY

8033-3300 Final authority to investigate charges and issue complaints

Worcester Steel Erectors v. N.L.R.B. **———F.2d——— (C.A. 1, Jan. 1986)**
[decision not to issue C is unreviewable by cts]

8033-3301 Generally

Dubose Masonry, Inc. **279 NLRB No. 125**
[notwithstanding charge filed against E and U for latter demanding and former discharging Ee for not being member of U in right to work state and RD issued C against E only, independent resolution of instant C against E proper and appropriate, since there is no showing, in instant case that RD has improperly failed to issue C in pending charge against U or that it has improperly failed to seek consolidation of these matters for hearing]

Coastside Scavenger Company **273 NLRB No. 198**

8033-3375 Dismissal of charge not reviewable by courts

John J. Fuller v. N.L.R.B. **——— F.Supp.———(DC MA, Mar. 1986)**

8033-6700 Exclusive authority to prosecute complaint

John J. Fuller v. N.L.R.B. **——— F.Supp.———(DC MA, Mar. 1986)**

John J. Fuller v. N.L.R.B. **——— F.Supp. ——— (DC MA, Mar. 1986)**

8033-6733 Controls theory of case

Suburban Transit Corp. and Suburban Trails, Inc. **276 NLRB No. 005**
(charging party though he raised allegation of *alter ego* in charge cannot advance this theory to ALJ as GC did not allege such status in C, at trial or posthearing briefs and GC controls theory of case)

8033-6767 Sole authority to amend complaint

Suburban Transit Corp. and Suburban Trails, Inc. **276 NLRB No. 005**

Save Mart of Modesto, Inc. **JD-(SF)-25-85**

200 NLRB JURISDICTION

201 GENERALLY

3300 POLICY OF BOARD

6700 EFFECT OF PRIOR DECISIONS

Imperial House Condominium, Inc. **279 NLRB No. 154**

[E's contention in case involving issue of Bd's jurisdiction over E's operation that prior Bd decision extending jurisdiction to include operation similar to that of E did not constitute precedent because E and U therein agreed that Bd should assert jurisdiction, rejected]

6750 PRIOR DECISIONS NOT CONTROLLING

Trustee of St. Joseph's College **282 NLRB No. 009**

[to extent that *Barber-Scotia College*, 245 NLRB 406 (1979) and similar cases stand for proposition that *Catholic Bishop of Chicago*, 440 U.S. 490 (1979), does not apply to colleges and universities they are *overruled*]

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 **776 F.2d 745 (C.A. 7, Nov. 1985)**

[ct cases decided before adoption of new rule by Bd are not controlling on cts concerning legality of new rule]

Kenneth P. Prill v. N.L.R.B. **755 F.2d 941 (C.A.D.C., Feb. 1984)**

(it is not responsibility of cts to second-guess lawful judgments of Bd which has been granted broad authority to construe Act in light of its expertise and, in appropriate circumstances, Bd may even elect to abandon or modify established precedent; however, judicial deference is not accorded Bd decision when it acts pursuant to erroneous view of law and, as a consequence, fails to exercise discretion delegated to it by Congress)

8300 TIMELINESS OF RAISING ISSUE

220 STATUTORY JURISDICTION

0100 GENERALLY

Volunteers of America, Los Angeles v. N.L.R.B. 777 F.2d 1386 (C.A. 9, Dec. 1985)

[Bd is empowered to prevent the commission of ULPs by *any persons...affecting commerce*, and since the Act does not specifically exempt nonprofit charitable organizations, the Bd has held that it has jurisdiction over such Es]

2500 PREEMPTION OF JURISDICTION OVER SUBJECT MATTER REGULATED BY ACT

2525 BOARD HAS EXCLUSIVE JURISDICTION IN ENFORCING ACT

2525-0100 Generally

N.L.R.B. v. Superior Fowarding, Inc. 762 F.2d 695 (C.A. 8, May 1985)

(whether alleged ULP stems from debtor's rejection or modification of bargaining agreement or from debtor's failure to bargain over terms of new contract, is question of contract construction, one of law, to be determined by bankruptcy ct when debtor petitions ct to enjoin Bd proceedings notwithstanding contention that Bd is exclusive forum for determining whether conduct falls w/i *Bildisco* protected conduct)

2525-2000 Centralized administration necessary to obtain uniform national labor policy

Allis-Chalmers Corp. v. Lueck ———U.S.——— (U.S. S.CT, Apr. 1985)

[E's insurance claim, pursuant to self-funded (by E) disability plan in collective-bargaining agreement which established disability grievance procedure culminating in final and binding arbitration, dismissed for failure to make use of grievance procedure in agreement; questions relating to what parties to agreement agreed and what legal consequences were intended to flow from breaches of agreement, must be resolved by reference to uniform federal law rather than state tort law]

Allis-Chalmers Corp. v. Lueck ———U.S.——— (U.S. S.CT, Apr. 1985)

[Sec. 301 (of NLRA) does not grant parties to collective-bargaining agreement ability to contract for what is illegal under state law; questions of contract interpretation, therefore underlie any finding of tort liability, regardless that state ct may choose to define tort as *independent* of any contract question; Congress has mandated that *federal law govern meaning given contract terms* in order to have unified federal body of labor-contract law]

2525-4000 Not subject to other means of adjustment or prevention established by agreement, laws, or otherwise

Retail Delivery Drivers, Driver-Salesmen, and Helpers Local 278, a/w Teamsters (Labor Management Services, Inc. d/b/a L.M.S. Company) JD-(SF)-61-85

(U insisting upon application of bargaining agreement, including U-security provisions, to E's Ees at new location, violative, as this same issue was subject of UC proceeding in which RD held there was no accretion. E under no obligation to go to arbitration after UC proceeding though contract provides for arbitration)

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) 786 F.2d 1516 (C.A. 11, Apr. 1986)

[Bd has statutory duty to enforce Act and exclusive jurisdiction to decide ULPs; Bd may not avoid this responsibility through far reaching deferral policy which apparently presumes that ULP claim has been resolved through arbitration]

2525-6000 Board jurisdiction not ousted because suit also arises under section 301(a)

Allis-Chalmers Corp. v. Lueck ———U.S.——— (U.S. S.CT, Apr. 1985)

[E's insurance claim, pursuant to self-funded (by E) disability plan in collective-bargaining agreement which established disability grievance procedure culminating in final and binding arbitration, dismissed for failure to make use of grievance procedure in agreement; questions relating to what parties to agreement agreed and what legal consequences were intended to flow from breaches of agreement, must be resolved by reference to uniform federal law rather than state tort law]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[there was no reasonable basis in law for U's grievance and Sec. 301 suit, since it is well established that the *supremacy doctrine* bars arbitrator from making award inconsistent with Bd's 10(k) determination]

2525-7000 Board proceedings not stayed pending bankruptcy proceeding involving respondent

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ———U.S.——— (U.S. S.Ct, Feb. 1984)

[Bd is precluded from, in effect, enforcing terms of collective-bargaining agreement by filing ULP charges against debtor-in-possession for violating Sec. 8(d) of NLRA by modifying or terminating unexpired labor agreement. Though Bd's action is nominally one to enforce Sec. 8(d), practical effect of enforcement action would be to require adherence to terms of agreement, but filing of ptn in bankruptcy means that agreement is no longer enforceable. Consequently, Bd enforcement under these circumstances would run directly counter to express provisions of Bankruptcy Code]

Rector Engineering and Development Corporation; Rector Engineering and Development Corporation, Debtor-in-Possession 281 NLRB No. 146

[E's contention in ULP proceeding on GC's mtn for summary judgment, that bankruptcy ptn excused its failure to file ans and nevertheless, Bd was obligated to file claim with bankruptcy ct rather than litigate ULP, rejected; E's uncertain financial condition does not constitute *good cause* for failure to file ans and it is well established that ULP proceedings are exempt from automatic stay provisions of bankruptcy law]

Haug-N-Action, Inc. & J. L. Excavating, Inc. 281 NLRB No. 013

[C alleging 8(a)(5) violations during pendency of bankruptcyy proceedings of E which continued to do business until proceedings were converted to Chapter 7 liquidation, dismissed as to that E, since, for that relevant period Bd had no jurisdiction over its obligations under executory contract absent evidence it did not agree to assume the contract in Chapter 11 proceedings; however, absent evidence that E's alter ego was brought w/i bankruptcy proceedings' jurisdiction, Bd adopted that part of ALJ's recommended order that alter ego recognize and bargain with U]

Antoine's Inc., A California Corporation, d/b/a Antoine's of Beverly Hills 280 NLRB No. 142

[mtn for summary judgment granted where respondent's answer to Notice to Show Cause stated it had filed bankruptcy ptn but failed to deny committing ULP or explain failure to contact Regional Office about answer or extension of time to file answer, and instituting bankruptcy proceedings does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; Bd proceedings fall w/i 11 USC Sec. 362(b)(4) and (5) exception to automatic stay provision for governmental unit proceedings to enforce its police or regulatory powers]

Michels Rena, and Its Alter Ego, Ritz Style Merchandising, Inc., T/A Ritz Style Fashions 280 NLRB No. 072

J & B Smith Company, Inc. 280 NLRB No. 057

[contention made first time in exception to ALJ's decision that ptn in bankruptcy triggered automatic stay and that Bd's enforcement of ALJ's D/O would be *in derogation* of Bankruptcy Code's protection of respondent, rejected since Bd proceedings fall w/i exceptions to automatic stay provisions]

2525-7000—Cont.

Edwin Odum d/b/a The Phoenix Company 274 NLRB No. 146
(institution of bankruptcy proceedings does not deprive Bd of jurisdiction or authority to entertain and process ULP case to its final disposition. Bd proceedings fall w/i exception to automatic stay provision for proceedings by governmental unit to enforce its police or regulatory powers)

E. G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. JD-168-85
(filing of ptn in bankruptcy did not automatically stay backpay proceeding before Bd)

E. G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. JD-168-85
(Bd enforcement proceeding in ct of appeals has been held to be proceeding by governmental unit to enforce its regulatory power w/i meaning of provisions of Bankruptcy Act, and hence is not subject to automatic stay provision of that Act; and instant backpay proceeding is part and parcel of process leading to enforcement ptn filed in ct of appeals and, hence, falls under same exemption)

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[Bd's order against E in bankruptcy proceeding held not void because Bd failed to ptn bankruptcy ct for relief from automatic stay under Bankruptcy Act before proceeding against E; governmental unit which determines that its police powers or regulatory proceeding is excepted from automatic stay under 362(b)(4) of Bankruptcy Act is not required to ptn bankruptcy ct for relief from stay prior to continuing its proceeding, and legislative history of Bankruptcy Act evinces congressional intent to such effect]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[Bd, acting on belief that its ULP proceeding was excepted from operation of automatic stay under Bankruptcy Act, held to have permissibly proceeded with ULP hearing w/o obtaining relief from stay in bankruptcy ct; however, Bd proceeded at its own risk and, if it was later determined that proceeding was *not* excepted from automatic stay, entire Bd proceeding would be void *ab initio*; nonetheless, exercise of governmental unit's police or regulatory powers is not void merely because used in belief that its action was excepted from automatic stay]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[Sec. 362 of Bankruptcy Act does not require that Bd ptn bankruptcy ct for permission to proceed with ULP proceeding, and legislative history of 362 shows that when action is excepted from automatic stay, trustee is required to move ct into action, rather than requiring stayed party to request relief from stay; however, Bankruptcy Act empowers bankruptcy ct to stay proceedings that are excepted from operation of automatic stay if assets of debtor's estate are threatened]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[Bd's ULP proceeding held excepted from operation of automatic stay of 362(b)(4) of Bankruptcy Act and not attempt to enforce money judgment, and therefore subject to automatic stay by operation of 362(b)(5), since Bd's adjudication that E violated federal labor law was not proceeding for primary purpose of protecting government's claim to entitlement to pecuniary interest in debtor's estate, and Bd was engaged in enforcing nation's labor laws in exercise of police or regulatory powers placing it w/i 362(b)(4) exemption to automatic stay]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[Bd's determination that E in bankruptcy owed backpay to its former Ees held excepted from automatic stay by operation of 362(b)(4) of Bankruptcy Act; accordingly, *entry* of money judgment affirmed but not *enforced*, since governmental units are allowed to fix amount of penalties up to and including entry of moeny judgment, and only attempts to enforce money judgments are subject to automatic stay]

N.L.R.B. v. Superior Fowarding, Inc. 762 F.2d 695 (C.A. 8, May 1985)
(ct should deny debtor's mtn to enjoin Bd proceedings on charge if ULP charge stems from debtor's failure to bargain in good faith over terms and conditions of new contract)

Armour Oil Company v. N.L.R.B. ———
F.Supp.————(BC C.D. CA, June 1985)
[in action brought in bankruptcy ct to enjoin ULP hearing on grounds that filing of bankruptcy ptn automatically stays ULP hearing, ct held that Bd is *governmental unit* and ULP proceeding is an action by the Bd to enforce its regulatory power, therefore, Bd's ULP proceeding is not automatically stayed by filing of ptn]

2550 COURTS WITHOUT CONCURRENT JURISDICTION TO REDRESS UNFAIR LABOR PRACTICES

2550-0900 Failure to obtain relief under Act immaterial

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. ————F.2d————
(C.A. 9, June 1985)
[ct rejected U's attempt to justify district ct's exercise of 301(a) jurisdiction over U's state law claim on ground E used labor consultants to negotiate agreements and 301(a) should be interpreted broadly to alleviate problems arising from use of consultants to keep companies *U-free*; ct expressed no opinion as to legitimacy of U's claim concerning consultant problem and stated resolution thereof is best left to legislative and not judicial branch]

2550-1800 Doctrine of primary jurisdiction requires judicial abstention

Waggoner, et al. v. Dallaire, etc. ————F.2d————
(C.A. 9, July 1985)
[ct of appeals held that it could not reach merits of appellants' argument that district ct's interpretation of parties' short form agreement was erroneous on grounds that it was inconsistent with requirements of Sec. 8(d) of NLRA, since federal cts lack jurisdiction to consider claims based on violation of Sec. 8 of NLRA]

2550-2700 Enforcement of private rights not proper basis for jurisdiction

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. ————F.2d————
(C.A. 9, June 1985)
[in reversing and remanding decision to district ct found not to have jurisdiction under 301(a) over U's state law contractual tort claim which was found to be preempted, ct declined to accept district ct's assumption of jurisdiction under 301(a) on ground that its operative language should be construed broadly to include w/i its scope tort action alleging *prospective* contractual relations]

2550-3600 Injunctive powers of courts do not include jurisdiction to determine existence of and redress unfair labor practices

Shanrod Construction and John Shane (Debtor) ———
F.Supp.————(BC W.D. NY, Aug. 1985)
[Bankruptcy Ct (ct) stayed Bd from holding ULP hearing filed against debtor-in-possession (debtor) before debtor filed ptn under Chap. 11, holding that under 11 U.S.C. Sec. 1113 ct and only ct had authority to determine issue of whether debtor could reject collective bargaining agreement, an executory agreement]

2550-4500 Arguable existence of unfair labor practice precludes assumption of jurisdiction by court

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. ————F.2d————
(C.A. 9, June 1985)
[in reversing and remanding decision to district ct found not to have jurisdiction under 301(a) over U's state law contractual tort claim which was found to be preempted, ct held that U's expired contract could not serve as basis for proper exercise of jurisdiction under 301(a), and that any obligation that E had to continue paying wages and making contributions while negotiating resulted from 8(a)(5) proscription against unilateral changes, and not from contract w/i definition of 301(a)]

2550-6300 Section 301(a) court jurisdiction to enforce agreements between labor organizations restricted by policy to leave representation matters to Board

Bakers Union Local No. 4 of Greater St. Louis v. Schnuck Baking Company, Inc. ———
F.Supp.————(DC E.D. MO, July 1985)
[mtn to dismiss Sec. 301 suit brought to compel E to submit to contract's grievance arbitration procedure dispute assertedly over E's manning of bakery operation, granted, where dispute involved whether bakery department Ees were an accretion to existing warehouse store unit, a representational issue that formed basis of ULP charge filed by U that was dismissed by RD w/o appeal]

2550-8100 Garmon preemption doctrine applicable

2550-8100—Cont.

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.——
(U.S. S.CT, July 1984)

[presumption of federal preemption, based on primary jurisdiction of Bd, admits to exception when unusually *deeply rooted* local interests are at stake, since federal system and rational allocation of functions belie any inference that Congress intended to drprive State of jurisdiction over such matters; however, if state law regulates conduct that is actually protected by federal law, preemption follows not as matter of protecting primary jurisdiction, but as matter of substantive right, and federal law must prevail over state law]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. ——F.2d——
(C.A. 9, June 1985)

[ct rejected U's attempt to justify district ct's exercise of 301(a) jurisdiction over U's state law claim against E's labor consultants on ground consultants were independent third parties, and not E's agents, when they induced E to terminate long relationship with U; even if U's third party argument is valid, conduct which constituted essential element of U's state claim was very same conduct Bd had considered in rejecting U's ULP claim and, consequently, conduct is arguably covered by Act and state claim is preempted]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. ——F.2d——
(C.A. 9, June 1985)

[in finding that district ct had no 301(a) jurisdiction over U's state law claim, ct held that, unlike case involving state claim arising from malpractice charge against U's counsel, whose resolution depended on standard of care attorney owes client and not on evaluation of conduct arguably covered by Act, U's state claim herein against E's labor consultants for tortious interference with contractual relationship between E and U involved element dealing with intricacies of bargaining process better left to Bd's exclusive jurisdiction]

2575 STATE AGENCIES WITHOUT CONCURRENT JURISDICTION TO REDRESS UNFAIR LABOR PRACTICES

Terraillon Corp. **280 NLRB No. 037**

[no deferral of charge of wrongful discharge to decision of state department of labor, since Bd in exercise of its jurisdiction to decide ULP cases pursuant to Section 10(a) of Act will not be bound to defer to decisions of other administrative agencies; E's analogy to arbitration deferral cases, rejected, since parties in those cases had agreed to be bound by arbitrator's decision, and Section 201 of Act encourages arbitration]

2587 STATE REGULATION OF PREEMPTED SUBJECT MATTER

2587-2500 State statute

Baker et al. v. General Motors Corp. et al —— U.S. —— (U.S. S.Ct, July 1986)

[state law denying unemployment compensation to laid-off Ees who, by paying U dues, financed strikes at other locations that led to their layoffs, not pre-empted by federal law, notwithstanding right to make such payments is protected by Sec. 7; Ees found to have voluntarily caused own unemployment, as there was meaningful connection between Ees' decision to pay dues, ensuing strikes and their own layoffs, and layoffs were untainted by any unlawful conduct by E; histories of NLRA and Title IX of SSA show that Congress intended to allow such conflict between federal law and state unemployment compensation law]

Baker et al. v. General Motors Corp. et al —— U.S. —— (U.S. S.Ct, July 1986)

[state may either refuse or provide unemployment compensation to strikers responsible for own unemployment, or to workers laid off by reason of labor dispute in which they have no interest or responsibility whatsoever]

Allis-Chalmers Corp. v. Lueck ——U.S.——
(U.S. S.CT, Apr. 1985)

[E's insurance claim, pursuant to self-funded (by E) disability plan in collective-bargaining agreement which established disability grievance procedure culminating in final and binding arbitration, dismissed for failure to make use of grievance procedure in agreement; questions relating to what parties to agreement agreed and what legal consequences were intended to flow from breaches of agreement, must be resolved by reference to uniform federal law rather than state tort law]

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.——
(U.S. S.CT, July 1984)

[state law establishing disqualification criteria for casino industry U officials held not preempted by NLRA, since Congress' enactment of LMRDA, defining U officials' qualifications, disclaimed preemption of state laws and preserved operation of state laws concerning U officials' qualifications; and since governmental machinery was not effective in policing abuses at local level and in stamping out crime and corruption in Us, ct presumed Congress would allow state to adopt different and more stringent requirements for U officials to effectuate such goal]

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.——
(U.S. S.CT, July 1984)

[state law establishing disqualification criteria for casino industry U officials held not preempted by Act in view of ct's prior decision in case involving waterfront Ees that Act does not exclude every state policy that may restrict freedom of group of Ees to designate representatives of their own choosing, and Congress apparently concluded that where states are confronted with public evils of crime, corruption, and racketerring more stringent state regulation of U officials is not incompatible with national labor policy embodied in Sec. 7]

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.——
(U.S. S.CT, July 1984)

[state law establishing disqualification criteria for casino industry U officials held not preempted by Act, since Sec. 7 does not conflict with every state regulation that may restrict Ees' right to select U officials, nor do disqualification criteria, obstruct objectives of Congress which has indicated that Ees do not have unqualified right to choose their U officials and that disqualification requirements are compatible with Sec. 7 when used to vindicate compelling state interest in combating local crime infesting particular industry]

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.——
(U.S. S.CT, July 1984)

[ct emphasized that its conclusion that state's regulation of casino industry U officials was not preempted by Act did not implicate Ees' Sec. 7 right to select particular U as their representative but only their subsidiary right to select U officials; Congress has distinguished between the two and has accorded less than absolute protection to Ees' right to choose U officials; and casino industry Ees' freedom to select U as their representative was not affected by state's qualification criteria for U officials]

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.——
(U.S. S.CT, July 1984)

[ct declined to decide whether dues collection ban imposed on U by state to effect removal of disqualified casino industry U officials was preempted by Act because ban would prohibit U from functioning as Ees' representative thereby abridging Ees' Sec. 7 rights; since U's factual allegations regarding financial impact of dues collection ban upon its functioning as Ee represntative were never addressed by cts below, ct remanded to district ct to make findings of fact whether ban will so incapacitate U as to prevent it from functioning as Ee representative]

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.——
(U.S. S.CT, July 1984)

[ct declined to decide whether state's prohibition of U's administration of its pension or welfare funds as sanction against U for noncompliance with state criteria concerning qualifications of casino industry U officials was preempted by ERISA; since state commission, in its discretion, chose not to impose sanction, ct was not presented with concrete application of state law and issue was not ripe for review; consequently, ct of appeals' holding that ERISA preempted state sanction is vacated]

2587-7500 State court action for damages against employer

Allis-Chalmers Corp. v. Lueck ——U.S.——
(U.S. S.CT, Apr. 1985)

[Sec. 301 (of NLRA) does not grant parties to collective-bargaining agreement ability to contract for what is illegal under state law; questions of contract interpretation, therefore underlie any finding of tort liability, regardless that state ct may choose to define tort as *independent* of any contract question; Congress has mandated that *federal law govern meaning given contract terms* in order to have unified federal body of labor-contract law]

Allis-Chalmers Corp. v. Lueck ——U.S.——
(U.S. S.CT, Apr. 1985)

[when resolution of state-law claim is substantially dependent upon analysis of terms of agreement made between parties in labor contract, that claim must either be treated as Section 301 claim, or dismissed as pre-empted by federal labor-contract law; complaint in instant case (tort action for breach of duty to act in good faith brought in state ct) should have been dismissed

2587-7500—Cont.

for failure to make use of greivance procedure established in collective-bargaining agreement]

Lumber Production Industrial Workers Local #1054, et al. v. West Coast Industrial Relations Association, Inc. ———F.2d———

(C.A. 9, June 1985)

[in finding that district ct did not have 301(a) jurisdiction over U's state claim, ct rejected U's contention that, even if conduct complained of in its state claim was arguably covered by Act and therefore preempted, state's interest in preventing tortious interference with contractual relationships warranted exception to exclusive jurisdiction rule; such interference is not so deeply rooted in local law that state's interest in enforcing it overrides interference with labor law that prosecution of state action would entail]

5000 STATUTORY CRITERIA OF JURISDICTION

7500 TERRITORIAL JURISDICTION

7517 EXTRA-TERRITORIAL APPLICATION

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. 280 NLRB No. 146

[Bd has jurisdiction over backpay proceeding since it had jurisdiction over underlying ULP proceeding involving U.S. business, notwithstanding Respondent E's owners were Canadian citizens who returned to Canada in the interim]

7700 BOYCOTT OF FOREIGN PRODUCTS

7900 BOYCOTT OF FOREIGN OWNED MODES OF TRANSPORTATION

240 DISCRETION IN EXERCISE OF JURISDICTION

0100 GENERALLY

0150 DISCRETION TO DECLINE TO EXERCISE JURISDICTION

0150-2500 Where subversion of statute would result

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**

[Bd's decision in *Olin Corp.*, 268 NLRB 573, does not protect sufficiently Ee's rights granted by Act; by presuming, until proven otherwise, that all arbitration proceedings confront and decide every possible ULP, *Olin Corp.* gives away too much of Bd's responsibility under Act]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**

[Bd's decision under *Olin Corp.*, 268 NLRB 573, that deferral is proper in all cases unless it is affirmatively demonstrated that some unusual circumstances require that ALJ conduct independent inquiry into grievant's statutory claims cannot be reconciled with need to protect statutory rights, as expressed by S.Ct; *Olin Corp.* ignores those instances where contract and statutory issues may be factually parallel but involve distinct elements of proof and questions of factual relevance]

0150-7500 To enforce grievance settlement under contract

Alpha Beta Company **273 NLRB No. 194**

(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

Marie E. Darr v. N.L.R.B. (Cone Mills Corp.) **801 F.2d 1404 (C.A. D.C., Sept. 1986)**

[ct remanded case to Bd to articulate its policy and reasons thereof on deferrals where arbitrator held that under contract Ee was fired w/o *just cause* for taking unscheduled break and engaging in protest, but Ee also guilty of insubordination in not leaving plant when ordered; under NLRA, discharge was unlawful as primary cause of discharge was her protected activity of protesting E's conduct; therefore, arbitrator ordered reinstatement but w/o backpay which is contrary to Bd's practice]

0167 JURISDICTION MAY BE EXERCISED UPON STATUTORY BASIS ONLY

0167-1700 To maintain protection of employees where jurisdiction previously asserted

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware, et al. **280 NLRB No. 146**

[Bd has jurisdiction over backpay proceeding since it had jurisdiction over underlying ULP proceeding involving U.S. business, notwithstanding Respondent E's owners were Canadian citizens who returned to Canada in the interim]

1700 BOARD AUTHORITY TO ESTABLISH SCOPE OF DISCRETIONARY JURISDICTION

2500 ADVISORY OPINIONS AS TO JURISDICTION (FOR JURISDICTIONAL HOLDINGS SEE 280)

2501 GENERALLY

In The Matter of David Landau, d/b/a Century Assets **279 NLRB No. 083**

[Bd unable to conclude whether it would assert jurisdiction where ptn indicated combined gross annual revenues from petitioner's ventures but merely described general nature of its business as *real estate*, and Bd has different jurisdictional standards for different *real estate* operations]

Chieppo Bus Company and Its Alter Egos, Comfort Coach and Nicholas Chieppo d/b/a G. R. Coach and Chieppo Bus Company **278 NLRB No. 071**

[ptn for advisory opinion to determine whether Bd would assert jurisdiction over petitioning Es, dismissed where there was outstanding ULP proceeding in which binding adjudication of jurisdictional issue could be obtained, no other considerations suggested need for earlier determination of the issue, and Bd's confining itself to statutory proceeding before it would better serve advisory opinion procedure's underlying purpose and avoid unnecessary duplication and possible confusion]

2550 LIMITED TO DETERMINATION OF APPLICABILITY OF DISCRETIONARY STANDARDS

The Penson Corporation **275 NLRB No. 079**

(Advisory Opinion that Bd would assert jurisdiction over E engaged in business as management agent for residential apartment buildings where E's gross annual rent revenues exceeded $500,000 and it purchased goods and services in interstate commerce in excess of $50,000)

2900 DECLARATORY JUDGMENTS AS TO JURISDICTION

3300 BOARD DEFERENCE TO OTHER MEANS OF ADJUSTMENT

3333 BOARD AUTHORITY UNDER STATUTE

3333-3300 Authority under section 10(a)

Marie E. Darr v. N.L.R.B. (Cone Mills Corp.) **801 F.2d 1404 (C.A. D.C., Sept. 1986)**

3333-6700 Discretion to defer

Veronica Lewis v. N.L.R.B. **800 F.2d 818 (C.A. 8, Sept. 1986)**

[Bd has discretion to decline to exercise its authority to adjudicate dispute before it when purposes and fundamental aims of Act are served by deferral; encouragement of dispute resolution under bargaining agreement through arbitration is fundamental aim of Act and is matter of public policy]

Veronica Lewis v. N.L.R.B. **800 F.2d 818 (C.A. 8, Sept. 1986)**

[deferral policy is proper and reasonable exercise of Bd's discretion where proceeding appears to have been fair and regular all parties have agreed to be bound and decision is not clearly repugnant to Act]

N.L.R.B. (Steven R. Lovell, etc.) v. Electrical Workers, Local 11 **772 F.2d 571 (C.A. 9, Sep. 1985)**

(Bd has considerable, though not unlimited, discretion to respect or disregard an arbitration decision. In exercising its discretion, Bd must balance policy in favor of settling labor disputes by arbitration with its statutory duty and authority to prevent ULPs)

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**

[Bd has statutory duty to enforce Act and exclusive jurisdiction to decide ULPs; Bd may not avoid this responsibility through far reaching deferral policy which apparently presumes that ULP claim has been resolved through arbitration]

3333-7800 Discretion to retain jurisdiction during deferral

3333-7500—Cont.

Combustion Engineering Inc. **274 NLRB No. 172**
(as Bd decision deferring to arbitration award that found E liable for unilateral changes to absenteeism and tardiness system only involved two Ees, GC's mtn for reconsideration contending that Bd's order was not adequate because it did not provide remedy to numerous other Ees adversely affected by E's conduct, granted and jusisdiction retained to review, upon mtn, grievance proceedings or awards arising from E's unlawful action, where arbitrator had no authority to remedy violation he found)

T.L.B. Plastics Corporation **273 NLRB No. 223**

United States Postal Service **273 NLRB No. 217**
(where Bd deferred to parties' grievance-arbitration procedure, jurisdiction was retained for purpose of entertaining mtn for further consideration on showing that either (a) allegations in charge have not been resolved through grievance-arbitration, or (b) grievance procedure has not been fair and regular or has been resolved with result repugnant to Act)

3367 CIRCUMSTANCES OF DEFERRAL

3367-0100 Generally

Transport Service Company **282 NLRB No. 011**
[deferral of 8(a)(5) charges, which concerned transfer of work, use of non-unit personnel, and failure to comply with contract provisions, appropriate under standards of *United Technologies Corp.* 268 NLRB 557 (1984), where dispute before Bd turned on interpretation of contract, broad arbitration clause in bargaining agreement clearly encompassed matters at issue, E asserted its willingness to arbitrate dispute, and parties had stable bargaining relationship]

Transport Service Company **282 NLRB No. 011**
[deferral of 8(a)(5) allegations appropriate, notwithstanding they involved alleged unilateral changes in contract's terms and alleged refusals to furnish information necessary for grievance processing, and despite ALJ's findings that E unilaterally bypassed U in bargaining directly with Ees and threatened to retaliate against Ee if he did not withdraw grievance, where E's unilateral actions did not rise to level of total repudiation of contract or rejection of bargaining, and its interference with grievance processing was isolated]

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat **281 NLRB No. 030**
[deferral inappropriate as to issue of who may be U representative at grievance meeting absent contract under which parties were mutually bound by agreed-upon grievance-arbitration procedure]

Burroughs Interstate Services Credit Union **280 NLRB No. 034**
[issues involving compliance with order, inappropriate for determination by arbitrator]

Burroughs Interstate Services Credit Union **280 NLRB No. 034**
[where result in 2 related cases turned in part on resolution of same factual and legal issues, deferral of 1 of cases inappropriate, notwithstanding cases arose from separate C allegations]

Timothy Nevins v. N.L.R.B. **796 F.2d 14 (C.A. 2, June 1986)**
[Bd's wide discretion in deciding which situations merit deferral to arbitration is tempered by its adoption of administrative rules or guidelines governing such decisions, and while it may alter or amend them, it cannot ignore them or lightly change them on case by case basis]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Dec. 1985)**
[deferral of grievance over E's failure to grant superseniority in layoff to U official pursuant to contractual clause, inappropriate where E charged that U's effort to enforce illegal contractual clause constituted ULP]

3367-0113 Purpose of fostering and facilitating existing collective-bargaining relationship

Allis-Chalmers Corp. v. Lueck **———U.S.——— (U.S. S.CT, Apr. 1985)**
[since nearly any alleged willful breach of contract can be restated as tort claim for breach of good faith obligation under contract, arbitrator's role in every case could be bypassed if Section 301 is not understood to pre-empt such tort claims; rule that permitted individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness]

U.S. Postal Service **280 NLRB No. 080**
[deferral concerning U's information request for names of U officers and stewards who had applied for supervisory positions (with E), held inappropriate, since U has sought information which is relevant to performance of its statutory function as Ees' bargaining representative]

Anderson Prestress Division Anderson Sand and Gravel Company **277 NLRB No. 127**
]by adopting broadly based arbitration policy as enunciated in Olin Corp., 268 NLRB 573, Bd endorses national labor policy favoring arbitration and achieves one of the primary objectives of Act-to encourage collective bargaining. Deferral recognizes that parties have accepted possibility that arbitrator might decide particular set of facts differently than would Bd. This possibility, however, is one which parties have voluntarily assumed through collective bargaining)

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 **772 F.2d 571 (C.A. 9, Sep. 1985)**
(Bd has considerable, though not unlimited, discretion to respect or disregard an arbitration decision. In exercising its discretion, Bd must balance policy in favor of settling labor disputes by arbitration with its statutory duty and authority to prevent ULPs)

3367-0150 Spielberg standard of fairness

Texaco, Inc. **279 NLRB No. 163**
[deferral to arbitration decision regarding suspension of Ees for alleged strike misconduct, appropriate, since arbitrator had complied with *Spielberg* standards inasmuch as he had adequately considered ULP issue where he was presented with evidence of alleged actions of Ees, nor was his decision which held that Ees did engage in strike misconduct and ordered reinstatement, but no backpay, repugnant to purposes and policies of Act]

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**
[deferral of alleged discharge ULP to joint committee award, inappropriate, since it was repugnant to the Act because committee was not presented with evidence of protected activities responsible for E's discriminatory treatment, and absence of that evidence precluded finding that contractual and statutory issues were factually parallel]

Earl C. Smith, Inc. **278 NLRB No. 100**
[deferral to joint committee award, inappropriate, since award was *palpably wrong* and therefore clearly repugnant to the Act, and could not have resolved E's 8(a)(5) violations alleged in C, where award merely ordered E to comply with a contract that was neither at issue nor in effect at time of E's conduct, which included its refusal to bargain with U, its direct dealing with Ees, and its unilateral modification of earlier contract]

Drummond Coal Company, Inc. **277 NLRB No. 177**
[Bd deferred to grievance arbitration award concerning issue of whether E provided U advance notice for *effects* bargaining over shop's closure, since question was coextensive with those that would be considered by Bd in decision on whether E complied with agreed upon arrangement for effects bargaining over layoffs. Only U excepted to judge's decision deferring to arbitral award and U failed to allege award did not meet standards set forth in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955). U failed to meet burden of affirmatively demonstrating defects in arbitral process or award]

Roadway Express, Inc. **JD-(SF)-78-85**
(dispute involving E's refusal to produce photocopies of supervisory reports necessary for processing grievances not deferable under *Spielberg* since joint U-management committee did not consider statutory issue nor did it purport to rule on meaning of contract language, nor was statutory issue of right to pre-arbitration access factually parallel to question apparently ruled upon by body)

Veronica Lewis v. N.L.R.B. **800 F.2d 818 (C.A. 8, Sept. 1986)**
[deferral policy is proper and reasonable exercise of Bd's discretion where proceeding appears to have been fair and regular all parties have agreed to be bound and decision is not clearly repugnant to Act]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**
[ct vacated and remanded to Bd its decision which held that GC had not met its burden of affirmatively demonstrating that ULP had not received adequate consideration by arbitration committee; remand required Bd to reconsider its decision in light of ct's disapproval of Bd's standard for deferral under *Olin Corp.*, 268 NLRB 573]

3367-0175 Adequate representation of Employee rights

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**
[Bd's decision in *Olin Corp.*, 268 NLRB 573, does not protect sufficiently Ee's rights granted by Act; by presuming, until proven otherwise, that all arbitration proceedings confront and decide every possible ULP, *Olin Corp.* gives away too much of Bd's responsibility under Act]

3367-0175-3300 Where substantial harmony exists

Veronica Lewis v. N.L.R.B. **800 F.2d 818 (C.A. 8, Sept. 1986)**
[contrary to Ee's assertion that Bd deferral to grievance procedure of issue of her discharge was improper because Ee's interests were adverse to those of U which had made decision not to proceed further with Ee's grievance, ct held Bd's decision to defer was reasonable since interests were not competing but harmonious in view of E.'s voluntary invocation of contractural dispute resolution mechanism and U's active role in negotiating for favorable treatment of Ee's grievance]

3367-0175-6700 Where substantial conflict exists

Local Union No. 896, a/w Teamsters (Anheuser-Busch, Inc.) **280 NLRB No. 076**
[no deferral to arbitration decision regarding discharge of charging party where C alleged U's breach of duty of fair representation as no contractual issues involved in ULP case, and absent evidence arbitration encompassed issues of U representation and U's providing of information to grievant raised in ULP case; further, interests of charging party and U were in conflict in view of antagonism between U representatives and charging party, U's refusal to take her prior discipline to arbitration or to argue her lack of knowledge of system on the failure to adhere thereto caused her discharge]

Consolidated Edison Co. of New York, Inc. **280 NLRB No. 039**
[deferral of alleged ULPs committed by E to contractual grievance procedures not warranted, since E has not indicated willingness to utilize arbitration to resolve dispute and since subject Ee was active dissident in U, there is possibility that his interests might not be adequately represented by (U) incumbents during arbitral process]

Teamsters Local Union #519 (Rust Engineering Co.) **276 NLRB No. 094**
(deferral of U's alleged unlawful failure to refer dissidents, inappropriate, since uncertain dissidents would get fair hearing before U executive board where members of board same U officials involved in alleged unlawful operation of hiring hall on executive committee)

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[no deferral to arbitrator's decision upholding discharges of rival U adherents, where Bd C alleged incumbent U threatened Ees with discharge if they supported rival U; thus, interests of Ees in conflict with those of U and E and hostility present as shown by Ees declining U's offer of representation. Further U and E had expressed hostility to Ees over their support of rival U]

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 **772 F.2d 571 (C.A. 9, Sep. 1985)**
(Bd may decline to defer to an arbitration decision *in which there is an apparent conflict of interest between the Ee and the U representing him)*

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 **772 F.2d 571 (C.A. 9, Sep. 1985)**
(Bd did not abuse its discretion by failing to defer to arbitration decision where there was conflict of interest between Ees and U)

3367-0193 E's attitude toward Ee or U's statutory rights

3367-0193-6700 Pattern of union animus

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[no deferral to arbitrator's decision upholding discharges of rival U adherents, where Bd C alleged incumbent U threatened Ees with discharge if they supported rival U; thus, interests of Ees in conflict with those of U and E and hostility present as shown by Ees declining U's offer of representation. Further U and E had expressed hostility to Ees over their support of rival U]

3367-0400 Bars to deferral in advance of arbitration

Local 814, a/w Teamsters (Beth Israel Medical Center) **281 NLRB No. 153**
[deferral inappropriate in case involving Ee's discharge since the interests of Ee were in direct conflict with both the U and E where Ee had filed charge against U alleging breach of duty of fair representation and E, who had discharged Ee, had refused to allow filing of untimely grievance; further, C alleged U had interfered with Ee's access to Bd and such questions have always been solely w/i Bd's province to decide]

3367-0401 Generally

Pacific Coast Metal Trades District Council **282 NLRB No. 041**
[deferral of issue whether or not contract had been modified by parties' subsequent mid-term modification agreement held inappropriate under *Anaconda Co.*, 224 NLRB 1041; moreover, since contract may not properly limit parties in modifying it, contract need not be interpreted by arbitrator to determine binding nature of subsequent agreement]

Pacific Coast Metal Trades District Council **282 NLRB No. 041**
[when compliance with prior Bd order is at issue, deferral to arbitration is inappropriate]

O. Voorhees Painting Co. and O.V. International, Inc. **275 NLRB No. 114**
(deferral inappropriate, where none of charging parties' allegations and none of issues raised in case, involved interpretation over any terms or meaning of bargaining agreement, and E refused to furnish requested information, preventing U from filing grievance which fully set out alleged contractual violations, and C raised issues arbitrator was w/o power to remedy)

Griffith-Hope Company **275 NLRB No. 073**
(deferral of issue regarding E's change in insurance carriers w/o bargaining with U, appropriate, since it is contrary to basic principles of Act for Bd to intervene prior to honest attempt by parties to resolve their dispute through machinery culminating in final and binding arbitration; here, parties met on matter covered by contract and resolved dispute through grievance machinery pursuant to which U, by meeting with E after it filed grievance over insurance, accomplished everything it was seeking)

3367-0407 Deferral of charges involving employee's access to the Board inappropriate

Ryder/P-I-E Nationwide, Inc. **279 NLRB No. 028**
[Bd refused to defer to arbitration 8(a)(4) allegation involving discharge for resorting to Bd's processes and ordered RD to set case down for hearing notwithstanding settlement agreement executed by parties and approved by RD provided for such arbitration]

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) **275 NLRB No. 048**
(deferral of complaints that local U had filed internal charges with district council against Ees and district council had tried them because they had filed ULP charges with Bd, inappropriate, because complaints involve question of Ees' access to Bd processes, an issue solely w/i province of Bd to decide)

3367-0415 Deferral which would result in two-tier arbitration inappropriate

Clinchfield Coal Company **275 NLRB No. 189**
(deferral of E's obligation to provide information concerning subcontracting out unit work that was relevant and necessary to U's collective bargaining responsibilities, inappropriate since it would result in *two-tiered* arbitration that would not be consistent with national labor policy favoring voluntary and expeditious resolution of disputes through arbitration)

United States Steel Corporation **JD-176-85**
(deferral of 8(a)(5) charge involving E's refusal to furnish information regarding processing of contracting-out grievances, inappropriate in view of Bd's historical and recent reluctance to apply deferral policy to information disclosure disputes alleged to constitute violation of 8(a)(5))

Roadway Express, Inc. **JD-(SF)-78-85**
(deferral of 8(a)(5) charge involving E's refusal to furnish information requested by U, held inappropriate, where E had proposed that U must first either suspend or compromise its pursuit of certain grievances while it attempted to vindicate its claim of right to information, and to return to merits of underlying grievances only after its claims to information were resolved)

3367-0420 Adequacy of representation of employee rights

3367-0420-3300 Where substantial harmony exists

Alpha Beta Company **273 NLRB No. 194**
(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

Veronica Lewis v. N.L.R.B. **800 F.2d 818 (C.A. 8, Sept. 1986)**
[contrary to Ee's assertion that Bd deferral to grievance procedure of issue of her discharge was improper because Ee's interests were adverse to those of U which had made decision not to proceed further with Ee's grievance, ct held Bd's decision to defer was reasonable since interests were not competing but harmonious in view of Ee's voluntary invocation of contractural dispute resolution mechanism and U's active role in negotiating for favorable treatment of Ee's grievance]

3367-0420-6700 Where substantial conflict exists

Local 814, a/w Teamsters (Beth Israel Medical Center) **281 NLRB No. 153**
[deferral inappropriate in case involving Ee's discharge since the interests of Ee were in direct conflict with both the U and E where Ee had filed charge against U alleging breach of duty of fair representation and E, who had discharged Ee, had refused to allow filing of untimely grievance; further, C alleged U had interfered with Ee's access to Bd and such questions have always been solely w/i Bd's province to decide]

Carpenters, Local Union No. 1243 (Northern Alaska Associated General Contractors) **281 NLRB No. 015**
[deferral inappropriate where members' interests are patently adverse to U as issue was whether U referred members out of sequence]

3367-0420-6700—Cont.

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) **278 NLRB No. 024**
[deferral of issue of Ees' U dues obligation after resignation from U, inappropriate, where contract contained no procedure for disputes between U and Ees, interests of Ees were diametrically apposed to those of U, E was not party to proceeding and was under no obligation to represent Ees in adjunct arbitration proceeding, nor was there any reason to believe E would be willing to bear cost of having issue herein considered by arbitrator]

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) **275 NLRB No. 048**
(deferral of complaints that U unlawfully filed internal charges and tried and refused to refer Ees because they had filed charges with Bd and conditioned referral on their voting for incumbent U officers, inappropriate because of conflict of interest of U between representing Ees and defending itself)

Graphic Arts International Union, Local 280 (Belzer-Shapes Litho Plate Company) **274 NLRB No. 119**

Operating Engineers Local Union No. 3 (Arthur R. Cole, an Individual) **JD-(SF)-113-85**
(no deferral to internal U-management tribunal, of charges that U discriminated against member in operation of its hiring hall, since there would be inherent conflict of interest by virtue of fact that U sits as both judge and defendent and even E members could be hostile to grievant because of E's potential liability)

Laborers , Local 324 (The Associated General Contractors of California, Inc.) **JD-(SF)-90-85**
(deferral of C alleging that U refused to refer Ee for nonpayment of dues at time when Ee was not obligated to pay dues, inappropriate in view of conflict of interest between U and Ee)

3367-0430 Inhibition of access to grievance procedure

BASF Wyandotte Corporation **276 NLRB No. 175**
(deferral to arbitral process of cases that were types of disputes that probably should have been disposed of under grievance-arbitration clause, inappropriate where E refused to accept and process grievances)

A. N. Electric Corp. **276 NLRB No. 092**
(no deferral to alleged settlement of E's liabilities to discharged Ees where there was discrepancy between amounts Ees testified they received and figures in settlement; circumstances suggested that settlement figures had been tampered with; agreement was apparently to settle E's Davis-Bacon Act liabilities, not its ULP liabilities; and alleged settlement did not rise w/i framework of established grievance-arbitration procedures)

3367-0440 Timeliness of request to defer

KCW Furniture Company, Inc. **276 NLRB No. 100**
(Bd deferred issue of whether suspension of Ees violated terms of then-existing contract, and amount of backpay due them, where E suspended Ees under its unilaterally implemented proposals for new agreement authorizing suspensions; in earlier proceedings Bd and ct found original contract automatically renewed itself and was in effect when suspensions took place; since suspensions were not alleged as separate ULP in prior proceeding, E was not remiss in not raising deferral issue at that time; and E's unlawful implementation of new contract proposals did not make suspensions *part and parcel* of 8(a)(5) violation)

Southwestern Bell Telephone Company **276 NLRB No. 110**
(ALJ properly found that E untimely raised issue of deferral by doing so only in its brief, where E had not affirmatively agreed, either at hearing or in its exceptions, to waive any timeliness provisions of its grievance-arbitration clause or to arbitrate dispute at all)

Griffith-Hope Company **275 NLRB No. 073**
(E's contention that ULP matter should be deferred to parties' grievance-arbitration system, not addressed in any of E's exceptions and raised in brief before Bd, rejected, since E never argued before ALJ that he should defer dispute to arbitration)

United Technologies Corporation **274 NLRB No. 072**
(E properly raised deferral defense at appropriate stage in case where, unlike cases concerning requested deferral for the first time in posthearing brief to ALJ or in exceptions to the Bd, E affirmatively pled deferral in its ans and in its supplemental posthearing brief to ALJ)

3367-0460 Willingness of parties to arbitrate

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**
[although dispute arising from E's unilateral discontinuance of payments to health and welfare fund was clearly encompassed by contract's grievance-arbitration clause and there was no time limit for E to waive, deferral held inappropriate where E, who sought deferral, never indicated willingness to arbitrate but asked for dismissal of C; dismissal and deferral are distinct remedies, and by asking that C be dismissed, E rejected possibility of arbitration]

Burroughs Interstate Services Credit Union **280 NLRB No. 034**
[deferral inappropriate, where E specifically reserved its right to raise before arbitration questin whether U's claim was arbitrable under agreement and thus did not credibly assert its willingness to resort to arbitration]

Ryder/P-I-E Nationwide, Inc. **279 NLRB No. 028**
[Bd refused to defer to arbitration 8(a)(4) allegation involving discharge for resorting to Bd's processes and ordered RD to set case down for hearing notwithstanding settlement agreement executed by parties and approved by RD provided for such arbitration]

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**
(deferral of charge of refusal to abide by contract, inappropriate where E maintained that contract had been terminated and had not specifically agreed to arbitrate or indicated willingness to waive the time limit for filing a grievance, which had expired)

Spann Building Maintenance Co. **275 NLRB No. 135**
(Bd deferred to grievance-arbitration procedure notwithstanding U exhausted steps of their grievance procedure prior to arbitration, neither U nor E wants to go to arbitration though U has not communicated such to E, U was attempting to obtain more generous terms of purported settlement, since arbitration option still open as U has not waived nor exercised right to go to arbitration, and Bd not limited to precise legal theory (settlement agreement) proferred by E in support of deferral since E raised deferral and cited *United Technologies*, 268 NLRB 557, Bd may consider whether deferral appropriate)

E. I. Dupont De Nemours & Company **275 NLRB No. 103**
(deferral appropriate where grievance and ULP issues of whether implementation of E's new program violated the contract or Sec. 8(a)(5) of the Act as unilateral change w/o bargaining were factually parallel, turned on presence or absence of contractual authorization of E's new program, and could be resolved by evidence of parties' prior contracts, bargaining history, and past practice; further, E's alleged direct dealing with Ees to enlist them as candidates for its new program was not alleged as independent ULP)

Alpha Beta Company **273 NLRB No. 194**
(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

Asociacion Hospital Del Maestro, Inc. **JD-68-86**
[deferral of issue of unilateral decision to replace unit Ees with nonunit Ees and transfer unit work to them, appropriate where parties agreed during hearing to proceed to binding arbitration]

3367-0480 Availability of arbitration

3367-0480-2500 Effect of prior arbitration

Drummond Coal Company, Inc. **277 NLRB No. 177**
[*no deference to arbitral awards* which *did not consider merits of grievance or substantive aspects* relating to possible ULP since procedural obstacles (time-bar of notice and res judicata) caused dismissal of grievance by arbitrator and prevented parties from resolving their disputes on merits through grievance-arbitration process]

3367-0480-5000 Non-arbitrable issue

Pacific Coast Metal Trades District Council **282 NLRB No. 041**
[when compliance with prior Bd order is at issue, deferral to arbitration is inappropriate]

3367-0480-7500 Remedial power of arbitrator

E. G. & G. Florida, Inc. **JD-108-86**
[U's contention that arbitration award, which included finding that E had violated Act, was repugnant to Act because arbitrator did not issue c/d order mandated under Sec. 10(c), rejected; arbitrators are private citizens lacking power to issue c/d orders or to remedy public wrongs; they can only determine private rights and grant specific remedy for breach of private agreement; and novel issue herein, involving arbitrator's finding that E violated Act, is properly to be passed upon by Bd or reviewing ct, not by ALJ]

My Buddy Products, A Division of S&T Industries, Inc. **JD-114-85**
(deferral inappropriate in matter regarding health insurance contributions where, based on silence of contract on subject, arbitrator found himself w/o authority to rule on grievance presented to him; therefore, there is nothing to which to defer)

3367-0600 Availability of arbitration proceedings

Veronica Lewis v. N.L.R.B. **800 F.2d 818 (C.A. 8, Sept. 1986)**
[deferral of issue of whether Ee was unlawfully discharged held proper where requirements of Bd's deferral policy had been met and matter re-

3367-0800—Cont.

mained to be decided under agreed upon dispute resolution procedure since, absent formal withdrawal of arbitration request or processing through arbitration matter was not final; and w/o deferral, parties would be encouraged to circumvent contractual grievance and arbitration procedures for possible favorable resolution of ULP charges before Bd]

3367-0825 Scope of grievance and arbitration contract provisions

Amoco Oil Company **278 NLRB No. 003**
[deferral of charge involving alleged violations of Ees' *Weingarten* rights, inappropriate, where contract limited grievances only to alleged contractual violations and no *Weingarten* rights were given Ees under the contract and no party had attempted to invoke contractual grievance procedure]

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(E's request to defer to arbitration denied since request was academic where grievance and arbitration procedures by agreement were not available, and neither party brought matter to arbitration)

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**
[Bd's decision under *Olin Corp.*, 268 NLRB 573, that deferral is proper in all cases unless it is affirmatively demonstrated that some unusual circumstances require that ALJ conduct independent inquiry into grievant's statutory claims cannot be reconciled with need to protect statutory rights, as expressed by S.Ct; *Olin Corp.* ignores those instances where contract and statutory issues may be factually parallel but involve distinct elements of proof and questions of factual relevance]

3367-0825-3300 Provisions arguably encompassing dispute

Reichhold Chemicals, Inc. **275 NLRB No. 203**
(issue of whether E's unilaterally promoting 3 *chief operators* in one of its 5 buildings at its plant to *shift supervisor* w/o bargaining in good faith with U properly deferred to arbitrator's award finding that contract's management rights clause gave E authority to direct its Ees, and neither recognition clause nor any other provision restricted this right. Bd, in this case, would have determined E's unilateral action to be not violative since award is susceptible to interpretation consistent with Act. Also ULP and contractual issues are *factually parallel*)

T.L.B. Plastics Corporation **273 NLRB No. 223**
(deferral under grievance-arbitration provisions of bargaining agreement appropriate as to issues of whether E violated Act by: (1) issuing 2 disciplinary notices to one Ee, (2) refusing to pay Ee holiday pay, (3) suspending Ee for 3 days, (4) discharging that Ee and (5) discharging other Ees (U adherents) who allegedly were released for engaging in work stoppage, or *wild cat* strike in violation of plant rule and no-strike clause of collective bargaining agreement. Contractual and ULP issues were factually parallel and Ees involved had faith in fairness of grievance-arbitration machinery as well as efforts of present U steward)

United States Postal Service **273 NLRB No. 217**
(deferral appropriate where issue arose when E announced and unilaterally implemented policy requiring U to process and file grievances during specified period of each day as such dispute encompasses definition of grievance contained in contract, contract provides for final and binding arbitration and there is management rights clause. Therefore, contract and its meaning in present circumstances lie at heart of dispute)

Central Transport, Inc. **JD-114-86**
[deferral to grievance procedure of issues raised in C of whether respondent E covered by supplement or rider to national agreement and consequently which of these supplements it reverts to upon rejection of proposed addendum, since provisions of procedure broad enough to encompass issues raised, where issue w/i scope of procedure and fully cognizable for determination under parties grievance procedure and can be disposed of by resolution of pending grievance on same issue]

Letraset Manufacturing, Inc. **JD-(NY)-57-85**
(deferral inappropriate, where parties' contract did not provide for arbitration in very broad range of disputes and did not clearly encompass dispute at issue)

My Buddy Products, A Division of S&T Industries, Inc. **JD-114-85**
(deferral inappropriate in matter regarding health insurance contributions where, based on silence of contract on subject, arbitrator found himself w/o authority to rule on grievance presented to him; therefore, there is nothing to which to defer)

3367-0833 Prompt resolution of grievance

The E. W. Buschman Company **277 NLRB No. 021**
(deferral of issue of legality of E's failure to provide requested financial and production information because of its alleged confidential nature, inappropriate, since U needed former to determine possibility of early resolution of the grievance and latter to determine accuracy of E's records by checking them with Ees; grievance concerned cancellation of bonus due to E's alleged lack of cash flow)

3367-0837 Availability to either party

Sawin & Co., Inc. **277 NLRB No. 044**
(deferral appropriate where E and U agreed to be bound by arbitrator's decision, charging party and other alleged discriminatees testified in their own behalf, proceeding was fair and regular notwithstanding that E relied on affidavits rather than presenting witnesses inasmuch as neither U nor alleged discriminatees sought to compel attendance of affiants at, or protested any facet of, arbitration proceeding)

3367-0850 Availability to charging party

Clinchfield Coal Company **275 NLRB No. 189**
(deferral inappropriate where E was unwilling to waive U's failure to comply with contract's timeliness provision as defense)

3367-0887 Repudiation of contract by party

Transport Service Company **282 NLRB No. 011**
[deferral of 8(a)(5) allegations appropriate, notwithstanding they involved alleged unilateral changes in contract's terms and alleged refusals to furnish information necessary for grievance processing, and despite ALJ's findings that E unilaterally bypassed U in bargaining directly with Ees and threatened to retaliate against Ee if he did not withdraw grievance, where E's unilateral actions did not rise to level of total repudiation of contract or rejection of bargaining, and its interference with grievance processing was isolated]

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**
(deferral of charge of refusal to abide by contract, inappropriate where E maintained that contract had been terminated and had not specifically agreed to arbitrate or indicated willingness to waive the time limit for filing a grievance, which had expired)

Ambassador Convalescent Center, Inc. Debtor-In-Possession In Bankrupicy **JD-319-85**
(deferral inappropriate where E's defense to 8(a)(5) charge was not based on claim of contractual privilege but rather on argument that no contract was formed, and arbitration provision in expired agreement only allowed arbitrator to decide questions which arose under bargaining agreement, not whether contract existed)

3367-1200 Willingness of parties to arbitrate

Local 814, a/w Teamsters (Beth Israel Medical Center) **281 NLRB No. 153**
[deferral inappropriate in case involving Ee's discharge since the interests of Ee were in direct conflict with both the U and E where Ee had filed charge against U alleging breach of duty of fair representation and E, who had discharged Ee, had refused to allow filing of untimely grievance; further, C alleged U had interfered with Ee's access to Bd and such questions have always been solely w/i Bd's province to decide]

United States Postal Service **281 NLRB No. 032**
[deferral inappropriate where E engaged in direct dealing with Ee and unilaterally adjusted Ee's grievance concerning pending dismissal from job, even though E expressed its willingness to arbitrate issue of Ee's discipline by reactivating his grievance, since E's request for deferral did not specifically encompass underlying issue of its direct dealing and unilateral grievance adjustment, and therefore ULP issue would remain unresolved]

Consolidated Edison Co. of New York, Inc. **280 NLRB No. 039**
[deferral of alleged ULPs committed by E to contractual grievance procedures not warranted, since E has not indicated willingness to utilize arbitration to resolve dispute and since subject Ee was active dissident in U, there is possibility that his interests might not be adequately represented by (U) incumbents during arbitral process]

BASF Wyandotte Corporation **276 NLRB No. 175**
(deferral to arbitral process of cases that were types of disputes that probably should have been disposed of under grievance-arbitration clause, inappropriate where E refused to accept and process grievances)

KCW Furniture Company, Inc. **276 NLRB No. 100**
(where E unilaterally instituted terms and conditions of employment inconsistent with existing contract, status quo ante held best resolved by deferring to contractual method for resolving dispute involving Ees' suspensions, where contract provided multistep grievance procedure culminating in decision by adjustment board or arbitration, and E was willing to cooperate in processing grievances since Bd and ct had determined its applicability)

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**
(deferral of charge of refusal to abide by contract, inappropriate where E maintained that contract had been terminated and had not specifically agreed to arbitrate or indicated willingness to waive the time limit for filing a grievance, which had expired)

3367-1200—Cont.

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(E's request to defer to arbitration denied since request was academic where grievance and arbitration procedures by agreement were not available, and neither party brought matter to arbitration)

United Technologies Corporation **274 NLRB No. 072**
(deferral of 8(a)(1) and (3) charges involving E's suspension of U steward on two occasions and E's instructions to Ees to remove buttons they wore in protest over those suspensions, held appropriate, where contract between the parties established multistep grievance procedure with final and binding arbitration and anti-discrimination clause in contract provided for resolution of disputes involving alleged discrimination under the Act; further, E had expressed willingness to arbitrate dispute and impiedly waived any timeliness objections)

T.L.B. Plastics Corporation **273 NLRB No. 223**
(deferral under grievance-arbitration provisions of bargaining agreement appropriate as to issues of whether E violated Act by: (1) issuing 2 disciplinary notices to one Ee, (2) refusing to pay Ee holiday pay, (3) suspending Ee for 3 days, (4) discharging that Ee and (5) discharging other Ees (U adherents) who allegedly were released for engaging in work stoppage, or *wild cat* strike in violation of plant rule and no-strike clause of collective bargaining agreement. Contractual and ULP issues were factually parallel and Ees involved had faith in fairness of grievance-arbitration machinery as well as efforts of present U steward)

United Food Management Service, Inc. Alabama **273 NLRB No. 201**
(deferral of issue of whether E had contractual duty to inform new hires that they would be subject to discharge for failure to join U w/i 45 days, appropriate in view of contract interpretation issue-- where contract lacked express notification provision,-- and evidence that deferral would not be *futile* where parties had used grievance-arbitration procedure to resolve other disputes, E was willing to arbitrate, and U had initiated grievance procedure; U's election not to proceed to arbitration on grievance did not preclude deferral decision)

Advance Manufacturing Corp. **JD-9-86**
[no deferral to arbitration of alleged unlawful discharge, where U's undisputed explanation for not processing grievance regarding discharge to arbitration, lack of funds, did not appear contrived and E did not require or request arbitration]

3367-1700 Nature of proceeding

3367-1712 Proceeding established by contract

3367-1712-7500 Grievance procedure with joint-committee

Earl C. Smith, Inc. **278 NLRB No. 100**
[deferral to joint committee award, inappropriate, since award was *palpably wrong* and therefore clearly repugnant to the Act, and could not have resolved E's 8(a)(5) violations alleged in C, where award merely ordered E to comply with a contract that was neither at issue nor in effect at time of E's conduct, which included its refusal to bargain with U, its direct dealing with Ees, and its unilateral modification of earlier contract]

3367-1762 State authorities

Terraillon Corp. **280 NLRB No. 037**
[no deferral of charge of wrongful discharge to decision of state department of labor, since Bd in exercise of its jurisdiction to decide ULP cases pursuant to Section 10(a) of Act will not be bound to defer to decisions of other administrative agencies; E's analogy to arbitration deferral cases, rejected, since parties in those cases had agreed to be bound by arbitrator's decision, and Section 201 of Act encourages arbitration]

Port Plastics, Inc. **279 NLRB No. 050**
[deferral to decision of State deputy labor commissioner regarding merits of discharge, inappropriate]

3367-1775 Court suit

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**
[E's defense to unlawful unilateral discontinuance of payments to health and welfare fund on ground C should be dismissed because U instituted ct action to collect monies due to fund, rejected, since it is not Bd law to defer or to dismiss due to pendency of ct action]

Inner City Broadcasting Corporation **281 NLRB No. 162**
[request for deferral to district ct in which same issue was raised as to whether contract existed, declined, on basis of Bd precedent, even though issues before ct and Bd were identical]

3367-1787 Non-Board settlement by parties

Service Merchandise Company, Inc. **278 NLRB No. 023**
[Bd upheld ALJ's refusal to approve settlement of allegations of unlawful discharge of its drivers and subcontracting of driving operations, since proposed out of Bd lump sum settlement was not computed in accordance with Bd's packpay formulae, proposed settlement wholly inadequate for effectuating policies of Act in that Bd monitoring of parties' conduct would be required after approval of withdrawal of charge, approval also inappropriate in that would require Bd sanction of release of Respondent from any or all liabilities arising out of Ees' employment or cessation of employment, and sanction of waiver of reinstatement over objections of Ees

River Grain Elevators, Inc. and Cooper Stevedoring Co., Inc. **JD-185-86**
[proposed non-Bd settlement agreement in which U and discriminatees were reinbursed for dues and lost wages, respectively approved, where all but 2 of 13 alleged discriminatees signified their assent to settlement agreement. Of 2 remaining discriminatees, one has since joined other alleged discriminatees in signifying his approval to non-Bd settlement while one other discriminatee has not responded to Judge's Order to Show Cause. Approval is compatible with policies and purposes of Act which are— *in the public interest and not in vindication of private rights*]

3367-1787-5000 Strike-settlement agreement

Texaco, Inc. **273 NLRB No. 164**
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

3367-3300 Authority of tribunal making determination

3367-3310 Over the parties

District 1199E, Hospital Employees (Greater Pennsylvania Avenue Nursing Center, Inc.) **273 NLRB No. 173**
(Bd deferred to arbitration award over issue of subcontracting and U's refusal to bargain notwithstanding subcontractor not party to arbitration proceeding since there was contractual privity between contractor and subcontractor)

3367-3320 Binding nature of determination

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) **280 NLRB No. 009**
[deferral to arbitration not appropriate where bargaining agreement did not provide charging parties with access to grievance-arbitration procedure i.e. no right to compel binding arbitration, and to allow Respondent to waive this procedural defect would fundamentally alter existing dispute procedures]

Alpha Beta Company **273 NLRB No. 194**
(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

3367-3340 Identity of issues

3367-3340-5000 ULP proceedings

Armour and Company **280 NLRB No. 096**
[no deferral to decision of arbitrator on issue of waiver by U of right to request bargaining regarding allocation to specific periods of severance and vacation pay to Ees being terminated, since contract issue resolved by arbitrator was not factually parallel to statutory issue presented to Bd, where question of U waiver never presented to nor considered by arbitrator, and arbitrator considered waiver only to extent that he found no evidence to indicate E bargained away or waived its right to allocate separation pay under state employment law]

Texaco, Inc. **279 NLRB No. 163**
[deferral to arbitration decision regarding suspension of Ees for alleged strike misconduct, appropriate, since arbitrator had complied with *Spielberg* standards inasmuch as he had adequately considered ULP issue where he was presented with evidence of alleged actions of Ees, nor was his decision which held that Ees did engage in strike misconduct and ordered reinstatement, but no backpay, repugnant to purposes and policies of Act]

Texaco, Inc. **279 NLRB No. 163**
[contractual and ULP issues factually paralel, and deferral to arbitration appropriate, where essence of each proceeding was whether E was justified in disciplining on Ees for alleged strike misconduct, and arbitrator adequately considered ULP issue and decided just cause for discipline existed. Each forum has its own analytical framework. Thus arbitrator decided whether just cause for discipline existed while resolution of ULP would require decision on whether Ees by their misconduct forfeited protection of Act. These analytical differences however are endemic to relative forums and do

3367-3340-5000—Cont.

not detract from congruent issue of whether Ees misconduct justified discipline

Sachs Electric Company **278 NLRB No. 121**
[deferral to Labor Management Committee's decision that concluded that Ee was not selected for layoff because of his activities as U steward, appropriate where issue of Ee's status as steward before Committee was factually parallel with issues herein and Committee was presented with many of same facts presented herein and relevant to resolving issue of Ee's occupying position of steward]

Sachs Electric Company **278 NLRB No. 121**
[deferral to Labor Management Committee for decision as to whether Ee had been selected for layoff as result of his complaining to E's general foreman, and subsequently to U's business manager about foreman's failure to allocate available overtime work to other Ees as required under contract, appropriate where contractual and statutory issues were clearly factually identical, facts needed to resolve ULP question were generally presented to Committee, and statutory issue was adequately considered by Committee]

Desota, Inc. **278 NLRB No. 114**
[deference to arbitral award that E's closing plant and transferring work to its other facilities violated contract, inappropriate where issue presented to Bd was broader than issue presented to arbitrator and neither party sought deferral to award]

Donald Brown d/b/a Bailey Distributors **278 NLRB No. 017**
[deferral to arbitral award that E did not discriminatorily pay grievant less than helper's contractual wage and did not discharge him for requesting payment at contractual rate, appropriate where contractual and statutory issues turned on whether grievant was ever employed by E as a helper and GC failed to demonstrate that arbitrator was not generally presented with facts relevant to statutory issue]

Garland Coal & Mining Co. **276 NLRB No. 102**
(Bd held U, as party opposing deferral, did not sustain its burden of proving that arbitrator did not consider ULP involving discharge of U official, where (1) arbitrator was required to determined whether official was discharged for *just cause* under contract which was issued factually parallel to Bd's consideration of question whether discharge was statutorily unlawful; and (2) arbitrator was presented generally with facts relevant to resolving ULP charge and made specific findings of fact based on evidence essentially same as that which was necessary for determination of merits of ULP charge)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(Bd deferred to arbitration award holding that contractual no-strike provision encompassed sympathy strikers and therefore E was free to discipline sympathy strikers where award was not clearly repugnant to Act since broad no-strike clause bans all strikes, including sympathy strikes, absent clear evidence that parties intended otherwise; no party contended arbitration proceeding failed to satisfy other *Spielberg* criteria; contractual issue was factually parallel to ULP issue; and parties presented arbitration panel with facts relevant to resolving issues)

E. I. Dupont De Nemours & Company **275 NLRB No. 103**
(deferral appropriate where grievance and ULP issues of whether implementation of E's new program violated the contract or Sec. 8(a)(5) of the Act as unilateral change w/o bargaining were factually parallel, turned on presence or absence of contractual authorization of E's new program, and could be resolved by evidence of parties' prior contracts, bargaining history, and past practice; further, E's alleged direct dealing with Ees to enlist them as candidates for its new program was not alleged as independent ULP)

United Food Management Service, Inc. Alabama **273 NLRB No. 201**
(deferral of issue of whether under the contract E could tell Ees that they would not be terminated if they did not join the U, appropriate, since Ees' obligation to join U as condition of employment was a matter of interpretation of a certain article of the contract, and its resolution would determine whether or not E's statement was contrary to that contractual provision; ALJ had found E's statement violative of 8(a)(1))

The Stroh Brewery Company a/k/a Joseph Schlitz Company **273 NLRB No. 200**
(deferral to arbitral award, appropriate, since arbitrator adequately considered alleged ULP where ULP and contractual issues both involved Ee's discharge, and arbitrator's finding that discharge was for insubordination, rather than U activities, was not *palpably wrong* or repugnant to the Act where arbitrator had before him all evidence of Ee's U activities, including fact insubordination occurred while Ee was transacting U business)

E. G. & G. Florida, Inc. **JD-108-86**
[U's complaint to Bd that arbitrator, in finding violation of 8(a)(1) and (3), failed to order posting of award whereas Bd in similar circumstances would require posting of its usual notice held insufficient basis for setting aside arbitrator's award, since there is no requirement under Bd law for posting of arbitration awards]

E. G. & G. Florida, Inc. **JD-108-86**
[U's contention that arbitration award, which included finding that E had violated Act, was repugnant to Act because arbitrator did not issue c/d order mandated under Sec. 10(c), rejected; arbitrators are private citizens lacking power to issue c/d orders or to remedy public wrongs; they can only determine private rights and grant specific remedy for breach of private agreement; and novel issue herein, involving arbitrator's finding that E violated Act, is properly to be passed upon by Bd or reviewing ct, not by ALJ]

E. G. & G. Florida, Inc. **JD-108-86**
[ALJ held U's objection to arbitrator's award, finding 8(a)(1) and (3) violation, as being insufficient because arbitrator did not issue c/d order is one which is properly to be passed upon by Bd or reviewing ct, not by ALJ]

E. G. & G. Florida, Inc. **JD-108-86**
[although normally deferral is not warranted where, as here, issue before arbitrator was not based on interpretation or application of contract, deferral to arbitrator's award, finding no 8(a)(5) violation, appropriate, where ALJ had granted chargin, U's request to hold C case in abeyance pending outcome of arbitration proceeding but, upon receipt of unsatisfactory award, U returned for decision from ALJ in face of GC's mtn to dismiss C, and thereby impermissibly trifled with Bd processes; nor was public interest compromised by deferral since GC, as public autority, acted in public interest]

Ambassador Convalescent Center, Inc. Debtor-In-Possession In Bankruptcy **JD-319-85**
(deferral inappropriate where E's defense to 8(a)(5) charge was not based on claim of contractual privilege but rather on argument that no contract was formed, and arbitration provision in expired agreement only allowed arbitrator to decide questions which arose under bargaining agreement, not whether contract existed)

Coos-Bend, Inc., d/b/a The Sawmill Restaurant & Lounge **JD-(SF)-156-85**
(E's mtn to stay ULP proceeding pending grievance it had filed, denied since processing of grievance would not resolve all of issues in proceeding; further, E had acted in total disregard of its bargaining obligations by its failure to execute written contract containing terms verbally agreed to)

Timothy Nevins v. N.L.R.B. **796 F.2d 14 (C.A. 2, June 1986)**
[deferral to arbitral determination, appropriate where grievance that Ee was paid substandard wages was factually parallel to ULP charge that as non-U member he was discriminatorily paid subcontractual wages and benefits, and arbitrator was presented with facts necessary to make that determination]

Timothy Nevins v. N.L.R.B. **796 F.2d 14 (C.A. 2, June 1986)**
[deferral of ULP charge concerning constructive discharge by conditioning employment as helper on acceptance of substandard wages, inappropriate where charge was not factually parallel with grievances of receipt of substandard wages as helper or improper termination of position as driver; further, arbitrator was not presented with facts necessary resolve charge where arbitral decision did not mention incident constituting alleged discharge, counsel and E testified that issue was not raised, and Ee failed to tell counsel why he refused conditioned employment offer]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**
[Bd's decision under *Olin Corp.*, 268 NLRB 573, that deferral is proper in all cases unless it is affirmatively demonstrated that some unusual circumstances require that ALJ conduct independent inquiry into grievant's statutory claims cannot be reconciled with need to protect statutory rights, as expressed by S.Ct; *Olin Corp.* ignores those instances where contract and statutory issues may be factually parallel but involve distinct elements of proof and questions of factual relevance]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**
[ct vacated and remanded to Bd its decision which held that GC had not met its burden of affirmatively demonstrating that ULP had not received adequate consideration by arbitration committee; remand required Bd to reconsider its decision in light of ct's disapproval of Bd's standard for deferral under *Olin Corp.*, 268 NLRB 573]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**
[deferral inappropriate where it was not shown that arbitration committee considered statutory ULP issue]

3367-3360 Adequacy of decision

E. I. Dupont De Nemours & Company **275 NLRB No. 103**
(deferral appropriate where grievance and ULP issues of whether implementation of E's new program violated the contract or Sec. 8(a)(5) of the Act as unilateral change w/o bargaining were factually parallel, turned on presence or absence of contractual authorization of E's new program, and could be resolved by evidence of parties' prior contracts, bargaining history, and past

3367-3360—Cont.

practice; further, E's alleged direct dealing with Ees to enlist them as candidates for its new program was not alleged as independent ULP)

E. G. & G. Florida, Inc. **JD-108-86**

[U's complaint to Bd that arbitrator awarded only 6 percent interest on backpay remedy whereas Bd would have required payment of interest at 12 percent held insufficient basis for setting aside arbitrator's award and granting standard Bd remedy, since difference between 6 percent and 12 percent per annum on one day's pay, even for 48 Ees, involved herein, was *de minimis*]

E. G. & G. Florida, Inc. **JD-108-86**

[U's complaint to Bd that arbitrator, in finding violation of 8(a)(1) and (3), failed to order posting of award whereas Bd in similar circumstances would require posting of its usual notice held insufficient basis for setting aside arbitrator's award, since there is no requirement under Bd law for posting of arbitration awards]

E. G. & G. Florida, Inc. **JD-108-86**

[ALJ held U's objection to arbitrator's award, finding 8(a)(1) and (3) violation, as being insufficient because arbitrator did not issue c/d order is one which is properly to be passed upon by Bd or reviewing ct, not by ALJ]

Timothy Nevins v. N.L.R.B. **796 F.2d 14 (C.A. 2, June 1986)**

[deferral to arbitral determination, appropriate where grievance that Ee was paid substandard wages was factually parallel to ULP charge that as non-U member he was discriminatorily paid subcontractual wages and benefits, and arbitrator was presented with facts necessary to make that determination]

Timothy Nevins v. N.L.R.B. **796 F.2d 14 (C.A. 2, June 1986)**

[deferral of ULP charge concerning constructive discharge by conditioning employment as helper on acceptance of substandard wages, inappropriate where charge was not factually parallel with grievances of receipt of substandard wages as helper or improper termination of position as driver; further, arbitrator was not presented with facts necessary resolve charge where arbitral decision did not mention incident constituting alleged discharge, counsel and E testified that issue was not raised, and Ee failed to tell counsel why he refused conditioned employment offer]

Timothy Nevins v. N.L.R.B. **796 F.2d 14 (C.A. 2, June 1986)**

[contention that Ee should be barred from challenging deferral to arbitral award on basis that arbitrator failed to address ULP issue of constructive discharge as helper because Ee purposely did not raise issue at arbitration hearing over improper termination from driver's position because he wanted to be reinstated to driver's position only, rejected, since, regardless of blame, ULP issue was not raised at arbitration hearing and facts necessary to resolve it not presented, so that deferral to arbitral award would be abuse of discretion]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**

[deferral inappropriate where it was not shown that arbitration committee considered statutory ULP issue]

3367-3380 Jurisdiction pre-empted by federal statute

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) **786 F.2d 1516 (C.A. 11, Apr. 1986)**

[Bd's decision under *Olin Corp.*, 268 NLRB 573, that deferral is proper in all cases unless it is affirmatively demonstrated that some unusual circumstances require that ALJ conduct independent inquiry into grievant's statutory claims cannot be reconciled with need to protect statutory rights, as expressed by S.Ct; *Olin Corp.* ignores those instances where contract and statutory issues may be factually parallel but involve distinct elements of proof and questions of factual relevance]

3367-5000 Fair and regular nature of proceeding

3367-5001 Generally

Anderson Prestress Division Anderson Sand and Gravel Company **277 NLRB No. 127**

[where Respondent shows that arbitration concerning matter before Bd has already occured, burden is on GC to demonstrate that there are deficiencies in arbitral process requiring Bd to ignore determination of arbitration and subject case to de novo review]

Sawin & Co., Inc. **277 NLRB No. 044**

(arbitration proceeding at which E relied on affidavits rather than presenting witnesses held fair and regular; Bd does not require that strict standard of Bd hearing be met in order that arbitration award be honored)

Timothy Nevins v. N.L.R.B. **796 F.2d 14 (C.A. 2, June 1986)**

[burden is on party requesting Bd to ignore earlier arbitration decision to establish inadequacy of that proceeding]

3367-5050 Adequate procedures

Sawin & Co., Inc. **277 NLRB No. 044**

(deferral appropriate where E and U agreed to be bound by arbitrator's decision, charging party and other alleged discriminatees testified in their own behalf, proceeding was fair and regular notwithstanding that E relied on affidavits rather than presenting witnesses inasmuch as neither U nor alleged discriminatees sought to compel attendance of affiants at, or protested any facet of, arbitration proceeding)

Sawin & Co., Inc. **277 NLRB No. 044**

(GC's contention that arbitrator's award in favor of E was based on arbitrator's disbelief of alleged discriminatees' denial that they had engaged in strike misconduct for which E had refused to reinstate them, and that such disbelief did not provide basis for finding that misconduct had occurred, rejected; it cannot be assumed, w/o supporting evidence, that arbitrator was so derelict in his duties so as not to require E to meet burden of proof in discharge and discipline cases; and GC did not meet his burden of establishing existence of such deficiencies)

Alpha Beta Company **273 NLRB No. 194**

(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

Hotel and Restaurant Employees, Local 54 (Boardwalk Regency Corp-d/b/a Caesars Atlantic City) **JD-104-86**

[no deferral to award made w/o regard for due process where award rested on facts found w/o benefit of parole or documentary testimony of witnesses, litigation, confrontation, cross-examination, or opportunity to present counter-proof]

3367-5075 Result not repugnant to Act

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**

[deferral of alleged discharge ULP to joint committee award, inappropriate, since it was repugnant to the Act because committee was not presented with evidence of protected activities responsible for E's discriminatory treatment, and absence of that evidence precluded finding that contractual and statutory issues were factually parallel]

Earl C. Smith, Inc. **278 NLRB No. 100**

[deferral to joint committee award, inappropriate, since award was *palpably wrong* and therefore clearly repugnant to the Act, and could not have resolved E's 8(a)(5) violations alleged in C, where award merely ordered E to comply with a contract that was neither at issue nor in effect at time of E's conduct, which included its refusal to bargain with U, its direct dealing with Ees, and its unilateral modification of earlier contract]

Drummond Coal Company, Inc. **277 NLRB No. 177**

[if the reasoning behind an award is susceptible of two interpretations, one permissable and one impermissable, it is simply not true that the award was clearly repugnant to the Act]

Anderson Prestress Division Anderson Sand and Gravel Company **277 NLRB No. 127**

]by adopting broadly based arbitration policy as enunciated in Olin Corp., 268 NLRB 573, Bd endorses national labor policy favoring arbitration and achieves one of the primary objectives of Act-to encourage collective bargaining. Deferral recognizes that parties have accepted possibility that arbitrator might decide particular set of facts differently than would Bd. This possibility, however, is one which parties have voluntarily assumed through collective bargaining)

Brewery Workers Joint Local Executive Board, Teamsters, and Local 153, et al. (Anheuser-Busch, Inc.) **277 NLRB No. 118**

(arbitrator's award applying multi-E unitwide seniority system held not *clearly repugnant to purpose and policy of Act*, as found by ALJ, since test under *Olin* is not whether award is *totally consistent with Bd precedent*, but whether award is susceptible to interpretation consistent with Act; and if requirement is met, award is not *palpably wrong* and Bd will defer)

Garland Coal & Mining Co. **276 NLRB No. 102**

(deferral inappropriate where arbitrator's award, upholding disciplining of U official for being insubordinate in refusing to sign E's memorandum threatening discharge if grievance and safety committee members interfered in any activity outside their own unit was repugnant to Act, since to find that official was insubordinate for engaging in support of U's interpretation of contract is not consistent with Act; and it is unlawful for E to discipline Ees for engaging in protected activities as U representatives)

Reichhold Chemicals, Inc. **275 NLRB No. 203**

(issue of whether E's unilaterally promoting 3 *chief operators* in one of its 5 buildings at its plant to *shift supervisor* w/o bargaining in good faith with U

3367-5075—Cont.

properly deferred to arbitrator's award finding that contract's management rights clause gave E authority to direct its Ees, and neither recognition clause nor any other provision restricted this right. Bd, in this case, would have determined E's unilateral action to be not violative since award is susceptible to interpretation consistent with Act. Also ULP and contractual issues are *factually parallel*)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(Bd deferred to arbitration award holding that contractual no-strike provision encompassed sympathy strikers and therefore E was free to discipline sympathy strikers where award was not clearly repugnant to Act since broad no-strike clause bans all strikes, including sympathy strikes, absent clear evidence that parties intended otherwise; no party contended arbitration proceeding failed to satisfy other *Spielberg* criteria; contractual issue was factually parallel to ULP issue; and parties presented arbitration panel with facts relevant to resolving issues)

E. I. Dupont De Nemours & Company **275 NLRB No. 103**
(deferral appropriate where grievance and ULP issues of whether implementation of E's new program violated the contract or Sec. 8(a)(5) of the Act as unilateral change w/o bargaining were factually parallel, turned on presence or absence of contractual authorization of E's new program, and could be resolved by evidence of parties' prior contracts, bargaining history, and past practice; further, E's alleged direct dealing with Ees to enlist them as candidates for its new program was not alleged as independent ULP)

1115, Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board **275 NLRB No. 045**
(U's filing ptn in S.Ct of N.Y. to confirm that portion of arbitrator's award determining that U gained majority support of Ees in several previously unrepresented departments of E, violative, since award was based on *tainted authorization cards*, obtained by supervisors' assistance removing them as basis for attaining majority support; no deferral as decision of arbitrator palpably wrong as it seeks to achieve prohibited objective and lacks reasonable basis in fact and law)

1115, Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board **275 NLRB No. 045**
(findings of arbitrator not disturbed where he found that U acted in good faith when it obtained *uncoerced card majority* w/i two of E's departments. Collective-bargaining agreement (between E and U) provided for inclusion of units where U obtains *uncoerced majority* and arbitrator's award relating to these two group met *Spielberg* criteria in all respects)

I. A. R. Electric, Inc. **274 NLRB No. 099**
(deferral appropriate since result of joint conference committee's decision to uphold discharge was not repugnant to Act, where discharged Ee who was grievant was contractually protected job steward and committee was presented with conflicting claims as to reason for discharge: one, performance of steward responsibilities, the other, non-production and insubordination; it was decided that the latter was true cause of discharge and decision was clear and unambiguous and ULP issue was identical with issue decided by committee)

Martin Redi-Mix, Inc. **274 NLRB No. 079**
(deferral appropriate in case involving alleged 8(a)(1) discharge where statutory and contractual issues were factually parallel, i.e. what prompted Ee to depart from jobsite and whether Ee was voluntary quit, arbitrator was presented with evidence necessary for determination of ULP charge, i.e. circumstances surrounding Ee's departure from work; fact that GC and ALJ would have decided contractual issues differently does not change result since Bd will not substitute its judgment for that of the arbitrator but rather, Bd will inquire only whether arbitrator adequately considered issues; *Olin Corp.*, 268 NLRB 573, followed)

Alpha Beta Company **273 NLRB No. 194**
(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

The Stroh Brewery Company a/k/a Joseph Schlitz Company **273 NLRB No. 200**
(deferral to arbitral award, appropriate, since arbitrator adequately considered alleged ULP where ULP and contractual issues both involved Ee's discharge, and arbitrator's finding that discharge was for insubordination, rather than U activities, was not *palpably wrong* or repugnant to the Act where arbitrator had before him all evidence of Ee's U activities, including fact insubordination occurred while Ee was transacting U business)

Cone Mills Corporation-White Oak Plant **273 NLRB No. 188**
(Bd reiterated *Olin Corp. clearly repugnant* standard that it would not require arbitrator's award to be totally consistent with Bd precedent; unless GC sustains his burden of proof that award is *palpably wrong*, i.e., that arbitrator's decision is not susceptible to interpretation consistent with Act, Bd will defer)

Cone Mills Corporation-White Oak Plant **273 NLRB No. 188**
(arbitrator's award reinstating discharged U steward but w/o backpay held to have met *Olin Corp. clearly repugnant* standard that Bd would not require award to be totally consistent with Bd precedent; failure to give complete make-whole remedy does not render award clearly repugnant; in issuing award, arbitrator may consider relative merit of positions of parties and may determine to give complete award or partial award, depending on how he assesses merit of the situation)

Cone Mills Corporation-White Oak Plant **273 NLRB No. 188**
(deferral appropriate where arbitrator's award reinstating discharged U steward but w/o backpay was not repugnant to Act and GC has not carried his burden of proving award palpably wrong; steward, who engaged in U and/or protected activities, was discharged for refusing to leave plant when instructed to do so by E and which arbitrator found constituted insubordination; it is essential nature of arbitration process to balance competing claims of parties by adjusting equities involved to reach harmonious result, and that is what parties had agreed upon as acceptable resolution of their labor-management dispute)

E. G. & G. Florida, Inc. **JD-108-86**
[U's complaint to Bd that arbitrator, in finding violation of 8(a)(1) and (3), failed to order posting of award whereas Bd in similar circumstances would require posting of its usual notice held insufficient basis for setting aside arbitrator's award, since there is no requirement under Bd law for posting of arbitration awards]

E. G. & G. Florida, Inc. **JD-108-86**
[U's contention that arbitration award, which included finding that E had violated Act, was repugnant to Act because arbitrator did not issue c/d order mandated under Sec. 10(c), rejected; arbitrators are private citizens lacking power to issue c/d orders or to remedy public wrongs; they can only determine private rights and grant specific remedy for breach of private agreement; and novel issue herein, involving arbitrator's finding that E violated Act, is properly to be passed upon by Bd or reviewing ct, not by ALJ]

N.L.R.B. v. Wolff & Munier, Inc. **747 F.2d 156 (C.A. 3, Oct. 1984)**
[where Bd assertedly refused to defer to joint committee's findings that dischargees were foremen and could be discharged at will for lack of evidence that the committee considered the ULP issue of whether they were discharged due to E's antiU motivation, ct remanded case to Bd to determine whether the committee findings resolved the statutory issue by deciding that the foremen were supervisors and not protected by the Act and whether the committee's findings were repugnant to the Act]

3367-5076 Consideration of unfair labor practices

United States Postal Service **281 NLRB No. 032**
[deferral inappropriate where E engaged in direct dealing with Ee and unilaterally adjusted Ee's grievance concerning pending dismissal from job, even though E expressed its willingness to arbitrate issue of Ee's discipline by reactivating his grievance, since E's request for deferral did not specifically encompass underlying issue of its direct dealing and unilateral grievance adjustment, and therefore ULP issue would remain unresolved]

Armour and Company **280 NLRB No. 096**
[no deferral to arbitration award of complaint alleging unlawful refusal by E to bargain regarding allocation of severance and vacation payments to Ees being terminated to specific periods, since ULP issues not considered by arbitrator, where Respondent had argued that arbitrator had no authority to exapnd nature of grievance filed or federal or state matters raised by U at arbitration hearing, and arbitrator concluded he had no authority to decide ULP issues raised by U]

Armour and Company **280 NLRB No. 096**
[no deferral to decision of arbitrator on issue of waiver by U of right to request bargaining regarding allocation to specific periods of severance and vacation pay to Ees being terminated, since contract issue resolved by arbitrator was not factually parallel to statutory issue presented to Bd, where question of U waiver never presented to nor considered by arbitrator, and arbitrator considered waiver only to extent that he found no evidence to indicate E bargained away or waived its right to allocate separation pay under state employment law]

Toyota of San Francisco **280 NLRB No. 093**
[deferral to arbitration of allegation that E who was party to bargaining agreement with *most favored nation* clause, which provided that any more favorable terms agreed to by U with any other E would automatically become part of agreement, had acted unlawfully when it invoked provision and applied wage rate paid pursuant to agreement with another dealer to strike replacements and paid its Ees who worked during strike at its final offer rate, where arbitrator considered separately both implementation of *most favored nation* rates and of E's final offer, provided remedy for each, and retained jurisdiction to determine E's liability to Ees]

Toyota of San Francisco **280 NLRB No. 093**
[no deferral to arbitration decision of allegation that E unlawfully implemented terms of its final offer, where matter was not before arbitrator]

3367-5076—Cont.

Texaco, Inc. **279 NLRB No. 163**
[deferral to arbitration decision regarding suspension of Ees for alleged strike misconduct, appropriate, since arbitrator had complied with *Spielberg* standards inasmuch as he had adequately considered ULP issue where he was presented with evidence of alleged actions of Ees, nor was his decision which held that Ees did engage in strike misconduct and ordered reinstatement, but no backpay, repugnant to purposes and policies of Act]

Desota, Inc. **278 NLRB No. 114**
[deference to arbitral award that E's closing plant and transferring work to its other facilities violated contract, inappropriate where issue presented to Bd was broader than issue presented to arbitrator and neither party sought deferral to award]

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**
[deferral of alleged discharge ULP to joint committee award, inappropriate, since it was repugnant to the Act because committee was not presented with evidence of protected activities responsible for E's discriminatory treatment, and absence of that evidence precluded finding that contractual and statutory issues were factually parallel]

Earl C. Smith, Inc. **278 NLRB No. 100**
[deferral to joint committee award, inappropriate, since award was *palpably wrong* and therefore clearly repugnant to the Act, and could not have resolved E's 8(a)(5) violations alleged in C, where award merely ordered E to comply with a contract that was neither at issue nor in effect at time of E's conduct, which included its refusal to bargain with U, its direct dealing with Ees, and its unilateral modification of earlier contract]

Donald Brown d/b/a Bailey Distributors **278 NLRB No. 017**
[deferral to arbitral award that E did not discriminatorily pay grievant less than helper's contractual wage and did not discharge him for requesting payment at contractual rate, appropriate where contractual and statutory issues turned on whether grievant was ever employed by E as a helper and GC failed to demonstrate that arbitrator was not generally presented with facts relevant to statutory issue]

Drummond Coal Company, Inc. **277 NLRB No. 177**
[Bd deferred to grievance arbitration award concerning issue of whether E provided U advance notice for *effects* bargaining over shop's closure, since question was coextensive with those that would be considered by Bd in decision on whether E complied with agreed upon arrangement for effects bargaining over layoffs. Only U excepted to judge's decision deferring to arbitral award and U failed to allege award did not meet standards set forth in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955). U failed to meet burden of affirmatively demonstrating defects in arbitral process or award]

Drummond Coal Company, Inc. **277 NLRB No. 177**
[*no deference to arbitral awards* which *did not consider merits of grievance or substantive aspects* relating to possible ULP since procedural obstacles (time-bar of notice and res judicata) caused dismissal of grievance by arbitrator and prevented parties from resolving their disputes on merits through grievance-arbitration process]

Wheeling-Pittsburgh Steel Corporation **277 NLRB No. 160**
(deferral to arbitral award that discharge was for cause, inappropriate where facts necessary to resolution of unfair labor practice were not presented)

Anderson Prestress Division Anderson Sand and Gravel Company **277 NLRB No. 127**
(deferral to arbitration decision upholding discharge for violation of no-strike clause, proper, where contractual and statutory issues were factually parallel, and arbitration panel presented generally with facts relevant to resolving ULPs, notwithstanding absence of any rationale in award to indicate panel considered ULPs, and failure of parties to raise issue at hearings, since GC has not shown arbitration panel was lacking evidence relevant to determination of nature of obligation imposed by no-strike clause, nor was award repugnant to purposes and policies of Act)

Anderson Prestress Division Anderson Sand and Gravel Company **277 NLRB No. 127**
]arbitrator has adequately considered ULP issue if (1) contractual issue is factually parallel to ULP issue, and (2) arbitrator was presented generally with facts relevant to resolving ULP]

Anderson Prestress Division Anderson Sand and Gravel Company **277 NLRB No. 127**
(Bd's standard of review does not contemplate substitution of its judgment for that of arbitrator, but only that arbitrator adequately consider ULP issues)

Liquid Carbonic Corporation **277 NLRB No. 091**
(Bd held that contract clause requiring E to have its Ees employed by whomever E may choose to subcontract unit work to, and which required any subcontractor employing E's Ees to agree to entire contract covering unit Ees, was not violative on its face of Section 8(e); therefore, C was dismissed and deferral was appropriate to arbitrator's finding that E violated contract by subcontracting unit work since arbitrator expresly considered allegations of C)

A. N. Electric Corp. **276 NLRB No. 092**
(no deferral to alleged settlement of E's liabilities to discharged Ees where there was discrepancy between amounts Ees testified they received and figures in settlement; circumstances suggested that settlement figures had been tampered with; agreement was apparently to settle E's Davis-Bacon Act liabilities, not its ULP liabilities; and alleged settlement did not rise w/i framework of established grievance-arbitration procedures)

Garland Coal & Mining Co. **276 NLRB No. 102**
(Bd held U, as party opposing deferral, did not sustain its burden of proving that arbitrator did not consider ULP involving discharge of U official, where (1) arbitrator was required to determined whether official was discharged for *just cause* under contract which was issued factually parallel to Bd's consideration of question whether discharge was statutorily unlawful; and (2) arbitrator was presented generally with facts relevant to resolving ULP change and made specific findings of fact based on evidence essentially same as that which was necessary for determination of merits of ULP charge)

Cotter & Company **276 NLRB No. 075**
(deferral to arbitrator's award inappropriate, in view of C allegations that E discriminated against Ees in failing to consider them for transfer to new facility because of their U activity, where arbitrator, in finding E did not violate contract by refusing recognition at new facility, based decision only on the terms of the contract and did not in any way consider E motive, a fact which clearly was the basis of the instant C)

Laborers Local Union No. 380 (Mautz & Oren, Inc.) **275 NLRB No. 167**
(deferral to arbitration award, rejected, since award involved interpretation of unlawful superseniority clause which was not addressed or resolved by arbitrator which leaves award not susceptible to an interpretation consistent with Act)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(Bd deferred to arbitration award holding that contractual no-strike provision encompassed sympathy strikers and therefore E was free to discipline sympathy strikers where award was not clearly repugnant to Act since broad no-strike clause bans all strikes, including sympathy strikes, absent clear evidence that parties intended otherwise; no party contended arbitration proceeding failed to satisfy other *Spielberg* criteria; contractual issue was factually parallel to ULP issue; and parties presented arbitration panel with facts relevant to resolving issues)

Paper Manufacturers Company **274 NLRB No. 070**
(deferral to arbitrator's decision finding that group of represented Ees who were relocated had accreted to unit of Ees represented by another U, inappropriate, since arbitrator's decision was in no way *consonant with Board's standards* where arbitrator gave no consideration to Bd precedent which clearly proscribes reliance on relocation as excuse for evading consequences of certification and failed to consider whether the certification of U representing relocated Ees survived their transfer to new location)

United Parcel Service, Inc. **274 NLRB No. 093**
(deferral to joint committee award appropriate, where proceedings were fair and regular, parties agreed to be bound, contractual and ULP issues were factually parallel, and panel was presented with facts relevant to resolving ULP issue of whether Ee's refusing to tap his horn as directed lest he break the law was concerted, protected activity or grieving would have been a reasonable alternative, and whether he should have been disciplined for insubordination; GC has failed to show that award was *palpably wrong* or provide basis for not giving binding effect to award)

Martin Redi-Mix, Inc. **274 NLRB No. 079**
(deferral appropriate in case involving alleged 8(a)(1) discharge where statutory and contractual issues were factually parallel, i.e. what prompted Ee to depart from jobsite and whether Ee was voluntary quit, arbitrator was presented with evidence necessary for determination of ULP charge, i.e. circumstances surrounding Ee's departure from work; fact that GC and ALJ would have decided contractual issues differently does not change result since Bd will not substitute its judgment for that of the arbitrator but rather, Bd will inquire only whether arbitrator adequately considered issues; *Olin Corp.*, 268 NLRB 573, followed)

United Parcel Service, Inc. **274 NLRB No. 066**
(C dismissed where GC's evidence which augmented that (ULP evidence) presented to arbitration panel, is not of such probative value as to necessitate conclusion that arbitration panel did not have before it essential facts as to issues (Ee's discharge etc.) litigated. GC failed to carry his burden of proof for rejection of arbitration decision)

United States Postal Service **273 NLRB No. 217**
(where Bd deferred to parties' grievance-arbitration procedure under *United Technologies*, 268 NLRB No. 83 inasmuch as bargaining agreement contained broad grievance-arbitration agreement provision clearly encompassing dispute, but record did not establish issues alleged as ULPs were fully considered in course of processing grievance, E must waive any timeliness provisions of grievance-arbitration clauses since *Technologies* does not preclude U from filing second grievance specifically covering ULP)

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Coos-Bend, Inc., d. b/a The Sawmill Restaurant & Lounge JD-(SF)-156-85
(E's mtn to stay ULP proceeding pending grievance it had filed, denied since processing of grievance would not resolve all of issues in proceeding; further, E had acted in total disregard of its bargaining obligations by its failure to execute written contract containing terms verbally agreed to)

Timothy Nevins v. N.L.R.B. 796 F.2d 14 (C.A. 2, June 1986)
[deferral to arbitral determination, appropriate where grievance that Ee was paid substandard wages was factually parallel to ULP charge that as non-U member he was discriminatorily paid subcontractual wages and benefits, and arbitrator was presented with facts necessary to make that determination]

Timothy Nevins v. N.L.R.B. 796 F.2d 14 (C.A. 2, June 1986)
[deferral of ULP charge concerning constructive discharge by conditioning employment as helper on acceptance of substandard wages, inappropriate where charge was not factually parallel with grievances of receipt of substandard wages as helper or improper termination of position as driver; further, arbitrator was not presented with facts necessary resolve charge where arbitral decision did not mention incident constituting alleged discharge, counsel and E testified that issue was not raised, and Ee failed to tell counsel why he refused conditioned employment offer]

Timothy Nevins v. N.L.R.B. 796 F.2d 14 (C.A. 2, June 1986)
[contention that Ee should be barred from challenging deferral to arbitral award on basis that arbitrator failed to address ULP issue of constructive discharge as helper because Ee purposely did not raise issue at arbitration hearing over improper termination from driver's position because he wanted to be reinstated to driver's position only, rejected, since, regardless of blame, ULP issue was not raised at arbitration hearing and facts necessary to resolve it not presented, so that deferral to arbitral award would be abuse of discretion]

N.L.R.B. v. Wolff & Munier, Inc. 747 F.2d 156 (C.A. 3, Oct. 1984)
[where Bd assertedly refused to defer to joint committee's findings that dischargees were foremen and could be discharged at will for lack of evidence that the committee considered the ULP issue of whether they were discharged due to E's antiU motivation, ct remanded case to Bd to determine whether the committee findings resolved the statutory issue by deciding that the foremen were supervisors and not protected by the Act and whether the committee's findings were repugnant to the Act]

Charles E. Lewis v. N.L.R.B. (United Parcel Service, Inc.) 779 F.2d 12 (C.A. 6, Dec. 1985)
[deferral to arbitral decision denying grievance, appropriate where record showed that ULP of discharge allegedly for filing numerous grievances had been presented and considered, notwithstanding decisions' failure to fully set forth that fact, since ct will not require evidence that ULP charge was presented and considered be in written form]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) 786 F.2d 1516 (C.A. 11, Apr. 1986)
[Bd has statutory duty to enforce Act and exclusive jurisdiction to decide ULPs; Bd may not avoid this responsibility through far reaching deferral policy which apparently presumes that ULP claim has been resolved through arbitration]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) 786 F.2d 1516 (C.A. 11, Apr. 1986)
[Bd's decision in *Olin Corp.*, 268 NLRB 573, does not protect sufficiently Ee's rights granted by Act; by presuming, until proven otherwise, that all arbitration proceedings confront and decide every possible ULP, *Olin Corp.* gives away too much of Bd's responsibility under Act]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) 786 F.2d 1516 (C.A. 11, Apr. 1986)
[Bd's decision under *Olin Corp.*, 268 NLRB 573, that deferral is proper in all cases unless it is affirmatively demonstrated that some unusual circumstances require that ALJ conduct independent inquiry into grievant's statutory claims cannot be reconciled with need to protect statutory rights, as expressed by S.Ct; *Olin Corp.* ignores those instances where contract and statutory issues may be factually parallel but involve distinct elements of proof and questions of factual relevance]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) 786 F.2d 1516 (C.A. 11, Apr. 1986)
[ct vacated and remanded to Bd its decision which held that GC had not met its burden of affirmatively demonstrating that ULP had not received adequate consideration by arbitration committee; remand required Bd to reconsider its decision in light of ct's disapproval of Bd's standard for deferral under *Olin Corp.*, 268 NLRB 573]

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) 786 F.2d 1516 (C.A. 11, Apr. 1986)
[deferral inappropriate where it was not shown that arbitration committee considered statutory ULP issue]

3367-5090 All affected parties taking part in proceeding

Donald Brown d/b/a Bailey Distributors 278 NLRB No. 017
[deferral to arbitral award that E did not discriminatorily pay grievant less than helper's contractual wage and did not discharge him for requesting payment at contractual rate, appropriate where contractual and statutory issues turned on whether grievant was ever employed by E as a helper and GC failed to demonstrate that arbitrator was not generally presented with facts relevant to statutory issue]

Donald Brown d/b/a Bailey Distributors 278 NLRB No. 017
[deferral not inappropriate due to unfair and irregular nature of proceeding because of conflict between U's and grievant's attorneys and ineffective presentation of grievant's case, since animosity between attorneys was overcome, grievant was represented by independent counsel who did not object or add to evidence presented, grievant and both attorneys had adequate opportunity to present evidence, U attorney was experienced practicioner, and grievant's attorney witnessed arbitration w/o objecting to manner of presentation or evidence presented]

Sawin & Co., Inc. 277 NLRB No. 044
(deferral appropriate where E and U agreed to be bound by arbitrator's decision, charging party and other alleged discriminatees testified in their own behalf, proceeding was fair and regular notwithstanding that E relied on affidavits rather than presenting witnesses inasmuch as neither U nor alleged discriminatees sought to compel attendance of affiants at, or protested any facet of, arbitration proceeding)

Alpha Beta Company 273 NLRB No. 194
(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

District 1199E, Hospital Employees (Greater Pennsylvania Avenue Nursing Center, Inc.) 273 NLRB No. 173
(Bd deferred to arbitration award over issue of subcontracting and U's refusal to bargain notwithstanding subcontractor not party to arbitration proceeding since there was contractual privity between contractor and subcontractor)

3367-6700 Stage to which contract enforcement proceeding has progressed

3367-6712 Procedure available under contract, but no recourse

3367-6712-8200 Willingness of parties to invoke procedure

Consolidated Edison Co. of New York, Inc. 280 NLRB No. 039
[deferral of alleged ULPs committed by E to contractual grievance procedures not warranted, since E has not indicated willingness to utilize arbitration to resolve dispute and since subject Ee was active dissident in U, there is possibility that his interests might not be adequately represented by (U) incumbents during arbitral process]

Spann Building Maintenance Co. 275 NLRB No. 135
(Bd deferred to grievance-arbitration procedure notwithstanding U exhausted steps of their grievance procedure prior to arbitration, neither U nor E wants to go to arbitration though U has not communicated such to E, U was attempting to obtain more generous terms of purported settlement, since arbitration option still open as U has not waived nor exercised right to go to arbitration, and Bd not limited to precise legal theory (settlement agreement) proferred by E in support of deferral since E raised deferral and cited *United Technologies*, 268 NLRB 557, Bd may consider whether deferral appropriate)

Advance Manufacturing Corp. JD-9-86
[no deferral to arbitration of alleged unlawful discharge, where U's undisputed explanation for not processing grievance regarding discharge to arbitration, lack of funds, did not appear contrived and E did not require or request arbitration]

3367-6725 Contract procedure initiated, but withdrawal by one party

Veronica Lewis v. N.L.R.B. 800 F.2d 818 (C.A. 8, Sept. 1986)
[contrary to Ee's assertion that Bd deferral to grievance procedure of issue of her discharge was improper because Ee's interests were adverse to those of U which had made decision not to proceed further with Ee's grievance, ct held Bd's decision to defer was reasonable since interests were not competing but harmonious in view of Ee's voluntary invocation of contrac-

3367-6725—Cont.

tural dispute resolution mechanism and U's active role in negotiating for favorable treatment of Ee's grievance]

3367-6762 Arbitration or joint-committee proceedings

3367-6762-6700 After decision

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. ——— F.Supp.———(DC NJ, July 1985)

[in 10(j) proceeding, ct held reasonable cause existed for belief that arbitrator's award, finding that suspension and subsequent discharge of Ee, were lawful and not based on Ee's protected activity, did not meet Bd's requirements for deferral]

3367-8300 Issues for which deference is sought

3367-8301 Generally

3367-8301-2500 Issues legality of contract provision

Sheet Metal Workers, Local 208 (Paul Mueller Company) 278 NLRB No. 087

[no deferral to arbitration of allegation of unlawful bringing of charges and fining by U of members who crossed picket line after resigning from U and of one member who had not resigned prior to crossing picket line, since legality of U's actions involved determination of threshold question of legality of provision in U's constitution prohibiting acceptance of resignation proffered in anticipation of or during pendency of U charges, or during strike or lockout, and thus decision of arbitrator regarding meaning of contract or no retaliation in strike settlement agreement would not settle basic issue]

3367-8301-3300 Issues of contract meaning or application

Transport Service Company 282 NLRB No. 011

[deferral of 8(a)(5) charges, which concerned transfer of work, use of non-unit personnel, and failure to comply with contract provisions, appropriate under standards of *United Technologies Corp.* 268 NLRB 557 (1984), where dispute before Bd turned on interpretation of contract, broad arbitration clause in bargaining agreement clearly encompassed matters at issue, E asserted its willingness to arbitrate dispute, and parties had stable bargaining relationship]

Brewery Workers Joint Local Executive Board, Teamsters, and Local 153, et al. (Anheuser-Busch, Inc.) 277 NLRB No. 118

(Bd deferred to arbitrator's award requiring E under multi-E unitwide seniority system to place Ees, seeking employment with E after voluntarily resigning from employment with another E-member, on E's seniority list and to employ them as regular Ees in place of casual Ees, since GC failed to meet *Olin* burden of showing that arbitrator's analysis was palbably wrong, where arbitrator, upon construing language of contract, properly concluded that application of seniority provisions neither encouraged U membership nor restrained Ees' exercise of their statutory rights)

Brewery Workers Joint Local Executive Board, Teamsters, and Local 153, et al. (Anheuser-Busch, Inc.) 277 NLRB No. 118

(arbitrator's award applying multi-E unitwide seniority system held not *clearly repugnant to purpose and policy of Act,* as found by ALJ, since test under *Olin* is not whether award is *totally consistent with Bd precedent,* but whether award is susceptible to interpretation consistent with Act; and if requirement is met, award is not *palpably wrong* and Bd will defer)

Iron Workers, Local No. 587 (The Ornamental Iron Works Company) 276 NLRB No. 076

(deferral of dispute over effect of E's notice to terminate contract and of follow-up letter to same effect, appropriate, where case primarily involved contract interpretation with respect to whether contract was validly terminated by E's notice to terminate, and whether service of notice to steward was valid in light of contractual limitations placed upon his authority)

Reichhold Chemicals, Inc. 275 NLRB No. 203

(issue of whether E's unilaterally promoting 3 *chief operators* in one of its 5 buildings at its plant to *shift supervisor* w/o bargaining in good faith with U properly deferred to arbitrator's award finding that contract's management rights clause gave E authority to direct its Ees, and neither recognition clause nor any other provision restricted this right. Bd, in this case, would have determined E's unilateral action to be not violative since award is susceptible to interpretation consistent with Act. Also ULP and contractual issues are *factually parallel*)

Chevron, U.S.A., Inc. 275 NLRB No. 132

(Bd deferred to arbitration award holding that contractual no-strike provision encompassed sympathy strikers and therefore E was free to discipline sympathy strikers where award was not clearly repugnant to Act since broad no-strike clause bans all strikes, including sympathy strikes, absent clear evidence that parties intended otherwise; no party contended arbitration proceeding failed to satisfy other *Spielberg* criteria; contractual issue was factually parallel to ULP issue; and parties presented arbitration panel with facts relevant to resolving issues)

E. I. Dupont De Nemours & Company 275 NLRB No. 103

(deferral appropriate where grievance and ULP issues of whether implementation of E's new program violated the contract or Sec. 8(a)(5) of the Act as unilateral change w/o bargaining were factually parallel, turned on presence or absence of contractual authorization of E's new program, and could be resolved by evidence of parties' prior contracts, bargaining history, and past practice; further, E's alleged direct dealing with Ees to enlist them as candidates for its new program was not alleged as independent ULP)

Ohio Edison Company 274 NLRB No. 128

(deferral to arbitration panel's finding that E had just cause for imposing disciplinary suspension on grievants who refused to cross another U's picket line and perform work as ordered held appropriate, where panel's determination that bargaining agreement waived Ees' right under Act to honor another U's picket line turned on interpretation of no-strike clause and panel's determination of waiver was not in conflict with purposes and policies of Act)

Central Transport, Inc. JD-114-86

[deferral to grievance procedure of issues raised in C of whether respondent E covered by supplement or rider to national agreement and consequently which of these supplements it reverts to upon rejection of proposed addendum, since provisions of procedure broad enough to encompass issues raised, where issue w/i scope of procedure and fully cognizable for determination under parties grievance procedure and can be disposed of by resolution of pending grievance on same issue]

3367-8301-5000 Validity of contract

Inner City Broadcasting Corporation 281 NLRB No. 162

[request for deferral to district ct in which same issue was raised as to whether contract existed, declined, on basis of Bd precedent, even though issues before ct and Bd were identical]

Timothy Nevins v. N.L.R.B. 796 F.2d 14 (C.A. 2, June 1986)

[deferral to arbitral determination, appropriate where grievance that Ee was paid substandard wages was factually parallel to ULP charge that as non-U member he was discriminatorily paid subcontractual wages and benefits, and arbitrator was presented with facts necessary to make that determination]

Local 33, Marine and Shipbuilding Workers, and James C. Harmon, Executive Secretary, etc. v. Marine and Shipbuilding Workers ——— F.Supp.———(DC MD, May 1984)

[Bd has traditionally not deferred to parties' expedited contractual grievance procedures where issue is whether new agreement was properly entered into and, therefore, valid]

3367-8301-6700 Issues of contract enforcement

Food and Commercial Workers (Dierberg's Markets, Inc. 278 NLRB No. 068

[whether under contract E could require Ees to work overtime at time and a half or had to negotiate with U]

N.L.R.B. v. Local 1131, Local 1167, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[deferral of grievance over E's failure to grant superseniority in layoff to U official pursuant to contractual clause, inappropriate where E charged that U's effort to enforce illegal contractual clause constituted ULP]

3367-8312 Unit or representative status issues

3367-8312-4200 Unit determination

E. G. & G. Florida, Inc. JD-108-86

[U's contention that arbitrator's ruling that parties had bargained to impasse over question of merged seniority resulted in issue of unit placement which was nondeferrable qcr, rejected, since there was no unit placement issue before arbitrator inasmuch as unit placement had been accomplished by parties' agreement, and arbitrator passed not upon qcr but on contract dispute over terms and conditions of employment, principally question of merged v. separate seniority]

N.L.R.B. v. Paper Manufacturers Company, et al. 796 F.2d 163 (C.A. 3, Mar. 1986)

[no deferral to arbitration of whether separate unit of medical packaging products division Ees to be represented by U which had been certified as representative of that division prior to its relocation to same facility in which E's other packaging products manufactured, or whether medical packaging Ees to be deemed accretion to Ees in other packaging division who were represented by another U, since accretion is representation issue and not subject to resolution by contract interpretation]

3367-8312-5600 Unit clarification

Retail Delivery Drivers, Driver-Salesmen, and Helpers Local 278, a/w Teamsters (Labor Management Services, Inc. d/b/a L.M.S. Company) **JD-(SF)-61-85**

(U insisting upon application of bargaining agreement, including U-security provisions, to E's Ees at new location, violative, as this same issue was subject of UC proceeding in which RD held there was no accretion. E under no obligation to go to arbitration after UC proceeding though contract provides for arbitration)

N.L.R.B. v. Magna Corporation **734 F.2d 1057 (C.A. 5, June 1984)**

[deferral inappropriate to arbitrator's decision which held that Ee employed in new job classification did not share *community of interest* with plant clerical unit, since determination of questions of representation, accretion and appropriate units do not depend on contract interpretations but involve application of statutory policies and thus are matters for the Bd, not an arbitrator]

3367-8312-8400 Accretion

Paper Manufacturers Company **274 NLRB No. 070**

(deferral to arbitrator's decision finding that group of represented Ees who were relocated had accreted to unit of Ees represented by another U, inappropriate, since arbitrator's decision was in no way *consonant with Board's standards* where arbitrator gave no consideration to Bd precedent which clearly proscribes reliance on relocation as excuse for evading consequences of certification and failed to consider whether the certification of U representing relocated Ees survived their transfer to new location)

N.L.R.B. v. Paper Manufacturers Company, et al. **786 F.2d 163 (C.A. 3, Mar. 1986)**

[no deferral to arbitration of whether separate unit of medical packaging products division Ees to be represented by U which had been certified as representative of that division prior to its relocation to same facility in which E's other packaging products manufactured, or whether medical packaging Ees to be deemed accretion to Ees in other packaging division who were represented by another U, since accretion is representation issue and not subject to resolution by contract interpretation]

3367-8320 Backpay

Donald Brown d/b/a Bailey Distributors **278 NLRB No. 017**

[deferral to arbitral award that E did not discriminatorily pay grievant less than helper's contractual wage and did not discharge him for requesting payment at contractual rate, appropriate where contractual and statutory issues turned on whether grievant was ever employed by E as a helper and GC failed to demonstrate that arbitrator was not generally presented with facts relevant to statutory issue]

Alpha Beta Company **273 NLRB No. 194**

(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

E. G. & G. Florida, Inc. **JD-108-86**

[U's complaint to Bd that arbitrator awarded only 6 percent interest on backpay remedy whereas Bd would have required payment of interest at 12 percent held insufficient basis for setting aside arbitrator's award and granting standard Bd remedy, since difference between 6 percent and 12 percent per annum on one day's pay, even for 48 Ees, involved herein, was *de minimis*]

3367-8325 Jurisdictional disputes

Longshoremen's Union, Local 32 v. Pacific Maritime Association, et al. (NLRB) **F.Supp.——————(DC W.D. WA, Sep. 1984)**

[U's mtn in district ct to enforce arbitral award based on U's contract with E--of disputed work and *time-in-lieu* payments to it's members for period when they had not performed disputed work dismissed, since ct found that the award was in conflict with Bd's 10(k) determination that members of another U were entitled to disputed work and that Bd's determination was controlling]

3367-8331 Section 8(a)(4) alleged violations

Grand Rapids Die Casting Corp. **279 NLRB No. 093**

[deferral of charges alleging violations of 8(a)(1), (3) and (4), inappropriate, where 8(a)(1) and (3) allegations were *closely intertwined* with 8(a)(4) allegations and 8(a)(4) allegations may not be delegated to the parties or an arbitrator]

Ryder/P-I-E Nationwide, Inc. **279 NLRB No. 028**

[Bd refused to defer to arbitration 8(a)(4) allegation involving discharge for resorting to Bd's processes and ordered RD to set case down for hearing notwithstanding settlement agreement executed by parties and approved by RD provided for such arbitration]

Roadway Express, Inc. **274 NLRB No. 052**

(deferral of 8(a)(1), (3), and (4) issues, inappropriate, since Bd will not defer alleged violations of 8(a)(4) to arbitration inasmuch as questions concerning access to Bd processes have always been held solely w/i Bd's province to decide; and where, as here, alleged 8(a)(1) and (3) violations are *closely intertwined* with 8(a)(4) allegations, deferral of those issues is equally inappropriate)

Dubovsky and Sons, Inc. **JD-(NY)-47-86**

[alleged violation of Section 8(a)(4) of Act raises questions which must be resolved by Bd and cannot be deferred to arbitration]

3367-8332 Section 8(b)(1)(A) violation by interfering with employee's access to the Board

Local 814, a/w Teamsters (Beth Israel Medical Center) **281 NLRB No. 153**

[U's failure to take Ee's discharge to arbitration, violated its duty of fair representation and such inaction was *something more* than mere negligence where U was completely unaware of contractual time limits for pursuing grievance and did nothing to pursue Ee's grievance w/i those time limits, U handled grievance in perfunctory manner by assuring Ee they would arbitrate discharge while at same time U had decided internally not to pursue grievance and when Ee went to Bd, U refused to pursue grievance further and said Bd was now *taking care of it*]

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) **275 NLRB No. 048**

(deferral of complaints that local U had filed internal charges with district council against Ees and district council had tried them because they had filed ULP charges with Bd, inappropriate, because complaints involve question of Ees' access to Bd processes, an issue solely w/i province of Bd to decide)

3367-8337 Membership obligations under contract

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) **278 NLRB No. 024**

[deferral of issue of Ees' U dues obligation after resignation from U, inappropriate, where contract contained no procedure for disputes between U and Ees, interests of Ees were diametrically apposed to those of U, E was not party to proceeding and was under no obligation to represent Ees in adjunct arbitration proceeding, nor was there any reason to believe E would be willing to bear cost of having issue herein considered by arbitrator]

3367-8343 Unlawful assistance

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. **F.Supp.——————(DC NJ, July 1985)**

[in 10(j) proceeding, ct held issues arising in 8(a)(2) cases, especially when assistance to favored U is rendered in connection with organizing drive by rival U, cannot be delegated to arbitration since it would impact on Ees' choice of bargaining representative, a matter exclusively w/i expertise of Bd]

3367-8350 Discharge, layoffs or disciplinary action, or threats thereof

United States Postal Service **281 NLRB No. 032**

[deferral inappropriate where E engaged in direct dealing with Ee and unilaterally adjusted Ee's grievance concerning pending dismissal from job, even though E expressed its willingness to arbitrate issue of Ee's discipline by reactivating his grievance, since E's request for deferral did not specifically encompass underlying issue of its direct dealing and unilateral grievance adjustment, and therefore ULP issue would remain unresolved]

Texaco, Inc. **279 NLRB No. 163**

[deferral to arbitration decision regarding suspension of Ees for alleged strike misconduct, appropriate, since arbitrator had complied with *Spielberg* standards inasmuch as he had adequately considered ULP issue where he was presented with evidence of alleged actions of Ees, nor was his decision which held that Ees did engage in strike misconduct and ordered reinstatement, but no backpay, repugnant to purposes and policies of Act]

Grand Rapids Die Casting Corp. **279 NLRB No. 093**

[deferral of charges alleging violations of 8(a)(1), (3) and (4), inappropriate, where 8(a)(1) and (3) allegations were *closely intertwined* with 8(a)(4) allegations and 8(a)(4) allegations may not be delegated to the parties or an arbitrator]

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**

[deferral of alleged discharge ULP to joint committee award, inappropriate, since it was repugnant to the Act because committee was not presented with evidence of protected activities responsible for E's discriminatory treatment, and absence of that evidence precluded finding that contractual and statutory issues were factually parallel]

3367-8350—Cont.

Amoco Oil Company **278 NLRB No. 003**
[deferral of charge involving alleged violations of Ees' *Weingarten* rights, inappropriate, where contract limited grievances only to alleged contractual violations and no *Weingarten* rights were given Ees under the contract and no party had attempted to invoke contractual grievance procedure]

Wheeling-Pittsburgh Steel Corporation **277 NLRB No. 160**
(deferral to arbitral award that discharge was for cause, inappropriate where facts necessary to resolution of unfair labor practice were not presented)

Anderson Prestress Division Anderson Sand and Gravel Company **277 NLRB No. 127**
(deferral to arbitration decision upholding discharge for violation of no-strike clause, proper, where contractual and statutory issues were factually parallel, and arbitration panel presented generally with facts relevant to resolving ULPs, notwithstanding absence of any rationale in award to indicate panel considered ULPs, and failure of parties to raise issue at hearings, since GC has not shown arbitration panel was lacking evidence relevant to determination of nature of obligation imposed by no-strike clause, nor was award repugnant to purposes and policies of Act)

Sawin & Co., Inc. **277 NLRB No. 044**
(deferral appropriate since arbitrator adequately considered ULP where issue whether E unlawfully refused to reinstate alleged discriminatees because of misconduct during strike was factually parallel to ULP issue as to whether alleged discriminatees engaged in strike misconduct serious enough to remove them from protection of Act; and GC failed to carry burden of establishing that facts generally relevant to alleged ULP were not presented to arbitrator at some time during arbitration proceeding)

Sawin & Co., Inc. **277 NLRB No. 044**
(GC's contention that arbitrator's award in favor of E was based on arbitrator's disbelief of alleged discriminatees' denial that they had engaged in strike misconduct for which E had refused to reinstate them, and that such disbelief did not provide basis for finding that misconduct had occurred, rejected; it cannot be assumed, w/o supporting evidence, that arbitrator was so derelict in his duties so as not to require E to meet burden of proof in discharge and discipline cases; and GC did not meet his burden of establishing existence of such deficiencies)

Sawin & Co., Inc. **277 NLRB No. 044**
(deferral appropriate to arbitrator's award that E's refusal to reinstate alleged discriminatees because of strike misconduct was proper, where parties agreed to be bound by arbitrator's award, statutory issue and issue before arbitrator were factually parallel, there was insufficient evidence to establish that facts generally relevant to ULP were absent from record before arbitrator, and arbitrator's award was not palpably wrong)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(Bd deferred to arbitration award holding that contractual no-strike provision encompassed sympathy strikers and therefore E was free to discipline sympathy strikers where award was not clearly repugnant to Act since broad no-strike clause bans all strikes, including sympathy strikes, absent clear evidence that parties intended otherwise; no party contended arbitration proceeding failed to satisfy other *Spielberg* criteria; contractual issue was factually parallel to ULP issue; and parties presented arbitration panel with facts relevant to resolving issues)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(pursuant to Bd's *United Technologies* decision Bd deferred case alleging 8(a)(1) and 8(a)(3) violations involving disciplining of sympathy strikers under contractual no-strike provision to parties' grievance-arbitration provisions)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(Bd held deferral to arbitration award upholding disciplining of sympathy stirkers under contractual no-strike provision appropriate, even though award did not involve Ees named in instant Bd proceeding, since award involved same contractual issue relevant to such Ees)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(in deferring to arbitration award upholding disciplining of sympathy strikers under contractual no-strike provision, Bd directed E to waive any timeliness provisions of grievance-arbitration clause of contract so that U's grievance may be processed)

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) **275 NLRB No. 127**
(U's mtn to reopen record to receive additional evidence concerning whether instant cases should be deferred to arbitration, denied, since question was untimely raised. U *first* raised issue in its posthearing brief. Issue not litigated at hearing. Evidence concerning deferral immaterial to issues under consideration in present ULP hearing)

West Penn Power Company **274 NLRB No. 173**
(Bd deferred to arbitration decision sustaining discharge of U president and reducing discharge of U vice-president to 30-day suspension where, in view of language of no-strike provision, arbitrator had reasonable basis for finding that management clearly had authority to discipline officials for failure to terminate unauthorized work stoppage and to have work resumed; arbitrator's contractual interpretation was not clearly repugnant to S.Ct's *Metropolitan Edison* decision that U may waive right of its officials to acquiesce in unprotected work stoppage)

West Penn Power Company **274 NLRB No. 173**
(in deferring to decision of arbitrator who, on basis of language of no-strike provision, sustained harsher discipline imposed on U officials for failure to terminate unauthorized work stoppage than that accorded Ees engaged in stoppage, Bd pointed out that statutory and contractual issues were not factually dissimilar, facts generally relevant to ULP issue were not absent from record made before arbitrator, and GC failed to show that arbitrator's decision was not susceptible to interpretation consistent with Act)

Martin Redi-Mix, Inc. **274 NLRB No. 079**
(deferral appropriate in case involving alleged 8(a)(1) discharge where statutory and contractual issues were factually parallel, i.e. what prompted Ee to depart from jobsite and whether Ee was voluntary quit, arbitrator was presented with evidence necessary for determination of ULP charge, i.e. circumstances surrounding Ee's departure from work; fact that GC and ALJ would have decided contractual issues differently does not change result since Bd will not substitute its judgment for that of the arbitrator but rather, Bd will inquire only whether arbitrator adequately considered issues; *Olin Corp.*, 268 NLRB 573, followed)

United Technologies Corporation **274 NLRB No. 072**
(deferral of 8(a)(1) and (3) charges involving E's suspension of U steward on two occasions and E's instructions to Ees to remove buttons they wore in protest over those suspensions, held appropriate, where contract between the parties established multistep grievance procedure with final and binding arbitration and anti-discrimination clause in contract provided for resolution of disputes involving alleged discrimination under the Act; further, E had expressed willingness to arbitrate dispute and impiedly waived any timeliness objections)

United Parcel Service, Inc. **274 NLRB No. 066**
(C dismissed where GC's evidence which augmented that (ULP evidence) presented to arbitration panel, is not of such probative value as to necessitate conclusion that arbitration panel did not have before it essential facts as to issues (Ee's discharge etc.) litigated. GC failed to carry his burden of proof for rejection of arbitration decision)

T.L.B. Plastics Corporation **273 NLRB No. 223**
(deferral under grievance-arbitration provisions of bargaining agreement appropriate as to issues of whether E violated Act by: (1) issuing 2 disciplinary notices to one Ee, (2) refusing to pay Ee holiday pay, (3) suspending Ee for 3 days, (4) discharging that Ee and (5) discharging other Ees (U adherents) who allegedly were released for engaging in work stoppage, or *wild cat* strike in violation of plant rule and no-strike clause of collective bargaining agreement. Contractual and ULP issues were factually parallel and Ees involved had faith in fairness of grievance-arbitration machinery as well as efforts of present U steward)

Alpha Beta Company **273 NLRB No. 194**
(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

Cone Mills Corporation-White Oak Plant **273 NLRB No. 188**
(deferral appropriate where arbitrator's award reinstating discharged U steward but w/o backpay was not repugnant to Act and GC has not carried his burden of proving award palpably wrong; steward, who engaged in U and/or protected activities, was discharged for refusing to leave plant when instructed to do so by E and which arbitrator found constituted insubordination; it is essential nature of arbitration jrkcass tk ibalanca coktletinc claims of parties by adjusting equities involved to resch harmonious result, and that is what parties had agreed upon as acceptable resolution of their labor-management dispute)

Cone Mills Corporation-White Oak Plant **273 NLRB No. 188**
(arbitrator's award reinstating discharged U steward but w/o backpay held to have met *Olin Corp. clearly repugnant* standard that Bd would not require award to be totally consistent with Bd precedent; failure to give complete make-whole remedy does not render award clearly repugnant; in issuing award, arbitrator may consider relative merit of positions of parties and may determine to give complete award or partial award, depending on how he assesses merit of the situation)

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[no deferral to arbitrator's decision upholding discharges of rival U adherents, where Bd C alleged incumbent U threatened Ees with discharge if they supported rival U; thus, interests of Ees in conflict with those of U and E and hostility present as shown by Ees declining U's offer of representation.

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Further U and E had expressed hostility to Ees over their support of rival U]

Timothy Nevins v. N.L.R.B. **796 F.2d 14 (C.A. 2, June 1986)**

[deferral of ULP charge concerning constructive discharge by conditioning employment as helper on acceptance of substandard wages, inappropriate where charge was not factually parallel with grievances of receipt of substandard wages as helper or improper termination of position as driver; further, arbitrator was not presented with facts necessary resolve charge where arbitral decision did not mention incident constituting alleged discharge, counsel and E testified that issue was not raised, and Ee failed to tell counsel why he refused conditioned employment offer]

Charles E. Lewis v. N.L.R.B. (United Parcel Service, Inc.) **779 F.2d 12 (C.A. 6, Dec. 1985)**

[deferral to arbitral decision denying grievance, appropriate where record showed that ULP of discharge allegedly for filing numerous grievances had been presented and considered, notwithstanding decisions' failure to fully set forth that fact, since ct will not require evidence that ULP charge was presented and considered be in written form]

Veronica Lewis v. N.L.R.B. **800 F.2d 818 (C.A. 8, Sept. 1986)**

[deferral of issue of whether Ee was unlawfully discharged held proper where requirements of Bd's deferral policy had been met and matter remained to be decided under agreed upon dispute resolution procedure since, absent formal withdrawal of arbitration request or processing through arbitration matter was not final; and w/o deferral, parties would be encouraged to circumvent contractual grievance and arbitration procedures for possible favorable resolution of ULP charges before Bd]

Veronica Lewis v. N.L.R.B. **800 F.2d 818 (C.A. 8, Sept. 1986)**

[contrary to Ee's assertion that Bd deferral to grievance procedure of issue of her discharge was improper because Ee's interests were adverse to those of U which had made decision not to proceed further with Ee's grievance, ct held Bd's decision to defer was reasonable since interests were not competing but harmonious in view of Ee's voluntary invocation of contractural dispute resolution mechanism and U's active role in negotiating for favorable treatment of Ee's grievance]

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. **———— F.Supp.———— ——(DC NJ, July 1985)**

[in 10(j) proceeding, ct held reasonable cause existed for belief that arbitrator's award, finding that suspension and subsequent discharge of Ee, were lawful and not based on Ee's protected activity, did not meet Bd's requirements for deferral]

3367-8351 Adverse action with regard to employee's job status

KCW Furniture Company, Inc. **276 NLRB No. 100**

(where E unilaterally instituted terms and conditions of employment inconsistent with existing contract, status quo ante held best resolved by deferring to contractual method for resolving dispute involving Ees' suspensions, where contract provided multistep grievance procedure culminating in decision by adjustment board or arbitration, and E was willing to cooperate in processing grievances since Bd and ct had determined its applicability)

KCW Furniture Company, Inc. **276 NLRB No. 100**

(Bd deferred issue of whether suspension of Ees violated terms of then-existing contract, and amount of backpay due them, where E suspended Ees under its unilaterally implemented proposals for new agreement authorizing suspensions; in earlier proceedings Bd and ct found original contract automatically renewed itself and was in effect when suspensions took place; since suspensions were not alleged as separate ULP in prior proceeding, E was not remiss in not raising deferral issue at that time; and E's unlawful implementation of new contract proposals did not make suspensions *part and parcel* of 8(a)(5) violation)

Cotter & Company **276 NLRB No. 075**

(deferral to arbitrator's award inappropriate, in view of C allegations that E discriminated against Ees in failing to consider them for transfer to new facility because of their U activity, where arbitrator, in finding E did not violate contract by refusing recognition at new facility, based decision only on the terms of the contract and did not in any way consider E motive, a fact which clearly was the basis of the instant C)

3367-8353 Harassing or discriminatory action

The Trustees of Columbia University in the City of New York **279 NLRB No. 019**

[Bd dismissed 8(a)(3) allegation that E unlawfully withdrew non-contractual tuition benefit plan in retaliation for U's successfully pursuing grievance over similar contractually required fund where proof of 8(a)(3) allegation depended on proof of 8(a)(5) allegation that Bd dismissed in deferring to arbitrator's award finding that E did not have to provide both benefits]

Donald Brown d/b/a Bailey Distributors **278 NLRB No. 017**

[deferral to arbitral award that E did not discriminatorily pay grievant less than helper's contractual wage and did not discharge him for requesting payment at contractual rate, appropriate where contractual and statutory issues turned on whether grievant was ever employed by E as a helper and GC failed to demonstrate that arbitrator was not generally presented with facts relevant to statutory issue]

Teamsters Local Union #519 (Rust Engineering Co.) **276 NLRB No. 094**

(deferral of U's alleged unlawful failure to refer dissidents, inappropriate, since uncertain dissidents would get fair hearing before U executive board where members of board same U officials involved in alleged unlawful operation of hiring hall on executive committee)

United Technologies Corporation **274 NLRB No. 072**

(deferral of 8(a)(1) and (3) charges involving E's suspension of U steward on two occasions and E's instructions to Ees to remove buttons they wore in protest over those suspensions, held appropriate, where contract between the parties established multistep grievance procedure with final and binding arbitration and anti-discrimination clause in contract provided for resolution of disputes involving alleged discrimination under the Act; further, E had expressed willingness to arbitrate dispute and impiedly waived any timeliness objections)

3367-8362 Bargaining obligation

Earl C. Smith, Inc. **278 NLRB No. 100**

[deferral to joint committee award, inappropriate, since award was *palpably wrong* and therefore clearly repugnant to the Act, and could not have resolved E's 8(a)(5) violations alleged in C, where award merely ordered E to comply with a contract that was neither at issue nor in effect at time of E's conduct, which included its refusal to bargain with U, its direct dealing with Ees, and its unilateral modification of earlier contract]

Drummond Coal Company, Inc. **277 NLRB No. 177**

[Bd deferred to grievance arbitration award concerning issue of whether E provided U advance notice for *effects* bargaining over shop's closure, since question was coextensive with those that would be considered by Bd in decision on whether E complied with agreed upon arrangement for effects bargaining over layoffs. Only U excepted to judge's decision deferring to arbitral award and U failed to allege award did not meet standards set forth in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955). U failed to meet burden of affirmatively demonstrating defects in arbitral process or award]

Drummond Coal Company, Inc. **277 NLRB No. 177**

[*no deference to arbitral awards* which *did not consider merits of grievance or substantive aspects* relating to possible ULP since procedural obstacles (time-bar of notice and res judicata) caused dismissal of grievance by arbitrator and prevented parties from resolving their disputes onmerits through grievance-arbitration process]

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) **275 NLRB No. 127**

(U's mtn to reopen record to receive additional evidence concerning whether instant cases should be deferred to arbitration, denied, since question was untimely raised. U *first* raised issue in its posthearing brief. Issue not litigated at hearing. Evidence concerning deferral immaterial to issues under consideration in present ULP hearing)

E. G. & G. Florida, Inc. **JD-108-86**

[although normally deferral is not warranted where, as here, issue before arbitrator was not based on interpretation or application of contract, deferral to arbitrator's award, finding no 8(a)(5) violation, appropriate, where ALJ had granted charging U's request to hold C case in abeyance pending outcome of arbitration proceeding but, upon receipt of unsatisfactory award, U returned for decision from ALJ in face of GC's mtn to dismiss C, and thereby impermissibly trifled with Bd processes; nor was public interest compromised by deferral since GC, as public autority, acted in public interest]

3367-8362-1000 Repudiation of agreement

Rappazzo Electric Co., Inc. **281 NLRB No. 075**

[deferral on issue of whether bargaining agreement still existed or whether E had repudiated agreement, inappropriate where other alleged violations of 8(a)(5) were closely intertwined and deferral of only one of allegations would not serve purposes of Act]

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**

(deferral of charge of refusal to abide by contract, inappropriate where E maintained that contract had been terminated and had not specifically agreed to arbitrate or indicated willingness to waive the time limit for filing a grievance, which had expired)

3367-8362-2000 Duty to furnish information

The E. W. Buschman Company **277 NLRB No. 021**

(deferral of issue of legality of E's failure to provide requested financial and production information because of its alleged confidential nature, inappropriate, since U needed former to determine possibility of early resolution of the

3367-8362-2000—Cont.

grievance and latter to determine accuracy of E's records by checking them with Ees; grievance concerned cancellation of bonus due to E's alleged lack of cash flow)

Clinchfield Coal Company **275 NLRB No. 189**
(deferral of E's obligation to provide information concerning subcontracting out unit work that was relevant and necessary to U's collective bargaining responsibilities, inappropriate since it would result in *two-tiered* arbitration that would not be consistent with national labor policy favoring voluntary and expeditious resolution of disputes through arbitration)

Ralph's Grocery Company **JD-(SF)-144-85**
(deferral is inappropriate of charge involving E's refusal to provide U with information relevant to processing grievances over discharge of Ees)

3367-8362-2001 Generally

U.S. Postal Service **280 NLRB No. 090**
[deferral concerning U's information request for names of U officers and stewards who had applied for supervisory positions (with E), held inappropriate, since U has sought information which is relevant to performance of its statutory function as Ees' bargaining representative]

United Technologies Corporation **274 NLRB No. 072**
(deferral of 8(a)(5) charge involving E's refusal to provide information relevant to processing grievances, held inappropriate, since purpose of U's requests was to pursue pending or future grievances; Bd is unwilling to institute a *two-tiered* arbitration process whereby a request for information relevant to a grievance, and the underlying grievance itself, is submitted to arbitration)

United States Steel Corporation **JD-223-85**
(deferral of question of U's entitlement to requested information inappropriate, since it would result in two-tier arbitration)

United States Steel Corporation **JD-176-85**
(deferral of 8(a)(5) charge involving E's refusal to furnish information regarding processing of contracting-out grievances, inappropriate in view of Bd's historical and recent reluctance to apply deferral policy to information disclosure disputes alleged to constitute violation of 8(a)(5))

Roadway Express, Inc. **JD-(SF)-78-85**
(deferral of 8(a)(5) charge involving E's refusal to furnish information requested by U, held inappropriate, where E had proposed that U must first either suspend or compromise its pursuit of certain grievances while it attempted to vindicate its claim of right to information, and to return to merits of underlying grievances only after its claims to information were resolved)

Jeddo-Highland Coal Company **JD-144-85**
(deferral inappropriate in case involving E's refusal to furnish wage related information relevant to pending grievance)

3367-8362-2075 Time and attendance records

United States Postal Service **276 NLRB No. 143**
(no deferral to arbitration of U's request for time and attendance information for purpose of establishing whether E had scheduled Ees to work overtime in violation of contract as this would encumber the process of resolving pending grievances to have to submit new grievance to obtain relevant information)

3367-8362-4000 Power to subcontract unit work

District 1199E, Hospital Employees (Greater Pennsylvania Avenue Nursing Center, Inc.) **273 NLRB No. 173**
(Bd deferred to arbitration award over issue of subcontracting and U's refusal to bargain notwithstanding subcontractor not party to arbitration proceeding since there was contractual privity between contractor and subcontractor)

United States Steel Corporation **JD-223-85**
(deferral of question of U's entitlement to requested information inappropriate, since it would result in two-tier arbitration)

3367-8362-6000 Power to transfer or terminate operations and effects of such actions

Armour and Company **280 NLRB No. 096**
[no deferral to arbitration award of complaint alleging unlawful refusal by E to bargain regarding allocation of severance and vacation payments to Ees being terminated to specific periods, since ULP issues not considered by arbitrator, where Respondent had argued that arbitrator had no authority to exapnd nature of grievance filed or federal or state matters raised by U at arbitration hearing, and arbitrator concluded he had no authority to decide ULP issues raised by U]

Armour and Company **280 NLRB No. 096**
[no deferral to decision of arbitrator on issue of waiver by U of right to request bargaining regarding allocation to specific periods of severance and vacation pay to Ees being terminated, since contract issue resolved by arbitrator was not factually parallel to statutory issue presented to Bd, where question of U waiver never presented to nor considered by arbitrator, and arbitrator considered waiver only to extent that he found no evidence to indicate E bargained away or waived its right to allocate separation pay under state employment law]

3367-8362-8000 Power to make unilateral changes in terms and conditions of employment

Asociacion Hospital Del Maestro, Inc. **JD-68-86**
[deferral of issue of unilateral decision to replace unit Ees with nonunit Ees and transfer unit work to them, appropriate where parties agreed during hearing to proceed to binding arbitration]

3367-8362-8006 Overtime pay

Food and Commercial Workers (Dierberg's Markets, Inc. **278 NLRB No. 068**
[whether under contract E could require Ees to work overtime at time and a half or had to negotiate with U]

3367-8362-8012 Benefits

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**
[although dispute arising from E's unilateral discontinuance of payments to health and welfare fund was clearly encompassed by contract's grievance-arbitration clause and there was no time limit for E to waive, deferral held inappropriate where E, who sought deferral, never indicated willingness to arbitrate but asked for dismissal of C; dismissal and deferral are distinct remedies, and by asking that C be dismissed, E rejected possibility of arbitration]

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**
[deferral of dispute arising from E's unilateral discontinuance of payments to health and welfare fund, inappropriate, since E rejected its bargaining obligation by refusing to meet or bargain with U and to make any payments to fund, failing to accept registered mail from U and Bd, and failing to respond to any of many phone calls and personal requests made by U representatives]

The Trustees of Columbia University in the City of New York **279 NLRB No. 019**
[Bd deferred to arbitration award holding that contract required E to help pay for and to provide scholarship to U-run school for members to upgrade their skills, and that therefore E did not have to provide related non-contractual tuition exemption benefit]

Central Transport, Inc. **JD-114-86**
[deferral to grievance procedure of issues raised in C of whether respondent E covered by supplement or rider to national agreement and consequently which of these supplements it reverts to upon rejection of proposed addendum, since provisions of procedure broad enough to encompass issues raised, where issue w/i scope of procedure and fully cognizable for determination under parties grievance procedure and can be disposed of by resolution of pending grievance on same issue]

My Buddy Products, A Division of S&T Industries, Inc. **JD-114-85**
(deferral inappropriate in matter regarding health insurance contributions where, based on silence of contract on subject, arbitrator found himself w/o authority to rule on grievance presented to him; therefore, there is nothing to which to defer)

3367-8362-8017 Grievance and arbitration procedures

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat **281 NLRB No. 030**
[deferral inappropriate as to issue of who may be U representative at grievance meeting absent contract under which parties were mutually bound by agreed-upon grievance-arbitration procedure]

United States Postal Service **273 NLRB No. 217**
(deferral appropriate where issue arose when E announced and unilaterally implemented policy requiring U to process and file grievances during specified period of each day as such dispute encompasses definition of grievance contained in contract, contract provides for final and binding arbitration and there is management rights clause. Therefore, contract and its meaning in present circumstances lie at heart of dispute)

3367-8362-8044 Basic wage rate

Rappazzo Electric Co., Inc. **281 NLRB No. 075**
[deferral inappropriate where E's unilateral modification of terms and conditions of employment effecting changes in wages and rates of pay constituted rejection of principles of collective bargaining]

3367-8362-8068 Wage rate decrease

Earl C. Smith, Inc. **278 NLRB No. 100**
[deferral to joint committee award, inappropriate, since award was *palpably wrong* and therefore clearly repugnant to the Act, and could not have resolved E's 8(a)(5) violations alleged in C, where award merely ordered E to comply with a contract that was neither at issue nor in effect at time of E's conduct, which included its refusal to bargain with U, its direct dealing with Ees, and its unilateral modification of earlier contract]

3367-8362-8075 Change in job classifications

3367-8362-8075—Cont.

Reichhold Chemicals, Inc. **275 NLRB No. 203**
(issue of whether E's unilaterally promoting 3 *chief operators* in one of its 5 buildings at its plant to *shift supervisor* w/o bargaining in good faith with U properly deferred to arbitrator's award finding that contract's management rights clause gave E authority to direct its Ees, and neither recognition clause nor any other provision restricted this right. Bd, in this case, would have determined E's unilateral action to be not violative since award is susceptible to interpretation consistent with Act. Also ULP and contractual issues are *factually parallel*)

3367-8362-8085 Holiday compensation

T.L.B. Plastics Corporation **273 NLRB No. 223**
(deferral under grievance-arbitration provisions of bargaining agreement appropriate as to issues of whether E violated Act by: (1) issuing 2 disciplinary notices to one Ee, (2) refusing to pay Ee holiday pay, (3) suspending Ee for 3 days, (4) discharging that Ee and (5) discharging other Ees (U adherents) who allegedly were released for engaging in work stoppage, or *wild cat* strike in violation of plant rule and no-strike clause of collective bargaining agreement. Contractual and ULP issues were factually parallel and Ees involved had faith in fairness of grievance-arbitration machinery as well as efforts of present U steward)

3367-8365 Representative's duty of fair representation

Local Union No. 896, a/w Teamsters (Anheuser-Busch, Inc.) **280 NLRB No. 076**
[no deferral to arbitration decision regarding discharge of charging party where C alleged U's breach of duty of fair representation as no contractual issues involved in ULP case, and absent evidence arbitration encompassed issues of U representation and U's providing of information to grievant raised in ULP case; further, interests of charging party and U were in conflict in view of antagonism between U representatives and charging party, U's refusal to take her prior discipline to arbitration or to argue her lack of knowledge of system on the failure to adhere thereto caused her discharge]

3367-8366 Union refusal to bargain

Carpenters 46 Northern California Counties Conference Board (Refrigeration Design Contractors) **278 NLRB No. 021**
[deferral of 8(b)(3) charges appropriate where contract's arbitration provision covered dispute in question, issue involved duration of agreement, an issue parallel to that which would be decided in ULP case and U had agreed to waive time limitations on grievance]

District 1199E, Hospital Employees (Greater Pennsylvania Avenue Nursing Center, Inc.) **273 NLRB No. 173**
(Bd deferred to arbitration award over issue of subcontracting and U's refusal to bargain notwithstanding subcontractor not party to arbitration proceeding since there was contractual privity between contractor and subcontractor)

3367-8367 Contractual obligations

Anderson Prestress Division Anderson Sand and Gravel Company **277 NLRB No. 127**
(deferral to arbitration decision upholding discharge for violation of no-strike clause, proper, where contractual and statutory issues were factually parallel, and arbitration panel presented generally with facts relevant to resolving ULPs, notwithstanding absence of any rationale in award to indicate panel considered ULPs, and failure of parties to raise issue at hearings, since GC has not shown arbitration panel was lacking evidence relevant to determination of nature of obligation imposed by no-strike clause, nor was award repugnant to purposes and policies of Act)

3367-8367-0100 Generally

Central Transport, Inc. **JD-114-86**
[deferral to grievance procedure of issues raised in C of whether respondent E covered by supplement or rider to national agreement and consequently which of these supplements it reverts to upon rejection of proposed addendum, since provisions of procedure broad enough to encompass issues raised, where issue w/i scope of procedure and fully cognizable for determination under parties grievance procedure and can be disposed of by resolution of pending grievance on same issue]

3367-8367-1000 No-strike clause

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(Bd deferred to arbitration award holding that contractual no-strike provision encompassed sympathy strikers and therefore E was free to discipline sympathy strikers where award was not clearly repugnant to Act since broad no-strike clause bans all strikes, including sympathy strikes, absent clear evidence that parties intended otherwise; no party contended arbitration proceeding failed to satisfy other *Spielberg* criteria; contractual issue was factually parallel to ULP issue; and parties presented arbitration panel with facts relevant to resolving issues)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(pursuant to Bd's *United Technologies* decision Bd deferred case alleging 8(a)(1) and 8(a)(3) violations involving disciplining of sympathy strikers under contractual no-strike provision to parties' grievance-arbitration provisions)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(Bd held deferral to arbitration award upholding disciplining of sympathy stirkers under contractual no-strike provision appropriate, even though award did not involve Ees named in instant Bd proceeding, since award involved same contractual issue relevant to such Ees)

Chevron, U.S.A., Inc. **275 NLRB No. 132**
(in deferring to arbitration award upholding disciplining of sympathy strikers under contractual no-strike provision, Bd directed E to waive any timeliness provisions of grievance-arbitration clause of contract so that U's grievance may be processed)

West Penn Power Company **274 NLRB No. 173**
(Bd deferred to arbitration decision sustaining discharge of U president and reducing discharge of U vice-president to 30-day suspension where, in view of language of no-strike provision, arbitrator had reasonable basis for finding that management clearly had authority to discipline officials for failure to terminate unauthorized work stoppage and to have work resumed; arbitrator's contractual interpretation was not clearly repugnant to S.Ct's *Metropolitan Edison* decision that U may waive right of its officials to acquiesce in unprotected work stoppage)

West Penn Power Company **274 NLRB No. 173**
(in deferring to decision of arbitrator who, on basis of language of no-strike provision, sustained harsher discipline imposed on U officials for failure to terminate unauthorized work stoppage than that accorded Ees engaged in stoppage, Bd pointed out that statutory and contractual issues were not factually dissimilar, facts generally relevant to ULP issue were not absent from record made before arbitrator, and GC failed to show that arbitrator's decision was not susceptible to interpretation consistent with Act)

T.L.B. Plastics Corporation **273 NLRB No. 223**
(deferral under grievance-arbitration provisions of bargaining agreement appropriate as to issues of whether E violated Act by: (1) issuing 2 disciplinary notices to one Ee, (2) refusing to pay Ee holiday pay, (3) suspending Ee for 3 days, (4) discharging that Ee and (5) discharging other Ees (U adherents) who allegedly were released for engaging in work stoppage, or *wild cat* strike in violation of plant rule and no-strike clause of collective bargaining agreement. Contractual and ULP issues were factually parallel and Ees involved had faith in fairness of grievance-arbitration machinery as well as efforts of present U steward)

3367-8367-2000 Discipline under 'just cause' provision

Brewery Workers Joint Local Executive Board, Teamsters, and Local 153, et al. (Anheuser-Busch, Inc.) **277 NLRB No. 118**
(Bd deferred to arbitrator's award requiring E under multi-E unitwide seniority system to place Ees, seeking employment with E after voluntarily resigning from employment with another E-member, on E's seniority list and to employ them as regular Ees in place of casual Ees, since GC failed to meet *Olin* burden of showing that arbitrator's analysis was palbably wrong, where arbitrator, upon construing language of contract, properly concluded that application of seniority provisions neither encouraged U membership nor restrained Ees' exercise of their statutory rights)

3367-8367-3500 Duration and termination

Carpenters 46 Northern California Counties Conference Board (Refrigeration Design Contractors) **278 NLRB No. 021**
[deferral of 8(b)(3) charges appropriate where contract's arbitration provision covered dispute in question, issue involved duration of agreement, an issue parallel to that which would be decided in ULP case and U had agreed to waive time limitations on grievance]

3367-8367-5000 Management rights clause

United States Postal Service **273 NLRB No. 217**
(deferral appropriate where issue arose when E announced and unilaterally implemented policy requiring U to process and file grievances during specified period of each day as such dispute encompasses definition of grievance contained in contract, contract provides for final and binding arbitration and there is management rights clause. Therefore, contract and its meaning in present circumstances lie at heart of dispute)

3367-8367-5300 Favored-nation clause

Toyota of San Francisco **280 NLRB No. 093**
[deferral to arbitration of allegation that E who was party to bargaining agreement with *most favored nation* clause, which provided that any more favorable terms agreed to by U with any other E would automatically become part of agreement, had acted unlawfully when it invoked provision and applied wage rate paid pursuant to agreement with another dealer to strike replacements and paid its Ees who worked during strike at its final offer rate, where arbitrator considered separately both implementation of *most favored nation* rates and of E's final offer, provided remedy for each, and retained jurisdiction to determine E's liability to Ees]

3367-8367-5500 Referral provision

Operating Engineers Local Union No. 3 (Arthur R. Cole, an Individual) **JD-(SF)-113-85**
(no deferral to internal U-management tribunal, of charges that U discriminated against member in operation of its hiring hall, since there would be inherent conflict of interest by virtue of fact that U sits as both judge and defendent and even E members could be hostile to grievant because of E's potential liability)

3367-8367-6200 Seniority system

Brewery Workers Joint Local Executive Board, Teamsters, and Local 153, et al. (Anheuser-Busch, Inc.) **277 NLRB No. 118**
(arbitrator's award applying multi-E unitwide seniority system held not *clearly repugnant to purpose and policy of Act*, as found by ALJ, since test under *Olin* is not whether award is *totally consistent with Bd precedent*, but whether award is susceptible to interpretation consistent with Act; and if requirement is met, award is not *palpably wrong* and Bd will defer)

3367-8367-6500 Rights of union steward

Laborers Local Union No. 380 (Mautz & Oren, Inc.) **275 NLRB No. 147**
(deferral to arbitration award, rejected, since award involved interpretation of unlawful superseniority clause which was not addressed or resolved by arbitrator which leaves award not susceptible to an interpretation consistent with Act)

3367-8367-9900 Other

Burroughs Interstate Services Credit Union **280 NLRB No. 034**
[where result in 2 related cases turned in part on resolution of same factual and legal issues, deferral of 1 of cases inappropriate, notwithstanding cases arose from separate C allegations]

KCW Furniture Company, Inc. **276 NLRB No. 100**
(where E unilaterally instituted terms and conditions of employment inconsistent with existing contract, status quo ante held best resolved by deferring to contractual method for resolving dispute involving Ees' suspensions, where contract provided multistep grievance procedure culminating in decision by adjustment board or arbitration, and E was willing to cooperate in processing grievances since Bd and ct had determined its applicability)

KCW Furniture Company, Inc. **276 NLRB No. 100**
(Bd deferred issue of whether suspension of Ees violated terms of then-existing contract, and amount of backpay due them, where E suspended Ees under its unilaterally implemented proposals for new agreement authorizing suspensions; in earlier proceedings Bd and ct found original contract automatically renewed itself and was in effect when suspensions took place; since suspensions were not alleged as separate ULP in prior proceeding, E was not remiss in not raising deferral issue at that time; and E's unlawful implementation of new contract proposals did not make suspensions *part and parcel* of 8(a)(5) violation)

Griffith-Hope Company **275 NLRB No. 073**
(deferral of issue regarding E's change in insurance carriers w/o bargaining with U, appropriate, since it is contrary to basic principles of Act for Bd to intervene prior to honest attempt by parties to resolve their dispute through machinery culminating in final and binding arbitration; here, parties met on matter covered by contract and resolved dispute through grievance machinery pursuant to which U, by meeting with E after it filed grievance over insurance, accomplished everything it was seeking)

3367-8371 Secondary boycott

Liquid Carbonic Corporation **277 NLRB No. 091**
(Bd held that contract clause requiring E to have its Ees employed by whomever E may choose to subcontract unit work to, and which required any subcontractor employing E's Ees to agree to entire contract covering unit Ees, was not violative on its face of Section 8(e); therefore, C was dismissed and deferral was appropriate to arbitrator's finding that E violated contract by subcontracting unit work since arbitrator expressly considered allegations of C)

3367-8385 Status as 'employee' or 'supervisor'

Wolff and Munier, Inc. **282 NLRB No. 022**
[Bd did not defer to Joint Conference Committee's findings that discriminatees are supervisors where record showed that Committee did not consider or resolve whether these discriminatees exercised independent judgment in carrying out their duties as required under Section 2(11) of Act]

Donald Brown d/b/a Bailey Distributors **278 NLRB No. 017**
[deferral to arbitral award that E did not discriminatorily pay grievant less than helper's contractual wage and did not discharge him for requesting payment at contractual rate, appropriate where contractual and statutory issues turned on whether grievant was ever employed by E as a helper and GC failed to demonstrate that arbitrator was not generally presented with facts relevant to statutory issue]

Reichhold Chemicals, Inc. **275 NLRB No. 203**
(issue of whether E's unilaterally promoting 3 *chief operators* in one of its 5 buildings at its plant to *shift supervisor* w/o bargaining in good faith with U properly deferred to arbitrator's award finding that contract's management rights clause gave E authority to direct its Ees, and neither recognition clause nor any other provision restricted this right. Bd, in this case, would have determined E's unilateral action to be not violative since award is susceptible to interpretation consistent with Act. Also ULP and contractual issues are *factually parallel*)

3367-8387 Other interference with Section 7 rights

3367-8387-5000 Union discipline of member

Sheet Metal Workers, Local 208 (Paul Mueller Company) **278 NLRB No. 087**
[no deferral to arbitration of allegation of unlawful bringing of charges and fining by U of members who crossed picket line after resigning from U and of one member who had not resigned prior to crossing picket line, since legality of U's actions involved determination of threshold question of legality of provision in U's constitution prohibiting acceptance of resignation proffered in anticipation of or during pendency of U charges, or during strike or lockout, and thus decision of arbitrator regarding meaning of contract or no retaliation in strike settlement agreement would not settle basic issue]

5000 CESSION OF JURISDICTION TO STATE OR TERRITORIAL AGENCIES

6700 EFFECT OF OTHER STATUTES

6712 BANKRUPTCY ACT

Ohio Container Service, Inc.; Myron E. Wasserman, Trustee in Bankruptcy **277 NLRB No. 025**
(trustee in bankruptcy's mtn to stay ULP proceedings pursuant to Bankruptcy code, rejected, since Bd's jurisdiction to hear and determine charges of ULPs is exempted from automatic stay of provisions of Bankruptcy Act under exception of 11 U.S.C. 362(b)(4))

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 224**
(Respondent Corporation required to enforce terms and conditions of applicable (labor) contract only until date on which Respondent Corporation filed its ptn for bankruptcy. See *NLRB v. Bildisco & Bildisco*, 104 S.Ct. 1188 (1984). Contractual backpay remedy, awarded by Bd, fully restores status quo prior to filing of bankruptcy ptn)

E. G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. **JD-168-85**
(filing of ptn in bankruptcy did not automatically stay backpay proceeding before Bd)

E. G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. **JD-168-85**
(Bd enforcement proceeding in ct of appeals has been held to be proceeding by governmental unit to enforce its regulatory power w/i meaning of provisions of Bankruptcy Act, and hence is not subject to automatic stay provision of that Act; and instant backpay proceeding is part and parcel of process leading to enforcement ptn filed in ct of appeals and, hence, falls under same exemption)

General Highway Express, Inc. v. Teamsters Local Union No. 20 (NLRB) **_____F.2d_____**
(BC N.D. OH, Jan. 1985)
[bankruptcy ct refused to enjoin NLRB from hearing ULP C arising out of events that occurred during operation of debtor in possession notwithstanding 11 U.S.C. Sec. 502 (c)(1) arguably authorizes ct to decide U's ULP claims against debtor, since Congress entrusted NLRB to adjudicate ULP claims and S.Ct expressed strong preference for allowing NLRB to do so]*Nathanson v. NLRB*, 344 U.S. 25) unless assets of estate would be threatened if proceedings before NLRB allowed to continue]

6737 RAILWAY LABOR ACT

Ebon Services International, Inc. **277 NLRB No. 136**
(Bd asserted jurisdiction over E engaged in providing cleaning services to four airlines at international airport, where National Mediation Board advised Bd that E was independent company that was not owned or controlled by any carrier subject to Railway Labor Act)

6760 DAVIS-BACON ACT

A. N. Electric Corp. **276 NLRB No. 092**
(no deferral to alleged settlement of E's liabilities to discharged Ees where there was discrepancy between amounts Ees testified they received and figures in settlement; circumstances suggested that settlement figures had been tampered with; agreement was apparently to settle E's Davis-Bacon Act liabilities, not its ULP liabilities; and alleged settlement did not rise w/i framework of established grievance-arbitration procedures)

6775 POSTAL REORGANIZATION ACT

6775—Cont.

U.S. Postal Service 280 NLRB No. 080

[by virtue of Section 1209 of Postal Reorganization Act, NLRA was made applicable to Postal Service Ee-management relations]

8300 LIMITATIONS ON DISCRETION IN EXERCISE OF JURISDICTION

Marie E. Darr v. N.L.R.B. (Cone Mills Corp.) 801 F.2d 1404 (C.A. D.C., Sept. 1986)

260 STANDARDS FOR ASSERTION OF JURISDICTION

0100 GENERALLY

0150 NOT-FOR-PROFIT EMPLOYERS SUBJECT TO STANDARDS ON SAME BASIS AS FOR-PROFIT EMPLOYERS

Tony and Susan Alamo Foundation, et al. v. Secretary of Labor ——U.S.—— (U.S. SCT, Apr. 1985)

[nonprofit religious foundation operating various commercial businesses held *enterprise engaged in commerce*, notwithstanding its religious character, in view of ct's liberal construction of FLSA intended to outlaw from interstate commerce goods produced under conditions below minimum standards of decency, absence from FLSA of any express or implied exceptions for commercial activities of religious or other nonprofit organizations, Labor Departments consistent interpretation of FLSA reading such businesses, and legislative history supporting such interpretation]

3300 COMPUTATION OF MONETARY VOLUME OF GOODS AND SERVICES

3320 MEASURE OF COMMERCE

3320-0100 Generally

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking 274 NLRB No. 045

(in determining whether E meets monetary standards for asserting jurisdiction, Bd will add direct and indirect inflow or direct and indirect outflow. Bd will *not* add inflow and outflow)

St. Charles Interiors Inc.; d/b/a GML Drywall, etc. JD-447-84

(while there was no commerce evidence of record concerning 1 of 3 companies involved herein and therefore no basis to conclude whether company in question as separate entity would meet Bd's jurisdictional standards, jurisdiction asserted over such company inasmuch as it was *alter ego* of other 2 companies which separately met Bd's jurisdictional standards)

3320-0137 Total business of employer

Chesvront-Hill Corporation d/b/a Pit Stop Markets 279 NLRB No. 161

[jurisdiction asserted over E who operates retail gas station and convenience grocery store under retail standard. Bd used the gross volume of retail gas sales, which amounted to $1 million, rather than commission fees of $43,000 that e received for such sales made under consignment and commission agreement with supplier notwithstanding title to gasoline remained with supplier]

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking 274 NLRB No. 045

(in determining whether E meets monetary standards for asserting jurisdiction, Bd will add direct and indirect inflow or direct and indirect outflow. Bd will *not* add inflow and outflow)

Electrical Workers Local Union #46 (PAC, Inc.) 273 NLRB No. 167

(while State of Washington is exempt from Bd's jurisdiction under Sec. 2(2) of Act, value of services performed by E for State may be considered for jurisdictional purposes. Bd has held that *indirect outflow* refers to sales of goods or services w/i State to *users* meeting any direct or indirect outflow standards. Included in definition of users are enterprises which themselves are exempted form Bd's jurisdiction)

Michigan Motor Inns, Inc., d/b/a Confort Inn, Formerly Known as Carriage Inn JD-361-85

[motel's receipt of State and local taxes on room rentals as well as money due the telephone company for long-distance calls made by guests are properly part of motel's gross revenues]

3320-5000 Outflow

3320-5001 Generally

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos 277 NLRB No. 39

(E did not violate Act since it was held to be neither alter ego or successor E of another Respondent E, nor did it alone meet Bd's jurisdictional standards, where, based on projection after 2-1/2 months operations, it would not perform out-of-state services in excess of $50,000 per year)

3320-5033 Direct

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking 274 NLRB No. 045

(refers to goods shipped or services furnished by E outside state)

3320-5067 Indirect

3320-5067-2500 Goods and/or services

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking 274 NLRB No. 045

(refers to sales of goods or services to users meeting any of Bd's jurisdictional standards except indirect outflow or indirect inflow standard)

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking 274 NLRB No. 045

(C dismissed for want of jurisdiction where E sold all coal he produced (over $50,000 annually) to *individual*-not agent of E-in same state, who then sold all the coal to another entity w/i state who shipped all this coal to Canada, since here, E did not have any direct outflow (no coal shipped by E outside state) and no showing that *individual was user* who met any of Bd's jurisdictional standard other than indirect outflow, and for Bd to assert jurisdiction under indirect outflow standard there must be sale to user meeting any of Bd's jurisdiction standards except indirect outflow or indirect inflow standard)

Electrical Workers Local Union #46 (PAC, Inc.) 273 NLRB No. 167

(while State of Washington is exempt from Bd's jurisdiction under Sec. 2(2) of Act, value of services performed by E for State may be considered for jurisdictional purposes. Bd has held that *indirect outflow* refers to sales of goods or services w/i State to *users* meeting any direct or indirect outflow standards. Included in definition of users are enterprises which themselves are exempted form Bd's jurisdiction)

Quality Plastic Molds, Inc., and Titan Enterprises, Corp. JD-(NY)-143-84

(jurisdiction asserted over plastic molds designer selling goods valued at $90,000 to plastic molds manufacturer w/i same state which satisfied Bd's direct outflow standard, since designer thus met E's indirect outflow standard; designer also met jurisdictional standard by virtue of being found single integrated enterprise and single E with manufacturer)

3320-7500 Inflow

3320-7501 Generally

3320-7501-4000 Source of inflow

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(E's purchase from supplier of gypsum drywall in excess of $300,000 during one year held not to affect interstate commerce, where gypsum ore moved across state lines to state where it was made into gypsum drywall that was sold to Es in same state)

Michigan Motor Inns, Inc., d/b/a Confort Inn, Formerly Known as Carriage Inn JD-361-85

[motel's receipt of State and local taxes on room rentals as well as money due the telephone company for long-distance calls made by guests are properly part of motel's gross revenues]

3320-7501-4700 Volume of inflow is immaterial

Gamber Roofing Company JD-174-86

[Bd lacked jurisdiction over E which had over $500,000 in annual gross revenue where it lacked requisite purchase of goods from out of state of

3320-7501-6700—Cont.

over $50,000, nor could jurisdiction be based on purchases by multi-E association, where E was not member of association, had neither signed nor applied last two association contracts with U, and where E's authorization to association to conduct bargaining on its behalf did not bind E to contract negotiated by association]

3320-7533 Direct

American Lebanese Syrian Associated Charities, Inc. d/b/a A.L.S.A.C. 277 NLRB No. 189

[jurisdiction asserted over non-profit fund raising organization for hospital where organization itself received products in excess of $50,000 from points outside state and fact that hospital was dependent on organization for funds and was itself engaged in commerce, was further justification for asserting jurisdiction]

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking 274 NLRB No. 045

(refers to goods or services furnished directly to E from outside state in which E located)

Gamber Roofing Company JD-174-86

[Bd lacked jurisdiction over E which had over $500,000 in annual gross revenue where it lacked requisite purchase of goods from out of state of over $50,000, nor could jurisdiction be based on purchases by multi-E association, where E was not member of association, had neither signed nor applied last two association contracts with U, and where E's authorization to association to conduct bargaining on its behalf did not bind E to contract negotiated by association]

3320-7567 Indirect

3320-7567-5000 Local purchases of supplies whose original source was outside of state

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking 274 NLRB No. 045

(refers to purchasers of goods or services which originated outside E's state but which he purchased from seller w/i state who received such goods or services from outside state)

3340 PERIOD OF COMPUTATION

3340-0100 Generally

Enterprise Aggregates Corporation 276 NLRB No. 011

(Bd will use E's last fiscal or calendar year preceding year ULPs alleged to have occurred to determine jurisdiction)

3340-5000 Projection from short period

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter ego 277 NLRB No. 39

(E did not violate Act since it was held to be neither alter ego or successor E of another Respondent E, nor did it alone meet Bd's jurisdictional standards, where, based on projection after 2-1/2 months operations, it would not perform out-of-state services in excess of $50,000 per year)

Michigan Motor Inns, Inc., d/b/a Comfort Inn, Formerly Known as Carriage Inn JD-361-85

[since financial data was not available from predecessor E, average monthly revenues of successor E was used to project annual gross revenues]

Everett Yacht Club JD-(SF)-115-85

(applying discretionary standard for retailers, jurisdiction asserted over private yacht club where its gross revenues excluding dues and initiation fees exceeded this standard for last fiscal or calendar year, or for last 12 months before hearing. Bd rejected E's theory that because E subcontracted operation of bar and restaurant beginning 3 months prior to hearing it should be treated as new entity in which case it would not meet standard)

3360 ENTERPRISE WHOSE GOODS AND SERVICES ARE MEASURED

3360-3300 Integrated enterprise

American Lebanese Syrian Associated Charities, Inc. d/b/a A.L.S.A.C. 277 NLRB No. 189

[jurisdiction asserted over non-profit fund raising organization for hospital where organization itself received products in excess of $50,000 from points outside state and fact that hospital was dependent on organization for funds and was itself engaged in commerce, was further justification for asserting jurisdiction]

3360-3367 Particular industry or business

3360-3367-2800 Building and construction

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 166

(E's purchase from supplier of gypsum drywall in excess of $300,000 during one year held not to affect interstate commerce, where gypsum ore moved across state lines to state where it was made into gypsum drywall that was sold to Es in same state)

3360-3367-4500 Country clubs

Everett Yacht Club JD-(SF)-115-85

(applying discretionary standard for retailers, jurisdiction asserted over private yacht club where its gross revenues excluding dues and initiation fees exceeded this standard for last fiscal or calendar year, or for last 12 months before hearing. Bd rejected E's theory that because E subcontracted operation of bar and restaurant beginning 3 months prior to hearing it should be treated as new entity in which case it would not meet standard)

3360-3367-4700 Motels-restaurants

Michigan Motor Inns, Inc., d/b/a Comfort Inn, Formerly Known as Carriage Inn JD-361-85

[motel's receipt of State and local taxes on room rentals as well as money due the telephone company for long-distance calls made by guests are properly part of motel's gross revenues]

3360-4700 Employer associations

Gamber Roofing Company JD-174-86

[Bd lacked jurisdiction over E which had over $500,000 in annual gross revenue where it lacked requisite purchase of goods from out of state of over $50,000, nor could jurisdiction be based on purchases by multi-E association, where E was not member of association, had neither signed nor applied last two association contracts with U, and where E's authorization to association to conduct bargaining on its behalf did not bind E to contract negotiated by association]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. JD-25-86

[jurisdiction asserted over respondent Es who were members of multi-E bargaining association, where non-party E-member of association met requirements for assertion of jurisdiction, inasmuch as all members of E association bound by its negotiation are considered single E for jurisdictional purposes]

3360-4700 Union

Carpenters Local 925; et al. (Charlene Saier, an Individual) 279 NLRB No. 148

[jurisdiction asserted over local U and district council of Carpenters as integral part of multistate enterprise, and nonretail standard of $50,000 direct inflow or direct outflow applied where constitution provided that no local bylaws or trade rules may conflict with any provisions of Carpenters constitution and must be approved by latter before taking affect, thus giving parent-Carpenters active control over local and council]

3380 SECONDARY BOYCOTT CASES

Teamsters Local Union No. 688 (Air-Ways Cab Co., Inc.) 277 NLRB No. 181

[in secondary boycott case involving taxicab companies as primary, and lessee-drivers as secondary, Es, jurisdiction declined where companies' change from Ee-drivers to lessee-drivers would almost certainly have resulted in substantial diminution of companies' gross revenues; such circumstances undermine presumption that companies' business remained same so as to call for assertion of jurisdiction; and, while companies operated under new leasing system for 4 months before hearing, and even though U never admitted that Bd has jurisdiction, GC introduced no evidence as to companies' gross revenues for relevant period]

Teamsters Local Union No. 688 (Air-Ways Cab Co., Inc.) 277 NLRB No. 181

[in secondary boycott case involving taxicab companies as primary, and lessee-drivers as secondary, Es, jurisdiction declined, where operations of lessee-drivers did not individually meet jurisdictional standards and hence could not be aggregated for finding jurisdiction; followig E's changeover from Ee-drivers to lessee-drivers, latters' revenues could not be attributed to companies for determining jurisdiction since lessee-drivers were not companies' *allies*, nor was their status as independent contractors, rather than Ees, due to companies' wrongful conduct; rather, changeover was lawfully effected after impasse]

3380-0100 Generally

3380-0100—Cont.

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. 796 F.2d 1328 (C.A. 11, Aug. 1986)

[handbilling is protected by First Amendment even when designed to pressure others to act, but government has interest in certain forms of economic regulations, e.g. secondary boycotts and picketing, notwithstanding effects on rights of speech and association, as part of Congress' striking delicate balance between U's freedom of expression and neutral Es', Ees', and consumers' freedom from coerced participation in industrial strife]

3380-3300 Primary employer's outflow supports jurisdiction

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85

(even if neutral E's operations did not meet Bd's jurisdictional standards, jurisdiction would be asserted over entire dispute (1) because of operations and revenues of primary E over whom U conceded Bd would take jurisdiction, or (2) because of pervasive economic role in alleged boycott of another neutral E found to be engaged in commerce w/i meaning of Act)

3380-8400 Jurisdiction over secondary employer sufficient

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85

(even if neutral E's operations did not meet Bd's jurisdictional standards, jurisdiction would be asserted over entire dispute (1) because of operations and revenues of primary E over whom U conceded Bd would take jurisdiction, or (2) because of pervasive economic role in alleged boycott of another neutral E found to be engaged in commerce w/i meaning of Act)

3390 SERVICES INTIMATELY RELATED TO OPERATIONS OF EXEMPT ENTERPRISE

The Big East Conference 282 NLRB No. 050

[jurisdiction asserted over E, basketball conference composed of nine member schools, notwithstanding two of its nine member schools were public institutions, where their designated representatives on conference Board could not control operations of E and E was not created directly by state]

Res-Care, Inc. 280 NLRB No. 078

[in *National Transportation Service*, Bd abandoned *intimate connection* test for determining whether to assert jurisdiction over E with close ties to exempt government entity; instead, inquiry would be whether E itself met definition of *employer* in Section 2(2) of the Act and, if so, whether E retained sufficient control of employment conditions of its Ees to enable it to engage in effective or meaningful bargaining with a labor organization]

Res-Care, Inc. 280 NLRB No. 078

[in determining whether to assert jurisdiction over E providing services to or for an exempt entity, Bd will closely examine not only the control over essential terms and conditions of employment retained by E, but also the scope and degree of control exercised by the exempt entity over the E's labor relations, to determine whether E is capable of engaging in meaningful collective bargaining]

Res-Care, Inc. 280 NLRB No. 078

[Bd declined to assert jurisdiction over E engaged in operation of residential job corp center under contract with Department of Labor (DOL), since DOL controlled E's labor relations to extent precluding E from engaging in meaningful collective bargaining where DOL retained ultimate discretion for setting wage and benefit levels and approving any change in wage rates, benefit levels or personnel policies; if E does not have final say on entire package of Ee compensation, i.e., wages and fringe benefits, meaningful bargaining is not possible]

Res-Care, Inc. 280 NLRB No. 078

[in reaffirming test of *National Transportation* for determining whether Bd will assert jurisdiction over E providing services to or for an exempt entity, Bd expressly overruled *Management and Training Corp., Teledyne Economic Development Co.* and *Singer Co.*]

Long Stretch Youth Home, Inc. 280 NLRB No. 079

[test for determining when assertion of jurisdiction over E providing services to or for exempt entity is appropriate is whether E has sufficient control over its Ees' employment conditions to enable it to bargain effectively with U, rather than what is the relationship between the functions of exempt entity and those of private E]

St. Jude Industrial Park Board v. N.L.R.B. 760 F.2d 223 (C.A. 8, Apr. 1985)

(Bd, with S.Ct approval, has limited *political subdivision* exemption to entities that are either: (1) created by state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate)

St. Jude Industrial Park Board v. N.L.R.B. 760 F.2d 223 (C.A. 8, Apr. 1985)

(Park Board set up to manage industrial park held not political subdivision notwithstanding City ratified its creation by adopting ordinance, since Park Board not create to constitute department or administrative arm of city government but was more in nature of business arrangement and city has retained very little control over Park Board affairs; further, Park Board is not administered by individuals who are responsible to public officials or general electorate as half of members are appointed by company in park and who cannot be removed by City)

3395 CONTROL OVER LABOR RELATIONS BY EXEMPT ENTERPRISE

Rustman Bus Company, Inc. 282 NLRB No. 025

[jurisdiction asserted over E providing bus transportation to exempt state and local public school entities, since exempt entities did not impinge on E's daily operation or ultimate control of labor relations, where entities did not impose discipline on drivers or participate in interviewing, hiring, decision or grievance adjustment, and notwithstanding entities' specification of minimum driver qualifications and retention of rights to investigate complaints and ask that driver be reassigned]

Res-Care, Inc. 280 NLRB No. 078

[in *National Transportation Service*, Bd abandoned *intimate connection* test for determining whether to assert jurisdiction over E with close ties to exempt government entity; instead, inquiry would be whether E itself met definition of *employer* in Section 2(2) of the Act and, if so, whether E retained sufficient control of employment conditions of its Ees to enable it to engage in effective or meaningful bargaining with a labor organization]

Res-Care, Inc. 280 NLRB No. 078

[in determining whether to assert jurisdiction over E providing services to or for an exempt entity, Bd will closely examine not only the control over essential terms and conditions of employment retained by E, but also the scope and degree of control exercised by the exempt entity over the E's labor relations, to determine whether E is capable of engaging in meaningful collective bargaining]

Res-Care, Inc. 280 NLRB No. 078

[Bd declined to assert jurisdiction over E engaged in operation of residential job corp center under contract with Department of Labor (DOL), since DOL controlled E's labor relations to extent precluding E from engaging in meaningful collective bargaining where DOL retained ultimate discretion for setting wage and benefit levels and approving any change in wage rates, benefit levels or personnel policies; if E does not have final say on entire package of Ee compensation, i.e., wages and fringe benefits, meaningful bargaining is not possible]

Res-Care, Inc. 280 NLRB No. 078

[in reaffirming test of *National Transportation* for determining whether Bd will assert jurisdiction over E providing services to or for an exempt entity, Bd expressly overruled *Management and Training Corp., Teledyne Economic Development Co.* and *Singer Co.*]

Long Stretch Youth Home, Inc. 280 NLRB No. 079

[test for determining when assertion of jurisdiction over E providing services to or for exempt entity is appropriate is whether E has sufficient control over its Ees' employment conditions to enable it to bargain effectively with U, rather than what is the relationship between the functions of exempt entity and those of private E]

St. Jude Industrial Park Board v. N.L.R.B. 760 F.2d 223 (C.A. 8, Apr. 1985)

(City did not exercise sufficient control over labor relations of Park Board where Park Board Ees received higher wages than City Ees and terms of employment and work supervision of Ees of Park Board are effectively controlled by lessee-appointed members of Park Board)

6700 STANDARDS APPLICABLE TO SPECIFIC TYPES OF ENTERPRISES

6708 COLLEGES AND UNIVERSITIES, PRIVATE NON-PROFIT

College of English Language, Los Angeles, Inc. 277 NLRB No. 105

(E operating college teaching English as second language to foreign language students held engaged in operation dissimilar from that of colleges, universities, and secondary schools found by Bd to be educational institutions, and held, instead, retail establishment providing service to consumers in view of E's lack of institutional or governmental accreditation common to Bd-denominated educational institutions; applicable state code having commercial purpose of assisting consumers in seeking redress from E; and fact that, while E possessed number of characteristics of educational entities, such characteristics existed in name only)

6710 ELEMENTARY AND SECONDARY SCHOOLS, PRIVATE FOR-PROFIT AND NON-PROFIT

College of English Language, Los Angeles, Inc. **277 NLRB No. 105**
(E operating college teaching English as second language to foreign language students held engaged in operation dissimilar from that of colleges, universities, and secondary schools found by Bd to be educational institutions, and held, instead, retail establishment providing service to consumers in view of E's lack of institutional or governmental accreditation common to Bd-denominated educational institutions; applicable state code having commercial purpose of assisting consumers in seeking redress from E; and fact that, while E possessed number of characteristics of educational entities, such characteristics existed in name only)

6736 NATIONAL DEFENSE

Jim Miller, A Sole Proprietor, d/b/a Action Drywall **JD-(SF)-136-86**
[*National defense standard is discretionary jurisdictional standard formulated by Bd for restricting disputes over which it will assert jurisdiction. National defense standard of operations which have substantial impact on national defense* will not automatically be invoked whenever E's services are performed as part of defense establishment. Rather, case by case analysis required to determine possible impact labor dispute might have on defense facility. Application for National defense standard is not restricted to disputes enmeshing only military or even government installation]

6736-5000 Substantial impact on national defense

Jim Miller, A Sole Proprietor, d/b/a Action Drywall **JD-(SF)-136-86**
[Bd asserted jurisdiction over dry wall constractor at housing project for military personnel located on military base, notwithstanding E did not meet Bd's administrative direct or indirect outflow or inflow standards, since w/i Bd's statutory jurisdiction inasmuch as commerce of base included in determination of effect on commerce where work was performed on military base and involved work necessary for providing on base housing, thus labor dispute arising in situation would enmesh base operations, and also E meets Bd's discretionary national defense standard since E's work exerted substantial impact on national defense]

Jim Miller, A Sole Proprietor, d/b/a Action Drywall **JD-(SF)-136-86**
[*although no specific test or indicia has emerged for evaluating impact of disruption in particular situations, cases applying national defense standard have looked to certain areas in arriving at conclusion that particular E's operations do, or do not, warrant application of standard. One such area is personnel to whom materials or services furnished. Another area included in this analysis has been nature of materials or services provided. Finally, Bd has examined location at which materials or services supplied*]

6776 RETAIL ENTERPRISES

Chevvron-Hill Corporation d/b/a Pit Stop Markets **279 NLRB No. 161**
[jurisdiction asserted over E who operates retail gas station and convenience grocery store under retail standard. Bd used the gross volume of retail gas sales, which amounted to $1 million, rather than commission fees of $43,000 that e received for such sales made under consignment and commission agreement with supplier notwithstanding title to gasoline remained with supplier]

College of English Language, Los Angeles, Inc. **277 NLRB No. 105**
(E operating college teaching English as second language to foreign language students held engaged in operation dissimilar from that of colleges, universities, and secondary schools found by Bd to be educational institutions, and held, instead, retail establishment providing service to consumers in view of E's lack of institutional or governmental accreditation common to Bd-denominated educational institutions; applicable state code having commercial purpose of assisting consumers in seeking redress from E; and fact that, while E possessed number of characteristics of educational entities, such characteristics existed in name only)

6784 SPORTS

The Big East Conference **282 NLRB No. 050**
[jurisdiction asserted over E, basketball conference composed of nine member schools, notwithstanding two of its nine member schools were public institutions, where their designated representatives on conference Board could not control operations of E and E was not created directly by state]

280 ENTERPRISES OVER WHICH THE BOARD DID OR DID NOT ASSERT JURISDICTION

0100 AGRICULTURAL PRODUCTION - CROPS

0200 AGRICULTURAL PRODUCTION - LIVESTOCK

0700 AGRICULTURAL SERVICES

0800 FORESTRY

0900 FISHING, HUNTING, AND TRAPPING

1000 METAL MINING

1100 ANTHRACITE MINING

1200 BITUMINOUS COAL AND LIGNITE MINING

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking 274 NLRB No. 045

(C dismissed for want of jurisdiction where E sold all coal he produced (over $50,000 annually) to *individual*-not agent of E-in same state, who then sold all the coal to another entity w/i state who shipped all this coal to Canada, since here, E did not have any direct outflow (no coal shipped by E outside state) and no showing that *individual was user* who met any of Bd's jurisdictional standard other than indirect outflow, and for Bd to assert jurisdiction under indirect outflow standard there must be sale to user meeting any of Bd's jurisdiction standards except indirect outflow or indirect inflow standard)

1300 OIL AND GAS EXTRACTION

1400 MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS

1500 BUILDING CONSTRUCTION - GENERAL CONTRACTORS AND OPERATIVE BUILDERS

1600 CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION - GENERAL CONTRACTORS

1700 CONSTRUCTION - SPECIAL TRADE CONTRACTORS

1740 MASONRY, STONEWORK, TILE SETTING, AND PLASTERING

Jim Miller, A Sole Proprietor, d/b/a Action Drywall JD-(SF)-136-86

[Bd asserted jurisdiction over dry wall contractor at housing project for military personnel located on military base, notwithstanding E did not meet Bd's administrative direct or indirect outflow or inflow standards, since w/i Bd's statutory jurisdiction inasmuch as commerce of base included in determination of effect on commerce where work was performed on military base and involved work necessary for providing on base housing, thus labor dispute arising in situation would enmesh base operations, and also E meets Bd's discretionary national defense standard since E's work exerted substantial impact on national defense]

2000 FOOD AND KINDRED PRODUCTS

2100 TOBACCO MANUFACTURES

2200 TEXTILE MILL PRODUCTS

2300 APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS

2400 LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE

2500 FURNITURE AND FIXTURES

2600 PAPER AND ALLIED PRODUCTS

2700 PRINTING, PUBLISHING, AND ALLIED INDUSTRIES

2800 CHEMICALS AND ALLIED PRODUCTS

2900 PETROLEUM REFINING AND RELATED INDUSTRIES

3000 RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS

3100 LEATHER AND LEATHER PRODUCTS

3200 STONE, CLAY, GLASS, AND CONCRETE PRODUCTS

3300 PRIMARY METAL INDUSTRIES

3400 FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT

3500 MACHINERY, EXCEPT ELECTRICAL

3600 ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT, AND SUPPLIES

3700 TRANSPORTATION EQUIPMENT

3800 MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC, MEDICAL, AND OPTICAL GOODS; WATCHES AND CLOCKS

3900 MISCELLANEOUS MANUFACTURING

4000 RAILROAD TRANSPORTATION

4100 LOCAL AND SURBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER TRANSPORTATION

4110 LOCAL AND SUBURBAN PASSENGER TRANSPORTATION

Springfield Transit Management, Inc. 281 NLRB No. 017

[jurisdiction asserted over city transit management company operating buses owned and garaged by state transit authority where E established labor relations for Ees who operated transit system and was therefore private E subject to NLRA rather than exempt state agencyor instrumentality]

4120 TAXICABS

Teamsters Local Union No. 688 (Air-Ways Cab Co., Inc.) 277 NLRB No. 181

[in secondary boycott case involving taxicab companies as primary, and lessee-drivers as secondary, Ea, jurisdiction declined where companies'

4120—Cont.

change from Ee-drivers to lessee-drivers would almost certainly have resulted in substantial diminution of companies' gross revenues; such circumstances undermine presumption that companies' business remained same so as to call for assertion of jurisdiction; and, while companies operated under new leasing system for 4 months before hearing, and even though U never admitted that Bd has jurisdiction, GC introduced no evidence as to companies' gross revenues for relevant period]

Teamsters Local Union No. 688 (Air-Ways Cab Co., Inc.) 277 NLRB No. 181

[in secondary boycott case involving taxicab companies as primary, and lessee-drivers as secondary, Es, jurisdiction declined, where operations of lessee-drivers did not individually meet jurisdictional standards and hence could not be aggregated for finding jurisdiction; followig E's changeover from Ee-drivers to lessee-drivers, latters' revenues could not be attributed to companies for determining jurisdiction since lessee-drivers were not companies' *allies*, nor was their status as independent contractors, rather than Ees, due to companies' wrongful conduct; rather, changeover was lawfully effected after impasse]

4150 SCHOOL BUSES

Rustman Bus Company, Inc. 282 NLRB No. 025

[jurisdiction asserted over E providing bus transportation to exempt state and local public school entities, since exempt entities did not impinge on E's daily operation or ultimate control of labor relations, where entities did not impose discipline on drivers or participate in interviewing, hiring, decision or grievance adjustment, and notwithstanding entities' specification of minimum driver qualifications and retention of rights to investigate complaints and ask that driver be reassigned]

4200 MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING

4230 TERMINAL AND JOINT TERMINAL MAINTENANCE FACILITIES FOR MOTOR FREIGHT TRANSPORTATION

Ebon Services International, Inc. 277 NLRB No. 136

(Bd asserted jurisdiction over E engaged in providing cleaning services to four airlines at international airport, where National Mediation Board advised Bd that E was independent company that was not owned or controlled by any carrier subject to Railway Labor Act)

4400 WATER TRANSPORTATION

4500 TRANSPORTATION BY AIR

4580 FIXED FACILITIES AND SERVICES RELATED TO AIR TRANSPORTATION

ARA Ground Services, Inc. 280 N.L.R.B. No. 062

[R ptn involving E engaged in business of providing ground services to air carriers at airport, dismissed, since National Mediation Bd advised Bd that, based on nature of activities and degree of control by airlines, activities and Ees performing them were subject to Railway Labor Act]

Ground Handling, Inc. 278 NLRB No. 142

[Bd dismissed ptn on jurisdictional grounds where E provided ground fleet servises to air carriers through contract with county where, pursuant to Bd's request, National Mediation Bd advised Bd that, in view of nature of E's activities traditionally performed by Ees of carriers in airline industry, and degree of control exercised by airlines which E serves, activities and Ees performing such activities are subject to Railway Labor Act]

Ground Services, Inc., a Wholly-Owned Subsidiary of ARA Services, Inc. 276 NLRB No. 006

(ptn to represent Ees of E providing ground fleet service to air carriers, dismissed for lack of jurisdiction, where Bd advised by National Mediation Board that Ees sought by petitioner were subject to Railway Labor Act)

4600 PIPE LINES, EXCEPT NATURAL GAS

4700 TRANSPORTATION SERVICES

4800 COMMUNICATION

4900 ELECTRIC, GAS, AND SANITARY SERVICES

5000 WHOLESALE TRADE - DURABLE GOODS

5100 WHOLESALE TRADE - NONDURABLE GOODS

5200 BUILDING MATERIALS, HARDWARE, GARDEN SUPPLY, AND MOBILE HOME DEALERS

5300 GENERAL MERCHANDISE STORES

5400 FOOD STORES

5500 AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS

5600 APPAREL AND ACCESSORY STORES

5700 FURNITURE, HOME FURNISHINGS AND EQUIPMENT STORES

5800 EATING AND DRINKING PLACES

5900 MISCELLANEOUS RETAIL

6000 BANKING

6100 CREDIT AGENCIES OTHER THAN BANKS

6200 SECURITY AND COMMODITY BROKERS, DEALERS, EXCHANGES, AND SERVICES

6300 INSURANCE

6400 INSURANCE AGENTS, BROKERS, AND SERVICE

6500 REAL ESTATE

6510 REAL ESTATE OPERATORS (EXCEPT DEVELOPERS) AND LESSORS

In The Matter of David Landau, d/b/a Century Assets 280 NLRB No. 155

[AO that Bd would assert jurisdiction over owner, operator, and controller of 2 apartment buildings where combined income exceeded $500,000 per year, and E's alleged $30,000 per annum in out-of-state purchases was more than de minimus]

Imperial House Condominium, Inc. 279 NLRB No. 154

[reaffirming its decision in *30 Sutton Place*, 240 NLRB 752, and that it will continue to assert jurisdiction over residential condominiums and cooperatives, Bd asserted jurisdiction over nonprofit incorporated association operating residential condominium that met established jurisdictional amount of $500,000 per annum, where there was no intervening change in either (1) nature of condominiums and cooperatives or (2) their unquestioned impact on interstate commerce that would warrant reversal of 7-year policy of asserting jurisdiction over such enterprises]

Imperial House Condominium, Inc. 279 NLRB No. 154

[in asserting jurisdiction over nonprofit incorporated association operating residential condominium, Bd noted that it had rejected argument that nonprofit nature of apartment cooperatives made them inappropriate for Bd jurisdiction; assertion of jurisdiction over cooperatives and its withdrawal from condominiums would be anomalous since they differ essentially only in legal form, not substance; similarly, while residential apartment, over which Bd asserts jurisdiction, differs from residential condominium, such difference centers more on *form* of ownership rather than on real and potential impace on interstate commerce]

Imperial House Condominium, Inc. 279 NLRB No. 154

[in asserting jurisdiction over condominium on basis of *30 Sutton Place*, 240 NLRB 752, stating jurisdiction derives from general impact of enterprise on interstate commerce, rather than involvement in traditional commercial activity, Bd conceded that condominiums are not *engaged in business* in sense of retail operation but held that, while relationship of condominium's individual unit owner to condominium Ee may not be equivalent of retailer to purchaser, relationship of condominium as business enterprise to its Ees and suppliers is no different from that of any similar business enterprise and is inextricably in interstate commerce]

Imperial House Condominium, Inc. 279 NLRB No. 154

[in asserting jurisdiction over residential condominium, Bd found no meaningful equivalence between condominium and individual homeowner simply because in each instance owner is purchasing *personal services;* such argument ignores collective nature of condominium which serves to take enterprise outside sphere of individual action; and Bd has asserted jurisdiction over enterprises wherein collection of individuals banded together to purchase personal goods and services and which included private athletic clubs, nonprofit golf and country clubs, and electrical and agricultural cooperatives]

Imperial House Condominium, Inc. 279 NLRB No. 154

[in asserting jurisdiction over residential condominium, Bd held fact that condominium unit owners purchase repair and related services for their dwellings is no more reason to decline jurisdiction over condominiums than fact that portion of apartment dwellers' monthly rents are attributable to repair and maintenance of their dwellings is basis to decline jurisdiction over residential apartment houses]

6510—Cont.

Imperial House Condominium, Inc. 279 NLRB No. 154
[in asserting jurisdiction over residential condominium, Bd held it is not appropriate to withdraw Bd's jurisdictional authority from substantial segment of national economy and thereby deny Act's protection to significant number of Ees employed in such industry]

St. Jude Industrial Park Board v. N.L.R.B. 760 F.2d 223 (C.A. 8, Apr. 1985)
(Park Board set up to manage industrial park held not political subdivision notwithstanding City ratified its creation by adopting ordinance, since Park Board not create to constitute department or administrative arm of city government but was more in nature of business arrangement and city has retained very little control over Park Board affairs; further, Park Board is not administered by individuals who are responsible to public officials or general electorate as half of members are appointed by company in park and who cannot be removed by City)

6530 REAL ESTATE AGENTS AND MANAGERS

The Penson Corporation 275 NLRB No. 079
(Advisory Opinion that Bd would assert jurisdiction over E engaged in business as management agent for residential apartment buildings where E's gross annual rent revenues exceeded $500,000 and it purchased goods and services in interstate commerce in excess of $50,000)

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. 273 NLRB No. 189
(jurisdiction asserted over partnership, owning and operating apartment building, which derived gross annual income insufficient to meet Bd's jurisdictional standard, where partnership was single E with five other similar partnerships and all six partnerships grossed total revenues sufficient to meet Bd's jurisdictional standard)

6600 COMBINATIONS OF REAL ESTATE, INSURANCE, LOANS, LAW OFFICES

6700 HOLDING AND OTHER INVESTMENT OFFICES

7000 HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES

7200 PERSONAL SERVICES

7300 BUSINESS SERVICES

7500 AUTOMOTIVE REPAIR, SERVICES, AND GARAGES

7600 MISCELLANEOUS REPAIR SERVICES

7800 MOTION PICTURES

7900 AMUSEMENT AND RECREATION SERVICES, EXCEPT MOTION PICTURES

7990 MISCELLANEOUS AMUSEMENT AND RECREATION SERVICES

Everett Yacht Club JD-(SF)-115-85
(applying discretionary standard for retailers, jurisdiction asserted over private yacht club where its gross revenues excluding dues and initiation fees exceeded this standard for last fiscal or calendar year, or for last 12 months before hearing. Bd rejected E's theory that because E subcontracted operation of bar and restaurant beginning 3 months prior to hearing it should be treated as new entity in which case it would not meet standard)

8000 HEALTH SERVICES

8050 NURSING AND PERSONAL CARE FACILITIES

Sunrise, A Community For The Retarded, Inc. 282 NLRB No. 035
[where Bd set aside election in stipulated unit in health care institution, in case in which hearing officer relied on *National Transportation Service*, 240 NLRB 565, in determining that Bd had jurisdiction, Bd, in remanding to RD to resume processing ptn, provided that, in absence of new stipulation, RD consider jurisdictional issue consistent with decision in *Res-Care*, 280 NLRB No. 78, including reopening record, if necessary, and issuing supplemental decision]

Cape Girardeau Care Center, Inc. 278 NLRB No. 143
[jurisdiction asserted over E, a not-for-profit corporation operating nnursing home, where (1) neither state nor any of its political subdivision or agencies created E; instead, E sought county approval to obtain tax-exempt bonds to finance sale of nursing home, and (2) E's policy-making officials had no accountability to public inasmuch as county did not appoint E's directors but simply gave ministerial approval to their appointment which was further effort to insure tax-exempt financing of sale of nursing home]

Cape Girardeau Care Center, Inc. 278 NLRB No. 143
[in asserting jurisdiction over E, a not-for-profit corporation operating nursing home found not to constitute political subdivision, Bd noted, among other things, that county lacked control over E, E was not county nursing home and county provided no funds or other support to E, and E determined its own fee schedules and budgets and was not required to submit such documents to county]

Cape Girardeau Care Center, Inc. 278 NLRB No. 143
[in asserting jurisdiction over E, a not-for-profit corporation operating nursing home found not to constitute political subdivision, Bd noted, among other things, that county had no control over E's daily operations or its labor relations policies, E's board of director's and Ees were not on county payroll and had different health insurance and pension plans from those of county Ees, and E had no power of eminent domain or subpoena power and paid property taxes to county]

8090 HEALTH AND ALLIED SERVICES, NOT ELSEWHERE CLASSIFIED

Renaissance West Community Mental Health Center 276 NLRB No. 050
(jurisdiction asserted over private, nonprofit corporation under contract with city-county mental health board to provide mental health services in specified geographic area, where corporation was health care institution w/i meaning of Act; its receipt of federal funds, coming from out-of-state sources, demonstrated that its operation had substantial impact on commerce; and, since it had complete control over its personnel and labor relations, it was engaged in commerce w/i meaning of Act)

8100 LEGAL SERVICES

8200 EDUCATIONAL SERVICES

8210 ELEMENTARY AND SECONDARY SCHOOLS

College of English Language, Los Angeles, Inc. 277 NLRB No. 105
(jurisdiction asserted over E operating college teaching English as second language to foreign language students, where E was engaged in operation substantially dissimilar from colleges, universities, and secondary schools found by Bd to be educational institutions and, therefore, it was improper to apply $1 million jurisdictional standard applicable to such institutions; rather, E's operation was more properly classified as retail establishment providing service to consumers, and E's gross annual revenue in excess of $500,000 satisfied Bd's jurisdictional standard for retail operations)

8220 COLLEGES, UNIVERSITIES, PROFESSIONAL SCHOOLS, AND JUNIOR COLLEGES

Trustee of St. Joseph's College 282 NLRB No. 009
[Bd declined jurisdiction over E (4 year college) founded by religious Order since College's mission is inextricably interwoven with indisputably religious mission of the Order because: (1) college is financially dependent on Order; (2) Order exercised considerable administrative control over E; and (3) Bishop of Portland possesses signficant degree of control over E. Pervasiveness of Order's influence on teaching of E, even as to secular subjects, is apparent in certain requirements imposed on faculty by E. Very process of inquiry by Bd would present substantial liklihood that rights guaranteed by constitution may be impinged]

Trustee of St. Joseph's College 282 NLRB No. 009
[to extent that *Barber-Scotia College*, 245 NLRB 406 (1979) and similar cases stand for proposition that *Catholic Bishop of Chicago*, 440 U.S. 490 (1979), does not apply to colleges and universities they are *overruled*]

College of English Language, Los Angeles, Inc. 277 NLRB No. 105
(jurisdiction asserted over E operating college teaching English as second language to foreign language students, where E was engaged in operation substantially dissimilar from colleges, universities, and secondary schools found by Bd to be educational institutions and, therefore, it was improper to apply $1 million jurisdictional standard applicable to such institutions; rather, E's operation was more properly classified as retail establishment providing service to consumers, and E's gross annual revenue in excess of $50o,000 satisfied Bd's jurisdictional standard for retail operations)

Universidad Central De Bayamon v. N.L.R.B. 793 F.2d 383 (C.A. 1, June 1986)
[divided en banc ct denied enforcement of Bd's bargaining order against church-operated university and w/drew prior enfg. opn (778 F.2d 922); ct divided over interpretation of *Catholic Bishop* (440 U.S. 490), withholding jurisdiction from secondary schools; 3 judges supported denial of enforcement based on risk of church/state entanglement, and other limitations on Bd's jurisdiction over university teachers; 3 judges suggested enforcement based on difference between teachers in pre-college schools and faculty at

8220—Cont.

universities and because religious function here was subordinate to that of providing secular education]

8290 SCHOOLS AND EDUCATIONAL SERVICES, NOT ELSEWHERE CLASSIFIED

College of English Language, Los Angeles, Inc. **277 NLRB No. 105**
(jurisdiction asserted over E operating college teaching English as second language to foreign language students, where E was engaged in operation substantially dissimilar from colleges, universities, and secondary schools found by Bd to be educational institutions and, therefore, it was improper to apply $1 million jurisdictional standard applicable to such institutions; rather, E's operation was more properly classified as retail establishment providing service to consumers, and E's gross annual revenue in excess of $50o,000 satisfied Bd's jurisdictional standard for retail operations)

Volunteers of America-Minnesota-Bar None Boys Ranch v. N.L.R.B. **752 F.2d 345 (C.A. 8, Jan. 1985)**
(Bd properly asserted jurisdiction over religiously affiliated residential treatment center for children since treatment center essentially secular and differed significantly from parochial schools over which Bd has refused to assert jurisdiction, inasmuch as it had as its primary purpose care of children rather than parochial school's purpose of propagation of faith; nor did E demonstrate that its commitment to serving as many children as possible would bring it into conflict with U, or that its secular objectives would be impaired by U representation)

8300 SOCIAL SERVICES

8320 INDIVIDUAL AND FAMILY SOCIAL SERVICES

Every Woman's Place, Inc. **282 NLRB No. 048**
[jurisdiction asserted over nonprofit corporation, which provided crises intervention, counseling service, and shelter to women and youths, with annual gross income of over $250,000 furnishing services to the state valued in excess of $50,000 per annum]

8350 CHILD DAY CARE SERVICES

N.L.R.B. v. The Salvation Army of Massachusetts Dorchester Day Care Center **———F.2d———**
(C.A. 1, May 1985)
[Bd properly asserted jurisdiction over day care center operated by Salvation Army, notwithstanding E's contention that to assert jurisdiction would pose significant risk that its First Amendment rights would be infringed, since day care center served purely secular function where function was primarily to provide care for children, not education, day care involved no religious instruction or indoctrination and teachers, children and parents were not chosen according to their religious affiliation]

8360 RESIDENTIAL CARE

Long Stretch Youth Home, Inc. **280 NLRB No. 079**
[jurisdiction asserted over nonprofit corporation licensed as child care institution providing a residence for teenage boys, notwithstanding contention that E shared state's exemption from Bd jurisdiction, where E had sufficient control over Ees' employment conditions to enable it to bargain effectively with U, state agency lacked ultimate discretion as to wage and benefit levels, E retained substantial control over economic matters central to E-Ee relationship, and state agency required only that E fill certain job classifications with Ees who met certain minimum standards and that child care workers have regularly scheduled hours and days off]

Volunteers of America-Minnesota-Bar None Boys Ranch v. N.L.R.B. **752 F.2d 345 (C.A. 8, Jan. 1985)**
(Bd properly asserted jurisdiction over religiously affiliated residential treatment center for children since treatment center essentially secular and differed significantly from parochial schools over which Bd has refused to assert jurisdiction, inasmuch as it had as its primary purpose care of children rather than parochial school's purpose of propagation of faith; nor did E demonstrate that its commitment to serving as many children as possible would bring it into conflict with U, or that its secular objectives would be impaired by U representation)

8400 MUSEUMS, ART GALLERIES, BOTANICAL AND ZOOLOGICAL GARDENS

8600 MEMBERSHIP ORGANIZATIONS

8630 LABOR UNIONS AND SIMILAR LABOR ORGANIZATIONS

Carpenters Local 925; et al. (Charlene Seier, an Individual) **279 NLRB No. 145**
[jurisdiction asserted over local U and district council of Carpenters as integral part of multistate enterprise, and nonretail standard of $50,000 direct inflow or direct outflow applied where constitution provided that no local bylaws or trade rules may conflict with any provisions of Carpenters constitution and must be approved by latter before taking affect, thus giving parent-Carpenters active control over local and council]

8640 CIVIC, SOCIAL, AND FRATERNAL ASSOCIATIONS

Citizens Action Coalition of Indiana, Inc. **JD-53-85**
(jurisdiction not asserted over citizens' advocacy group which among other activities published newsletter, where organization's newsletter had no appreciable impact on commerce, and absent newsletter, there was no other aspects of the organization's operations that had impact on commerce sufficient to warrant assertion of jurisdiction. Bd has neither asserted nor declined jurisdiction over this class of organization... whether Respondent meets certain dollar amount standards only becomes relevant if and when Bd elects to apply these standards to Respondent and/or Es of same class)

8660 RELIGIOUS ORGANIZATIONS

Tony and Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.———**
(U.S. SCT, Apr. 1985)
[nonprofit religious foundation operating various commercial businesses held *enterprise engaged in commerce,* notwithstanding its religious character, in view of ct's liberal construction of FLSA intended to outlaw from interstate commerce goods produced under conditions below minimum standards of decency, absence from FLSA of any express or implied exceptions for commercial activities of religious or other nonprofit organizations, Labor Departments consistent interpretation of FLSA reading such businesses, and legislative history supporting such interpretation]

Tony and Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.———**
(U.S. SCT, Apr. 1985)
[in suit brought under FLSA by religious foundation operating various commercial business, ct held admixture of religious motivations did not alter business's effect on commerce; as found by lower ct, foundation's businesses competed with ordinary commercial enterprises and payment of substandard wages would give foundation and similar organizations an advantage over their competitions, which is kind of *unfair method of competition* FLSA was intended to prevent]

Tony and Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.———**
(U.S. SCT, Apr. 1985)
[in holding that religious foundation operating various commercial businesses was enterprise engaged in commerce and its associates working in commercial businesses were Ees w/i meaning of FLSA, ct held ordinary volunteerism is not threatened by its interpretation of FLSA herein, since coverage of foundation's business activities will not lead to coverage of volunteers who perform services for the elderly, the needy, and the church]

Tony & Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.———**
(U.S. SCT, Apr. 1985)
[application of FLSA's minimum wage requirements to nonprofit religious foundation operating commercial businesses held not to interfere w/free exercise of religious beliefs of associates working in commercial businesses and receiving payment in form of benefits instead of wages; First Amendment does not require exemption from government program unless, at minimum, inclusion in program actually burdens claimant's freedom to exercise religious beliefs; and application of FLSA, which does not require payment of cash wages, will work little change in associates' receipt of payment in form of benefits]

Tony & Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.———**
(U.S. SCT, Apr. 1985)
[application of FLSA's minimum wage requirements to nonprofit religious foundation operating commercial businesses held not to interfere w/free exercise of religious beliefs of associates working in commercial businesses and receiving payment in form of benefits instead of wages; even if foundation were to pay wages in cash, or if associates' beliefs precluded them from accepting statutory amount, associates are not prevented from returning amounts to foundation, if done voluntarily]

Tony & Susan Alamo Foundation, et al. v. Secretary of Labor **———U.S.———**
(U.S. SCT, Apr. 1985)
[application of FLSA's record keeping requirements to nonprofit religious foundation operating commercial businesses held not to violate First Amendments by inhibiting religious activity and fostering excessive government entanglement in religion, since FLSA's requirements apply only to commercial activities undertaken with *business purpose* and would have no impact on

8660—Cont.

foundation's evangelical activities or on individuals engaged in volunteer work for other religious organizations; and bear no resemblance to kind of government surveillance ct has previously held unlawful]

N.L.R.B. v. The Salvation Army of Massachusetts Dorchester Day Care Center ———F.2d——— (C.A. 1, May 1985)

[Bd properly asserted jurisdiction over day care center operated by Salvation Army, notwithstanding E's contention that to assert jurisdiction would pose significant risk that its First Amendment rights would be infringed, since day care center served purely secular function where function was primarily to provide care for children, not education, day care involved no religious instruction or indoctrination and teachers, children and parents were not chosen according to their religious affiliation]

Volunteers of America, Los Angeles v. N.L.R.B. 777 F.2d 1386 (C.A. 9, Dec. 1985)

[Bd did not err in asserting jurisdiction over nonprofit religious alcohol detoxification center, since there was no significant risk the first amendment would be infringed where center was essentially secular, center's religious views were not imposed upon its Ees, Ees did not propagate E's religious doctrine and further, E's contention that its social programs were expressive of a religious philosophy and thus there was excessive entanglement, rejected, since the center's programs were carried out in a secular fashion]

8670 CHARITABLE ORGANIZATIONS

American Lebanese Syrian Associated Charities, Inc. d/b/a A.L.S.A.C. 277 NLRB No. 189

[jurisdiction asserted over non-profit fund raising organization for hospital where organization itself received products in excess of $50,000 from points outside state and fact that hospital was dependent on organization for funds and was itself engaged in commerce, was further justification for asserting jurisdiction]

8800 PRIVATE HOUSEHOLDS

8900 MISCELLANEOUS SERVICES

9100 EXECUTIVE, LEGISLATIVE, AND GENERAL GOVERNMENT, EXCEPT FINANCE

9200 JUSTICE, PUBLIC ORDER, AND SAFETY

9300 PUBLIC FINANCE, TAXATION, AND MONETARY POLICY

9400 ADMINISTRATION OF HUMAN RESOURCES PROGRAMS

9440 ADMINISTRATION OF SOCIAL, MANPOWER, AND INCOME MAINTENANCE PROGRAMS

Res-Care, Inc. 280 NLRB No. 078

[Bd declined to assert jurisdiction over E engaged in operation of residential job corp center under contract with Department of Labor (DOL), since DOL controlled E's labor relations to extent precluding E from engaging in meaningful collective bargaining where DOL retained ultimate discretion for setting wage and benefit levels and approving any change in wage rates, benefit levels or personnel policies; if E does not have final say on entire package of Ee compensation, i.e., wages and fringe benefits, meaningful bargaining is not possible]

9500 ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS

9600 ADMINISTRATION OF ECONOMIC PROGRAMS

9700 NATIONAL SECURITY AND INTERNATIONAL AFFAIRS

9900 NONCLASSIFIABLE ESTABLISHMENTS

300 INVESTIGATION AND CERTIFICATION OF REPRESENTATIVE

301 GENERALLY

5000 EXISTENCE OF QUESTION OF REPRESENTATION

308 WHO MAY RAISE QUESTION OF REPRESENTATION

0100 GENERALLY

2000 EMPLOYEE OR GROUP OF EMPLOYEES

4000 INDIVIDUAL

6000 LABOR ORGANIZATION

8000 EMPLOYER

316 HOW QUESTION OF REPRESENTATION IS RAISED

0100 GENERALLY

3300 DEMAND FOR AND REFUSAL OF RECOGNITION

3390 SUBSTITUTION OF OR AFFILIATION WITH ANOTHER BARGAINING REPRESENTATIVE

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[if Bd finds that affiliation raises qcr undermining Bd's own election and certification procedures, it can refuse to reconsider U's ULP charge, and is authorized to conduct R election; however it may not condone E's refusal to bargain in absence of qcr and has no authority to prescribe internal procedures for U to follow in order to invoke Act's protections]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)

[U affiliations or mergers do not inevitably raise qcr so as to necessitate election; so long as changes are not sufficiently dramatic to alter U's identity, decision to affiliate is internal U matter that does not affect representative status of bargaining agent or end E's duty to continue its relationship with U; otherwise, industrial stability sought by Act would unnecessarily be disrupted if every U organizational adjustment were to displace E-bargaining representative relationship]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)

[notion that qcr is created simply by increase in local U's bargaining power as result of its a/w larger U has no express basis in Act and has been rejected by Bd; and S.Ct's decision in *Financial Institution* likewise suggests that increase in U's bargaining power is not, standing alone, determinative of whether affiliation raises qcr, since there may be variety of reasons why local U might seek to affiliate, and S.Ct has noted that Bd has recognized that U *must remain largely unfettered in its organizational quest for financial stability and aid in the negotiating process*]

6700 FILING OF PETITION FOR ELECTION

6725 PETITION BY EMPLOYER

6725-5000 Objective considerations

Hydro Conduit Corporation 278 NLRB No. 164

[at expiration of collective bargaining agreement, E may file an *RM* ptn and Bd will hold an election, if E can show objectively based reasonable doubt as to U's majority support; decision to process ptn is made by RD pursuant to an administrative determination that E has made prima facie showing of objective considerations and such administrative determination as to objective considerations is not litigable]

324 SHOWING OF INTEREST IN REPRESENTATION

0100 GENERALLY

0175 ELECTION, NOT SHOWING OF INTEREST, DETERMINES UNION'S MAJORITY STATUS

Wright Memorial Hospital v. N.L.R.B. 771 F.2d 400 (C.A. 8, Aug. 1985)

(mtn to dismiss election ptn, allegedly because it was tainted and showing of interest was invalid, properly denied; ptn was not tainted by supervisors' pro-U activities where the activities did not coerce Ees to vote for U out of fear of retaliation, and allegedly invalid showing of interest was not basis for mtn, since it is determined administratively, not litigated by the parties, and does not determine U's majority status, which depends on outcome of election)

2000 INTEREST SHOWING AS NONLITIGABLE ADMINISTRATIVE MATTER

2033 WHERE REQUIREMENT IS BOARD POLICY

Hydro Conduit Corporation 278 NLRB No. 164

[at expiration of collective bargaining agreement, E may file an *RM* ptn and Bd will hold an election, if E can show objectively based reasonable doubt as to U's majority support; decision to process ptn is made by RD pursuant to an administrative determination that E has made prima facie showing of objective considerations and such administrative determination as to objective considerations is not litigable]

Hydro Conduit Corporation 278 NLRB No. 164

[Bd has consistently refused to allow litigation of RD's administrative determination as to objective considerations in support of RM ptn on grounds that this protects confidentiality of data submitted in support of ptn and permits expeditious resolution of issues concerning Ee choice of representative; however, an administrative determination that objective considerations support RM ptn is not determinative of E's obligation to engage in further bargaining]

Wright Memorial Hospital v. N.L.R.B. 771 F.2d 400 (C.A. 8, Aug. 1985)

(mtn to dismiss election ptn, allegedly because it was tainted and showing of interest was invalid, properly denied; ptn was not tainted by supervisors' pro-U activities where the activities did not coerce Ees to vote for U out of fear of retaliation, and allegedly invalid showing of interest was not basis for mtn, since it is determined administratively, not litigated by the parties, and does not determine U's majority status, which depends on outcome of election)

4000 EXTENT OF INTEREST REQUIRED

4020 BY PETITIONER

4020-4200 Where Board directed unit different from that sought by petitioner

ACL Corporation d/b/a Atlanta Hilton and Towers 275 NLRB No. 197

6000 TIME FOR SUBMISSION OF SHOWING OF INTEREST

8000 VALIDITY OF SHOWING

332 DISCLAIMER OF INTEREST IN BEING REPRESENTATIVE

0100 GENERALLY

2500 IN PROCEEDINGS INITIATED BY EMPLOYER

2560 CONDUCT OR EVENTS CONSISTENT WITH DISCLAIMER

2560-1000 Failure to appear at hearing

Texas Bus Lines, Inc. 277 NLRB No. 075

(failure of Ee committee or its representative to appear at representation hearing held pursuant to outside U's representation ptn or otherwise in furtherance of its recognition found disclaimer of interest in or abandonment of its representation of the limited unit of Ees it had been elected to represent)

5000 WITHDRAWAL BY PETITIONING UNION OR INTERVENOR

5012 DISCLAIMER OF INTEREST BY INCUMBENT UNION

Arden Electric, et al. 275 NLRB No. 095

(U's disclaimer resulting in dissolution of multi-E unit represented by E association and concurrent ptn for single E units held not to constitute unlawful whipsawing requiring dismissal of ptn, since any whipsaw-effect results from parties' relationship and from E association's decision to attempt to substitute on multi-E basis new U for disclaiming U; if alleged whipsawing were basis for dismissing ptns, w/o returning parties to status quo ante, Bd would preclude any inquiry into Es' consent to bargaining with substitute U and obligate them to multi-E unit bargaining they had never authorized)

7500 DISCLAIMER IN DECERTIFICATION PROCEEDINGS

339 WHO MAY ACT AS REPRESENTATIVE

0100 GENERALLY

2500 LABOR ORGANIZATIONS

2531 UNION SUBSEQUENT TO AFFILIATION OR MERGER

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**

[U affiliations or mergers do not inevitably raise qcr so as to necessitate election; so long as changes are not sufficiently dramatic to alter U's identity, decision to affiliate is internal U matter that does not affect representative status of bargaining agent or end E's duty to continue its relationship with U; otherwise, industrial stability sought by Act would unnecessarily be disrupted if every U organizational adjustment were to displace E-bargaining representative relationship]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**

[in determining whether U involved in affiliation has remained esnetially the same or has changed so substantially as to require new R election depends on number of factors which Bd generally considers, including *structure, administration, officers, assets, membership, autonomy, by-laws, size,* and it looks for changes *in the rights and obligations of U's leadership and membership, and in relationships between putative bargaining agent, its affiliate, and E*]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**

[E unlawfully refused to bargain with independent U after it a/w international, notwithstanding E's contention that changes due to affiliation were so great as to create new bargaining entity, with international's constitution significantly affecting autonomy of U as independent; while constitution placed certain obligations on U, its autonomy was not significantly curtailed, since U retained control over negotiating and administering contracts, processing grievances, and calling strikes; and money in U's treasury was to be spent for U's own purposes and at its sole discretion]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**

[E unlawfully refused to bargain with independent U after it a/w international, notwithstanding E's contention that affiliation of small independent U with much larger U creates substantially different bargaining entity; ct distg cases relied on by E on ground such cases either involved international constitution substantially limiting U's autonomy, irregularities in affiliation procedure, loss of control over U's affairs, use of affiliation as a stratagem, or Bd determination that Ees had choice between different and distinct bargaining representatives or none]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division **789 F.2d 961 (C.A. 1, Apr. 1986)**

[where U membership has expressed its desire to affiliate (at least in part to improve its bargaining posture), and continuing majority support of original bargaining representative is not in doubt, ct held it is not inclined to override Bd's judgment that substantial continuity existed when independent U a/w international and to adopt instead *per se* rule that affiliation of small independent U with much larger U creates substantially different bargaining entity]

5000 INDIVIDUALS

7500 DISQUALIFICATION AS REPRESENTATIVE

Springfield Hospital **281 NLRB No. 076**

[U did not cease to exist when it became independent of int'l U of which it was a division and accepted separate charter from AFL-CIO, where such action taken under provisions of its constitution and approved by referendum, notwithstanding unit Ees did not vote in any type of election on this disaffiliation or acceptance of charter, since unit members not members of petitioner's U at that time, and no changes have been made in how petitioner handles grievances, administers and negotiates contracts, organizing Ees, etc.; thus, no change in essential identity of bargaining representative which would require vote on question of continuity of representation]

7525 CHARACTER OF REPRESENTATIVE

Sahara Datsun, Inc. **278 NLRB No. 148**

[U officer not entitled to act as U representative in negotiations where, by informing bank through which E obtained financing for its customers that E was submitting falsified customer credit applications and by publishing, in newsletter mailed to Ees, accusations that E's owners were involved with prostitutes and use and sale of cocaine, he created such atmosphere of ill will that good faith bargaining would be futile, if not impossible, were E required to deal with him as U representative; allegations were unsubstantiated and directed against members of management who would negotiate with U]

7525-3300 Corrupt administration or unlawful action of union

Mohawk Flush Doors, Inc. **281 NLRB No. 059**

[Bd refused to revoke certification of District Council because of alleged statements contained in report of President's Commission on Organized Crime, alleging extensive influence by organized crime over international and some of its locals]

Castello Packing Co., Inc. and Castello Foods, Inc., d/b/a Holiday Pack Foods **281 NLRB No. 011**

[E's contention that U should not be treated as labor organization because of indictment for murder of 2 high U officials, rejected where, other than statements of counsel for E and of U agent no other evidence was submitted by E with respect to indictments or what had occurred since then; and Bd's finding in underlying R case and previous cases, as well as U agent's testimony herein, established U's labor organization status]

Brinks, Incorporated of Florida **276 NLRB No. 001**

(mtn for summary judgment denied, and 8(a)(5) case remanded to RD for evidentiary hearing on issue raised by E's contention that U of police and protection Ees was improperly certified where it was affiliated with organization that admitted nonguards to membership; contention that certification was also improper because of certain officers' criminal background, however, did not warrant a hearing, since that was not basis for denying certification)

7575 CONFLICT OF INTERESTS OF REPRESENTATIVE

7575-7500 Arising from relationship to other employees

7575-7550 Union representing guards

Burns International Security Services, Inc. **278 NLRB No. 070**

[election ordered in unit of guards, since contention U admitted nonguards to membership, rejected, where E failed to show by definitive evidence that U had continued to represent or admit to membership any Ee determined not to be guard by agreement with U, or through appropriate Bd proceeding, and herein whether Ees which E contended were not guards were guards or not presented close question, which would be difficult to litigate; to apply Section 9(b)(3) in literal sense would preclude certification of national guard U, contrary to intent of Congress]

7575-7575 Union representing mixed unit of guards and nonguards

Brink's Inc. **281 NLRB No. 074**

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting *All minutes of meetings* and related documents of nonguard U, did not *relate to any matter...in question in the proceedings* under Bd R/R 102.66(c) since it concerned nonguard Ees of other Es and thus it would be subject to petition to revoke; further, such request may also be revocable as unreasonably broad]

Brink's Inc. **281 NLRB No. 074**

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting nonguard U's *membership lists* and related docu-

7575-7575—Cont.

ments, may be revocable on grounds that it is unreasonable because no time limitations are specified and substantial privacy rights may be at stake]

Brink's Inc. **281 NLRB No. 074**

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting all communications between petitioner and petitioner's officers and its law firm, clearly requested privileged information; however, Hearing Officer should not have revoked subpoena but rather, should have conducted an *in camera* inspection of documents in question to determine whether any of them were subject to the privilege; those not privileged should have been made available assuming other relevant standards were met]

Brink's Inc. **281 NLRB No. 074**

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting individual tax records of petitioner's president for the purpose of determining whether president received money from nonguard U, was properly revoked since information was available *from another source that is more convenient* [*and*]

Brink's Inc. **281 NLRB No. 074**

[where E made contention that petitioner was affiliated with nonguard U, Hearing Officer's ruling that time period covered by subpoenas served by E could date only from time E notified U of its intent to withdraw recognition, rejected, since Bd decision allowing such withdrawal of recognition from such nonguard Us predated instant E's decision and E is entitled to seek information regarding any actions nonguard U may have taken in response to Bd's decision regarding petitioner's status]

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) **755 F.2d 5 (C.A. 2, Feb. 1985)**

(while Bd cannot compel an E to recognize mixed guard U as bargaining agent for unit of guards, E may voluntarily recognize mixed guard U as bargaining agent for unit; based on language and legislative history of Sec. 9(b)(3), Bd was warranted in interpreting section as proscribing Bd direction to an E to bargain with mixed guard U despite prior voluntary recognition)

7575-8100 Arising from relationship to other unions

7575-8125 Guard union affiliated with nonguard union

Brinks, Incorporated of Florida **276 NLRB No. 001**

(mtn for summary judgment denied, and 8(a)(5) case remanded to RD for evidentiary hearing on issue raised by E's contention that U of police and protection Ees was improperly certified where it was affiliated with organization that admitted nonguards to membership; contention that certification was also improper because of certain officers' criminal background, however, did not warrant a hearing, since that was not basis for denying certification)

Brinks, Inc. **274 NLRB No. 144**

(U which petitioned for unit of guards, held precluded under 9(b)(3) from being certified as bargaining representative, since U was indirectly affiliated with U admitting nonguards to membership and lacked freedom and independence in formulating its own policies where individual primarily responsible for formation of instant U who was also an officer therein, was paid officer and policymaker of U which admitted nonguards, using nonguard U's bylaws and authorization cards as model in creating instant U's bylaws and authorization cards)

Alemite and Instrument Divisions of Stewart-Warner Corporation **273 NLRB No. 215**

(Bd has held that assistance furnished guards' U during its infancy by U admitting to membership Ees other than guards does not necessarily establish affiliation between the Us; nevertheless, while substantial latitude has been permitted in such circumstances, indirect affiliation will be found where extent and duration of assistance indicates that guards' U lacks freedom and independence in formulating its own policies and deciding its own course of action)

Alemite and Instrument Divisions of Stewart-Warner Corporation **273 NLRB No. 215**

(petitioner seeking to represent security guards unit held indirectly affiliated with local admitting to membership Ees other than guards, thereby requiring dismissal of ptn, in view of petitioner's lack of independence from local, where petitioner was specifically formed by local to continue organizing E's guards after local withdrew its own ptn; petitioner had no assets or expertise suggesting its ability to function independently of local; and petitioner's president had been continuously dependent on local's officers for advice and assistance regarding very significant aspect of petitioner's formation)

7575-9300 Union subject to influence and control by supervisors

North Shore University Hospital **274 NLRB No. 188**

(on ct remand, Bd vacated prior D/O, dismissed C and revoked Certification of Representative and found that nurses association should not be considered differently from other labor organizations regarding conflict of interest engendered by supervisors' active participation in association, lack of insulation of collective-bargaining process from governance of organization and lack of mechanism to assist Es from violating Sec. 8(a)(2) through supervisory Ees participation in association's affairs)

347 BARS TO CONDUCT OF ELECTION

0100 GENERALLY

2000 PRIOR DETERMINATION OF REPRESENTATIVE

4000 CONTRACT WITH INCUMBENT REPRESENTATIVE

4001 GENERALLY

Otasco, Inc. **278 NLRB No. 054**

[inclusion of local driver Ees in petitioned for unit rendered unit inappropriate where existing contract covering them would constitute bar to election in unit]

4001-2500 Board contract bar rules as discretionary rules

4001-2525 Board authority to establish

N.L.R.B. v. Mississippi Power & Light Company **769 F.2d 276 (C.A. 5, July 1985)**

(E's refusal to bargain with U as representative of storeroom and warehouse Ees, violation, notwithstanding E's contention that U was invalidly certified because election was barred by existing contract between E and U as representative of service and maintenance Ees; Bd's contract bar rule applies only to Ees covered by contract and not to unrepresented Ees; nor was unit clarification procedure appropriate for Ees historically and intentionally excluded from bargaining unit)

4001-2550 May be applied or waived by Board as facts require

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**

[contract between one U and theatre chain which covered cashiers and candy attendants at E's theatres not bar to efforts of another U to organize Ees at one of E's theatres, where contract had not been applied at all for year at theatre which other U sought to organize and prior thereto there was only limited enforcement, particularly where E had deliberately withheld benefits of contract from Ees at that theatre and Ees were unaware of contract's existence; E's contention that substantial compliance with bargaining agreement at some of its locations constituted substantial compliance at another location, rejected]

4001-2575 Factors considered in establishment

4001-2575-5000 Balance between stability of labor relations and employee's freedom of choice

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**

4010 PERIOD DURING WHICH CONTRACT WILL BAR PETITION

4010-2000 Duration of contract

4010-2001 Generally

Hydro Conduit Corporation **278 NLRB No. 164**

[at expiration of collective bargaining agreement, E may file an *RM* ptn and Bd will hold an election, if E can show objectively based reasonable doubt as to U's majority support; decision to process ptn is made by RD pursuant to an administrative determination that E has made prima facie showing of objective considerations and such administrative determination as to objective considerations is not litigable]

4020 CIRCUMSTANCES OF EXECUTION

4020-3300 Validity of contract execution

4020-3350 Satisfaction of requirements of

4020-3350-1600 Representative complement of employees

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**

(unit size based upon member of Ees employed for greater part of year, *not* during peak season when (employment) roles are inflated)

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**

(date for determining U majority status is date new E commences full scale operations with representative complement of Ees whether or not hoped for expansion has been fully achieved. Here, E, with no hiatus, immediately began full scale operations at restaurant employing majority of Ees who were formerly unit members. Changes to menu and remodeling facilities not so significant as to change date)

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[full complement theory does not require postponement until business operating at maximum capacity or until E has hired all bargaining unit Ees]

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[full complement principle has been interpreted to require that examination of workforce composition be postponed until business is operating at its maximum capacity or until E has completed hiring all of its bargaining unit Ees fixing appropriate date at which bargaining obligation arises involves balancing objective of ensuring maximum Ee participation in selection of bargaining agent against goal of permitting Ees to be represented as quickly as possible Bd has reconciled these interests by applying substantial and representative complement standard]

4020-6700 Pendency of rival claim or petition

4020-6750 Contract executed while petition is pending

4020-6750-6700 Petition filed after insulation period but prior to execution of new contract not barred

Passavant Health Center **278 NLRB No. 077**

[where RD dismissed original RD ptns subject to reinstatement upon final disposition of earlier C allegations in accordance w/Bd's blocking charge procedures, and subsequently U and E entered into informal Bd settlement providing, inter alia, *nonadmissions* clause and statement E and U had entered into contract, such contract did not act as bar to reinstatement of RD ptns as date original ptns filed, rather than date of request that ptns be reinstated is controlling]

4030 STATUS OF CONTRACTING UNION AS REPRESENTATIVE

4030-6700 Relinquishment or abandonment of jurisdiction

4030-6775 Failure to act in furtherance of recognition and failure to appear at hearing construed as abandonment or disclaimer

Texas Bus Lines, Inc. **277 NLRB No. 075**

(failure of Ee committee or its representative to appear at representation hearing held pursuant to outside U's representation ptn or otherwise in furtherance of its recognition found disclaimer of interest in or abandonment of its representation of the limited unit of Ees it had been elected to represent)

4040 ADEQUACY OF CONTRACT FORM AND SUBSTANCE

4040-3300 Unit covered

4040-3301 Generally

4040-3301-5000 To constitute bar, contract must clearly encompass employees sought

N.L.R.B. v. Mississippi Power & Light Company **769 F.2d 276 (C.A. 5, July 1985)**

(E's refusal to bargain with U as representative of storeroom and warehouse Ees, violation, notwithstanding E's contention that U was invalidly certified because election was barred by existing contract between E and U as representative of service and maintenance Ees; Bd's contract bar rule applies only to Ees covered by contract and not to unrepresented Ees; nor was unit clarification procedure appropriate for Ees historically and intentionally excluded from bargaining unit)

4040-3333 Employees covered by contract do not constitute appropriate unit

4040-3333-6700 **Contract held bar**

4040-3333-6767 Unit of professional and non- professional employees established by agreement of parties

Gibbs & Cox, Inc. **280 NLRB No. 110**
[bargaining unit composed of professional and technical Ees held appropriate. While Bd will not, because of Sec. 9(b)(1), initially establish unit of professional and technical Ees w/o former being given opportunity to vote on inclusion in such unit, such combined units are not unlawful per se and will be upheld if unit was voluntarily created by parties and maintained by them for years]

4050 CHANGED CIRCUMSTANCES WITHIN CONTRACT TERM

4050-3300 **Merger of operations**

4050-3333 Consolidation of companies resulting in entirely new operation

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) **279 NLRB No. 096**
[when E merged two groups of Ees who have been historically represented by different Us, qcr arises, and Bd will not impose a U (on successor E) by applying its accretion policy where neither group of Ees is sufficiently predominent to remove question concerning overall R]

4050-6700 **Change in union affiliation**

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers ——— U.S. ——— (U.S. S.Ct, Feb. 1986)
[Bd's rule requiring that all Ees in bargaining unit--not merely U members--must have opportunity to participate in affiliation decision, even though organizational changes resulting from affiliation are not substantial enough to raise qcr, held to exceed Bd's authority under Act]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers ——— U.S. ——— (U.S. S.Ct, Feb. 1986)
[argument that Bd's rule that all Ees in bargaining unit must have opportunity to participate in affiliation decision is reasonable means of protecting bargaining unit Ees' right to select bargaining representative under Sec. 7 of Act, rejected where Act authorizes Bd to conduct R election *only* where affiliation raises qcr; Bd's rule upsets accomodation drawn by statute by effectively decertifying reorganized U even where affiliation does not raise qcr]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers ——— U.S. ——— (U.S. S.Ct, Feb. 1986)
[contention that Bd's rule stating all Ees in bargaining unit must have opportunity to participate in affiliation decision was necessary to protect interests of non-U Ees in that affiliation may affect U's representation of bargaining unit even if it does not raise qcr, rejected where U makes many decisions that *affect* its representation of nonmember Ees and dissatisfaction with decisions U members make may be tested by Bd-conducted R election only if it is unclear whether reorganized U retains majority support]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers ——— U.S. ——— (U.S. S.Ct, Feb. 1986)
[argument that affiliation differs from other organizational changes because it results in Ees being represented by different organization, rejected since many organizational changes may operate to alter U's *identity* w/o raising qcr]

United Retail Workers Union Local 881, chartered by Food & Commercial Workers v. N.L.R.B. (May Department Stores Co. et al.) **797 F.2d 421 (C.A. 7, July 1986)**
[applying principles laid down by the S.Ct in *Financial Institution*, ct held that Bd cannot require U to allow non-U Ees to vote in merger elections and remanded case to Bd to consider any remaining issues involved in the merger]

4060 MULTIEMPLOYER CONTRACTS

4060-5000 **Timely petition for single-employer unit processed notwithstanding multiemployer contract**

4060-5067 Petition by employer-member of association

Vincent Electric Company, Inc. **281 NLRB No. 122**
[ptn for deauthorization of unit of E's Ees only, dismissed as for inappropriate unit where E, by signing IBEW letter of Assent-A, became part of multi-E association, and E's execution of memorandum permitting it to pay current wages for six months or until current contracts were completed was not inconsistent with assent to be bound by group bargaining, as letter of assent looked toward future contracts as well as the current one, memorandum provided for future jobs to be performed under association contractual terms, and E based all bids after execution of letter of assent on association-negotiated wage rates]

6000 PENDENCY OF OTHER PROCEEDINGS

6020 BOARD PROCEEDINGS

6020-5000 **Unfair labor practice proceedings**

6020-5033 Blocking charges

6020-5033-7500 **Dismissal of petition**

Passavant Health Center **278 NLRB No. 077**
[where RD dismissed original RD ptns subject to reinstatement upon final disposition of earlier C allegations in accordance w/Bd's blocking charge procedures, and subsequently U and E entered into informal Bd settlement providing, inter alia, *nonadmissions* clause and statement E and U had entered into contract, such contract did not act as bar to reinstatement of RD ptns as date original ptns filed, rather than date of request that ptns be reinstated is controlling]

6020-5075 Resumption of processing of petition when ULP no longer pending

Passavant Health Center **278 NLRB No. 077**
[where RD dismissed original RD ptns subject to reinstatement upon final disposition of earlier C allegations in accordance w/Bd's blocking charge procedures, and subsequently U and E entered into informal Bd settlement providing, inter alia, *nonadmissions* clause and statement E and U had entered into contract, such contract did not act as bar to reinstatement of RD ptns as date original ptns filed, rather than date of request that ptns be reinstated is controlling]

8000 UNIT CONSIDERATIONS

Newsday, Inc. **274 NLRB No. 019**
(challenge to ballots of separate independent driver unit sustained where such unit no longer exists because E instituted distribution program using Ees rather than independent drivers; new program was devoid of any discriminatory motivation; all drivers subject to same supervision; and work pursuant to recognized U's contract which sets forth hours and working conditions for all drivers)

8010 NONEXISTENCE OF UNIT

8010-5000 **Unit merged into employerwide unit**

The Green-Wood Cemetery **280 NLRB No. 157**
[where negotiated contract expressly excluded office clerical Ees in contract's recognition clause, consistent with U's certification, and, following card check, E voluntarily recognized U as representative of office clerical Ees and executed another contract containing number of provisions applicable to clericals only and deleted exclusion of office clericals from recognition clause, Bd found that merger of units took place into single overall unit and refused to allow decertification election among office clericals only as unit in such election must be coextensive with certified or recognized unit]

Gibbs & Cox, Inc. **280 NLRB No. 110**
[where E in NY set up separate division in VA and after card check voluntarily recognized certified U of NY unit as bargaining representative for new unit and applied existing contract of NY unit to VA unit, and thereafter negotiated new multilocation unit contract containing provisions specifically applicable to VA unit, E violated Act by withdrawing recognition from U at VA location and implementing unilateral changes there since unit became *merged* with NY unit to create multilocation unit notwithstanding VA unit could have qualified as separate unit at time of recognition, and E had good-faith doubt that VA unit no longer desired U as bargaining rep]

Gibbs & Cox, Inc. **280 NLRB No. 110**
[bargaining unit composed of professional and technical Ees held appropriate. While Bd will not, because of Sec. 9(b)(1), initially establish unit of professional and technical Ees w/o former being given opportunity to vote on inclusion in such unit, such combined units are not unlawful per se and will be upheld if unit was voluntarily created by parties and maintained by them for years]

Gibbs & Cox, Inc. **280 NLRB No. 110**
[Bd will not recognize merger of voluntarily recognized unit into overall bargaining unit where parties mutually agree that such relationship is not workable]

8015 INAPPROPRIATE UNIT

Vincent Electric Company, Inc. **281 NLRB No. 122**
[ptn for deauthorization of unit of E's Ees only, dismissed as for inappropriate unit where E, by signing IBEW letter of Assent-A, became part of multi-E association, and E's execution of memorandum permitting it to pay current wages for six months or until current contracts were completed was not inconsistent with assent to be bound by group bargaining, as letter of assent looked toward future contracts as well as the current one, memorandum provided for future jobs to be performed under association contractual terms, and E based all bids after execution of letter of assent on association-negotiated wage rates]

Otasco, Inc. **278 NLRB No. 054**
[inclusion of local driver Ees in petitioned for unit rendered unit inappropriate where existing contract covering them would constitute bar to election in unit]

8020 STABILITY OF UNIT

8020-2000 Representative complement

8020-2001 Generally

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**
[full complement theory does not require postponement until business operating at maximum capacity or until E has hired all bargaining unit Ees]

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**
[full complement principle has been interpreted to require that examination of workforce composition be postponed until business is operating at its maximum capacity or until E has completed hiring all of its bargaining unit Ees fixing appropriate date at which bargaining obligation arises involves balancing objective ofensuring maximum Ee participation in selection of bargaining agent against goal of permitting Ees to be represented as quickly as possible Bd has reconciled these interests by applying substantial and representative complement standard]

8020-4000 Expanding unit

8020-4001 Generally

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(unit size based upon member of Ees employed for greater part of year, *not* during peak season when (employment) roles are inflated)

8020-4050 Contract as bar where unit rapidly expanding

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(date for determining U majority status is date new E commences full scale operations with representative complement of Ees whether or not hoped for expansion has been fully achieved. Here, E, with no hiatus, immediately began full scale operations at restaurant employing majority of Ees who were formerly unit members. Changes to menu and remodeling facilities not so significant as to change date)

8020-6000 Contracting unit

N.L.R.B. v. Engineers Constructors, Inc. **756 F.2d 464 (C.A. 6, Mar. 1985)**
(E's defense to bargaining order that contracting unit and change in nature of work performed by laborers had made election inappropriate, rejected, since decline of Ees in laborer classification would be gradual, and change in work from primarily construction work with some clean-up duties to primarily clean-up work was not significant since basic nature of work did not change; further, with eight months of work anticipated before project's completion, decision to hold election was reasonable and not contrary to Bd precedent)

8020-8000 Change in operations affecting unit

8020-8033 Relocation and new employees

American Fluorescent Corp. **275 NLRB No. 154**
(documentary evidence supporting U's theory that recognition clause of expired (labor) contract survived the whole contract, disregarded as irrelevant, since U's theory would perpetuate irrebuttable presumption of majority status conflicting with concept of contract bar interwoven in GC's theory)

8020-8067 Consolidation of separately represented operations

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) **279 NLRB No. 096**
[when E merged two groups of Ees who have been historically represented by different Us, qcr arises, and Bd will not impose a U (on successor E) by applying its accretion policy where neither group of Ees is sufficiently predominent to remove question concerning overall R]

8040 ONE-MAN UNIT

Donnie M. Parris, A Sole Proprietorship d/b/a D & B Masonry **275 NLRB No. 193**
(unit reduced in size to one-man no longer appropriate under statute)

8500 JURISDICTIONAL DISPUTES

9000 NO-RAID PACTS

355 TYPES OF ELECTIONS

1100 REPRESENTATION

2200 SELF-DETERMINATION ELECTION

2260 PROFESSIONAL EMPLOYEES IN UNIT WITH NONPROFESSIONAL EMPLOYEES

Baldwin League of Independent Schools **281 NLRB No. 134**

[GC's mtn for summary judgment denied and case severed from remaining CA portions and remanded to RD where RD did not determine whether or not librarians were professional Ees to be included in unit with teachers found to be professional Ees; if RD finds librarians to be nonprofessional, *Sonotone* election must be conducted to determine whether teachers desire to have librarians included in unit, see *Sonotone Corp.*, 90 NLRB 1236 (1950)]

Gibbs & Cox, Inc. **280 NLRB No. 110**

[bargaining unit composed of professional and technical Ees held appropriate. While Bd will not, because of Sec. 9(b)(1), initially establish unit of professional and technical Ees w/o former being given opportunity to vote on inclusion in such unit, such combined units are not unlawful per se and will be upheld if unit was voluntarily created by parties and maintained by them for years]

3300 DECERTIFICATION

3350 IN CERTIFIED OR RECOGNIZED UNIT ONLY

Saints Mary and Elizabeth Hospital **274 NLRB No. 086**

(only appropriate unit in a decertification election is the recognized or certified unit; Act refers to current representation and to include persons not currently represented by U would be in derogation of the statute, and violative of the purpose sought to be achieved)

3350-9000 Unit merged into employerwide unit

The Green-Wood Cemetery **280 NLRB No. 157**

[where negotiated contract expressly excluded office clerical Ees in contract's recognition clause, consistent with U's certification, and, following card check, E voluntarily recognized U as representative of office clerical Ees and executed another contract containing number of provisions applicable to clericals only and deleted exclusion of office clericals from recognition clause, Bd found that merger of units took place into single overall unit and refused to allow decertification election among office clericals only as unit in such election must be coextensive with certified or recognized unit]

4400 DEAUTHORIZATION

5500 EXPEDITED

6600 REMEDIAL

7700 UNIT CLARIFICATION

8800 AMENDMENT OF CERTIFICATION ELECTION

362 ELIGIBILITY TO PARTICIPATE IN ELECTION

0100 GENERALLY

Bo-Ed Inc. d/b/a Golden Fan Inn **281 NLRB No. 035**
[party seeking to exclude an individual from voting has the burden of establishing that the individual is, in fact, ineligible to vote]

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company **768 F.2d 151 (C.A. 7, July 1985)**
[while other evidence of intent regarding voting eligibility of particular Ee may come from outside pre-election stipulation itself, *Excelsior* list is of little help in determining intended scope of stipulation, and submission into evidence of list does not preclude U ballot challenges since list is required for U's benefit; and to allow use of extremely broad language in standard pre-election stipulation combined with naming of specific Ee in *Excelsior* list to preclude ballot challenge to named Ee would severely undermine Bd's important and proper role in regulating elections]

3300 DETERMINATIVE PAYROLL PERIOD

3301 GENERALLY

N.L.R.B. v. Tom Wood Datsun, Inc., and Tom Wood Subaru, Inc. **767 F.2d 350 (C.A. 7, July 1985)**
(direct judicial review of Bd decision to certify representative on basis of election is extremely imited. This requisite deference extends to Bd's selection of rules and policies to govern elections and its application of these rules. Soundness of election rule is not the business of reviewing ct because source of Bd's authority to issue such rules are 2 statutory provisions lacking specific standards which authorize Bd to conduct representation elections)

3337 CONTRACTING OR CHANGING UNITS

Newsday, Inc. **274 NLRB No. 019**
(challenge to ballots of separate independent driver unit sustained where such unit no longer exists because E instituted distribution program using Ees rather than independent drivers; new program was devoid of any discriminatory motivation; all drivers subject to same supervision; and work pursuant to recognized U's contract which sets forth hours and working conditions for all drivers)

3362 REPEAT ELECTIONS

Kenduk Area Hospital **278 NLRB No. 033**
[physical therapist and cytotechnologist at hospital, none of which were employed at time of first election and thus no determination made as to whether professional or technical Ees, allowed to vote subject to challenge in second election held in unit of professional Ees]

3381 DECERTIFICATION ELECTIONS

3381-5000 Members of recognized or certified unit

Saints Mary and Elizabeth Hospital **274 NLRB No. 086**
(only appropriate unit in a decertification election is the recognized or certified unit; Act refers to current representation and to include persons not currently represented by U would be in derogation of the statute, and violative of the purpose sought to be achieved)

6700 EMPLOYEE TENURE AND STATUS

6701 GENERALLY

Zartic, Inc. **277 NLRB No. 171**
[two challenged ballots, not counted, where voters could not be located, and testimony of individual claiming to be one voter discredited due to discrepancies between it and known facts about voter, and only testimony about other voter was by discredited witnesses]

6703 ELIGIBILITY DETERMINED BY AGREEMENT OF PARTIES

Inacomp America, Inc. **281 NLRB No. 040**
[challenge to ballot of individual sustained where individual was not Ee on eligibility cutoff and election dates, nor when parties executed their *Norris-Thermador* agreement]

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center **275 NLRB No. 194**
(on review *nursing assistants* included in unit of E's service and maintainance Ees which unit was clearly appropriate in view of parties' agreement to exclude all other Ees. Even in nonhealthcare facilities, Bd has recognized that disparaties w/i unit are generally not sufficient to render an otherwise appropriate unit inappropriate)

N.L.R.B. v. Barker Steel Company, Inc. **800 F.2d 284 (C.A. 1, Sept. 1986)**
[if dispute arises concerning Ee's eligibility to vote in stipulated unit election, Bd's function limited to ascertaining parties' intent with regard to disputed Ee. If intent of parties is expressed in stipulation in clear and unmistakable terms, Bd will hold parties to their literal agreement. If stipulation is ambiguous, primary question is what parties meant. Thus, Bd has authority to interpret agreement according to what it finds to have been intent of parties]

N.L.R.B. v. Barker Steel Company, Inc. **800 F.2d 284 (C.A. 1, Sept. 1986)**
[Bd erred in overruling challenge to ballot as name not on eligibility list, and stipulation for consent election agreed upon by parties: 1) named E different from one where Ee works (fact Bd found single E relationship not relevant); 2) stated Ees employed by named E were the ones parties intended to include in appropriate unit; 3) E's payroll was designated as basis for preparing eligibility list; 4) named E signed stip w/ U; and 5) description of E does not fit voter's E. Thus, stip clear on its face that intent of parties was that Ees of other E not eligible to vote and Bd must hold parties to their literal agreement]

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital **789 F.2d 524 (C.A. 7, Apr. 1986)**
[contention that election invalid, and E justified in its refusal to bargain, since held in inappropriate units where names omitted from Norris-Thermador list, rejected, inasmuch as requirement that list would be valid guide only if letter perfect would defeat saluatory effect of having parties stipulate to eligibility, and require constant and careful agency review to prevent clerical erors from upsetting elections]

Smith and Smith Aircraft Company v. N.L.R.B. **———F.2d——— (C.A. 10, May 1984)**
[ballots of eligible voters must be counted notwithstanding names inadvertenly left off *Norris-Thermador* list where names were included in Excelsior list, U knew of omission more than 3 weeks before election, and objected to their inclusion on Excelsior list as mistake discovered in sufficient time and right to vote is important right]

6706 ELIGIBILITY DETERMINED BY TENURE AND STATUS AS EMPLOYEE DURING DETERMINATIVE PAYROLL PERIOD AND ON DATE OF ELECTION

Inacomp America, Inc. **281 NLRB No. 040**
[challenge to ballot of individual sustained where individual was not Ee on eligibility cutoff and election dates, nor when parties executed their *Norris-Thermador* agreement]

Central Broadcast Company **280 NLRB No. 056**
[Ees no longer on E's payroll on date U demanded recognition, ineligible]

Michiel's Inc.. d/b/a Le Saint Jean Des Pres Restaurant **279 NLRB No. 017**
[challenge of voter whom E alleged was not working on or before eligibility date because Ee was *in training* during week prior to eligibility cutoff date, rejected and ballot counted, where, although Ee was in training, E informed Ee before cutoff date that he would *work out* and Ee in fact was working for E prior to cutoff date]

State Garden Celery Company, Inc. **JD-243-84**
(challenge to ballot of Ee who started working after eligibility date, upheld)

6706—Cont.

N.L.R.B. v. Tom Wood Datsun, Inc., and Tom Wood Subaru, Inc. 767 F.2d 350 (C.A. 7, July 1985)

(individual must be both *hired* and *working* on eligibility date in order to vote. Working means *actual performance of bargaining unit work* and excluding participation in training, orientation or other preliminaries even if exposed sufficiently to U representation issues)

6709 VOTING SUBJECT TO CHALLENGE

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017

[challenge of Ee alleged by U to be supervisor, upheld and ballot not counted, where, although Ee had title of hostess, which was included in the unit, she exercised sufficient authority over waiters by assigning them work, giving reprimands and she served as individual in complete charge of restaurant when managers were gone and was thus, supervisory]

Keoduk Area Hospital 278 NLRB No. 033

[physical therapist and cytotechnologist at hospital, none of which were employed at time of first election and thus no determination made as to whether professional or technical Ees, allowed to vote subject to challenge in second election held in unit of professional Ees]

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center 275 NLRB No. 194

(on review *nursing assistants* included in unit of E's service and maintainance Ees which unit was clearly appropriate in view of parties' agreement to exclude all other Ees. Even in nonhealthcare facilities, Bd has recognized that disparaties w/i unit are generally not sufficient to render an otherwise appropriate unit inappropriate)

6712 PART-TIME EMPLOYEES

6712-2500 Regular part-time

United States Aviex Company 279 NLRB No. 110

[social security annuitant held regular part-time Ee eligible to vote where his contact with unit Ees was not so infrequent that finding that he did not have sufficient community of interest with them was not warranted, special privileges he assertedly enjoyed by coming and going as he pleased was due to his *on-call* status, and there was no showing that Ee was paid for time spent in engaging in other liberties at work]

6712-2550 Eligible irrespective of number of hours worked

Bo-Ed Inc. d/b/a Golden Fan Inn 281 NLRB No. 035

[although Ee had worked only 9 hours in payroll eligibility period, that fact and fact Ee worked at times at E's other facilities outside the unit, did not make Ee ineligible to vote]

Bo-Ed Inc. d/b/a Golden Fan Inn 281 NLRB No. 035

[fact that Ee may have been a casual Ee prior to payroll eligibility period does not warrant presumption that such status continues where Ee was in fact employed during eligibility period]

6712-5000 Irregular or infrequent part-time

State Garden Celery Company, Inc. JD-243-84

(challenges to ballots of individuals who worked part time irregularly, upheld, since not regular part-time Ees and, further, were hired in order to help defeat U)

6712-7500 Part-time with regular job elsewhere

Bo-Ed Inc. d/b/a Golden Fan Inn 281 NLRB No. 035

[Ee who was employed part-time by E but who also sold goods to E on his full-time job, held ineligible to vote as Ee did not share community of interest with other Ees but rather had need to maintain a good relationship with E]

Star Color Plate Service, Division of Einhorn Enterprises, Inc. 279 NLRB No. 082

[Ees who were regular part-time Ees held ineligible to vote, since they did not share a community of interest with unit Ees where they owned or managed companies doing business with E, were dependent on E for their own business and thus had conflict of interest with unit Ees and otherwise were not allied in any way with unit Ees]

Mid-State Distributing Co., Inc. 276 NLRB No. 172

]*merchandise sales* part-time Ee having regular outside job included in unit of drivers and warehousemen and held eligible to vote where, in performing his duties pertaining to advertising displays and material, Ee showed sufficient community of interest with unit Ees in view of supportive nature of his duties to other Ees, his wages and benefits comparable to those of other Ees, and his day-to-day contact with them; moreover, his exclusion would risk his remaining unrepresented since he had far less community-of-interest with E's office clericals)

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[Bd properly determined that Ee was *casual Ee* and ineligible to vote because she worked on *sporadic and intermittent* basis, where Ee, after working for Ee as part-time Ee, accepted new job elsewhere and agreed with Ee to completely new status prior to eligibility period; under the circumstances, Bd did not inadequately consider Ee's work history prior to her on-call status nor her *reasonable expectation* of employment]

6715 SOCIAL SECURITY ANNUITANTS

United States Aviex Company 279 NLRB No. 110

[social security annuitant who was *on-call* and averaged 20 hours of work per week during quarter prior to eligibility date held eligible to vote]

United States Aviex Company 279 NLRB No. 110

[social security annuitant held regular part-time Ee eligible to vote where his contact with unit Ees was not so infrequent that finding that he did not have sufficient community of interest with them was not warranted, special privileges he assertedly enjoyed by coming and going as he pleased was due to his *on-call* status, and there was no showing that Ee was paid for time spent in engaging in other liberties at work]

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164

(social security annuitant, assertedly casual part-time Ee who, apart from special arrangement to limit his earnings to avoid decrease in his annuity, worked full-time, included in unit, since there was no evidence his terms and conditions of employment differed from those of other unit Ees)

6718 TEMPORARY EMPLOYEES

Wayside Realty Group, Inc. and Georgetown Hotel 281 NLRB No. 045

[authorization card of Ee recently transferred to E's facility, which parties had stipulated should be counted, included in count, even though Ee eventually returned to original employment, since she was not temporary Ee, where she had no definite date of return while employed by E, worked regular hours, and was on E's payroll]

Zartic, Inc. 277 NLRB No. 171

[allegedly temporary Ee, eligible where he was asked to stay on after two Ees were badly burned, was given insurance form to fill out like probationers at end of probationary period, and assigned different work]

Volt Information Sciences, Inc. 274 NLRB No. 047

(permanent Ee who intended to leave to attend school, not ineligible as temporary Ee since she was hired as permanent Ee, unlike students whom E hired as temporary Ees with E's knowledge that they would be returning to school)

6724 SEASONAL EMPLOYEES

United States Aviex Company 279 NLRB No. 110

[laid off Ee held eligible to vote, since he had reasonable expectancy of recall, where he was hired for entire period of E's seasonal operation rather than simply during peak periods, he was never informed that layoff was to be permanent, and E's need for Ees during relevant period of its operation depended entirely upon the weather which could not be predicted]

6730 CASUAL, EXTRA, OR INTERMITTENT EMPLOYEES

Bo-Ed Inc. d/b/a Golden Fan Inn 281 NLRB No. 035

[fact that Ee may have been a casual Ee prior to payroll eligibility period does not warrant presumption that such status continues where Ee was in fact employed during eligibility period]

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164

(social security annuitant, assertedly casual part-time Ee who, apart from special arrangement to limit his earnings to avoid decrease in his annuity, worked full-time, included in unit, since there was no evidence his terms and conditions of employment differed from those of other unit Ees)

Donnie M. Parris, A Sole Proprietorship d/b/a D & B Masonry 275 NLRB No. 193

(Ees who were employed by E intermittently w/o reasonable expectation of recall from layoff w/i reasonable period of time found casual Ees w/o community of interest with regular Ee and therefore not part of unit with him)

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[despite pre-election stipulation which E claimed established Ee's eligibility to vote, Bd properly sustained challenge to Ee's ballot on ground Ee was *casual Ee,* since stipulation was ambiguous as to inclusion of Ee in unit, and Bd properly applied rule as to casual Ees whether on grounds of Bd policy or on basis of *community of interest* standard]

6730-5000 Ineligible

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[Bd properly determined that Ee was *casual Ee* and ineligible to vote because she worked on *sporadic and intermittent* basis, where Ee, after working for Ee as part-time Ee, accepted new job elsewhere and agreed with Ee to completely new status prior to eligibility period; under the

6730-5000—Cont.

circumstances, Bd did not inadequately consider Ee's work history prior to her on-call status nor her *reasonable expectation* of employment]

6734 ON-CALL EMPLOYEES

United States Aviex Company 279 NLRB No. 110

[social security annuitant held regular part-time Ee eligible to vote where his contact with unit Ees was not so infrequent that finding that he did not have sufficient community of interest with them was not warranted, special privileges he assertedly enjoyed by coming and going as he pleased was due to his *on-call* status, and there was no showing that Ee was paid for time spent in engaging in other liberties at work]

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[Bd properly determined that Ee was *casual Ee* and ineligible to vote because she worked on *sporadic and intermittent* basis, where Ee, after working for Ee as part-time Ee, accepted new job elsewhere and agreed with Ee to completely new status prior to eligibility period; under the circumstances, Bd did not inadequately consider Ee's work history prior to her on-call status nor her *reasonable expectation* of employment]

6740 EMPLOYEES EMPLOYED IN VIOLATION OF STATUTE

State Garden Celery Company, Inc. JD-243-84

(challenges to ballots of individuals who worked part time irregularly, upheld, since not regular part-time Ees and, further, were hired in order to help defeat U)

6742 PROVISIONAL EMPLOYEES

6742-2000 Probationers

Data Technology Corp., Plastronics Division 281 NLRB No. 136

[laid-off probationary Ees held eligible to vote, where E had history of rehiring substantial number of similarly laid-off probationary Ees as shown by E's past practice and recent layoff, and statements made to Ees at time of layoff and those made in past; there was no showing that E's future plans at time of election foreclosed Ees' rehire; fact that not every Ee was recalled during previous layoffs was not dispositive; and events occurring subsequent to election were no basis for concluding Ees had no reasonable expectancy of recall]

Data Technology Corp., Plastronics Division 281 NLRB No. 136

[although E distinguished between permanent Ees laid off with recall rights and probationers terminated subject to consideration for rehire, Bd noted that same mode of analysis is used to determine reasonable expectancy of employment regardless of nomenclature used by E]

Zartic, Inc. 277 NLRB No. 171

[allegedly temporary Ee, eligible where he was asked to stay on after two Ees were badly burned, was given insurance form to fill out like probationers at end of probationary period, and assigned different work]

6742-6000 Trainees

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017

[challenge of voter whom E alleged was not working on or before eligibility date because Ee was *in training* during week prior to eligibility cutoff date, rejected and ballot counted, where, although Ee was in training, E informed Ee before cutoff date that he would *work out* and Ee in fact was working for E prior to cutoff date]

6754 FOREIGN NATIONALS OR ILLEGAL ALIENS

Lycee Francais de New York 273 NLRB No. 191

(Bd found improper inclusion of certain Ees (exchange visitors) who are on leave from French Ministry of Education (Ministry) to teach at E for up to 3 years because they did not enjoy community of interest with locally hired Ees as they must comply with French rules of their profession, can be discharged only with permission of Ministry, are evaluated by Ministry, continue their French pension and health care plans, work same hours as in France and no taxes paid first 2 years)

6766 EMPLOYEES NOT WORKING ON ELIGIBILITY DATES

6766-1000 Laid off

Link Manufacturing Co. 281 NLRB No. 028

[laid off Ees held eligible to vote since, in absence of E's discriminatory and unlawful change of their temporary layoff to permanent, they would have been considered temporarily laid off Ees eligible to vote]

Easthampton Electrical Services, Inc. JD-85-85

(challenge to ballots of Ees in permanent layoff status sustained since layoffs not unlawful)

6766-1050 Eligible if reasonable expectancy of reemployment

Data Technology Corp., Plastronics Division 281 NLRB No. 136

[in determining whether laid-off Ees have reasonable expectancy of recall, Bd evaluates *objective factors*, which included E's past experience, E's future plans, circumstances of layoff, and what Ees were told about likelihood of recall]

Data Technology Corp., Plastronics Division 281 NLRB No. 136

[laid-off probationary Ees held eligible to vote, where E had history of rehiring substantial number of similarly laid-off probationary Ees as shown by E's past practice and recent layoff, and statements made to Ees at time of layoff and those made in past; there was no showing that E's future plans at time of election foreclosed Ees' rehire; fact that not every Ee was recalled during previous layoffs was not dispositive; and events occurring subsequent to election were no basis for concluding Ees had no reasonable expectancy of recall]

Data Technology Corp., Plastronics Division 281 NLRB No. 136

[although E distinguished between permanent Ees laid off with recall rights and probationers terminated subject to consideration for rehire, Bd noted that same mode of analysis is used to determine reasonable expectancy of employment regardless of nomenclature used by E]

Data Technology Corp., Plastronics Division 281 NLRB No. 136

[vague statements made by E at time of layoff regarding chance or possibility of recall, absent any further support, are not sufficient to establish reasonable expectancy of recall]

Data Technology Corp., Plastronics Division 281 NLRB No. 136

[in determining reasonable expectancy of recall, Bd looks to whether Ees had reasonable expectation of rehire at time of election and will not consider subsequent developments]

United States Aviex Company 279 NLRB No. 110

[laid off Ee held eligible to vote, since he had reasonable expectancy of recall, where he was hired for entire period of E's seasonal operation rather than simply during peak periods, he was never informed that layoff was to be permanent, and E's need for Ees during relevant period of its operation depended entirely upon the weather which could not be predicted]

Red Arrow Freight Lines, Inc. 278 NLRB No. 137

[Ee on sick or maternity leave presumed to continue in such status unless and until presumption is rebutted by affirmative showing that Ee has been discharged or has resigned]

Red Arrow Freight Lines, Inc. 278 NLRB No. 137

[challenge to ballot of Ee, on sick leave overruled (and ballot counted), since Ee's position remained available to Ee. Neither Ee nor Ee's physician requested that Ee be placed on disability retirement. Nothing in Ee's personnel file showed Ee does not intend to return to work *reasonable expectation of employment* test applies to eligibility determinations involving *laid-off* Ees, only, although in some isolated cases, Bd may have *inadvertently* used such language in cases involving Ees on sick or maternity leave]

S & G Concrete Co. 274 NLRB No. 116

(eligibility of laid-off Ees to vote in R election depends on objective factors supporting reasonable expectancy of recall in near future which include past experience of E, E's future plans, circumstances of layoff, and what Ee was told about likelihood of recall)

S & G Concrete Co. 274 NLRB No. 116

(laid-off Ee held not eligible to vote where circumstances of layoff indicate that it was directly connected to completion of E's special projects and not seasonal business activity)

S & G Concrete Co. 274 NLRB No. 116

(laid-off Ee driver held not eligible to vote where his truck was removed from operation and it was clear that his lay off was directly connected to permanent reduction in E's need for drivers)

6766-2000 Ill

Red Arrow Freight Lines, Inc. 278 NLRB No. 137

[Ee on sick or maternity leave presumed to continue in such status unless and until presumption is rebutted by affirmative showing that Ee has been discharged or has resigned]

Red Arrow Freight Lines, Inc. 278 NLRB No. 137

[challenge to ballot of Ee, on sick leave overruled (and ballot counted), since Ee's position remained available to Ee. Neither Ee nor Ee's physician requested that Ee be placed on disability retirement. Nothing in Ee's personnel file showed Ee does not intend to return to work *reasonable expectation of employment* test applies to eligibility determinations involving *laid-off* Ees, only, although in some isolated cases, Bd may have *inadvertently* used such language in cases involving Ees on sick or maternity leave]

Iron Mountain Forge Corp. 278 NLRB No. 038

[challenge to ballot of individual previously hired for temporary work, who was recuperating from surgery and not working on day of election, overruled, notwithstanding no affirmative evidence he had been granted sick leave, since Ee who leaves work for reasons of health absent evidence Ee quit or discharged, he/she is presumed to be on sick leave and have reasona-

6766-2000—Cont.

ble expectation of return; further, prior to election, E had discussed with individual possibility of his return to work and when he would be available]

Zartic, Inc. **277 NLRB No. 171**
[rank-and-file Ee on extended sick leave, eligible]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(Ee who was absent from work due to work-related injuries held ineligible to vote where Ee had no reasonable expectation of employment since he manifested absolutely no interest in returning to work for E during 17 months from date of injury to date of hearing, thereby evincing no intention of returning to work whether or not he was capable of doing so)

N.L.R.B. v. Newly Weds Foods, Inc. **758 F.2d 4 (C.A. 1, Mar. 1985)**
(Ee on indefinite sick leave held eligible to vote, notwithstanding contention that on day of election Ee told one of E's secretaries that he had permanent injury and not be returning to work and thus, Ee had no reasonable expectation of returning to work, since Ee's conversation with secretary at most indicated Ee's subjective belief he would not return to work and was not intended by him as a resignation and E kept Ee on its payroll records and continued his insurance up through date of election and placed his name on eligibility list)

6766-3000 On leave of absence

Red Arrow Freight Lines, Inc. **278 NLRB No. 137**
[Ee on sick or maternity leave presumed to continue in such status unless and until presumption is rebutted by affirmative showing that Ee has been discharged or has resigned]

Red Arrow Freight Lines, Inc. **278 NLRB No. 137**
[challenge to ballot of Ee, on sick leave overruled (and ballot counted), since Ee's position remained available to Ee. Neither Ee nor Ee's physician requested that Ee be placed on disability retirement. Nothing in Ee's personnel file showed Ee does not intend to return to work *reasonable expectation of employment* test applies to eligibility determinations involving *laid-off* Ees, only, although in some isolated cases, Bd may have *inadvertently* used such language in cases involving Ees on sick or maternity leave]

6766-6000 Hired but not yet working

N.L.R.B. v. Tom Wood Datsun, Inc., and Tom Wood Subaru, Inc. **767 F.2d 350 (C.A. 7, July 1985)**
(individual must be both *hired* and *working* on eligibility date in order to vote. Working means *actual performance of bargaining unit work* and excluding participation in training, orientation or other preliminaries even if exposed sufficiently to U representation issues)

N.L.R.B. v. Tom Wood Datsun, Inc., and Tom Wood Subaru, Inc. **767 F.2d 350 (C.A. 7, July 1985)**
(Ees hired before eligibility date and on final eligibility date spent day at E's premises filling out forms and chatting with ees not eligible to vote because they did not perform actual unit work by final eligibility date)

6766-7000 Dischargees

Sahara Datsun, Inc. **278 NLRB No. 148**
[lawfully discharged Ee, ineligible]

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(challenge to ballot of lawfully discharged Ee sustained)

Offshore Shipbuilding, Inc. **274 NLRB No. 077**
(individuals who had been lawfully discharged not eligible to vote)

Easthampton Electrical Services, Inc. **JD-85-85**
(challenge to ballots of Ees in permanent layoff status sustained since layoffs not unlawful)

6766-8000 Discriminatees

Link Manufacturing Co. **281 NLRB No. 028**
[laid off Ees held eligible to vote since, in absence of E's discriminatory and unlawful change of their temporary layoff to permanent, they would have been considered temporarily laid off Ees eligible to vote]

Sahara Datsun, Inc. **278 NLRB No. 148**
[challenge to ballot of unlawfully discharged Ee sustained where, prior to election, he had forfeited right to reinstatement by informing bank through which E obtained financing for its customers that E was submitting falsified customer credit applications and by publishing, in newsletter mailed to Ees, accusations of E's owners' involvement with prostitutes and use and sale of cocaine]

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[discriminatorily discharged Ees, eligible]

Steffer Brothers **JD-269-86**
[unlawfully discharged Ees, eligible]

Youngstown Hospitality Co., d/b/a Howard Johnson's Motor Lodge **JD-3-86**

State Garden Celery Company, Inc. **JD-243-84**
(challenge to ballot of Ee who was not on eligibility list, but was unlawfully discharged, overeruled)

6766-9000 Alleged discriminatees

U.S. Pollution Control, Inc. **278 NLRB No. 042**
[ballot challenged due to absence of voter's name from eligibility list because of his discharge, directed to be opened and counted where petitioner would lose election only if voter were found eligible and together with another Ee voted against petitioner, and voter waived right to secret ballot and requested that his ballot be opened and counted before resolution of his allegedly unlawful discharge, on which C had issued]

McLean Roofing Company **276 NLRB No. 093**
(E's challenge to ballot of Ee not employed on eligibility date upheld where there was no C allegation that Ee was unlawfully denied employment, nor was issue litigated as ULP at hearing)

6772 EMPLOYEES SEPARATED FROM JOBS

6772-6700 Who have or intend to quit

Red Arrow Freight Lines, Inc. **278 NLRB No. 137**
[Ee on sick or maternity leave presumed to continue in such status unless and until presumption is rebutted by affirmative showing that Ee has been discharged or has resigned]

Crystal Linen & Uniform Service, Inc. **274 NLRB No. 137**
(Ees held ineligible to vote, since they evidenced intent to abandon their jobs with E by accepting employment with competitor while on strike)

Volt Information Sciences, Inc. **274 NLRB No. 047**
(female Ee who had quit by overstaying her agreed upon maternity leave before eligibility period, ineligible)

6775 EMPLOYEES ON ASSIGNMENT TO NONUNIT JOBS

Bo-Ed Inc. d/b/a Golden Fan Inn **281 NLRB No. 035**
[although Ee had worked only 9 hours in payroll eligibility period, that fact and fact Ee worked at times at E's other facilities outside the unit, did not make Ee ineligible to vote]

6776 EMPLOYEES HAVING JOB-RELATED CHARACTERISTICS DISTINCT FROM UNIT EMPLOYEES

Lycee Francais de New York **273 NLRB No. 191**
(Bd found improper inclusion of certain Ees (exchange visitors) who are on leave from French Ministry of Education (Ministry) to teach at E for up to 3 years because they did not enjoy community of interest with locally hired Ees as they must comply with French rules of their profession, can be discharged only with permission of Ministry, are evaluated by Ministry, continue their French pension and health care plans, work same hours as in France and no taxes paid first 2 years)

6780 REPLACEMENTS FOR DISCRIMINATEES

Moe Warehouse & Accessory **275 NLRB No. 165**
(overruled challenge to ballot of Ee who had worked for over fours months as warehouseman for E, and at time of election was working as replacement for Ee who had been alegedly unlawfully discharged)

Steffer Brothers **JD-269-86**
[ineligible to vote]

6790 DUAL FUNCTION EMPLOYEES

Mid-State Distributing Co., Inc. **276 NLRB No. 172**
(inventory clerk invluded in unit of drivers and warehousemen of wholesale beer distributor and held eligible to vote as dual function Ee, where majority of Ee's time was spent on duties more associated with shipping and receiving duties of plant clerical rather than those of office clerical, notwithstanding her not insignificant office clerical functions such as those of receptionist, and notwithstanding different method of pay and supervision than unit Ees)

6790-2500 Substantial interest in working conditions in unit

Central Broadcast Company **280 NLRB No. 056**
[dual function Ee operating primarily as sales representative for country music radio station but also as sports broadcaster excluded from unit of announcers where he received salary plus commission, rather than salary alone, did not prepare his broadcasts in same area as, or work with, copywriters or continuity department Ees like announcers, worked irregularly and broadcasted irregularly for total of only seven minutes a week]

6790-2500—Cont.

Star Color Plate Service, Division of Einhorn Enterprises, Inc. 279 NLRB No. 082
[Ee who performed some nonunit work, held eligible to vote, where at least 50% of his time was spent performing unit work]

U.S. Pollution Control, Inc. 278 NLRB No. 042
[pollution control specialist employed by E engaged in hazardous waste disposal found dual function Ee and excluded from unit, since he lacked community of interest with unit Ees where he spent half his time on nonunit sales work, had different supervisor, had no interchange of duties with unit Ees and, unlike them, received sick leave benefits and did not punch time clock or receive overtime pay]

6790-5000 Eligibility same as part-time employees

Central Broadcast Company 280 NLRB No. 056
[dual function Ee operating primarily as sales representative for country music radio station but also as announcer excluded from unit of announcers where he announced on irregular, rather than regular, part-time basis, had specialized announcement duties outside the studio, and was compensated by commission, rather than salary]

6795 MANAGERS

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017
[challenge of Ee alleged by U to be supervisor, upheld and ballot not counted, where, although Ee had title of hostess, which was included in the unit, she exercised sufficient authority over waiters by assigning them work, giving reprimands and she served as individual in complete charge of restaurant when managers were gone and was thus, supervisory]

United Artists Theatre Circuit, Inc. 277 NLRB No. 015
(challenge to ballots of Ees sustained where Ees, because of their use of independent judgment, were found to be managerial)

6796 PART-TIME OR TEMPORARY SUPERVISORS

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186
(temporary manager at coal mine concerning whom E had assertedly notified Ees that manager will act as assistant to superintendent in latter's absence held eligible to vote where manager was only nominally so designated and his appointment was only temporary)

6797 DELIVERY DRIVERS

Newsday, Inc. 274 NLRB No. 019
(challenge to ballots of separate independent driver unit sustained where such unit no longer exists because E instituted distribution program using Ees rather than independent drivers; new program was devoid of any discriminatory motivation; all drivers subject to same supervision; and work pursuant to recognized U's contract which sets forth hours and working conditions for all drivers)

6798 RELATIVES OF MANAGEMENT

6798-0100 Generally

Industrial Agrico Processing, Inc. 274 NLRB No. 102
(Ees related to nonowner supervisors (of E) included in (appropriate) unit of Ees unless Ees enjoyed *special status* on job)

6798-2500 Relationship to management

Central Broadcast Company 280 NLRB No. 056
[Ee listed as *sec/traffic/billing/news/Disc Jockey* at country music radio station excluded from unit of announcers where she did no announcing work, had had only one 30-second report that she called in broadcast, and was not a statutory Ee but an *individual employed by (her) parent*, her father being president and sole stockholder of E]

Terraillon Corp. 280 NLRB No. 037
[part time Ee who was high school age son of E's vice-president held not eligible to vote, since he enjoyed *special status* where he was allowed to work hours of his own choosing to accomodate his studies, had no income tax or social security deducted from his wages, and made personal telephone calls from his father's office]

United States Aviex Company 279 NLRB No. 110
[son of E's technical director and working under brother's supervision held eligible to vote where neither his father nor his brother had any financial interest in E or occupied any corporate position other than supervisor, and consequently family relationship was not of such special nature as to warrant exclusion from unit]

Futuramik Industries, Inc. 279 NLRB No. 021
[challenge to ballot of wife of company official and partial-owner, upheld, where husband owned 10% of E's stock, was Vice-President of corporation and was actively engaged in day-to-day management of E and wife lived in same household as husband; such facts indicate wife would be more closely aligned with management rather than Ees and would be certain to get a more attentive ear to day-to-day work concerns than would other Ees]

The Royal Sonesta, Inc. d/b/a Royal Laundry 277 NLRB No. 085
(challenge to ballot of son of personnel director sustained where he was not shown to have performed unit work on even regular part-time basis)

B.R.B. Iron Works, Inc. JD-(NY)-84-85
(son of 50% co-owner of closed corporation (E) not eligible to vote in Bd election, since he is not Ee w/i meaning of Act)

6798-5000 Identification of interests with management

Star Color Plate Service, Division of Einhorn Enterprises, Inc. 279 NLRB No. 082
[claim that Ee who received rides home in company car should be ineligible to vote because of this special relationship with management, rejected, where other Ees had also, on occasion, obtained rides in company cars w/o discrimination]

Futuramik Industries, Inc. 279 NLRB No. 021
[challenge to ballot of wife of company official and partial-owner, upheld, where husband owned 10% of E's stock, was Vice-President of corporation and was actively engaged in day-to-day management of E and wife lived in same household as husband; such facts indicate wife would be more closely aligned with management rather than Ees and would be certain to get a more attentive ear to day-to-day work concerns than would other Ees]

United Artists Theatre Circuit, Inc. 277 NLRB No. 015
(challenge to ballot of Ee sustained where Ee lacked community of interest with other Ees by virtue of his blood relationship to certain of E's owners and managers, and Ee was immune from review or correction by lower level supervision as result of relationship)

Hy's of Chicago, Ltd. 276 NLRB No. 113
(vote of son of E's general manager not tallied in results of election since he did not participate in *community of interest* with other members of bargaining unit where he, with consent of management, exercised privileges which were not available to other Ees in his classification; and supervisor consulted him concerning recommendation of wage increases)

B.R.B. Iron Works, Inc. JD-(NY)-84-85
(son of 50% co-owner of closed corporation (E) not eligible to vote in Bd election, since he is not Ee w/i meaning of Act)

370 MECHANICS OF ELECTION

0100 GENERALLY

0700 DATE OF ELECTION

0750 FACTORS CONSIDERED IN DETERMINING WHETHER OR NOT TO POSTPONE ELECTION

0750-7700 Unit found differs from that proposed

0750-7767 Not postponed

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center — 275 NLRB No. 194

(prior election set aside notwithstanding nursing assistants, whom RD had originally excluded from unit, were informed late in afternoon of day before election that they could vote challenged ballot (Bd having granted request for review) where over half of nursing assistants did not avail themselves of this option. Bd unwilling to presume that those who did not cast ballot did so out of indifference or neglect)

0783 EFFECT OF UNFORESEEN CIRCUMSTANCES ON DATE OF ELECTION

0783-3300 Inclement weather

V.I.P. Limousine, Inc. — 274 NLRB No. 090

(election set aside and second election directed, where 20-inch snowstorm occurred in and around election site during polling period affecting electorate as a whole, preventing a substantial number of Ees from reaching polls, thereby destroying integrity of election process. While Bd is not required to guarantee every voter gets to the polls, when it is alleged that Ees were prevented from voting, Bd must assess whether circumstances so affected sufficient number of ballots so as to destroy laboratory conditions and if there is a reasonable possibility this occurred and determinative number of votes is called into question, election must be set aside)

1400 PLACE OF ELECTION

2100 TIME OF ELECTION

2800 NOTICE OF ELECTION

2817 SUFFICIENCY OF NOTICE

2817-3300 Content

2817-3322 Designation of unit

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research — 793 F.2d 503 (C.A. 2, June 1986)

[no deference to Bd's discretion in using Sec. 102.67(b) *vote and impound procedure* to segregate small full-time (10%) overwhelming part-time faculty's vote w/o informing voters of reason where, pursuant to pre-election grant of request for review, Bd modified unit after election, since voters might have voted differently had they known of possible unit modification, and Bd could have avoided misinforming voters by developing another balloting process besides *vote and impound* procedure to allow voters to vote on U representation in alternative units]

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital — 789 F.2d 524 (C.A. 7, Apr. 1986)

[inaccurate notice of election that contained same erroneous unit description as decertification ptn technical unit Ees were placed in service and maintenance unit and vacant positions omitted from technical unit did not warrant setting election aside and justify E's refusal to bargain, notwithstanding contention erroneous unit description resulted in voter confusion, low voter turn out and certification of inappropriate units, since error immaterial where Ee who was improperly not included in technical unit voted in technical unit and inclusion of vacant positions had no impact]

2850 DEFACED NOTICE

2850-6700 Marked sample ballot

2850-6733 For nonunion choice

Rosewood Mfg. Co., Inc. — 278 NLRB No. 103

[E's posting defaced NLRB election notice with handwritten caption *Vote No* over top of notice with arrow drawn to *No* portion of sample ballot, did not warrant setting aside election, since altered notice was not likely to give voters misleading impression that Bd, favored E in election, inasmuch as *Vote No* and arrow were clearly discernable as additions made by E, and sufficiently distinct from printed notice and sample ballot to preclude suggestion Bd was endorsing E; further, E's use of notice from previous election would have alerted voters that alteration was not endorsed by Bd]

3500 VOTING PROCEDURE AND ELECTION FACILITIES

3533 VOTING PROCEDURE

3533-4000 Identification of voters (includes use of eligibility list)

3533-4050 Use of eligibility list

3533-4050-2500 Maintenance of list of who did or did not vote

Premier Maintenance, Inc. — 282 NLRB No. 003

[supervisor checking off Ees' names as they voted in election warranted setting election aside]

3533-4075 Failure to be included on eligibility list (effect on opportunity to vote)

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center — 275 NLRB No. 194

(prior election set aside notwithstanding nursing assistants, whom RD had originally excluded from unit, were informed late in afternoon of day before election that they could vote challenged ballot (Bd having granted request for review) where over half of nursing assistants did not avail themselves of this option. Bd unwilling to presume that those who did not cast ballot did so out of indifference or neglect)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital — 789 F.2d 524 (C.A. 7, Apr. 1986)

[refusal to allow Ee whose name was not on *Norris Thermador* List to cast challenged ballot did not warrant setting aside election and justify E's refusal to bargain since omission does not render voter list susceptible to challenge by either party unless mistake discovered in sufficient time to permit correction before balloting begins; requiring pre-election agreements, of which list is part, to adhere to standard of absolute perfection would undermine goal of having parties expedite handling of elections w/o extensive Bd involvement]

Smith and Smith Aircraft Company v. N.L.R.B. — ———F.2d——— (C.A. 10, May 1984)

[ballots of eligible voters must be counted notwithstanding names inadvertenly left off *Norris-Thermador* list where names were included in Excelsior list, U knew of omission more than 3 weeks before election, and objected to their inclusion on Excelsior list as mistake discovered in sufficient time and right to vote is important right]

4200 BALLOT

4201 GENERALLY

N.L.R.B. v. iDAB, Inc. — 770 F.2d 991 (C.A. 11, Sep. 1985)

(because of its expertise, Bd has broad discretion in conducting elections and resolving R matters; and there is presumption that ballots cast under specific safeguards provided by Bd procedures reflect Ees' true desires)

4270 USE OF FOREIGN LANGUAGE BALLOT

Unibilt Industries, Inc. — 278 NLRB No. 117

[as it is parties' responsibility to notify RD that bilingual election materials are needed, election not set aside where Vietnamese Ee who was not fluent in English came into election area to fill out timecard and Bd agent made

4270—Cont.

him leave and Ee did not vote, nor learn purpose of, nor obtain any information about election]

Kraft, Inc. Retail Food Group 273 NLRB No. 184
(election set aside in view of facially defective four-language ballot which would tend to confuse even the English-speaking majority of voters where layout of the ballot made for difficulty in reading, and inaccuracies rendered translations in two of the languages confusing)

Kraft, Inc. Retail Food Group 273 NLRB No. 184
(translation inaccuracies rendering four-language ballots defective were not cured by election notice, partisan pre-election campaigning, language of contract and dues checkoff authorization cards, all in English)

4900 OBSERVERS

4912 RIGHT TO OBSERVER

4912-3300 Consent election

4912-3350 Right to observe stipulated

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)
(certification not invalidated by fact that U had more election observers than E where there was no divergence from the stipulation on election procedure and Bd agent followed established procedure in allowing more than one observer per side shortly before election began and suggesting to E that it maintain party with U in the number of its observers, but E chose not to do so)

4925 APPROPRIATENESS OF INDIVIDUAL AS OBSERVER

4925-2500 Individuals closely associated with management

4925-2517 Supervisor

Monarch Building Supply 276 NLRB No. 016
(E's objection to election that U had chosen a supervisor as an election observor overruled, since E had waived the objection and was estopped from raising the issue for the first time in postelection objections by its failure to comment or protest when U announced at the preelection conference that it would use as an observor an individual whom it considered a supervisor)

William Okie, Jr., et al. d/b/a Standby One Associates Center for Housing Partnerships 274 NLRB No. 140
(E's contention that, contrary to Bd practice, state bd agent allowed supervisor to act as observer at state bd conducted election, rejected; while Bd has set aside elections when supervisory Ees acted as observers, Bd has long-standing policy prohibiting E from raising objection based on its own conduct during elections)

State Garden Celery Company, Inc. JD-243-84
(Bd agent properly allowed individual to act as observer notwithstanding E's counsel had objected to individual acting as observer based on contention individual was supervisor, since individual held not to be supervisor)

4925-5000 Individuals closely associated with union

4925-5020 Union official

William Okie, Jr., et al. d/b/a Standby One Associates Center for Housing Partnerships 274 NLRB No. 140
(E's contention that state bd improperly allowed non-Ee U official to act as U observer at state bd conducted election, rejected; although it is preferable to avoid non-Ee U representatives acting as election observers for U, it is not sufficient basis for refusing to recognize validity of state bd election)

4950 EFFECT OF ABSENCE OF, OR IMBALANCE IN NUMBER OF OBSERVERS, OR FAILURE TO IDENTIFY OBSERVERS

Sonicraft, Inc. 276 NLRB No. 044
(E's objections to election upheld, election set aside and new election ordered, where U had 3 observers at one of three polling places to E's 1, in breach of stipulation upon consent election agreement which provided that each party should have equal number of observers at each polling place, since breach was sufficiently material and prejudicial to warrant setting aside election, inasmuch as E was given no notice that there would be imbalance nor opportunity to furnish more observers; U also given permission to use releaser (tell Ees time to vote) at another location were no agreement for releasors and E had none)

Sonicraft, Inc. 276 NLRB No. 044
[rule followed by both Bd and ct seems to be that mere imbalance of observers is a breach of election agreement which must be examined in context with circumstances of each case to determine if breach was prejudicial or material enough to require setting aside of election)

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)
(certification not invalidated by fact that U had more election observers than E where there was no divergence from the stipulation on election procedure and Bd agent followed established procedure in allowing more than one observer per side shortly before election began and suggesting to E that it maintain party with U in the number of its observers, but E chose not to do so)

4962 FUNCTIONS AND RESPONSIBILITIES OF OBSERVERS

4962-4000 Instructions to voters

State Garden Celery Company, Inc. JD-243-84
(election set aside where Bd agent asked spanish speaking U observer to repeat his instructions on voting procedure to voters and later on to speak to spanish speaking Ees who were talking loudly outside voting area and tell them to *quiet down* and told Ees *I don't want to see you in there. We might get problems by you standing there* since Bd agent did not caution observer to limit statements to exact translation, but rather instructions were in nature of general directions to explain voting procedures and tell Ees to quiet down; thus, U's observer conveyed impression to voters that U, not Bd, was responsible for running election)

4975 CONDUCT OF OBSERVER

State Garden Celery Company, Inc. JD-243-84
(election set aside where Bd agent asked spanish speaking U observer to repeat his instructions on voting procedure to voters and later on to speak to spanish speaking Ees who were talking loudly outside voting area and tell them to *quiet down* and told Ees *I don't want to see you in there. We might get problems by you standing there* since Bd agent did not caution observer to limit statements to exact translation, but rather instructions were in nature of general directions to explain voting procedures and tell Ees to quiet down; thus, U's observer conveyed impression to voters that U, not Bd, was responsible for running election)

4975-0100 Generally

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)
[fact that E's election obsever wore identification badge with word *employer* typed in while U election observer wore identification badge with word *Union* hand printed in larger letters than those on E observer's badge saying *employer* too trivial a difference upon which to set election aside. Also E did not object to observers' (for E and U) badges before election began]

4975-6000 Instructing voters

Nestler, Division of Buckhorn, Inc. JD-(SF)-60-85
(on remand in light of *Alco Iron and Metal Co.* 269 NLRB No. 87, election set aside at E at which 80% of Ees could neither speak nor understand English, and neither E's observer nor Bd agent were conversant in Spanish. Bd agent had U observer translate voting instructions and U observer also spoke with substantial number of Ees w/o being instructed to do so by Bd agent; thus, voters instead of receiving voting instructions from neutral source received instructions from person identified with one of parties to election and voters were unaware that at times U observer was acting on instructions of Bd agent)

5600 CHALLENGE OF VOTER

6300 MAIL BALLOTING

6375 PROCEDURE FOR CONDUCTING ELECTION BY MAIL

6375-4000 Delivery of mail ballot to voter by individual

Brink's Armored Car, Inc. 278 NLRB No. 016
[clarifying proper handling of mail ballots in case involving propriety of permitting one individual to pick up mail ballot at Regional Office for another potential voter, Bd stated its disapproval of such practice and observed that had voting package been picked up, Bd would have had no way of determining with any degree of certainty that potential voter was one who received ballot and ultimately voted it, since normal presumption of accurate mail delivery or, alternatively, delivery in person at Regional Office to voter with proper identification would not have been available]

Brink's Armored Car, Inc. 278 NLRB No. 016
[although disapproving of practice of having one individual pick up mail ballot at Regional Office for another potential voter, Bd held that integrity of election herein was not compromised where voting package was never picked up and never left Bd agent's possession]

6375-8700 Verification of voter's identity

Brink's Armored Car, Inc. 278 NLRB No. 016
[clarifying proper handling of mail ballots in case involving propriety of permitting one individual to pick up mail ballot at Regional Office for

6375-8700—Cont.

another potential voter, Bd stated its disapproval of such practice and observed that had voting package been picket up, Bd would have had no way of determining with any degree of certainty that potential voter was one who received ballot and ultimately voted it, since normal presumption of accurate mail delivery or, alternatively, delivery in person at Regional Office to voter with proper identification would not have been available]

7000 SECRECY OF BALLOT

7033 NATURE OF VOTING CONDITIONS RAISING QUESTION OF OPPORTUNITY TO CAST SECRET BALLOT

7033-6700 Voting facilities in voting area

7033-6733 Polling booth

7033-6733-5000 Failure to use

Bekins Moving & Storage Co. 279 NLRB No. 109

[laboratory conditions not violated and objection to election overruled where Ees marked ballots at other than *three-sided box* which was the official designated voting place, absent evidence that ballots cast in election were not secret]

7067 IDENTITY OF VOTER

7067-2000 Election process identifying ballot of voter

7067-2067 Use of different ballots

7067-2067-3300 Foreign language and English

Unibilt Industries, Inc. 278 NLRB No. 117

[as it is parties' responsibility to notify RD that bilingual election materials are needed, election not set aside where Vietnamese Ee who was not fluent in English came into election area to fill out timecard and Bd agent made him leave and Ee did not vote, nor learn purpose of, nor obtain any information about election]

7700 COUNT

7725 VALIDITY OF BALLOT

7725-3300 Properly or improperly marked ballot

7725-3333 Intent of voter

7725-3333-7500 Wording, lettering or other markings on front or back of ballot

Hydro Conduit Corporation 278 NLRB No. 155

[notwithstanding challenged ballot destroyed in accordance with standard procedure in Region and Bd could not examine ballot, it nevertheless held that marking on back did not invalidate ballot]

N.L.R.B. v. Newly Weds Foods, Inc. 758 F.2d 4 (C.A. 1, Mar. 1985)

(Bd did not err in refusing to count ballot that had *X* in *Yes* box but also had *No* written immediately above *Yes* box since ballot was clearly ambiguous)

7737 PREPARATION OF TALLY OF BALLOTS

7737-2500 Ballots cast differ in number from ballots counted

Henry Street Settlement 277 NLRB No. 086

[second election ordered where there was discrepancy between total number of votes cast as disclosed in tally of ballots and total number of votes cast as revealed by RD's investigation w/o any explanation by RD to reconcile these figures]

7750 BALLOTS OF CHALLENGED VOTERS

7750-1000 When determinative of result

U.S. Pollution Control, Inc. 278 NLRB No. 042

[ballot challenged due to absence of voter's name from eligibility list because of his discharge, directed to be opened and counted where petitioner would lose election only if voter were found eligible and together with another Ee voted against petitioner, and voter waived right to secret ballot and requested that his ballot be opened and counted before resolution of his allegedly unlawful discharge, on which C had issued]

Glover Bottled Gas Corp. 275 NLRB No. 096

(R case ordered severed from other two election-ULP cases with which it had been consolidated where R case remanded to RD for opening and counting of challenged ballots of unlawfully discharged Ees that might prove dispositive of election)

7750-4000 Ballots commingled with nonchallenged ballots

J.C.L. Zigor Corporation 274 NLRB No. 213

(contrary to RD's recommendation, Bd found that commingling of challenged ballots with other ballots before determining eligibility of particular voters whose ballots would in some circumstances be determinative of election would make it impossible to ascertain the identity and eligibility of those individuals whose votes were crucial, thus precluding a determination as to whether they should be counted)

7750-6000 Opening and counting of certain challenged ballots prior to resolution of challenge

U.S. Pollution Control, Inc. 278 NLRB No. 042

[ballot challenged due to absence of voter's name from eligibility list because of his discharge, directed to be opened and counted where petitioner would lose election only if voter were found eligible and together with another Ee voted against petitioner, and voter waived right to secret ballot and requested that his ballot be opened and counted before resolution of his allegedly unlawful discharge, on which C had issued]

J.C.L. Zigor Corporation 274 NLRB No. 213

(contrary to RD's recommendation, Bd found that commingling of challenged ballots with other ballots before determining eligibility of particular voters whose ballots would in some circumstances be determinative of election would make it impossible to ascertain the identity and eligibility of those individuals whose votes were crucial, thus precluding a determination as to whether they should be counted)

7762 COUNTING OF MAIL BALLOTS

Henry Street Settlement 277 NLRB No. 086

[second election ordered where there was discrepancy between total number of votes cast as disclosed in tally of ballots and total number of votes cast as revealed by RD's investigation w/o any explanation by RD to reconcile these figures]

8400 MAJORITY CONCEPT UTILIZED BY BOARD

9100 ROLE OF BOARD AGENT

9133 PERSONAL CONDUCT

9133-3300 Bias

9133-3317 Determination of election mechanics

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[fact that E's election observer wore identification badge with word *employer* typed in while U election observer wore identification badge with word *Union* hand printed in larger letters than those on E observer's badge saying *employer* too trivial a difference upon which to set election aside. Also E did not object to observers' (for E and U) badges before election began]

9167 FUNCTIONS AND RESPONSIBILITIES

9167-2100 Handling of marked ballots

9167-2133 Destruction of ballots

Hydro Conduit Corporation 278 NLRB No. 155

[notwithstanding challenged ballot destroyed in accordance with standard procedure in Region and Bd could not examine ballot, it nevertheless held that marking on back did not invalidate ballot]

9167-3400 Instruction of voters

9167-3475 Manner of

9167-3475-2500 Non-English speaking

Unibilt Industries, Inc. 278 NLRB No. 117

[as it is parties' responsibility to notify RD that bilingual election materials are needed, election not set aside where Vietnamese Ee who was not fluent in English came into election area to fill out timecard and Bd agent made him leave and Ee did not vote, nor learn purpose of, nor obtain any information about election]

Gory Associated Industries, Inc. 275 NLRB No. 179

(Bd set election aside and directed that new election be held where interpreter arrived at voting place halfway through election period; this established sufficient prima facie proof of objectionable failure to assure Ees' effective and informed expression that was not rebutted by petitioner)

Nestler, Division of Buckhorn, Inc. JD-(SF)-60-85

(on remand in light of *Alco Iron and Metal Co.* 269 NLRB No. 87, election set aside at E at which 80% of Ees could neither speak nor understand English, and neither E's observer nor Bd agent were conversant in Spanish. Bd agent had U observer translate voting instructions and U observer also spoke with substantial number of Ees w/o being instructed to do so by Bd agent; thus, voters instead of receiving voting instructions from neutral source received instructions from person identified with one of parties to election and voters were unaware that at times U observer was acting on instructions of Bd agent)

9167-4100 Direction of observers

best copy available

9167-4101 Generally

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[fact that E's election observer wore identification badge with word *employer* typed in while U election observer wore identification badge with word *Union* hand printed in larger letters than those on E observer's badge saying *employer* too trivial a difference upon which to set election aside. Also E did not object to observers' (for E and U) badges before election began]

9167-8300 Handling challenged ballots

Hydro Conduit Corporation 278 NLRB No. 155

[notwithstanding challenged ballot destroyed in accordance with standard procedure in Region and Bd could not examine ballot, it nevertheless held that marking on back did not invalidate ballot]

9167-8900 Closing of polls

9167-8850 Early

Clarence E. Clapp 279 NLRB No. 051

[purported objection to election by individual who claimed he was denied opportunity to vote when polls closed prior to time stated in Notice of Election not proper, since objection made by individual who cannot be a *party* to this proceeding. Objection, by letter, filed 8 days after date for *timely* filing and not served on E as required by Sections 102.8 and 102.69(a) of Bd's R/R]

9500 UNION AFFILIATION, MERGER OR DISAFFILIATION ELECTIONS

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[argument that Bd's rule that all Ees in bargaining unit must have opportunity to participate in affiliation decision is reasonable means of protecting bargaining unit Ees' right to select bargaining representative under Sec. 7 of Act, rejected where Act authorizes Bd to conduct R election *only* where affiliation raises qcr; Bd's rule upsets accomodation drawn by statute by effectively decertifying reorganized U even where affiliation does not raise qcr]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[contention that Bd's rule stating all Ees in bargaining unit must have opportunity to participate in affiliation decision was necessary to protect interests of non-U Ees in that affiliation may affect U's representation of bargaining unit even if it does not raise qcr, rejected where U makes many decisions that *affect* its representation of nonmember Ees and dissatisfaction with decisions U members make may be tested by Bd-conducted R election only if it is unclear whether reorganized U retains majority support]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[argument that affiliation differs from other organizational changes because it results in Ees being represented by different organization, rejected since many organizational changes may operate to alter U's *identity* w/o raising qcr]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[contention that affiliation involves U's asking Bd to amend its certification or to order E to bargain and that therefore Bd has strong interest in insuring that its own election procedures have not been circumvented before placing its imprimatur on U's affiliation election, rejected since, in amending U's certification or ordering E to bargain, Bd does not sanction U's affiliation; rather it signifies only that reorganized U continues as ongoing entity that E should continue to recognize]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[if Bd finds that affiliation raises qcr undermining Bd's own election and certification procedures, it can refuse to reconsider U's ULP charge, and is authorized to conduct R election; however it may not condone E's refusal to bargain in absence of qcr and has no authority to prescribe internal procedures for U to follow in order to invoke Act's protections]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[argument that Bd's rule that all Ees in bargaining unit must have opportunity to participate in affiliation decision brings measure of certainty into bargaining relationship, rejected since Act assumes that stable bargaining relationships are best maintained by allowing affiliated U to continue representing bargaining unit unless Bd finds that affiliation raises qcr]

Fast Food Merchandisers, Inc. 274 NLRB No. 025

(ptn for amendment of certification to reflect merger of 2 locals, dismissed, since merger as ratified was invalid, where failure of local seeking merger to notify nonmember unit Ees of meeting at which vote was to be taken to ratify earlier procedurally defective merger of locals, and to extend to nonmembers opportunity to vote, violated due process)

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)

[substantial evidence supported Bd's finding that independent U's choice in conducting election concerning its affiliation with international in accordance with *traditions of New England town meeting* met necessary due process standards where U members had adequate notice that election to decide whether to affiliate with international would be held, Ees were adequately informed as to effects of affiliation, and they had sufficient opportunity for discussion before voting]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)

[voting procedure in affiliation election, while informal, met minimal due process standards, where voting was by secret ballot with Ees preserving some measure of privacy by turning their backs to others or by cupping their hands over their ballots, ballots were publicly tallied, no one voiced any objection or discontent with voting procedure which resulted in almost unanimous decision to affiliate, and election reflected views of large majority of Ees as evidenced by fact that no one in unit opposed election results]

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) 774 F.2d 752 (C.A. 7, Oct. 1985)

[in holding that Bd's conclusion that merger election is not solely internal U affair was rational, consistent with Act, and not arbitrary, ct sustained Bd's determination that all unit members must vote before it will sanction results of merger election]

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) 774 F.2d 752 (C.A. 7, Oct. 1985)

[in finding that Bd properly found *members only* merger election invalid, ct held Bd correctly justified its refusal to apply outcome determinative limitation on ground that effects of exclusion cannot be measured by mere numerical tally since group exclusions from election can have effects greater than mere number of excluded voters]

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) 774 F.2d 752 (C.A. 7, Oct. 1985)

[*members only* merger election held invalid, notwithstanding fact that decision to void election would leave Ees w/o representation, at least temporarily, since U was at fault for not letting non-U Ees vote; because non-U Ees did not vote, no recognizable majority of unit Ees had agreed to vote by U and therefore U cannot invoke Bd processes to force E to bargain with it]

378 CONDUCT INTERFERING WITH ELECTION CHOICE

0100 GENERALLY

0120 BOARD RESPONSIBLE FOR FAIR ELECTION

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(because of its expertise, Bd has broad discretion in conducting elections and resolving R matters; and there is presumption that ballots cast under specific safeguards provided by Bd procedures reflect Ees' true desires)

0150 BOARD MAY CONSIDER CONCURRENT ULP'S EVEN THOUGH NOT ALLEGED IN OBJECTIONS

E. A. Nord Company, Inc. 276 NLRB No. 161

(ULPs occurring between date of filing of ptn and date of election considered in determining whether election should be set aside)

0160 ISOLATED CONDUCT

Pony Express Courier Corporation 282 NLRB No. 036

[E informing fellow Ee, during conversation with another Ee and E's managers and officers, that if Ee acted as informer to E regarding U activities again, he would *beat shit out of him*, did not warrant setting election aside, since threat isolated, where no dissemination to other Ees, and directed to single Ee, notwithstanding relatively small unit of approximately 20 Ees]

United States Aviex Company 279 NLRB No. 110

[objection to election on ground E had in effect invalid no-distribution rule, overruled where, following incident involving supervisor's assertedly confiscatory removal of U literature from table in break room, E indicated Ees were not prohibited from distributing or reading U literature in break area during break period, U supporters did in fact distribute U literature in E's parking lot and break room, and it was unlikely isolated incident involving removal of single piece of U literature had significant impact on outcome of election]

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(isolated, innocuous, and joking remarks not shown to have caused a change in an Ee's vote held insufficient to set aside election; decisive factor is not whether improprieties occurred during campaign, but whether challenged conduct produced such climate of tension and coercion that Ees were effectively precluded from making a free choice)

0160-5000 Impact where election lost by close margin

Rushhill Cemetery Association 275 NLRB No. 033

(in determining effect of E misconduct on results of election, Bd considers size of unit, closeness of vote, number of objectionable incidents, and extent to which reports of that misconduct are disseminated to unit Ees)

0180 TIMING OF CONDUCT

0180-1700 Remote in time

Kokomo Tube Company 280 NLRB No. 035

[unlawful wage increase that was announced and effective prior to critical preelection period, but actually received by Ees after ptn filed, could not serve as basis for setting aside election, notwithstanding E referred to wage increase in post ptn letter to Ees, where letter included references to wage increases of prior years with no emphasis on current increase; contention *Scott Glass Products* 261 NLRB 906 modified *Ideal Electric* 134 NLRB 1275 to allow consideration of prepetion wage increase which was not actually received by Ees until after ptn filed, rejected]

0180-3300 Critical period

Local 295-295C, Operating Engineers (Weather Wise Conditioning Corp.) 282 NLRB No. 044

[election not set aside where E failed to meet its burden of proving when alleged threat of physical harm to Ees, if they did not support U in strike, was made by U representative; and, in the alternative, inference from facts was that statement was made outside critical preelection period before ptn was filed]

Data Technology Corp., Plastronics Division 281 NLRB No. 136

[objection to election alleging solicitation of U supporters overruled where alleged conduct occurred outside critical period before election ptn was filed, and there was no *related* allegedly objectionable post ptn conduct to which pre ptn conduct might give meaning; moreover, pre ptn conduct standing alone cannot provide basis for sustaining objection]

Kokomo Tube Company 280 NLRB No. 035

[unlawful wage increase that was announced and effective prior to critical preelection period, but actually received by Ees after ptn filed, could not serve as basis for setting aside election, notwithstanding E referred to wage increase in post ptn letter to Ees, where letter included references to wage increases of prior years with no emphasis on current increase; contention *Scott Glass Products* 261 NLRB 906 modified *Ideal Electric* 134 NLRB 1275 to allow consideration of prepetion wage increase which was not actually received by Ees until after ptn filed, rejected]

Timen Wire & Cable Company 280 NLRB No. 083

[the critical period for second election commences as of the date of the first election]

La Reina, Inc. 279 NLRB No. 103

[pre-ptn for election conduct barred as basis for setting aside election]

Radio Broadcasting Co. 277 NLRB No. 121

(election set aside where E's ULPs occurred during critical period; although most of E's unlawful conduct, consisting of promises and actual grants of increased benfits, took place during one meeting, E's president was involved and conduct was widely disseminated)

Pulman Del Mar Company 277 NLRB No. 011

(conduct before ptn for election or otherwise outside critical period not objectionable)

E. A. Nord Company, Inc. 276 NLRB No. 161

(ULPs occurring between date of filing of ptn and date of election considered in determining whether election should be set aside)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198

(proposed amendment to C with respect to alleged unlawful assistance to U allowed, where amendment presented no allegations of conduct not otherwise alleged as unlawful in C; independent violations of Act, such as discriminatory discharges, may be found also violative of 8(a)(2) if evidence indicates such violations tend to encourage membership in rival U)

Fruehauf Corporation 274 NLRB No. 067

(the date a ptn for election is filed opens the critical preelection period for cases involving a stipulation for certification upon consent election and in cases where a decision and direction of election issues by a RD; further, although prepetition conduct may not be used as the basis for setting aside an election, such rule does not preclude consideration of such conduct insofar as it lends meaning and dimension to related postpetition conduct or assists in evaluating it)

0180-6700 Cut-off date

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198

(critical period for considering alleged objectionable conduct prior to election deemed to commence with filing of first ptn where, following dismissal of one competing U's ptn, it filed second ptn followed shortly thereafter by rival U's filing of its ptn whereupon RD revoked dismissal of first ptn and consolidated 3 peding ptns for hearing)

1400 STANDARD FOR ELECTION CONDUCT

1401 GENERALLY

Brink's Armored Car, Inc. 278 NLRB No. 016

[in assuring integrity of election process, Bd goes to great lengths to assure that manner in which elections are conducted raises no reasonable doubt as to their fairness or validity]

1401-1200 Parties' informal elections

1401-1200—Cont.

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(majority status (of Ee bargaining representative) can be established by means other than NLRB-conducted election such as *informal-election* in instant case where with E present and consent, Ees secretly marked ballot *yes* or *no* and put ballot in hat)

1401-2500 ULP conduct a fortiori interference with election

Premier Maintenance, Inc. 282 NLRB No. 003

Exhaton Sunrise Community 279 NLRB No. 012

[conduct violative of 8(a)(1) is, *a fortiori*, conduct which interferes with election results, unless unlawful conduct is so *de minimis* as to make it virtually impossible to conclude that violations could have affected results of election; and in determining whether conduct is *de minimis*, Bd takes into consideration number of violations, their severity, extent of dissemination, size of unit, and other relevant factors]

1401-5000 *Laboratory conditions* standard

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018

[where ALJ phrased necessity for second election in language customarily used in *Gissel* bargaining order case, Bd directed second election on basis of its finding that E's conduct destroyed laboratory conditions needed to ensure Ees' uninhibited choice of representative; Bd specifically noted that E's interrogation, threats of plant closure, threats of discharge, and solicitation of Ee to abandon U, constituting 8(a)(1) violations during critical period, were also basis of timely filed election objections]

Bekins Moving & Storage Co. 279 NLRB No. 109

[laboratory conditions not violated and objection to election overruled where Ees marked ballots at other than *three-sided box* which was the official designated voting place, absent evidence that ballots cast in election were not secret]

Brink's Armored Car, Inc. 278 NLRB No. 016

[danger that laboratory conditions surrounding election may be destroyed is greater in mail balloting situations than in manual elections because of absence of Bd supervision over Ees' voting]

Seaward International, Inc. 275 NLRB No. 130

(evaluated cumulatively, incidents involving threats and actions involving physical harm, disturbed laboratory conditions necessary for election; substantial increase in amount of graffiti both for and against U appearing on walls with names of Ees accompanied by epithets contributed, albeit less significantly, to generally coercive atmosphere; and because of seriousness of incidents, their proximity to election, occurrence in relatively small unit, and dissemination of incidents, election set aside)

N.L.R.B. v. Hudson Oxygen Therapy Sales Company 764 F.2d 729 (C.A. 9, June 1985)

(E's contention that Bd failed to evaluate crowd's chanting *Vote Yes, Vote Yes* for few minutes before opening of polls by general laboratory conditions standard, rejected since Bd's rule against electioneering at polling place is limited to times while polls are open and challenged conduct was not shown to be coercive or intimidating, denying voting Ees free and uninhibited choice)

1401-6700 Conduct objectionable which may reasonably be expected to have significant impact on election

Springfield Hospital 281 NLRB No. 076

[no showing that U caused atmosphere of fear, confusion, and reprisal which pervaded whole organizing campaign by engaging in demonstration where no one from U or its agents present and demonstration was orderly and in no way affected hospital's operations or patient care]

Kokomo Tube Company 280 NLRB No. 035

[supervisor's unlawful threat to Ee *I guarantee E will shut down if U comes in* did not warrant setting election aside, where only ULP in critical period, occured 1 month prior to election and no evidence remark was disseminated]

Sealcraft, Inc. 276 NLRB No. 044

[rule followed by both Bd and ct seems to be that mere imbalance of observers is a breach of election agreement which must be examined in context with circumstances of each case to determine if breach was prejudicial or material enough to require setting aside of election]

Gary Associated Industries, Inc. 275 NLRB No. 179

(Bd set election aside and directed that new election be held where interpreter arrived at voting place halfway through election period; this established sufficient prima facie proof of objectionable failure to assure Ees' effective and informed expression that was not rebutted by petitioner)

Rosehill Cemetery Association 275 NLRB No. 033

(in determining effect of E misconduct on results of election, Bd considers size of unit, closeness of vote, number of objectionable incidents, and extent to which reports of that misconduct are disseminated to unit Ees)

Labor Services, Inc. 274 NLRB No. 068

(on ct remand for hearing on objection that U interfered with election by buying voters drinks in adjacent bar before and during election, ct's opinion was observed as law of the case, in view of similarity of facts found before and after remand, and U's conduct found objectionable; ct was concerned with effects of U's conduct and its tendency to interfere with voter's free choice, not U's motive or voters' sobriety, and did not judge conduct's impropriety on basis of its cost or fact drinking occurred outside polling area, since voters took drinking's physical and psychological effects into voting area with them)

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(E's coercive tactics coincident with U campaign w/i small unit of 12 Ees violative, since effect of E's ULPs was pervasive and exercised substantial impact upon possibility of an untainted election)

1401-6725 Impact on small unit

Rosehill Cemetery Association 275 NLRB No. 033

(in determining effect of E misconduct on results of election, Bd considers size of unit, closeness of vote, number of objectionable incidents, and extent to which reports of that misconduct are disseminated to unit Ees)

N.L.R.B. v. Browning-Ferris Industries of Louisville, Inc. 803 F.2d 345 (C.A. 7, Oct. 1986)

[while small size of unit and closeness of election results may be relevant considerations in determining whether free choice interfered with, neither fact is sufficient to raise presumption that conduct had impact on election results. It has been held that the cumulative impact argument *may not be used to turn a number of insubstantial objections to election into a serious challenge*]

1401-6750 De minimis impact of conduct

La Salle Investment Co., Ltd., d/b/a Cafe La Salle 280 NLRB No. 043

[E's unlawful failure to prepare letter of recommendation for Ee held too minimal to have interfered with election, where challenge to Ee's ballot was sustained and Ee was therefore ineligible to vote, and there was no evidence that any other Ee learned of E's misconduct before voting]

Raritan Bay Medical Center a/k/a Perth Amboy General Hospital and Old Bridge Regional Hospital 279 NLRB No. 010

Exhaton Sunrise Community 279 NLRB No. 012

[conduct violative of 8(a)(1) is, *a fortiori*, conduct which interferes with election results, unless unlawful conduct is so *de minimis* as to make it virtually impossible to conclude that violations could have affected results of election; and in determining whether conduct is *de minimis*, Bd takes into consideration number of violations, their severity, extent of dissemination, size of unit, and other relevant factors]

ATR Wire & Cable Co. v. N.L.R.B. 752 F.2d 201 (C.A. 6, Jan. 1985)

(minor property damage to antiU Ees' automobiles in E's parking lot insufficient to establish fear and coercion preventing fair election; only significant damage was not shown to have occurred in E's parking lot, and no proven damage was shown to be linked to U or proU Ees)

1401-7100 Subjective reaction of employees irrelevant

1401-7100 Subjective reaction of employees irrelevant

Hydro-Aire Division, Crane Co. 281 NLRB No. 133

[testimony concerning Ees' subjective reactions to conduct of E allegedly creating impression of surveillance held irrelevant]

Worths Stores Corp. 281 NLRB No. 160

[in determining that altered facsimile ballot circulated by U was propaganda that did not mislead Ees, Bd noted that subjective reaction of Ees is irrelevant to question of whether there was, in fact, objectionable conduct; rather, issue is whether conduct, viewed objectively, warrants setting aside election]

Electro Food Machinery, Inc. 279 NLRB No. 040

[objective standard of whether conduct would reasonably tend to create general atmosphere of fear and reprisal rendering free election impossible, proper]

Monark Boat Company 276 NLRB No. 121

(in agreeing with ALJ's finding that no objectionable misconduct occurred as result of pro-U Ees' comments, Bd disavowed ALJ's reliance on witness' subjective impression of such conduct)

1401-7500 Atmosphere of fear and violence

Electro Food Machinery, Inc. 279 NLRB No. 040

[objective standard of whether conduct would reasonably tend to create general atmosphere of fear and reprisal rendering free election impossible, proper]

1401-7500—Cont.

Eskaton Sunrise Community — **279 NLRB No. 012**

[supervisor's relating to Ees his past experience from prior employment about killing and mutilation of dog of supervisor's friend in order to discourage U activities held to sufice for finding interference]

L & J Equipment Company, Inc. — **278 NLRB No. 074**

[applying ct's agency test in its opinion on remand as law of the case, Bd held that statements by Ee organizing committee's chairman, found agent of U, concerning possible future violence on picket line, and his statement to Ee considered anti-U that he should sign U card to reduce U-related pressure, plus incidents not attributable to U, which included total destruction of E's vehicle by unknown persons, and various other conduct not attributable to U, had cumulative effect and combined to create coercive atmosphere interfering with Ees' free choice in election]

Monark Boat Company — **276 NLRB No. 121**

(proper standard for finding objectionable conduct is whether atmosphere of fear and coercion had been created, and not whether conduct was *intimidating, coercive,* or a form of *unlawful pressure*)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company — **275 NLRB No. 186**

(in determining whether threat is serious enough so as to create general atmosphere of fear and reprisal that interfered with election, Bd evaluates nature of threat and surrounding circumstances such as whether it encompassed entire bargaining unit, was widely disseminated, person making threat was capable of carrying it out, it is likely Ees acted in fear of his capability of carrying it out, and threat was rejuvenated at or near time of election)

Saxward International, Inc. — **275 NLRB No. 130**

(evaluated cumulatively, incidents involving threats and actions involving physical harm, disturbed laboratory conditions necessary for election; substantial increase in amount of graffiti both for and against U appearing on walls with names of Ees accompanied by epithets contributed, albeit less significantly, to generally coercive atmosphere; and because of seriousness of incidents, their proximity to election, occurrence in relatively small unit, and dissemination of incidents, election set aside)

Farmtronix — **274 NLRB No. 118**

(remand for hearing on whether threats by pro-U Ees to blow up houses, beat up Ees and damage property, which E alleged as objections to election, created general atmosphere of fear of reprisal prior to election, since even accepting contention threats not attributable to U, there was sufficient evidence of widespread awareness of talk of violence, and in view of serious nature of alleged threats, which if proven, created atmosphere precluding free expression of choice)

RJR Archer, Inc., Filmco Division — **274 NLRB No. 049**

(if Ees' choice is impeded by atmosphere of fear and coercion, it is not material that apprehension is created by Ees whose conduct cannot be attributed to either E or U)

RJR Archer, Inc., Filmco Division — **274 NLRB No. 049**

(Ees' preelection statements threatening individual fellow EEs, who stated they were not going to vote for U, with property damage or physical violence held interference since threats, when viewed cumulatively, created atmosphere of fear and coercion, where threat of property damage was disseminated widely among Ees, and threat of express physical violence was compounded by receipt of anonymous telephone calls by threatened Ee who testified that he often told people that he had been threatened; in these circumstances, especially where election results were so close, Bd did not view election as reflecting Ees' choice)

Blue Island Newspaper Printing, Inc. — **273 NLRB No. 208**

(no atmosphere of fear and reprisal created by U adherent's statements 1-1/2 weeks before, and morning of, election that he would *take care* of Ees voting *no* where statements were heard by two Ees at most, knowledge of them was not disseminated to other Ees, Ee was not especially capable of carrying out threat of physical harm, it was not likely that Ees acted in fear of his doing so, and only a supervisor heard threat when it was reiterated the morning of the election)

N.L.R.B. v. Monark Boat Company — **800 F.2d 191 (C.A. 8, Aug. 1986)**

[E's contention that Bd should have applied party, rather than third-party, standard of review to conduct, because in-plant organizing committee members acted as U agents or alter egos, rejected where Bd found no connection between U and misconduct]

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. — **758 F.2d 308 (C.A. 8, Mar. 1985)**

(ct held ALJ's finding, affirmed by Bd, that there was no atmosphere of fear and coercion, did not lack support either in record or law, where ALJ found that any adverse effect resulting from U's letters to supervisors, inaccurately implying that criminal penalties could be imposed against them should any ULPs be committed, was neutralized by E's actions to correct misstatement regarding penalties for ULPs)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. — **758 F.2d 308 (C.A. 8, Mar. 1985)**

(in keeping with ct's remand decision, ALJ properly considered totality of circumstances in determining whether fair and free election was held and concluded that alleged pre-election conduct by U and its supporters did not approach severity of conduct commemned in Bd cases, and that record herein fell far short of showing that U's conduct created atmosphere of fear and reprisal such as to render free expression of choice impossible)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. — **758 F.2d 308 (C.A. 8, Mar. 1985)**

(while agreeing with findings of ALJ, affirmed by Bd, that alleged pre-election misconduct by U did not create atmosphere of fear and coercion warranting setting aside election, ct stated it was disturbed by acts of intimidation that occurred during election campaign, made clear its disapproval of such conduct, and observed that in R election neither E nor U can be allowed to engage with impunity in conduct that would subrent Ee free choice)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. — **758 F.2d 308 (C.A. 8, Mar. 1985)**

(while agreeing with findings of ALJ, affirmed by Bd, that alleged pre-election misconduct by U did not create atmosphere of fear and coercion warranting setting aside election, ct stated that both Bd and reviewing cts must be vigilant in protecting right of workers freely to choose or reject a U and that, upon sufficient showing that Ee freedom to exercise meaningful choice has been undermined by whatever means, ct is prepared to set aside election results)

N.L.R.B. v. Chicago Metallic Corporation — **794 F.2d 527 (C.A. 9, July 1986)**

[election set aside where it was conducted in atmosphere of fear and reprisal exacerbated by fact that threats were made by domineering person perceived as supervisor in small unit and vote was relatively close]

N.L.R.B. v. IDAB, Inc. — **770 F.2d 991 (C.A. 11, Sep. 1985)**

(in assessing whether there was atmosphere of fear and coercion depriving Ees of free and untrammeled choice for or against U representation, ct considered (1) whether evidence established fear in the mind of voters; (2) whether than fear affected their votes; and (3) whether, had it not been for the fear, results of election might have been different)

N.L.R.B. v. IDAB, Inc. — **770 F.2d 991 (C.A. 11, Sep. 1985)**

(isolated, innocuous, and joking remarks not shown to have caused a change in an Ee's vote held insufficient to set aside election; decisive factor is not whether improprieties occurred during campaign, but whether challenged conduct produced such climate of tension and coercion that Ees were effectively precluded from making a free chocie)

1401-8700 Conduct must be attributable to party unless so disruptive as to preclude free expression of choice

Electra Food Machinery, Inc. — **279 NLRB No. 040**

[appropriate criteria for judging threats when applying third-party standard are nature of threats and whether they encompassed entire unit, were widely disseminated, were made by persons capable of carrying them out, would be likely to cause Ee to act in fear of their being carried out, and were *rejuvenated* near time of election]

Farmtronix — **274 NLRB No. 118**

(remand for hearing on whether threats by pro-U Ees to blow up houses, beat up Ees and damage property, which E alleged as objections to election, created general atmosphere of fear of reprisal prior to election, since even accepting contention threats not attributable to U, there was sufficient evidence of widespread awareness of talk of violence, and in view of serious nature of alleged threats, which if proven, created atmosphere precluding free expression of choice)

State Garden Celery Company, Inc. — **JD-243-84**

(Ee telling another Ee, who had yet to vote, *Vote Yes, more money* while rubbing thumb and fingers together, did not warrant setting aside election, since Ee urging yes vote was not agent of any party nor was he offering bribe, thus *Milchem* rule forbidding conversations between any party representative and voters waiting vote not applicable; nor could Ee's remark be construed as electioneering substantially impairing anyone's exercise of free choice)

N.L.R.B. v. Monark Boat Company — **800 F.2d 191 (C.A. 8, Aug. 1986)**

[E's contention that Bd should have applied party, rather than third-party, standard of review to conduct, because in-plant organizing committee members acted as U agents or alter egos, rejected where Bd found no connection between U and misconduct]

1700 ABUSE OF, OR INTERFERENCE WITH, BOARD PROCESSES

Clark Equipment Company — **278 NLRB No. 085**

[Ee relations director's statements to Ee that there was some question as to whether Bd subpoenas would be enforced and that compliance was up to Ee's discretion, violation and conduct affecting election, and employment relations manager's statements to him also violation and conduct interfering with election in that they falsely suggested that honoring subpoena was matter of discretion and subpoena could be ignored with impunity]

Clark Equipment Company — **278 NLRB No. 085**

[E's notice stating that E took no position about Ees meeting with Bd and/or U representatives and signing papers, and that Ees had no legal obligation to do so, not violation or conduct interfering with election where notice was posted in response to Ees' inquiries, did not mischaracterize Bd's role, did not suggest E's disfavor over Ee's cooperating with Bd, and did not make false statements about Ees' obligation to go to meeting or sign papers]

Clark Equipment Company — **278 NLRB No. 085**

[E's statements which denigrate Bd subpoenas and suggest that they need not be honored have only one purpose, to obstruct Bd investigation and presentation of cases and to interfere with Ees' Sec. 7 rights]

2100 SPEECHES TO MASSED EMPLOYEES WITHIN 24 HOURS OF ELECTION (PEERLESS PLYWOOD RULE)

Flex Products, Inc. — **280 NLRB No. 061**

[E's holding *individual* meetings with Ees in plant manager's office 24 hours before election did not violate rule of *Peerless Plywood*, barring election speeches on company time to massed assemblies of Ees w/i 24 hours prior to election]

Flex Products, Inc. — **280 NLRB No. 061**

[E's holding individual meetings with Ees in plant manager's office 24 hours before election, not objectionable, where E's stated purpose in so meeting was to give shy Ees a chance to ask questions about U if they were afraid to ask questions at mass meeting E held the prior day, E had on previous occasions talked to Ees in office, there was no evidence Ees were singled out for special pressure and although E's president urged Ees to vote *no* at end of meeting, such remarks do not constitute coercive or intimidating conduct]

2800 CONDUCT OF EMPLOYER

2801 GENERALLY

Mercy-Memorial Hospital — **279 NLRB No. 056**

[Bd has frequently applied different standards in judging similar actions of E and U in recognition of difference in coercive impact of their actions on Ees]

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. — **758 F.2d 308 (C.A. 8, Mar. 1985)**

(while agreeing with findings of ALJ, affirmed by Bd, that alleged pre-election misconduct by U did not create atmosphere of fear and coercion warranting setting aside election, ct stated it was disturbed by acts of intimidation that occurred during election campaign, made clear its disapproval of such conduct, and observed that in R election neither E nor U can be allowed to engage with impunity in conduct that would subrent Ee free choice)

2808 FAVORITISM OR DECLARATIONS OF UNION PREFERENCE

2808-2500 Urging employees to vote for favored union

Palmas Del Mar Company — **277 NLRB No. 011**

(urging Ees to abandon support for U they favored in election campaign and support and solicit other Ees to form an organization to campaign for and support U favored by E, unlawful and objectionable support of U)

2812 CAMPAIGNING ON WORK TIME WHILE DENYING EMPLOYEES SAME OPPORTUNITY

Scientific Atlanta, Inc. — **278 NLRB No. 069**

[E allowing distribution of anti-U literature during worktime and denying that right to U supporters, requiring Ees to disseminate anti-U material, telling Ee he would be sorry he got involved with U and telling Ees that U had already hurt them by holding back benefits, all done during critical period, objectionable and election set aside, since a significant number of Ees were affected by conduct where E's conduct was discussed among a minimum of 340 Ees out of a unit of 1934 Ees and was thus, not de minimus]

2816 ADDRESSING OR INTERVIEWING EMPLOYEES

2816-2500 Statements to employees individually or in groups

Flex Products, Inc. — **280 NLRB No. 061**

[E's holding individual meetings with Ees in plant manager's office 24 hours before election, not objectionable, where E's stated purpose in so meeting was to give shy Ees a chance to ask questions about U if they were afraid to ask questions at mass meeting E held the prior day, E had on previous occasions talked to Ees in office, there was no evidence Ees were singled out for special pressure and although E's president urged Ees to vote *no* at end of meeting, such remarks do not constitute coercive or intimidating conduct]

Decasper Corporation — **278 NLRB No. 022**

[E approaching Ees during polling period and asking them to vote for E and E's president asking Ees to *remember his face* when they voted, not such interference that would warrant setting aside election since restrictions on election day limited to captive Ee audiences and sustained conversations]

Long-Airdox Company, A Division of Marmon Group, Inc. — **277 NLRB No. 124**

(objections to election properly overruled only to extent they alleged E had conversations with Ees about U in working areas on working time, including day of election; see *Land O'Frost of Arkansas*, 251 NLRB 1)

2820 POLLING EMPLOYEES

Kusan Manufacturing Company, a division of Kusan, Inc. v. N.L.R.B. — **749 F.2d 362 (C.A. 6, Dec. 1984)**

(no *per se* proscription regarding pre-election polling of Ees by U as there is if done by E because of disparity between disruptive powers of E and those of U, and such polling by U only becomes impermissable if, in fact, it was coercive and in fact influenced result of election)

2824 INTERROGATION

The Gerkin Co. — **279 NLRB No. 136**

[E's highest officer's singling out one Ee at Ee meeting and asking him if it was correct that U had made promise of certain wages and bonus to Ees, asking Ee exactly what business representative had said, and asking, *you were there, weren't you?* violation and interference]

Fiber Glass Systems, Inc. — **278 NLRB No. 154**

Clark Equipment Company — **278 NLRB No. 085**

[asking Ee day before election why he supported U and whether it could give raises, not violation where Ee was open and active U adherent, who wore U button and passed out U leaflets and cards on E's premises, and surrounding circumstances were not coercive]

Long-Airdox Company, A Division of Marmon Group, Inc. — **277 NLRB No. 124**

(E's interrogation of Ees of how they planned to vote in election held unlawful and interference with election)

National Micronetics, Inc. — **277 NLRB No. 095**

Southern Illinois Petrol, Inc. — **277 NLRB No. 017**

Goodman Holding Company, Inc., and Its Wholly-Owned Subsidiaries, Goodman Manufacturing Corp., etc. — **276 NLRB No. 098**

(election set aside where E interrogated Ees during critical period on whether they were going to vote for or against the U)

Churchill's Catering Corporation d/b/a Churchill's Restaurant — **276 NLRB No. 087**

(E's conduct at meeting with Ees asking Ee if he gave out U cards on company time held interference where interrogation occurred in front of nearly one-half of Ee unit)

Naval Color Corporation — **276 NLRB No. 061**

(election set aside and new election directed where E interrogated 3 Ees in a formal setting concerning their U sympathies, threatened Ee with loss of his job if the U were selected and the intensity of E's anti-U campaign made it highly probable that statements were transmitted to the entire unit)

Okun Brothers Shoe Store, Inc. — **275 NLRB No. 145**

(supervisor's asking Ee how many Ees had signed up for U, coercive and objectionable in view of E's active opposition to U, lack of reason for supervisor's question, and fact it was oblique inquiry as to how active Ee was in organizing drive)

Rosehill Cemetery Association — **275 NLRB No. 033**

(election set aside where assistant manager asked Ee during election campaign if he *knew something about the Union* and asked same Ee about 2 weeks before election if he had seen anyone putting U cards on car windshield)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. — **274 NLRB No. 105**

(E's president's calling various Ees into his office singly and asking them how they thought other Ees felt about the U, if a certain Ee had anything to do with the U campaign, and if they knew who was *starting it* found violation and objectionable conduct)

2824—Cont.

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 105
(E's president's calling Ee into his office and asking if U representatives had been to her house and why she had not refused to speak to them, violative and objectionable conduct)

Commercial Property Services, Inc. JD-(NY)-80-86
[E's consultant's asking Ee during week of election what she felt were advantages of U, what U could provide, and what E was not providing, not unlawful nor interference with election, where there was absences of U hostility, questions were general and non threatening, and E had told Ee that her job would not be jeopardized if she voted for U]

2827 SOLICITATION OF GRIEVANCES

American Laser Corporation 280 NLRB No. 067
[personnel manager conducting individual interviews with Ees during critical period constituted solicitation of grievances and objectionable where she asked Ees if they had any complaints or suggestions notwithstanding manager did not make any express promises of corrective action, since no past practice of conducting this sort of interviews, and at no time did manager dispel Ees' beliefs that corrective action on their grievances would be forthcoming by announcing that she could not make any promises or committments concerning grievances. Therefore, there is compelling inference that manager is implicitly promising to correct inequities discovered]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[solicitation of grievances, violation and interference]

Uniontown Hospital Association 277 NLRB No. 144

National Micronetics, Inc. 277 NLRB No. 095
(soliciting Ee grievances during campaign so as to adjust them, violation and interference)

Okun Brothers Shoe Store, Inc. 275 NLRB No. 145
(questioning of Ees about their problems by members of consulting firm hired by E in response to U campaign, unlawful and objectionable solicitation of grievance where it carried inference of implicit promise to correct problems, and consultants suggested Ee handbook as specific solution to problems)

Clare Community Hospital 273 NLRB No. 218
(pre-election letter to Ees from Task Force of supervisors created to improve communication between E, Ees, and supervisors and to assure Ees of access to facts about U and answer Ees' questions not interference, in absence of solicitation of greivances, promise of benefits, or significant alteration in past method of communication)

Anchorage Times Publishing Company JD-(SF)-86-86
[E's soliciting and promising to remedy its Ees' grievances to influence Ee votes at election, violative and interference]

Collins Industries, Inc. JD-33-86
[where E solicits grievances there is at least implied promise to remedy them which is unlawful unless there is past practice of solicitation such that implied promise to remedy grievance is not change and not grant of new benefit; moreover, such conduct can affect election and, occurring between time ptn was filed and election, is basis for setting aside election]

2832 DISCRIMINATORY TREATMENT OR THREAT THEREOF

Lynn-Edwards Corp. 282 NLRB No. 007
[E's statements that Ees covered by U-negotiated contracts could not participate in Ee stock ownership plan, and E's maintenance of such restrictive provisions in the plan's governing document, violation and election interference]

Judy Hornby Designs, Inc. 279 NLRB No. 168
[bargaining order not required to remedy threat made to U representative and overheard by Ee and later dissiminated by U official to 4 other Ees--there was a total of 7 unit Ees--that E would close the plant before recognizing or having anything to do with U, as remark was heated and isolated reaction to forcible entry by U representative unto its premises rather than calculated threat to unit Ees that would tend to undermine majority strength and impede election process]

Futuramik Industries, Inc. 279 NLRB No. 021
[E's agent, who was fellow Ee, threatening to report certain Ees to Immigration Service if Ees chose U representation, objectionable and if U loses election, it shall be set aside, where comments were made either on election day or shortly before and at least 10 or 20 Ees heard comments; farther, statements do not lose coercive effect merely because there is no direct evidence that some Ees were illegal aliens]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017
[Bd ordered revised tally of ballots and if U lost election, RD was directed to set election aside and direct new election where E discharged U supporter during critical period and announced new rule changes detrimental to Ee during critical period]

Eskaton Sunrise Community 279 NLRB No. 013
[interference where supervisor told Ees they would never receive shifts that they desired to obtain]

Eskaton Sunrise Community 279 NLRB No. 012
[supervisor's telling Ee that it wasn't healthy for Ee to continue her U activities and threatening another Ee with loss of employment for her U activities held interference]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[discriminatorily isolating Ee to discourage support of U, interference]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[searching of U supporters by plant guards as they came to work, interference]

Scientific Atlanta, Inc. 278 NLRB No. 069
[E allowing distribution of anti-U literature during worktime and denying that right to U supporters, requiring Ees to disseminate anti-U material, telling Ee he would be sorry he got involved with U and telling Ees that U had already hurt them by holding back benefits, all done during critical period, objectionable and election set aside, since a significant number of Ees were affected by conduct where E's conduct was discussed among a minimum of 340 Ees out of a unit of 1934 Ees and was thus, not de minimus]

Decasper Corporation 278 NLRB No. 022
[asking E why she wanted U while in same conversation reminding Ee she had recently had two days off to participate in arts and crafts fair with implication that such favors might be imperialed by her U adherence, unlawful and warranted setting aside of election]

Decasper Corporation 278 NLRB No. 022
[setting aside election warranted where E's president stated he knew who U organizers were and suggested that they leave facility, and that E's board of directors would institute layoffs or close company if U came in since E would not be competitive]

Zartic, Inc. 277 NLRB No. 171
[telling Ee that if U did come in, she would be out of a job, violation and interference]

Uniontown Hospital Association 277 NLRB No. 144
(threatening Ees with discharge for signing U authorization cards, unless they later retrieved them, and for voting for U in election, violation and interference)

Long-Airdox Company, A Division of Marmon Group, Inc. 277 NLRB No. 134
(threatening Ees with job loss *once the U matter was over*, occurring w/i critical period held interference)

Long-Airdox Company, A Division of Marmon Group, Inc. 277 NLRB No. 134
(E's statements to known leading U supporter that he wished Ee would *screw up* or *ruin something* so that E *could get rid of the problem* held unlawful and interference with election since use of euphemism *problem* clearly indicated genesis of threat was Ee's organizing activities)

National Micronetics, Inc. 277 NLRB No. 095
(threatening not to promote Ees if U won election, violation and interference)

National Micronetics, Inc. 277 NLRB No. 095
(threatening Ees with stricter job classifications and denial of interdepartmental transfers if U became bargaining representative, violation and interference)

National Micronetics, Inc. 277 NLRB No. 095
(telling Ees that they had forfeited chances of advancement by engaging in U activities, violation and interference)

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(threatening to obtain U cards signed by Ees even if E had to pay for them and to fire signers, violative and objectionable)

Hy's of Chicago, Ltd. 276 NLRB No. 113
(discharge of two U activists, assertedly for being involved in fight, held interference and violative where they were discharged because of their efforts to organize Ees)

Bell Halter, Inc. 276 NLRB No. 136
(E's discriminatory evaluation of Ee's job performance held not interference, where neither Ee nor any other unit Ee was aware of such evaluation during critical pre-election period, and allegation that evaluation was discriminatory was not made until hearing when C was amended)

Churchill's Catering Corporation d/b/a Churchill's Restaurant 276 NLRB No. 087
(discharge of Ee motivated by his protected concerted activity in criticizing E for its alleged discriminatory treatment against Hispanics held unlawful and interference where E stated he discharged Ee *because he called me prejudiced. I considered it an insult*, thereby admitting Ee's remarks motivated his discharge)

2832—Cont.

Noral Color Corporation **276 NLRB No. 061**
(election set aside and new election directed where E interrogated 3 Ees in a formal setting concerning their U sympathies, threatened Ee with loss of his job if the U were selected and the intensity of E's anti-U campaign made it highly probable that statements were transmitted to the entire unit)

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(telling Ees during U campaign that E would *build a case* against U sympathizers in order to get rid of them, violative and objectionable)

Okun Brothers Shoe Store, Inc. **275 NLRB No. 145**
(supervisor's threatening Ees with reduction of hours if they voted U in, violative and objectionable)

Glover Bottled Gas Corp. **275 NLRB No. 096**
(unlawful discharges for U activities by E found grounds for setting aside elections at two other Es where Es were found to constitute single E with fourth E)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(discriminatory transfer of driver from short haul to long haul runs for exercising U's and driver's protected right to protest payment of driver loading and unloading fee held interference, since transfer intimidated other Ees from actively supporting U or positions taken by U and constituted kind of conduct which adversely affected U)

Collins Industries, Inc. **JD-33-86**
[E's speech to Ees day before election held interference in view of totality of speech in which E suggested futility of Ees' voting for U and implying closure of plant if Ees did so; during election campaign E has duty not to threaten Ees should they vote against his wishes; and E, having economically superior position to Ees, has, or is perceived to have, power to make good on its threats]

Collins Industries, Inc. **JD-33-86**
[election set aside in view of E's *hallmark violations* consisting of E's vitriolic anti-U speech to Ees which amply demonstrated to Ees futility of selecting U as their representative and implied much more harsh consequences such as plant closure; moreover, anti-U campaign by E's management officials, although involving less serious violations, reached virtually all unit Ees]

2835 PREDICTION OF DETRIMENTAL RESULTS OF UNIONIZATION

Diner's Drive-In, Inc. and Diner's Drive-In Kaaumoku, Inc., Jointly **280 NLRB No. 111**
[E's telling Ees through a letter enclosed with their paychecks prior to election, that the last thing E needed was *something that would put us over the edge and might require us to close our doors permanently*, objectionable and election set aside, since overall thrust of letter was to bring Ees' attention to possible adverse consequences of unionization. E's referral to *something* as putting E over the edge was intended to refer to unionization]

Diner's Drive-In, Inc. and Diner's Drive-In Kaaumoku, Inc., Jointly **280 NLRB No. 111**
[E's reference to the bad economy and the possibility that the business may close, held objectionable and election set aside, since E made no correlation, as he is permitted to do, between possible adverse economic consequences of unionization and the closing of his business; E's statements crossed the line between advising Ees of *potential adverse consequences* of unionization and an implied threat of the likelihood that business would close since E's predictions were not accompanied by any references to U's demand for higher wages and the impact on E of trying to meet such demands]

FGI Fibers, Inc. **280 NLRB No. 054**
[not objectionable where E told Ees that there would not be anymore open door policy if U was voted in because they would have to go through U procedures, would have to deal with Ees through shop steward, as E free to tell Ees about changes in its open door policy which will result from selection of bargaining representative. No negative inference should be drawn from E's failure to inform Ees that they still had right to present their grievances w/o U interference]

Kokomo Tube Company **280 NLRB No. 035**
[supervisor's unlawful threat to Ee *I guarantee E will shut down if U comes in* did not warrant setting election aside, where only ULP in critical period, occured 1 month prior to election and no evidence remark was disseminated]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[threat of layoffs and discharges, violative and interference]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[threats of strikes, violation and interference]

Clark Equipment Company **278 NLRB No. 085**
[E's statements found lawful and unobjectionable presentation of economic realities of unionization rather than unlawful threat of inevitability of strikes where they pointed out possibility of strikes and fact U could only try to force certain conditions by striking]

Clark Equipment Company **278 NLRB No. 085**
[statement referring to job security and plant closure, not violation or conduct interfering with election where they were not made in context of threats of loss of benefits, inevitability of strikes and futility of electing U]

Decasper Corporation **278 NLRB No. 022**
[setting aside election warranted where E's president stated he knew who U organizers were and suggested that they leave facility, and that E's board of directors would institute layoffs or close company if U came in since E would not be competitive]

Decasper Corporation **278 NLRB No. 022**
[no interference that would warrant setting aside election where E's president stated he would not be able to meet payroll and would have to close plant if production did not increase]

Uniontown Hospital Association **277 NLRB No. 144**
(threats of loss of benefits if U was elected, violation and interference)

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(E's statements to Ees that E's customers had stated they would stop sending work to E's repair facility if it became organized held interference)

Palmas Del Mar Company **277 NLRB No. 011**
(E's telling Ees in remarks, speech, letters, and notice in their paycheck that if they voted for disfavored U, interested purchaser would not buy the business, E would have to close it, and they would lose their jobs found unlawful and objectionable election conduct)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. **274 NLRB No. 105**
(no violation or objectionable conduct by E's distributing to its Ees a letter in which another E's Ee recounted his past personal experience with unionization; E's apprising Ees of others' experience and opinions did not predict or threaten retaliatory conduct by E and was intended to enable Ees to make informed decision)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. **274 NLRB No. 105**
(no unlawful threat of Ees' loss of right to speak directly with management upon unionization or objectionable conduct by E's distributing to Ees another E's Ee's letter recounting his past personal experience with and opinion about unionization in which he stated that, once a U came in, it did the talking whereas now Ees could discuss differences with management on one-to-one basis)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. **274 NLRB No. 105**
(cumulative effect of E's literature and consultant's speech, not unlawful threat of job loss and objectionable conduct; Ee's letter describing post-unionization layoffs due to higher wages was personal experience; lawfully posted newspaper article describing strikers' hardships not support for broader violation; trade journal article about store closings and Ees' letter asking help in keeping jobs merely described economic conditions; Ee's letter about U focused on Ee-U relations not store closings; and consultant's speech about store closings and *striking* stated economic realities)

Tri-Cast, Inc. **274 NLRB No. 059**
(E's letter stating that as a young company it could not afford to lose business and jobs by having to make higher bids than before or having its customers feel threatened due to U strikes and could not stay healthy if it lost flexibility due to U restrictions, not objectionable, since E's comments contained no threat of retaliation but merely pointed out reasonably possible results of unionization in moderate tone)

Western Waste Industries, Inc. of Florida **274 NLRB No. 035**
(asking Ees how they felt about U and at same time threatening that if U came in Ees would have to contribute to insurance premium payments and pay for uniforms, and that E would cut back to minimum wage, violative and warranted setting aside election where threats took place during critical period)

2837 SHOWING MOVIES, SLIDE PRESENTATIONS, ETC.

Offshore Shipbuilding, Inc. **274 NLRB No. 077**
(setting aside of election not warranted where E showed Ees documentary film *Strike Town USA*, with question and answer period following film, and personnel manager stated no one wanted strike situation, since unlawful prediction made and Ees free choice not negated where film depicted anatomy of labor dispute which depiction was privileged under Section 8(c))

2839 WAGE INCREASES AND OTHER BENEFITS, OR PROMISES THEREOF

United States Aviex Company **279 NLRB No. 110**
[promising Ee, who was father of son in layoff status, that E would recall son to work if father voted for company, unlawful]

2839—Cont.

Angelica Corporation 276 NLRB No. 038
(election set aside where E made implied promises of increased benefits and unilaterally announced new benefit program prior to election)

2839-1700 Statements concerning benefits

Playboy Elsinor Associates, t/a Playboy Hotel & Casino 281 NLRB No. 159
[E's announcing to Ees, during critical period new, and improved Ee health insurance benefits and new in-house medical testing, objectionable]

Playboy Elsinor Associates, t/a Playboy Hotel & Casino 281 NLRB No. 159
[*reminder*, during critical period to E's part-time Ees (a new category of Ees hired during critical period) to sign up for health and other benefits not violative or objectionable where testimony showed that part-time Ees had been told when interviewed that they could sign up for such benefits]

Clark Equipment Company 278 NLRB No. 085
[statements that E building management team and had developed program to improve conditions found permissible reminder of existing good conditions and of improvements started before election campaign and appeal for Ees' confidence, rather than unlawful and objectionable promise of improved benefits if Ees rejected U]

Duo-Fast Corporation 278 NLRB No. 010
[E's leaflets comparing U represented Ees' benefits with non U benefits offered by E, not interference, since leaflets were not per se objectionable, contained explicit disclaimer, which was repeated orally in meetings with Ees, and were unacccompanied by other interference]

Duo-Fast Corporation 278 NLRB No. 010
[E's explaining to Ees that there would be no gap in medical insurance coverage if Ees voted U out, not interference where made in response to Ees' questions and unaccompanied by promise of benefits or other interference]

National Micronetics, Inc. 277 NLRB No. 095
(E's asking Ees for *another chance* and *more time*, held too vague to rise to level of illegal promise of benefits or objectionable conduct where E made no specific promise but merely expressed general desire to do better)

National Micronetics, Inc. 277 NLRB No. 095
(impliedly promising benefits to dissuade Ees from supporting U, interference)

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home 275 NLRB No. 171
(telling Ees during U campaign that E would do more for Ees after the building mortgage was paid off in 10 years, violative and objectionable)

Clare Community Hospital 273 NLRB No. 218
(pre-election letter to Ees from Task Force of supervisors created to improve communication between E, Ees, and supervisors and to assure Ees of access to facts about U and answer Ees' questions not interference, in absence of solicitation of greivances, promise of benefits, or significant alteration in past method of communication)

2839-2500 Offer of or promotion to supervisor to preclude voting in election

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home 275 NLRB No. 171
(promoting several Ees in small unit to supervisory positions during critical period, assertedly to comply with state law, violative and objectionable, since real reason was to disenfranchise active U supporters, where state law did not in fact support E's position and even though job descriptions of Ees promoted would indicate supervisory status, those promoted did not in fact exercise any supervisory duties but rather performed same job as in the past)

2839-3300 To unit employees

Premier Maintenance, Inc. 282 NLRB No. 003
[election set aside, and new election ordered, in view of E's unlawful granting of wage increases]

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(improving working conditions including new parking lot, new lighting, and picnic tables did not warrant setting aside election, since improvements were planned whether or not U came in, because of company growth rather than motivated by U animus)

2839-3333 Preceding election

Ward Trucking Corp. 281 NLRB No. 083
[objection that E allowed newly transferred Ees to live in company house at very reduced rent in exchange for yard and maintenance work in order to influence their votes, overruled, since E's actions not departure from past practice of paying boarding expenses for newly transferred Ees, and by company house rental arrangement E reduced motel expenditures while providing housing needs; further, E's decision to obtain company house which resulted in Ees having to pay rent and perform chores for less desirable living arrangements than motel was not reasonably calculated to influence election result]

Ward Trucking Corp. 281 NLRB No. 083
[E providing newly transferred Ee payment for meals and lodging on open end basis, notwithstanding Ee had use of E's property to park camper, plus expenses for weekly return home, not sustained as objection, since benefits granted were not departure from E's past practice, nor was finding of objectionable conduct reasonably calculated to influence election warranted by fact benefits open ended or that Ee paid benefits while living in trailer where Ees had previously been paid for expenses which they did not actually incur]

Kokomo Tube Company 280 NLRB No. 035
[unlawful wage increase that was announced and effective prior to critical preelection period, but actually received by Ees after ptn filed, could not serve as basis for setting aside election, notwithstanding E referred to wage increase in post ptn letter to Ees, where letter included references to wage increases of prior years with no emphasis on current increase; contention *Scott Glass Products* 261 NLRB 906 modified *Ideal Electric* 134 NLRB 1275 to allow consideration of prepetion wage increase which was not actually received by Ees until after ptn filed, rejected]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle 280 NLRB No. 043
[unlawful preelection grant of benefits to Ees in form of complimentary coupons as part of promotional program, affecting substantial number of unit Ees held interference with *laboratory conditions* which Bd requires for election]

Delta Data Systems Corp. 279 NLRB No. 169
[preelection grant of benefits including relaxed lateness policy, no use of timeclock at lunch time, and establishment of Ee grievance committee, violative and interfered with election, notwithstanding E claim that changes had been under consideration prior to U campaign, where changes were not scheduled or implemented until after U drive began and were announced at meeting during which E president expressed anti-U animus]

Beverly Enterprises d/b/a Leisure Lodge 279 NLRB No. 049
[E's announcement of wage increase at anti-U meeting one week prior to election, objectionable and election set aside, where, although Ees were told some 5 months previously that increase may be granted if E received increase in Medicaid reimbursements, wage increase was precipitously announced 1 week before E officially received word of reimbursement; further, fact that wage increase was announced statewide and not just in voting unit was irrelevant, since E was aware of pending election and made decision to implement wage increase notwithstanding the election]

Clark Equipment Company 278 NLRB No. 085
[announcement and implementation of new job evaluation system resulting in wage increase and institution of new wage rate on election day, not violation or conduct interfering with election where implementation was already planned and Ees informed of its imminent announcement when U filed request to proceed]

Duo-Fast Corporation 278 NLRB No. 010
[E's leaflets comparing U represented Ees' benefits with non U benefits offered by E, not interference, since leaflets were not per se objectionable, contained explicit disclaimer, which was repeated orally in meetings with Ees, and were unacccompanied by other interference]

Duo-Fast Corporation 278 NLRB No. 010
[E's explaining to Ees that there would be no gap in medical insurance coverage if Ees voted U out, not interference where made in response to Ees' questions and unaccompanied by promise of benefits or other interference]

Duo-Fast Corporation 278 NLRB No. 010
[paying Ees bonus during pre election period, not interference where payment was made pursuant to past practice and pattern discernible both as to timing and amount and w/o mention of election]

Radio Broadcasting Co. 277 NLRB No. 121
(election set aside where E's ULPs occurred during critical period; although most of E's unlawful conduct, consisting of promises and actual grants of increased benfits, took place during one meeting, E's president was involved and conduct was widely disseminated)

National Micronetics, Inc. 277 NLRB No. 095
(distributing discount coupons to Ees to create impression of providing benefits and dissuade Ees from supporting U, violation and interference)

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(giving two Ees out of unit of 200 raises during critical pre-election period did not warrant setting election aside, since raises not given for purpose of influencing vote in election)

ARA Services Inc. & Its Wholly Owned Subsidiaries, Terminal Newsstands, Inc. & Terminal Shops, Inc., d/b/a AERO Enterprises, Inc. 274 NLRB No. 044
(wage raise granted by E to unit Ees 19 days prior to Bd election not objectionable where: (1) E had committed itself to raise prior to U's filing R ptn, (2) raise given on same day as previous wage increase, 1 year ago, and as result of wage survey, (3) increase was w/i range under consideration prior to R ptn, and (4) E's unambiguous statements regarding time and

2839-3333—Cont.

amount of increase preclude conclusion that E sought to affect election results)

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)

[reinstitution of *Ee of the Month* award and offering $100 to winner each month during pre-election period not violative in view of both length of U's (approximately 13 months) organizational drive and large number of hospital Ees (approximately 1300). Designation of one individual as Ee of month can not reasonably be said to be so significant as to influence in any way attitude of Ees or outcome of election]

2839-6700 To employees in other plants or units not seeking representation

Beverly Enterprises d/b/a Leisure Lodge 279 NLRB No. 049

[E's announcement of wage increase at anti-U meeting one week prior to election, objectionable and election set aside, where, although Ees were told some 5 months previously that increase may be granted if E received increase in Medicaid reimbursements, wage increase was precipitously announced 1 week before E officially received word of reimbursement; further, fact that wage increase was announced statewide and not just in voting unit was irrelevant, since E was aware of pending election and made decision to implement wage increase notwithstanding the election]

2843 DENIAL OR WITHHOLDING OF WAGE INCREASE OR OTHER BENEFITS, OR THREATS THEREOF

The Gerkin Co. 279 NLRB No. 136

[telling Ees that E could not carry out its intent to improve health insurance coverage until after election, violation and interference]

Clark Equipment Company 278 NLRB No. 085

[E statements that bargaining means *putting everything on the table* including present benefits and that ct decision had upheld E's right to inform Ees that E need not agree to continue existing wages and benefits, found accurate reflection of obligations and possibilities of bargaining process rather than unlawful and objectionable implied threat to take away benefits or bargain regressively if U won]

Unionstown Hospital Association 277 NLRB No. 144

(threatening Ees with loss of scheduled wage increase, violation and interference)

National Micronetics, Inc. 277 NLRB No. 095

(threat to discontinue benefits if E had to bargain with U, interference)

Goodman Holding Company, Inc., and Its Wholly-Owned Subsidiaries, Goodman Manufacturing Corp., etc. 276 NLRB No. 098

(E's telling group of Ees during critical period that a proposed individual incentive pay plan would be subject to negotiation if U was certified, not violative or objectionable, since E's statement was an accurate reflection of E's duty to bargain in good faith with a successful U and there was no evidence E threatened to freeze wages or conditioned pay plan upon defeat of the U)

Western Waste Industries, Inc. of Florida 274 NLRB No. 035

(asking Ees how they felt about U and at same time threatening that if U came in Ees would have to contribute to insurance premium payments and pay for uniforms, and that E would cut back to minimum wage, violative and warranted setting aside election where threats took place during critical period)

2843-5000 Placing onus for withholding on union

The Gerkin Co. 279 NLRB No. 136

[telling Ees that traditional wage increase was frozen during U organization campaign, violation and interference, since statement was contrary to well established rule that during preelection period E must grant or withhold benefits as if U were not in picture]

Scientific Atlanta, Inc. 278 NLRB No. 069

[E allowing distribution of anti-U literature during worktime and denying that right to U supporters, requiring Ees to disseminate anti-U material, telling Ee he would be sorry he got involved with U and telling Ees that U had already hurt them by holding back benefits, all done during critical period, objectionable and election set aside, since a significant number of Ees were affected by conduct where E's conduct was discussed among a minimum of 340 Ees out of a unit of 1934 Ees and was thus, not de minimus]

2847 RULES RESTRICTING UNION ACTIVITY (See also 512-5012)

2847-3300 No distribution, no solicitation

FGI Fibers, Inc. 280 NLRB No. 054

[promulgation of no-solicitation rule during critical period that would prevent Ees from talking about U at their work stations, held interference, since no such rule prior to U campaign and no evidence such conversations caused any disruption of work that would justify such ban]

The Gerkin Co. 279 NLRB No. 136

[describing solicitation and distribution of literature in handbook as *areas of behavior* which require special attention, violation and interference, notwithstanding absence of stated penalties in handbook, where E indicated that it considered Ees doing either one anywhere on its premises to be misconduct]

United States Aviex Company 279 NLRB No. 110

[objection to election on ground E had in effect invalid no-distribution rule, overruled where, following incident involving supervisor's assertedly confiscatory removal of U literature from table in break room, E indicated Ees were not prohibited from distributing or reading U literature in break area during break period, U supporters did in fact distribute U literature in E's parking lot and break room, and it was unlikely isolated incident involving removal of single piece of U literature had significant impact on outcome of election]

Fiber Glass Systems, Inc. 278 NLRB No. 154

[telling Ees they could not discuss U on their own time on E's property, violation and interference]

Clark Equipment Company 278 NLRB No. 085

[interfering with distribution of literature in non-work areas during non-work time, violative and objectionable where Ees were told they could not distribute literature at plant entrance but would have to go to plant gate, and two Ees were threatened with arrest and escorted by security guards to plant gate]

Unionstown Hospital Association 277 NLRB No. 144

(no-solicitation no-distribution policy, violation and interference where it applied to hospital's main lobby, cafeteria and gift shop, since solicitation and distribution there would not have interfered with patient care, but was not found violation or interference as to corridors, since solicitation or distribution there might have disrupted patient care)

National Micronetics, Inc. 277 NLRB No. 095

(telling Ee she could not talk U on breaks, violation and interference)

Bell Halter, Inc. 276 NLRB No. 136

(although E's conduct of maintaining and enforcing overly broad no-distribution rule was unlawful, such conduct held de minimis and not interference with election, where E subsequently granted Ees specific authorization to distribute U literature in non-work areas on non-work time, and thereafter, during more than 5-week period between E's authorization and election, there was no further interference by E to U distributions on its premises)

2847-5000 Restriction on use of bulletin board

Health Care and Retirement Corporation of America, d/b/a Heartland of Keyser 278 NLRB No. 026

(E's instituting a *no-posting* policy prohibiting any and all Ee postings on bulletin board, occurring 2 weeks before U filed ptn for election but after U organizing began and which was not in accordance with previous Es policy allowing all postings, and then modifying policy 3 weeks before election to allow all types of literature to be posted for 3 or 4 days, not objectionable conduct, where under both policies E treated anti-U and pro-U literature the same, Ees were assured opportunity to see U literature 3 weeks before election and there was no evidence U was unable to communicate with Ees)

2847-8400 Requiring removal of union insignia

Unionstown Hospital Association 277 NLRB No. 144

(ordering Ees to remove U buttons as violation of dress code, violation and interference where E allowed Ees to wear other insignia, such as Christmas and Easter pins and football insignia)

2855 SURVEILLANCE OR IMPRESSION THEREOF

Hydro-Aire Division, Crane Co. 281 NLRB No. 133

[E's impoundment, pursuant to valid property-pass rule, of Ee's pro-U documents containing confidential annotated voters' list held not to have created impression of surveillance interfering with election, where E was oblivious to presence of list when it initially impounded documents; U failed to prove that presence of management representative when impoundment took place was unusual, deliberate or in any way related to election or Ees' U activities; and delay occurring before Ee reclaimed list was insignificant and not attributable to E's knowledge of documents' contents]

Baddour, Inc. 281 NLRB No. 084

[E's security guards' observation of Ees' handbilling at gate to E's premises neither violative nor objectionable where area was open to public]

Fiber Glass Systems, Inc. 278 NLRB No. 154

[telling Ee that E knew he was one of U leaders, violation and interference, notwithstanding Ee wore U insignia, where many Ees did so, and wearing U insignia did not designate Ee as leader of U organizing]

Unionstown Hospital Association 277 NLRB No. 144

(telling Ee that coordinators had been instructed to watch for anyone who was soliciting or was involved with the U, violation and interference)

2855-3300 Recruiting employees for surveillance

2855-3300—Cont.

Delta Data Systems Corp. 279 NLRB No. 169
[E request that Ee attend U meeting and give E list of Ees attending, violation and election interference]

2855-6700 **Informing employees of surveillance**

Clark Equipment Company 278 NLRB No. 085
[no unlawful or objectionable impression of surveillance created by foreman's statement that he had heard U meetings were not well attended and that U had collected 500 cards or by supervisor's remarking on Ee's open distribution of leaflets and commenting that he was disappointed in Ee]

Decasper Corporation 278 NLRB No. 022
[impression created where E's president informed Ees he might attend U meeting and warranted setting aside of election]

Decasper Corporation 278 NLRB No. 022
[setting aside election warranted where E's president stated he knew who U organizers were and suggested that they leave facility, and that E's board of directors would institute layoffs or close company if U came in since E would not be competitive]

National Micronetics, Inc. 277 NLRB No. 095
(creating impression of surveillance by stating Ee had been *fingered* as having talked with U, interference)

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(indicating to Ee that E knew identities of Ees who were for and against U, objectionable)

2862 VARIOUS ULP's DURING CRITICAL PERIOD

Premier Maintenance, Inc. 282 NLRB No. 003
[election set aside and new election ordered, in view of extensive violations of Section 8(a)(1), including promise of benefits, interrogation, and promulgation of unlawful no solicitation rule]

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018
[where ALJ phrased necessity for second election in language customarily used in *Gissel* bargaining order case, Bd directed second election on basis of its finding that E's conduct destroyed laboratory conditions needed to ensure Ees' uninhibited choice of representative; Bd specifically noted that E's interrogation, threats of plant closure, threats of discharge, and solicitation of Ee to abandon U, constituting 8(a)(1) violations during critical period, were also basis of timely filed election objections]

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place 281 NLRB No. 008
[election set aside and case referred to RD for further proceedings, in view of ULPs committed by E including discriminatory transfers to different department and shift, threat of discharge, and threats that bargaining would start from scratch]

Products Unlimited Corp. 280 NLRB No. 041
[setting aside of election warranted in view of E's unlawful discharge, refusal to promote, refusal to permit display of anti-U posters, and interrogation during critical period]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle 280 NLRB No. 043
[E's unlawful failure to prepare letter of recommendation for Ee held too minimal to have interfered with election, where challenge to Ee's ballot was sustained and Ee was therefore ineligible to vote, and there was no evidence that any other Ee learned of E's misconduct before voting]

United States Aviex Company 279 NLRB No. 110
[unlawful interrogation of, and promises of benefit to, Ees; soliciting Ees to engage in surveillance of U meetings, creating impression of surveillance of Ees' U activity, and verbally abusing Ees because of U sympathies and activities held interference]

Michiel's Inc., d/b/a La Saint Jean Des Pres Restaurant 279 NLRB No. 017
[Bd ordered revised tally of ballots and if U lost election, RD was directed to set election aside and direct new election where E discharged U supporter during critical period and announced new rule changes detrimental to Ee during critical period]

Exkaton Sunrise Community 279 NLRB No. 012
[interference where E committed numerous violations of 8(a)(1), including threats of loss of employment, threats of discrimination as to shift assignment, and surveillance and interrogation of Ees]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[establishment of grievance committee and new grievance procedure, violation and interference]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[telling Ee to vote no in election, violation and interference]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[threats of loss of work, violation and interference]

Clark Equipment Company 278 NLRB No. 085
[interfering with distribution of literature in non-work areas during non-work time, violative and objectionable where Ees were told they could not distribute literature at plant entrance but would have to go to plant gate, and two Ees were threatened with arrest and escorted by security guards to plant gate]

Decasper Corporation 278 NLRB No. 022
[setting aside of election warranted in view of various violations of Section 8(a)(1) during critical period including interrogation, creating impression of surveillance and threats]

Electronic Data Systems International Corporation 278 NLRB No. 014
[setting aside of election warranted in view of various violations of Section 8(a)(1) during critical period, including creating impression of surveillance, unlawful promising and granting of benefits, maintenance of overly broad rules which interfered with Section 7 rights and discriminatory enforcement of rules]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) 278 NLRB No. 025
[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorization election which U won set aside, since members and non-members were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

Zartic, Inc. 277 NLRB No. 171
[telling Ees it was futile to select a U because E would never agree to dues checkoff, violation and interference]

Uniontown Hospital Association 277 NLRB No. 144
(E's agent's threatening part-time Ees with loss of flexibility as to days and hours when they could work, violation and interference)

Uniontown Hospital Association 277 NLRB No. 144
(threats that electing U would be futile, interference)

Uniontown Hospital Association 277 NLRB No. 144
(soliciting retrieval of U authorization cards and informing Ees of procedure to follow in doing so, violation and interference)

Uniontown Hospital Association 277 NLRB No. 144
(threats of disciplinary action for violationof unlawfully broad no-solicitation policy and of discriminatorily enforced dress code, violations and interference)

Uniontown Hospital Association 277 NLRB No. 144
(security guard's physically attempting to bar Ee from distributing U literature, violation and interference)

Uniontown Hospital Association 277 NLRB No. 144
(threats to not grant Ee a reference, violation and interference)

National Micronetics, Inc. 277 NLRB No. 095
(E's threatening to close plants if U won election, violation and interfeence where, rather than pointing to objective facts likely to result from unionization that would cause unprofitability, E noted that its plants were uncompetitive and could easily be relocated if U won where five E's officials had threatened to close plants and relocate to another state)

National Micronetics, Inc. 277 NLRB No. 095
(threatening that all strikers, ULP as well as economic strikers, could be replaced, violation and interference)

National Micronetics, Inc. 277 NLRB No. 095
(threatening discharge for U activities, and telling Ees that strikes were inevitable and that E would not bargain if U won election, interference)

National Micronetics, Inc. 277 NLRB No. 095
(maintaining bulletin board in such way that pro-U campaign propaganda, but not anti-U propaganda, could be defaced or removed, violation and interference)

National Micronetics, Inc. 277 NLRB No. 095
(telling Ee she could not talk U on breaks, violation and interference)

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(threatening that Ees would lose their free uniforms, insurance, Christmas bonuses, weekly tanks of gas and other benefits if they voted for U or U got in, violative and objectionable)

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(telling Ee that if U got in E would not have to bargain with it and would close the plant, thus giving Ee impression that organizing would be futile, violative and objectionable)

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(threatening to obtain U cards signed by Ees even if E had to pay for them and to fire signers, violative and objectionable)

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(threat to close plant objectionable)

2862—Cont.

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(objections to election sustained on basis of ULPs consisting of interrogation of Ees concerning their U activities and sympathies; threats of reprisal if Ees supported U; threat to close operations if U won election; granting wage increases to induce Ees to abandon their support for U; threat of loss of benefits; surveillance of Ee's U activities, thereby creating atmosphere of fear and coercion; and discharge of U supporters)

E. A. Nord Company, Inc. 276 NLRB No. 161
(ULPs occurring between date of filing of ptn and date of election considered in determining whether election should be set aside)

Magic Island, Inc. 276 NLRB No. 107
(bargaining order appropriate since fair election could not be held where E engaged in campaign consisting of violent obscenities coupled with threats directed at principal U organizers during critical period, promised benefits to those not supporting the U, terminated 5 of 9 U sympathizers by the time of the election, disseminated to entire unit false accusations concerning U supporters, and threatened to blackball all Ees who supported the U in election)

McLean Roofing Company 276 NLRB No. 093
(election set aside where E unlawfully interrogated Ees, created impression of surveillance, and threatened to discharge U supporters)

2870 TOTALITY OF PRE-ELECTION CONDUCT

Monark Boat Company 276 NLRB No. 121
(Bd held ALJ properly did not fail to consider effect of alleged objectionable conduct as a whole, where ALJ, after resolving each objection separately, concluded that evidence failed to establish that coercive environment existed during U campaign)

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

2872 SEPARATE PAYCHECK REPRESENTING AMOUNT OF UNION DUES

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(setting aside election not warranted where E deducted from last paycheck received by Ees prior to election, amount allegedly equivalent to U dues, and gave Ees separate check for that amount)

2874 INTERFERENCE WITH ORDERLY ELECTION PROCESSES

Fiber Glass Systems, Inc. 278 NLRB No. 154
[plant manager and supervisor telling Ees waiting in line to vote to vote no, interference]

E. A. Nord Company, Inc. 276 NLRB No. 161
(conduct of E's attorney, in polling areas during course of election, in releasing Ees early in disregard of preelection agreement, to which attorney was party as E's representative, objectionable since polling areas had *carnival atmosphere* when early released Ees crowded the polling areas which prevented Bd agents from maintaining order while Ees voted)

Joan Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home 275 NLRB No. 171
(promoting several Ees in small unit to supervisory positions during critical period, assertedly to comply with state law, violative and objectionable, since real reason was to disenfranchise active U supporters, where state law did not in fact support E's position and even though job descriptions of Ees promoted would indicate supervisory status, those promoted did not in fact exercise any supervisory duties but rather performed same job as in the past)

2878 FURNISHING LIST OF EMPLOYEE NAMES AND ADDRESSES (EXCELSIOR LIST)

2878-1400 Adequacy of list furnished

2878-1450 Substantial compliance

State Garden Celery Company, Inc. JD-243-84
(placing names of Ees on eligibility list who were later stipulated to be ineligible, is itself neither unlawful or evidence of unit packing, as there was no concealment nor effort to deceive in preparation of list and no evidence any party or Ee adversely affected by content of list)

2885 PRE-ELECTION PROPAGANDA

2885-0100 Generally

Works Stores Corp. 281 NLRB No. 160
[Bd applies two-part analysis to determine whether altered ballot is likely to give voters misleading impression that Bd favored one of the parties to election; relying on policy that Ees are capable of recognizing campaign propaganda as such, and of evaluating its claims, Bd holds altered ballot, which on its face clearly identifies party responsible for its preparation, not objectionable; however, if source is not clearly identified, it is necessary to examine nature and contents of material on case-by-case basis to determine whether it is misleading]

2885-0160 Statements must be phrased on basis of objective facts

Diner's Drive-In, Inc. and Diner's Drive-In Keeaumoku, Inc., Jointly 280 NLRB No. 111
[E's telling Ees through a letter enclosed with their paychecks prior to election, that the last thing E needed was *something that would put us over the edge and might require us to close our doors permanently*, objectionable and election set aside, since overall thrust of letter was to bring Ees' attention to possible adverse consequences of unionization. E's referral to *something* as putting E over the edge was intended to refer to unionization]

Diner's Drive-In, Inc. and Diner's Drive-In Keeaumoku, Inc., Jointly 280 NLRB No. 111
[E's reference to the bad economy and the possibility that the business may close, held objectionable and election set aside, since E made no correlation, as he is permitted to do, between possible adverse economic consequences of unionization and the closing of his business; E's statements crossed the line between advising Ees of *potential adverse consequences* of unionization and an implied threat of the likelihood that business would close since E's predictions were not accompanied by any references to U's demand for higher wages and the impact on E of trying to meet such demands]

2885-0180 Reasonable predictions of consequences

Diner's Drive-In, Inc. and Diner's Drive-In Keeaumoku, Inc., Jointly 280 NLRB No. 111
[E's telling Ees through a letter enclosed with their paychecks prior to election, that the last thing E needed was *something that would put us over the edge and might require us to close our doors permanently*, objectionable and election set aside, since overall thrust of letter was to bring Ees' attention to possible adverse consequences of unionization. E's referral to *something* as putting E over the edge was intended to refer to unionization]

Diner's Drive-In, Inc. and Diner's Drive-In Keeaumoku, Inc., Jointly 280 NLRB No. 111
[E's reference to the bad economy and the possibility that the business may close, held objectionable and election set aside, since E made no correlation, as he is permitted to do, between possible adverse economic consequences of unionization and the closing of his business; E's statements crossed the line between advising Ees of *potential adverse consequences* of unionization and an implied threat of the likelihood that business would close since E's predictions were not accompanied by any references to U's demand for higher wages and the impact on E of trying to meet such demands]

2885-2000 Employer statements

2885-2033 Kinds of statements

2885-2033-5000 Declaration of opposition to union

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(setting aside election not warranted where E who was shipbuilder informed Ees at shop launching ceremony that *U was no good* and that *there was no need for U at yard* absent evidence statements accompanied by threats or violence)

2885-2033-7500 Bargain from scratch

Kawasaki Motors Manufacturing Corporation, U.S.A. 280 NLRB No. 053
[no violation where supervisor agreed with Ee's description of negotiations that parties would *bargain from scratch*. This type of statement may or may not be coercive, depending on context in which it is uttered. Here, remark occurred in context free of other ULPs and as part of Ee discussion of give and take of negotiations and supervisor did not purport to speak for E's bargaining posture in any future negotiations]

2885-2033-8300 Inevitability of strikes and shutdowns

Kawasaki Motors Manufacturing Corporation, U.S.A. 280 NLRB No. 053
[no threat of plant closure where supervisors presented to Ees during meeting 3 days before scheduled R election information on plant's losses, layoffs, payroll decreases, shortened workweek, and overstocked inventory. Officials clearly created impression that any decision to close plant would be based on its profitability and competitive status in world markets. Their prediction of possible closure was not based on reasons unrelated to economic necessities]

Kokomo Tube Company 280 NLRB No. 035
[supervisor's unlawful threat to Ee *I guarantee E will shut down if U comes in* did not warrant setting election aside, where only ULP in critical period, occured 1 month prior to election and no evidence remark was disseminated]

S & G Concrete Co. 274 NLRB No. 116
(E's president's speech to Ees prior to election indicating that it would be futile for Ees to select U as their bargaining, that E would not negotiate with U, and that strike would be inevitable, held interference)

2885-2033-8300—Cont.

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(setting aside of election not warranted where E showed Ees documentary film *Strike Town USA*, with question and answer period following film, and personnel manager stated no one wanted strike situation, since unlawful prediction made and Ees free choice not negated where film depicted anatomy of labor dispute which depiction was privileged under Section 8(c))

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(no unlawful threat of closure that warranted setting aside election where E's personnel manager advised Ees of depressed state of industry market glut, and informed them job security depended on quality product at competitive prices)

2885-2033-9100 Futility of unionization

Collins Industries, Inc. JD-33-86
[E's speech to Ees day before election held interference in view of totality of speech in which E suggested futility of Ees' voting for U and implying closure of plant if Ees did so; during election campaign E has duty not to threaten Ees should they vote against his wishes; and E, having economically superior position to Ees, has, or is perceived to have, power to make good on its threats]

Collins Industries, Inc. JD-33-86
[election set aside in view of E's *hallmark violations* consisting of E's vitriolic anti-U speech to Ees which amply demonstrated to Ees futility of selecting U as their representative and implied much more harsh consequences such as plant closure; moreover, anti-U campaign by E's management officials, although involving less serious violations, reached virtually all unit Ees]

2885-2033-9150 Employer will not bargain

S & G Concrete Co. 274 NLRB No. 116
(E's president's speech to Ees prior to election indicating that it would be futile for Ees to select U as their bargaining, that E would not negotiate with U, and that strike would be inevitable, held interference)

2885-2033-9200 Employer will not deal directly with employees

FGI Fibers, Inc. 280 NLRB No. 054
[not objectionable where E told Ees that there would not be anymore open door policy if U was voted in because they would have to go through U procedures, would have to deal with Ees through shop steward, as E free to tell Ees about changes in its open door policy which will result from selection of bargaining representative. No negative inference should be drawn from E's failure to inform Ees that they still had right to present their grievances w/o U interference]

2885-4000 Misrepresentation concerning material issue

2885-4042 Employees capable of evaluation

Worths Stores Corp. 281 NLRB No. 160
[Bd applies two-part analysis to determine whether altered ballot is likely to give voters misleading impression that Bd favored one of the parties to election; relying on policy that Ees are capable of recognizing campaign propaganda as such, and of evaluating its claims, Bd holds altered ballot, which on its face clearly identifies party responsible for its preparation, not objectionable; however, if source is not clearly identified, it is necessary to examine nature and contents of material on case-by-case basis to determine whether it is misleading]

2885-4066 Misleading representation of the law

Tri-Cast, Inc. 274 NLRB No. 059
(E's letter stating that if U came in E could not work with Ees informally on person-to-person basis and handle their personal requests as before, but would have to work by the book with a stranger, not objectionable as misrepresentation of Ees' Sec. 9(a) rights to present grievances to E and threat to take away their rights to have personal requests handled as before due to unionization; E's statement that E-Ee relationship would change with unionization was explanation, not threat, and Bd will no longer probe into truth of, or set aside elections for, alleged misrepresentation of law)

2885-4093 Board position, processes or document

C.J. Krehbiel Company 279 NLRB No. 114
[Bd will set aside election if reproduced Bd document gives misleading impression that Bd favored one of the parties to election; if party preparing altered ballot is clearly identified on its face, Ees would know that document did not emanate from Bd, but when documents source is not clearly identified, Bd will examine material's nature and content to determine whether it would tend to mislead Ees to believe Bd endorsed on eparty]

Rosewood Mfg. Co., Inc. 278 NLRB No. 103
[E's posting defaced NLRB election notice with handwritten caption *Vote No* over top of notice with arrow drawn to *No* portion of sample ballot, did not warrant setting aside election, since altered notice was not likely to give voters misleading impression that Bd, favored E in election, inasmuch as *Vote No* and arrow were clearly discernable as additions made by E, and sufficiently distinct from printed notice and sample ballot to preclude suggestion Bd was endorsing E; further, E's use of notice from previous election would have alerted voters that alteration was not endorsed by Bd]

National Micronetics, Inc. 277 NLRB No. 095
(distributing accurate copies of Bd decision with portions highlighted and characterized as *true*, not violative threat or interference, especially where E was rebutting U's misstatements of law on these points; *Glassmaster Plastics Co.*; 203 NLRB 944 (1973) overruled to extent it is inconsistent with this deicision)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)
[misrepresentation by U during critical period that NLRB issued C against E did not warrant setting election aside and justify E's refusal to bargain. Under *Midland National Life Insurance Co.*, 263 NLRB 127. Misrepresentations, including those regarding actions of Bd, do not in themselves require setting election aside, and E's attempt to distinguish misrepresentation of Bd action from other misrepresentations and to bring case w/i *Mosey Manufacturing v. N.L.R.B.* 701 F.2d 610, exception to retroactive application of *Midland*, unsuccessful, since no manifest injustice]

2885-6000 Comments and instructions concerning election

2885-6050 Posting or distribution of ballot marked 'no'

SDC Investment, Inc. 274 NLRB No. 078
(extending rationale concerning misrepresentation of *Midland National Life Insurance Co.* and *Riveredge Hospital* to misrepresentative sample ballots, Bd held that an altered ballot which on its face clearly identifies party responsible for its preparation not objectionable, and not basis for setting election aside, as Ees would know that the document emanated from a party, not the Bd, and would not be led to believe that the party has been endorsed by the Bd; prior Bd decisions failing to apply this standard overruled to extent inconsistent with above rule, and new standard applied to all pending cases in whatever stage)

2885-6062 Failure to post or delay in posting election notices

Decasper Corporation 278 NLRB No. 022
[setting aside of election not warranted by E's failure to post notice of election until day before election, absent evidence any Ee did not vote because he or she did not know about election, and RD allowed discretion; since Bd has never established specified time prior to election for posting of notice and details left to RD]

2885-6075 Distribution of official notice accompanied by partisan message

C.J. Krehbiel Company 279 NLRB No. 114
[Bd will set aside election if reproduced Bd document gives misleading impression that Bd favored one of the parties to election; if party preparing altered ballot is clearly identified on its face, Ees would know that document did not emanate from Bd, but when documents source is not clearly identified, Bd will examine material's nature and content to determine whether it would tend to mislead Ees to believe Bd endorsed on eparty]

SDC Investment, Inc. 274 NLRB No. 078
(extending rationale concerning misrepresentation of *Midland National Life Insurance Co.* and *Riveredge Hospital* to misrepresentative sample ballots, Bd held that an altered ballot which on its face clearly identifies party responsible for its preparation not objectionable, and not basis for setting election aside, as Ees would know that the document emanated from a party, not the Bd, and would not be led to believe that the party has been endorsed by the Bd; prior Bd decisions failing to apply this standard overruled to extent inconsistent with above rule, and new standard applied to all pending cases in whatever stage)

2885-7000 Defacing of election notice

Rosewood Mfg. Co., Inc. 278 NLRB No. 103
[E's posting defaced NLRB election notice with handwritten caption *Vote No* over top of notice with arrow drawn to *No* portion of sample ballot, did not warrant setting aside election, since altered notice was not likely to give voters misleading impression that Bd, favored E in election, inasmuch as *Vote No* and arrow were clearly discernable as additions made by E, and sufficiently distinct from printed notice and sample ballot to preclude suggestion Bd was endorsing E; further, E's use of notice from previous election would have alerted voters that alteration was not endorsed by Bd]

2889 PROUNION CONDUCT OF SUPERVISORS

Reeves Brothers, Inc. 277 NLRB No. 153
[E's contention that participation of its supervisory leadmen in U's organizational and card signing drive tainted cards and rendered them invalid, rejected, notwithstanding extensive participation of leadmen in soliciting card signatures, handbilling and other significant U activities, where supervisory participants directed work of only small groups of maintenance Ees and were not in position to affect working lives of vast majority of production Ees]

2889—Cont.

N.L.R.B. v. Browning-Ferris Industries of Louisville, Inc. 803 F.2d 345 (C.A. 7, Oct. 1986)

[objection to election on basis that supervisor coerced Ees to support U overruled, where Ee, if supervisor at all, was low level one, no threats made by *supervisor* of retaliation, and fact that statements, if they had any impact at all, actually were likely to make Ees vote against U for fear of E reprisals]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[in case involving alleged pro-U conduct of supervisors, ct held characterization of supervisor as *minor* cannot save election when supervisor has power to punish or reward, and acts so that threat of exercising that power reasonably tends to coerce voting Ees; on other hand, classification of *minor* supervisor does not invalidate Bd's decision upholding election, so long as Bd properly focused on extent of supervisor's authority and extent of his pro-U activity in finding no coercion, and so long as substantial evidence in record supports Bd's findings]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[allegedly pro-U supervisor who called U representative to indicate interest in U and discussed U with at least 2 Ees and another supervisor before election held not to have acted in manner likely to coerce Ees in their vote; although conduct of supervisor, who had extensive supervisory authority, was relevant, it was not sufficient, in and of itself, to invalidate election]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[preelection conduct of supervisor, having limited authority, in signing authorization card and giving out authorization cards to Ees, and in stating to Ees that they should sign cards held not kind of pressure that could reasonably tend to coerce Ees in freedom of choice]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[preelection conduct of supervisor, who had limited authority and admittedly favored U, in talking to Ees about U, expressing personal views about U and answering questions about U, held permissible expressions of opinion since made in noncoercive and nonthreatening manner; moreover, as only supervisor to engage in pro-U activity, his conduct did not invalidate election]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[in case involving allegedly preelection pro-U conduct by supervisors, ct held, while evidence of actual coercion is not required, evidence was insufficient to support claim that Ees could reasonably fear retaliation from supervisors so as to interfere with Ees' freedom of choice]

N.L.R.B. v. Island Film Processing Co., Inc., d/b/a Kahala Kai Photo Service 784 F.2d 1446 (C.A. 9, Mar. 1986)

[refusal to bargain with certified U, not violation, since supervisory conduct tainted election where supervisors, who had ability to effectively recommend pay increases, reprimand Ees, and grant overtime, sowed seeds of reprisal by their constant vocal support of U among small group of Ees and assured them of benefits if U won and unfavorable conduct if it lost]

N.L.R.B. v. Hudson Oxygen Therapy Sales Company 764 F.2d 729 (C.A. 9, June 1985)

(E's argument that its objection to election relating to its allegations that supervisor encouraged Ees and subordinate supervisors to sign authorization cards and to vote for U ..nould have been considered by Bd, rejected where E failed to raise objection in timely fashion or otherwise give Bd reasonable notice of nature of objection, RD considered evidence that was before him and under Sec. 10(e), ct would have been w/o jurisdiction to hear supervisory taint claim)

2890 SELECTION OF ELECTION OBSERVER

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[supervisory participation in U campaign will not per se invalidate election; however, supervisory support for U organizing campaign will invalidate U's victory when it reasonably tends to have coercive effect or is likely to impair Ees' choice]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[when supervisors' conduct creates impression that E favors U or when supervisors' conduct creates fear of future retaliation, election must be invalidated; and fear of retaliation is created when pro-U supervisor's solicitation of Ees contains seeds of potential reprisal, punishment, or intimidation; in determining whether supervisor's conduct is impermissible solicitation, ct considers extent of supervisor's authority and extent of his pro-U activity; and evidence of actual threats are not required and implied threats of retaliation are sufficient]

2891 COUNTERACTING UNION'S CAMPAIGN

National Micronetics, Inc. 277 NLRB No. 095

(distributing accurate copies of Bd decision with portions highlighted and characterized as *true*, not violative threat or interference, especially where E was rebutting U's misstatements of law on these points; *Glassmaster Plastics Co.*; 203 NLRB 944 (1973) overruled to extent it is inconsistent with this deicision)

2897 GIFTS AND OTHER INDUCEMENTS OF VALUE

2897-5000 Raffles

Gold Bond Building Products, Division of National Gypsum Company 280 NLRB No. 116

[E-conducted raffles, held 2 weeks prior to election, in which Ees wishing to participate filled out entry forms that required them to answer multiple choice questions about subjects discussed in E's campaign literature and to give names and social security numbers, held interference, since prizes awarded were of substantial value and identification of Ees afforded potential for directing pressure at particular Ees]

E. A. Nord Company, Inc. 276 NLRB No. 161

(five $252 prizes offered by E in raffle, conducted by E, for everyone to come to work on election day (7/11/84), objectionable conduct warranting setting aside election, since eligibility was (actually) limited to nonstrikers only)

2897-9900 Other

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)

[reinstitution of *Ee of the Month* award and offering $100 to winner each month during pre-election period not violative in view of both length of U's (approximately 13 months) organizational drive and large number of hospital Ees (approximately 1300). Designation of one individual as Ee of month can not reasonably be said to be so significant as to influence in any way attitude of Ees or outcome of election]

4200 CONDUCT OF LABOR ORGANIZATION

4201 GENERALLY

Springfield Hospital 281 NLRB No. 076

[no showing that U caused atmosphere of fear, confusion, and reprisal which pervaded whole organizing campaign by engaging in demonstration where no one from U or its agents present and demonstration was orderly and in no way affected hospital's operations or patient care]

Avis Rent-A-Car System, Inc. 280 NLRB No. 060

[where U is responsible for picket misconduct, test is whether conduct reasonably tends to interfere with Ees free and uncoerced choice in election; factors Bd will evaluate are: 1) number and severity of incidents; 2) number of Ees in unit subjected to misconduct; 3) proximity to election date; 4) degree of persistence of misconduct and extent of dissemination among unit Ees; 5) extent, if any, of opposing party in canceling effect of misconduct; 6) closeness of vote and 7) degree to which misconduct can be attributed to U]

Mercy-Memorial Hospital 279 NLRB No. 056

[Bd has frequently applied different standards in judging similar actions of E and U in recognition of difference in coercive impact of their actions on Ees]

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(while agreeing with findings of ALJ, affirmed by Bd, that alleged preelection misconduct by U did not create atmosphere of fear and coercion warranting setting aside election, ct stated it was disturbed by acts of intimidation that occurred during election campaign, made clear its disapproval of such conduct, and observed that in R election neither E nor U can be allowed to engage with impunity in conduct that would subrent Ee free choice)

4214 PROMISES

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[U's promise to waive initistion and other fees and maintain an open shop if Ees elected U, not objectionable, since waiver applied to all Ees, regardless of pre-election U support, nor was U's pre-election promise to maintain open shop objectionable, since Bd does not probe into truth or falsity of party's campaign statements and will not set election aside on basis of misleading campaign statements]

4228 THREATS

Local 295-295C, Operating Engineers (Weather Wise Conditioning Corp.) 282 NLRB No. 044

[election not set aside where E failed to meet its burden of proving when alleged threat of physical harm to Ees, if they did not support U in strike,

4228—Cont.

was made by U representative; and, in the alternative, inference from facts was that statement was made outside critical preelection period before ptn was filed]

Springfield Hospital **281 NLRB No. 076**

[where no showing that rank-and-file Ees were agents of U, it is incombent on E to show that rank-and-file Ees warning to another Ee (loss of job and *make it rough on her*) if she did not support U were so disruptive that they created atmosphere of fear and reprisal such as to render free expression of choice in election impossible]

The John M. Horn Lumber Co. **280 NLRB No. 069**

[U committeeman's statement to Ee who did not support U, 3 weeks before election, that, *I'm gonna blow his brains out...*, not objectionable, where there was no evidence threat was U related, threat occurred 3 weeks prior to election and there was no evidence other Ees learned of threat prior to election]

United States Aviex Company **279 NLRB No. 110**

[statements made by in-plant organizing committee members, allegedly threatening Ee with physical harm if he did not support U, held not interference, irrespective of whether Ees were acting as agents of U, since no general atmosphere of fear and reprisal was thereby created, and accosted Ee was neither coerced into joining U nor deterred from voting in election]

Mercy-Memorial Hospital **279 NLRB No. 056**

[U letter to membership asking that, as E's efforts to confuse and deceive Ees would probably increase, members address any questions to U and notify U immediately if any coworkers were assisting management, not interference where request contained no threat or hint of unlawful means but campaign letter utilizing membership to obtain information by lawful means]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) **278 NLRB No. 025**

[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorization election which U won set aside, since members and nonmembers were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

Bristol Textile Co. **277 NLRB No. 182**

[Ee's threat to slash tires of Ees who voted against petitioner, interference warranting setting aside close election where it was made in conversation with U's agent, who did not disavow it, and was disseminated among Ees]

Malta Construction Company **276 NLRB No. 171**

(no interference, where conversation between Ee and U agent represented nothing more than two Ees puffing amongst themselves to show their respective allegiances)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**

(alleged threat of mass assembly of U members at E's coal mine before and during election held not interference where U official did what he could to scotch rumor about mass picketing and apparently succeeded in doing so since of approximately 31 eligible voters 31 cast ballot w/o incident)

Fruehauf Corporation **274 NLRB No. 067**

(E's refusal to bargain on grounds that certification of election was invalid, not violative, and U business agent's threat to majority of Ees, several days before ptn for election was filed, that Ee who crossed a future picket line would be shot, held interference and election set aside, since statement tainted election atmosphere where threat was repeated to other Ees by rank-and-file Ees during critical preelection period and rumors continuously circulated around plant during critical preelection period that strike breakers would be shot, thus destroying required condition of freedom of choice)

RJR Archer, Inc., Filmco Division **274 NLRB No. 049**

(Ees' preelection statements threatening individual fellow EEs, who stated they were not going to vote for U, with property damage or physical violence held interference since threats, when viewed cumulatively, created atmosphere of fear and coercion, where threat of property damage was disseminated widely among Ees, and threat of express physical violence was compounded by receipt of anonymous telephone calls by threatened Ee who testified that he often told people that he had been threatened; in these circumstances, especially where election results were so close, Bd did not view election as reflecting Ees' choice)

The May Department Stores Company **JD-(SF)-13-85**

(E's refusal to bargain on grounds that certification of election was invalid, not violative, and threats by members of U's *organizing committee*, found herein to be agents of U, that pro-E Hispanic Ees would be victims of immigration sweeps, lose their jobs or find their cars damaged, held interference and election set aside, since threats restrained Ees w/i meaning of 8(b)(1)(A) where character of threats, together with fact they were made shortly before election, led Hispanic Ees to believe they would be deported on election day, thus having potential of affecting voting choice of Ees and willingness of Ees w/i unit to show up at all)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. **758 F.2d 308 (C.A. 8, Mar. 1985)**

(ct held ALJ's finding, affirmed by Bd, that there was no atmosphere of fear and coercion, did not lack support either in record or law, where ALJ found that any adverse effect resulting from U's letters to supervisors, inaccurately implying that criminal penalties could be imposed against them should any ULPs be committed, was neutralized by E's actions to correct misstatement regarding penalties for ULPs)

4235 VIOLENCE

Avis Rent-A-Car System, Inc. **280 NLRB No. 060**

[U's engaging in various acts of picket line misconduct by blocking ingress and egress, spitting next to and slapping cars crossing picket line and scattering nails on road in front of plant, not objectionable, since conduct did not reasonably tend to interfere with voting Ees' free and uncoerced choice in election where E failed to demonstrate that Ees voting were present at picket line when incidents occurred or that knowledge of misconduct was ever disseminated to Ees]

Avis Rent-A-Car System, Inc. **280 NLRB No. 060**

[where U is responsible for picket misconduct, test is whether conduct reasonably tends to interfere with Ees free and uncoerced choice in election; factors Bd will evaluate are: 1) number and severity of incidents; 2) number of Ees in unit subjected to misconduct; 3) proximity to election date; 4) degree of persistence of misconduct and extent of dissemination among unit Ees; 5) extent, if any, of opposing party in canceling effect of misconduct; 6) closeness of vote and 7) degree to which misconduct can be attributed to U]

The May Department Stores Company **JD-(SF)-13-85**

(E's refusal to bargain on grounds that certification of election was invalid, not violative, and threats by members of U's *organizing committee*, found herein to be agents of U, that pro-E Hispanic Ees would be victims of immigration sweeps, lose their jobs or find their cars damaged, held interference and election set aside, since threats restrained Ees w/i meaning of 8(b)(1)(A) where character of threats, together with fact they were made shortly before election, led Hispanic Ees to believe they would be deported on election day, thus having potential of affecting voting choice of Ees and willingness of Ees w/i unit to show up at all)

4238 PROPERTY DAMAGE

Avis Rent-A-Car System, Inc. **280 NLRB No. 060**

[U's engaging in various acts of picket line misconduct by blocking ingress and egress, spitting next to and slapping cars crossing picket line and scattering nails on road in front of plant, not objectionable, since conduct did not reasonably tend to interfere with voting Ees' free and uncoerced choice in election where E failed to demonstrate that Ees voting were present at picket line when incidents occurred or that knowledge of misconduct was ever disseminated to Ees]

Avis Rent-A-Car System, Inc. **280 NLRB No. 060**

[where U is responsible for picket misconduct, test is whether conduct reasonably tends to interfere with Ees free and uncoerced choice in election; factors Bd will evaluate are: 1) number and severity of incidents; 2) number of Ees in unit subjected to misconduct; 3) proximity to election date; 4) degree of persistence of misconduct and extent of dissemination among unit Ees; 5) extent, if any, of opposing party in canceling effect of misconduct; 6) closeness of vote and 7) degree to which misconduct can be attributed to U]

L & J Equipment Company, Inc. **278 NLRB No. 074**

[applying ct's agency test in its opinion on remand as law of the case, Bd held that statements by Ee organizing committee's chairman, found agent of U, concerning possible future violence on picket line, and his statement to Ee considered anti-U that he should sign U card to reduce U-related pressure, plus incidents not attributable to U, which included total destruction of E's vehicle by unknown persons, and various other conduct not attributable to U, had cumulative effect and combined to create coercive atmosphere interfering with Ees' free choice in election]

ATR Wire & Cable Co. v. N.L.R.B. **752 F.2d 201 (C.A. 6, Jan. 1985)**

(minor property damage to antiU Ees' automobiles in E's parking lot insufficient to establish fear and coercion preventing fair election; only significant damage was not shown to have occurred in E's parking lot, and no proven damage was shown to be linked to U or proU Ees)

4242 ADDRESSING OR INTERVIEWING EMPLOYEES

4242-2500 Conversing with employees in immediate vicinity of polling area

Hy's of Chicago, Ltd. **276 NLRB No. 113**

(U's massing business agents and other U representatives outside E's restaurant near location of election where they could intercept Ees on way to work and, in at least one case, attempted to engage Ee in conversation and to distribute pro-U material, not interference where there was no effort to impede Ees' access to polling place or to unduly intimidate them)

4242-2500—Cont.

State Garden Celery Company, Inc. **JD-243-84**

(Ee telling another Ee, who had yet to vote, *Vote Yes, more money* while rubbing thumb and fingers together, did not warrant setting aside election, since Ee urging yes vote was not agent of any party nor was he offering bribe, thus *Milchem* rule forbidding conversations between any party representative and voters waiting vote not applicable; nor could Ee's remark be construed as electioneering substantially impairing anyone's exercise of free choice)

N.L.R.B. v. IDAB, Inc. **770 F.2d 991 (C.A. 11, Sep. 1985)**

(U organizer's conversations with Ees after they voted held not objectionable activity since such conduct could not have intruded upon *the final minutes* before Ees cast their votes)

4258 SURVEILLANCE OR IMPRESSION THEREOF

Mercy-Memorial Hospital **279 NLRB No. 056**

[U letter to membership asking that, as E's efforts to confuse and deceive Ees would probably increase, members address any questions to U and notify U immediately if any coworkers were assisting management, not interference where request contained no threat or hint of unlawful means but campaign letter utilizing membership to obtain information by lawful means]

Kentucky Fried Chicken of the Virgin Islands, Inc. **278 NLRB No. 086**

[conduct of former Ee did not interfere with election where she did not engage in surveillance before election, notwithstanding contention that former Ee was U agent, by driving past, and also coming into store where former fellow Ee worked, *looking at* her, and asking whether E's vice president had told Ee not to talk to her]

4260 LIST KEEPING

Springfield Hospital **281 NLRB No. 076**

[objection to election based on U questioning Ees to gauge their U sentiments and use of charts to record these appraisals, overruled, as no showing that U or pro-U employees conducted their questioning in context of threats or reprisals against those who either voiced opposition to U, or expressed indifference toward it. Noncoercive preelection polling by U does not warrant setting aside election]

4265 PRE-ELECTION POLLING

Springfield Hospital **281 NLRB No. 076**

[objection to election based on U questioning Ees to gauge their U sentiments and use of charts to record these appraisals, overruled, as no showing that U or pro-U employees conducted their questioning in context of threats or reprisals against those who either voiced opposition to U, or expressed indifference toward it. Noncoercive preelection polling by U does not warrant setting aside election]

Kusan Manufacturing Company, a division of Kusan, Inc. v. N.L.R.B. **749 F.2d 362 (C.A. 6, Dec. 1984)**

(no *per se* proscription regarding pre-election polling of Ees by U as there is if done by E because of disparity between disruptive powers of E and those of U, and such polling by U only becomes impermissable if, in fact, it was coercive and in fact influenced result of election)

4270 PRE-ELECTION PROPAGANDA

4270-1700 Tests determining legitimacy

Worths Stores Corp. **281 NLRB No. 160**

[Bd applies two-part analysis to determine whether altered ballot is likely to give voters misleading impression that Bd favored one of the parties to election; relying on policy that Ees are capable of recognizing campaign propaganda as such, and of evaluating its claims, Bd holds altered ballot, which on its face clearly identifies party responsible for its preparation, not objectionable; however, if source is not clearly identified, it is necessary to examine nature and contents of material on case-by-case basis to determine whether it is misleading]

4270-3300 Marked ballots and election notices

Worths Stores Corp. **281 NLRP No. 160**

[Bd applies two-part analysis to determine whether altered ballot is likely to give voters misleading impression that Bd favored one of the parties to election; relying on policy that Ees are capable of recognizing campaign propaganda as such, and of evaluating its claims, Bd holds altered ballot, which on its face clearly identifies party responsible for its preparation, not objectionable; however, if source is not clearly identified, it is necessary to examine nature and contents of material on case-by-case basis to determine whether it is misleading]

Worths Stores Corp. **281 NLRB No. 160**

[where document containing altered facsimile ballot circulated by U did not on its face sufficiently identify U as its source and therefore Bd found it necessary to examine document's nature and contents, Bd held Ees were capable of evaluating material as propaganda and were not misled into believing Bd favored U, since it would be unreasonable for Ee to assume Bd would include congratulatory headings and individual salutation on its official publications; and even if document covered same issues addressed in Bd's notice of election, its partisan nature was readily apparent]

Worths Stores Corp. **281 NLRB No. 160**

[document containing altered facsimile ballot circulated by U held not misleading because of physical appearance, where ballot had been cut from another form and added to partisan material; ballot did not appear *official* and was only partial reproduction omitting language indicating it was official U.S. Government secret ballot and also critical question for which election was being held; and, consequently, notwithstanding statement of Ee witness concerning her confusion about ballot, Ees would not reasonably assume that Bd would provide premarked partial ballot surrounded by partisan material for use in election]

Worths Stores Corp. **281 NLRB No. 160**

[Bd considered extrinsic evidence in examining nature and contents of document, containing altered facsimile ballot circulated by U, to determine if document was misleading, and held that Ees would not think that material came from Bd or that Bd in any way endorsed U, where Ees were familiar with identity of individual, referred to in document, as U organizer; and clearly partisan nature of document was indicated by fact that it was mailed in U envelope]

Worths Stores Corp. **281 NLRB No. 160**

[in determining that altered facsimile ballot circulated by U was propaganda that did not mislead Ees, Bd noted that subjective reaction of Ees is irrelevant to question of whether there was, in fact, objectionable conduct; rather, issue is whether conduct, viewed objectively, warrants setting aside election]

C.J. Krehbiel Company **279 NLRB No. 114**

[Bd will set aside election if reproduced Bd document gives misleading impression that Bd favored one of the parties to election; if party preparing altered ballot is clearly identified on its face, Ees would know that document did not emanate from Bd, but when documents source is not clearly identified, Bd will examine material's nature and content to determine whether it would tend to mislead Ees to believe Bd endorsed on sparty]

C.J. Krehbiel Company **279 NLRB No. 114**

[U flyer containing caption and remedy section of ALJ decision concerning non-party E with *Vote Yes* and partisan slogans appearing on same page, not objectionable, notwithstanding source was not identified on its face, where Ees would not reasonably believe ALJ would thus embellish his decision, and embellishments' size and placement showed they were added, although later U letter referred to flyer as campaign propaganda emanating from U office]

Professional Care Centers of North America, Inc. **279 NLRB No. 106**

[altered notice of election that bore name, address, telephone number and seal of U on face of notice and on reverse side of notice identified U as party responsible for its distribution, not objectionable and not basis for setting election aside since it was evident that U prepared document, and that voters would not be misled into believing that Bd favored U's cause]

SDC Investment, Inc. **274 NLRB No. 078**

(extending rationale concerning misrepresentation of *Midland National Life Insurance Co.* and *Riveredge Hospital* to misrepresentative sample ballots, Bd held that an altered ballot which on its face clearly identifies party responsible for its preparation not objectionable, and not basis for setting election aside, as Ees would know that the document emanated from a party, not the Bd, and would not be led to believe that the party has been endorsed by the Bd; prior Bd decisions failing to apply this standard overruled to extent inconsistent with above rule, and new standard applied to all pending cases in whatever stage)

SDC Investment, Inc. **274 NLRB No. 078**

(U's circulating leaflet containing altered sample ballot, objectionable where its nature and contents would likely cause it to be perceived as official Bd document and lead Spanish-speaking voters to believe that Bd wanted them to vote *yes*; leaflet contained hand-printed Spanish translation of ballot in same format as Bd's sample ballot, but with additional line at bottom stating in Spanish *Remember to vote yes on December 16th* and had Bd seal taken from an official Bd document at the top of ballot)

4270-5000 Appeals to racial, sexual or religious prejudice

N.L.R.B. v. Until International, Inc., a subsidiary of Until International (U.K.) Limited **750 F.2d 177 (C.A. 2, Dec. 1984)**

(false but non-inflammatory statements (made prior to R election) are reviewed according to usual test for misrepresentations)

4270-6700 Misrepresentation concerning material issue

4270-6701 Generally

Allis Chalmers Corporation **278 NLRB No. 082**

[objections alleging misrepresentation by U overruled under *Midland National Life Insurance*, 263 NLRB 127]

4270-6701—Cont.

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)

(U's alleged campaign misrepresentation invalidating certification no defense to E's refusal to bargain where, before hearing was held on E's objections to U's alleged campaign misrepresentations, Bd issued its decision that it would no longer inquire into such allegations in absence of allegations of use of forged documents -- not alleged herein-- and would apply the decision retroactively, as it did here)

4270-6705 Union dues and initiation fees

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) 278 NLRB No. 025

[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorizative election which U won set aside, since members and non-members were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

Detroit Receiving Hospital and University Health Center 277 NLRB No. 132

(U agent saying to Ee in presence of 2 other Ees that *if we signed the green card (authorization card) we would not have to pay initiation fees* not objectionable. Though statement ambiguous because agent did not state when card had to be signed to avoid initiation fees, U clarified statement by informing Ees at meetings that U had not charged initiation fees since 1966; morevoer, statement isolated where no other Ees out of over 500 unit Ees told of offer)

Ida Lace, Inc. 275 NLRB No. 040

(setting aside of election not warranted where U distributed leaflets prior to election guaranteeing that *all Ees who worked during voting month will not have to pay initiation fees*, since waiver of initiation fees extended to all Ees whether or not they joined U before or after election; statement in pamphlet *when you vote yes... your U could fulfill this document* did not, condition waiver on Ee's support for U, but was nothing more than statement that initiation fees of no significance if U does not become bargaining representative)

The Heil Co. JD-(ATL)-18-85

(promise by Ee found U agent herein, which was ratified by U agent with apparent authority to do so, that U would waive initiation fees of Ees who signed U authorization cards before election, but not those doing so after election, interference)

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[U's promise to waive initiation and other fees and maintain an open shop if Ees elected U, not objectionable, since waiver applied to all Ees, regardless of pre-election U support, nor was U's pre-election promise to maintain open shop objectionable, since Bd does not probe into truth or falsity of party's campaign statements and will not set election aside on basis of misleading campaign statements]

4270-6706 Employees capable of evaluation

Worths Stores Corp. 281 NLRB No. 160

[Bd applies two-part analysis to determine whether altered ballot is likely to give voters misleading impression that Bd favored one of the parties to election; relying on policy that Ees are capable of recognizing campaign propaganda as such, and of evaluating its claims, Bd holds altered ballot, which on its face clearly identifies party responsible for its preparation, not objectionable; however, if source is not clearly identified, it is necessary to examine nature and contents of material on case-by-case basis to determine whether it is misleading]

Worths Stores Corp. 281 NLRB No. 160

[where document containing altered facsimile ballot circulated by U did not on its face sufficiently identify U as its source and therefore Bd found it necessary to examine document's nature and contents, Bd held Ees were capable of evaluating material as propaganda and were not misled into believing Bd favored U, since it would be unreasonable for Ee to assume Bd would include congratulatory headings and individual salutation on its official publications; and even if document covered same issues addressed in Bd's notice of election, its partisan nature was readily apparent]

Allis Chalmers Corporation 278 NLRB No. 082

[U's claim that it was not bound by government existing wage guidelines and only way for Ees to get wages and benefits in excess of guidelines was to select U held not interference since statement that U was not *bound* by guidelines was perfectly true, and its presentation of itself as only agent through which Ees would get higher wages and benefits was pure campaign propaganda that Ees may reasonably expect to be capable of evaluating]

4270-6730 Hospitalization or other insurance benefits

Willey's Express, Inc. 275 NLRB No. 089

(U business agent's investigation as to legality of E's participation in insurance fund and his statement to Ee, few days before election, that Ees were illegally covered under trust fund, held coercive and reasonably tended to interfere with election, notwithstanding that E's participation in fund might be illegal, since it was inevitable that Ees infer from statement that there was only one sure way to keep insurance benefits--vote for U representation)

4270-6775 Distribution of Board documents

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(in agreeing with Bd that, unlike brochure in *Thiokol Chemical Corp.* on which E relied to support contention that inclusion of inaccurate statement of law in U's pre-election flyer which used Bd document in apparent support of statement constituted *per se* ground for setting election aside, ct held U's flyer, containing misstatement of law concerning wages, pensions, and benefits, and Bd document containing accurate statement of law, reproduced in flyer in its entirety rather than in part as in *Thiokol*, did not warrant setting election aside)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(although deploring U's prominent use of pre-election flyer containing misstatement of law and Bd document that easily could be understood as supporting misstatement, ct held that, since its role as reviewing ct was not to say what it would have decided had it been Bd, and since Bd's conclusions that flyer did not warrant setting aside election had support in record and reasonable basis in law, ct was constrained not to disturb them)

4270-6777 Improper use of plant bulletin boards

United States Aviex Company 279 NLRB No. 110

[E's conduct in assertedly permitting anti-U Ees to post material on company bulletin board while denying such previlege to pro-U Ees held not interference, where only 1 anti-U Ee posted material but was immediately ordered to remove it by E's president]

4270-6787 Misstatement of law

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[U representing to Ees that NLRA precluded reducing any wages or benefits if U won election, and that NLRB region had advised U that E's threat of loss of benefits was unlawful and suggested that U file charge, did not warrant setting aside election and justify E's refusal to bargain, since holding of *Midland National Life Insurance Co.*, 263 NLRB 127, that Bd would not probe truth or falsity of campaign statements by partisans in elections applies also to misrepresentations concerning Bd actions or positions that are recognized as partisan nor do *Midland* rules run afoul of either Sec. 9(c) of Act or Bd's rules]

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(in agreeing with Bd that, unlike brochure in *Thiokol Chemical Corp.* on which E relied to support contention that inclusion of inaccurate statement of law in U's pre-election flyer which used Bd document in apparent support of statement constituted *per se* ground for setting election aside, ct held U's flyer, containing misstatement of law concerning wages, pensions, and benefits, and Bd document containing accurate statement of law, reproduced in flyer in its entirety rather than in part as in *Thiokol*, did not warrant setting election aside)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(upon ct remand ALJ properly applied principles of *Hollywood Ceramics* in assesing impact on election results of U's misstatement of law in pre-election flyer, which Bd subsequently had abandoned as standard in evaluating misrepresentation of fact or law in context of R elections, since present case was initially considered by ct under principles enunciated in *Hollywood Ceramics*)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(where ALJ, bound by ct's determination on its remand that U's statements in flyer regarding wages, pensions, and benefits was misstatement of law that may have materially affected election results, and ALJ found, and Bd affirmed, that subsequent campaign materials cured any impact that misstatement in flyer might have had, ct held that, since Bd's conclusions had support in record and reasonable basis in law, it was constrained not to disturb them)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(although deploring U's prominent use of pre-election flyer containing misstatement of law and Bd document that easily could be understood as supporting misstatement, ct held that, since its role as reviewing ct was not to say what it would have decided had it been Bd, and since Bd's conclu-

4270-6787—Cont.

sions that flyer did not warrant setting aside election had support in record and reasonable basis in law, ct was constrained not to disturb them)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 306 (C.A. 8, Mar. 1985)

(ct held ALJ's finding, affirmed by Bd, that there was no atmosphere of fear and coercion, did not lack support either in record or law, where ALJ found that any adverse effect resulting from U's letters to supervisors, inaccurately implying that criminal penalties could be imposed against them should any ULPs be committed, was neutralized by E's actions to correct misstatement regarding penalties for ULPs)

4270-6795 Endorsement of union by Board or U.S. Government

Worths Stores Corp. 281 NLRB No. 160

[Bd applies two-part analysis to determine whether altered ballot is likely to give voters misleading impression that Bd favored one of the parties to election; relying on policy that Ees are capable of recognizing campaign propaganda as such, and of evaluating its claims, Bd holds altered ballot, which on its face clearly identifies party responsible for its preparation, not objectionable; however, if source is not clearly identified, it is necessary to examine nature and contents of material on case-by-case basis to determine whether it is misleading]

Worths Stores Corp. 281 NLRB No. 160

[where document containing altered facsimile ballot circulated by U did not on its face sufficiently identify U as its source and therefore Bd found it necessary to examine document's nature and contents, Bd held Ees were capable of evaluating material as propaganda and were not misled into believing Bd favored U, since it would be unreasonable for Ee to assume Bd would include congratulatory headings and individual salutation on its official publications; and even if document covered same issues addressed in Bd's notice of election, its partisan nature was readily apparent]

Worths Stores Corp. 281 NLRB No. 160

[Bd considered extrinsic evidence in examining nature and contents of document, containing altered facsimile ballot circulated by U, to determine if document was misleading, and held that Ees would not think that material came from Bd or that Bd in any way endorsed U, where Ees were familiar with identity of individual, referred to in document, as U organizer; and clearly partisan nature of document was indicated by fact that it was mailed in U envelope]

C.J. Krehbiel Company 279 NLRB No. 114

[Bd will set aside election if reproduced Bd document gives misleading impression that Bd favored one of the parties to election; if party preparing altered ballot is clearly identified on its face, Ees would know that document did not emanate from Bd, but when documents source is not clearly identified, Bd will examine material's nature and content to determine whether it would tend to mislead Ees to believe Bd endorsed on eparty]

C.J. Krehbiel Company 279 NLRB No. 114

[U flyer containing caption and remedy section of ALJ decision concerning non-party E with *Vote Yes* and partisan slogans appearing on same page, not objectionable, notwithstanding source was not identified on its face, where Ees would not reasonably believe ALJ would thus embellish his decision, and embellishments' size and placement showed they were added; although later U letter referred to flyer as campaign propaganda emanating from U office]

Professional Care Centers of North America, Inc. 279 NLRB No. 106

[altered notice of election that bore name, address, telephone number and seal of U on face of notice and on reverse side of notice identified U as party responsible for its distribution, not objectionable and not basis for setting election aside since it was evident that U prepared document, and that voters would not be misled into believing that Bd favored U's cause]

SDC Investment, Inc. 274 NLRB No. 078

(extending rationale concerning misrepresentation of *Midland National Life Insurance Co.* and *Riveredge Hospital* to misrepresentative sample ballots, Bd held that an altered ballot which on its face clearly identifies party responsible for its preparation not objectionable, and not basis for setting election aside, as Ees would know that the document emanated from a party, not the Bd, and would not be led to believe that the party has been endorsed by the Bd; prior Bd decisions failing to apply this standard overruled to extent inconsistent with above rule, and new standard applied to all pending cases in whatever stage)

SDC Investment, Inc. 274 NLRB No. 078

(U's circulating leaflet containing altered sample ballot, objectionable where its nature and contents would likely cause it to be perceived as official Bd document and lead Spanish-speaking voters to believe that Bd wanted them to vote *yes*; leaflet contained hand-printed Spanish translation of ballot in same format as Bd's sample ballot, but with additional line at bottom stating in Spanish *Remember to vote yes on December 16th* and had Bd seal taken from an official Bd document at the top of ballot)

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[U representing to Ees that NLRA precluded reducing any wages or benefits if U won election, and that NLRB region had advised U that E's threat of loss of benefits was unlawful and suggested that U file charge, did not warrant setting aside election and justify E's refusal to bargain, since holding of *Midland National Life Insurance Co.*, 263 NLRB 127, that Bd would not probe truth or falsity of campaign statements by partisans in elections applies also to misrepresentations concerning Bd actions or positions that are recognized as partisan nor do *Midland* rules run afoul of either Sec. 9(c) of Act or Bd's rules]

4270-6799 Other union benefits

4270-6799 Other benefits

Dart Container of California, A Wholly Owned Subsidiary of Dart Container of Michigan 277 NLRB No. 149

(U's leaflets, distributed to Ees before election, which guaranteed that all Ees would be eligible for large strike fund if U won and informed Ees that one benefit given to all U members was free legal help from U's attorneys, not objectionable conduct, since no Ee need have demonstrated preelection support for U to take advantage of the promised benefits, promising strike benefits, even large ones, does not impair free choice and U's promise of extending *existing* benefit of free legal help does not suggest to Ees that their votes are being purchased)

4284 GIFTS AND OTHER INDUCEMENTS OF VALUE

4284-3000 Free food or drinks

Labor Services, Inc. 274 NLRB No. 068

(on ct remand for hearing on objection that U interfered with election by buying voters drinks in adjacent bar before and during election, ct's opinion was observed as law of the case, in view of similarity of facts found before and after remand, and U's conduct found objectionable; ct was concerned with effects of U's conduct and its tendency to interfere with voter's free choice, not U's motive or voters' sobriety, and did not judge conduct's impropriety on basis of its cost or fact drinking occurred outside polling area, since voters took drinking's physical and psychological effects into voting area with them)

4284-5000 Initiation fees

Cataract, Inc. 274 NLRB No. 113

(U's statements to Ees prior to election that initiation fee would be reduced to $0.00 *for organizational purposes... (and) for this one time organizational drive*, held interference and election set aside, since statement was ambiguous and constituted an impermissible inducement to Ees where U at no time defined the term *organizational purposes* or *organizational drive* to Ees to specify that reduced fee was available for a period of time after the election to all Ees, thus linking availability of reduced initiation fee to joining U before election)

4284-7000 Assistance to strikers

Dart Container of California, A Wholly Owned Subsidiary of Dart Container of Michigan 277 NLRB No. 149

(U's leaflets, distributed to Ees before election, which guaranteed that all Ees would be eligible for large strike fund if U won and informed Ees that one benefit given to all U members was free legal help from U's attorneys, not objectionable conduct, since no Ee need have demonstrated preelection support for U to take advantage of the promised benefits, promising strike benefits, even large ones, does not impair free choice and U's promise of extending *existing* benefit of free legal help does not suggest to Ees that their votes are being purchased)

4284-8000 Waiver or reduction of union dues

Calplant Constructors, A Division of Calplant Engineering Service, Inc. 279 NLRB No. 113

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[U's promise to waive initiation and other fees and maintain an open shop if Ees elected U, not objectionable, since waiver applied to all Ees, regardless of pre-election U support, nor was U's pre-election promise to maintain open shop objectionable, since Bd does not probe into truth or falsity of party's campaign statements and will not set election aside on basis of misleading campaign statements]

4284-9900 Other

Dart Container of California, A Wholly Owned Subsidiary of Dart Container of Michigan 277 NLRB No. 149

(U's leaflets, distributed to Ees before election, which guaranteed that all Ees would be eligible for large strike fund if U won and informed Ees that one benefit given to all U members was free legal help from U's attorneys, not objectionable conduct, since no Ee need have demonstrated preelection support for U to take advantage of the promised benefits, promising strike

4284-9900—Cont.

benefits, even large ones, does not impair free choice and U's promise of extending *existing* benefit of free legal help does not suggest to Ees that their votes are being purchased)

4290 TOTALITY OF CONDUCT

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[E's contention that Bd should have considered whether cumulative effect of misconduct was sufficient to invalidate election, rejected where Bd found no connection between U and misconduct]

Wright Memorial Hospital v. N.L.R.B. 771 F.2d 400 (C.A. 8, Aug. 1985)

(contention that cummulative effect of pro-U activities of supervisors together with other activities required that election be overturned, rejected, since inferences drawn from facts by Bd were reasonable)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(in keeping with ct's remand decision, ALJ properly considered totality of circumstances in determining whether fair and free election was held and concluded that alleged pre-election conduct by U and its supporters did not approach severity of conduct commemned in Bd cases, and that record herein fell far short of showing that U's conduct created atmosphere of fear and reprisal such as to render free expression of choice impossible)

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(ct held that, in determining whether election should be set aside, alleged objectionable electioneering should be considered comulatively with alleged threats and violence; here, limited findings of threats and violence, so considered, required ct to uphold Bd's decision not to set aside election)

5600 EMPLOYEE CONDUCT

5625 RANK-AND-FILE UNIT EMPLOYEES

5625-0100 Generally

Springfield Hospital 281 NLRB No. 076

[where no showing that rank-and-file Ees were agents of U, it is incombent on E to show that rank-and-file Ees warning to another Ee (loss of job and *make it rough on her*) if she did not support U were so disruptive that they created atmosphere of fear and reprisal such as to render free expression of choice in election impossible]

Electro Food Machinery, Inc. 279 NLRB No. 040

[appropriate criteria for judging threats when applying third-party standard are nature of threats and whether they encompassed entire unit, were widely disseminated, were made by persons capable of carrying them out, would be likely to cause Ee to act in fear of their being carried out, and were *rejuvenated* near time of election]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186

(in determining whether threat is serious enough so as to create general atmosphere of fear and reprisal that interfered with election, Bd evaluates nature of threat and surrounding circumstances such as whether it encompassed entire bargaining unit, was widely disseminated, person making threat was capable of carrying it out, it is likely Ees acted in fear of his capability of carrying it out, and threat was rejuvenated at or near time of election)

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[E's contention that Bd should have applied party, rather than third-party, standard of review to conduct, because in-plant organizing committee members acted as U agents or alter egos, rejected where Bd found no connection between U and misconduct]

5625-1700 Physical violence

The John M. Horn Lumber Co. 280 NLRB No. 069

[Ee, who supported U, assaulting Ee who did not support U by hitting his hat with enough force to knock it off his head and telling him that he better vote *for the fucking union*, not objectionable, where there was no evidence threat was rejuvenated at or near time of election and although other Ees heard threat, evidence showed that much rough language and horseplay was engaged in shop, even by supervisors, and such had always been tolerated]

Dart Container of California, A Wholly Owned Subsidiary of Dart Container of Michigan 277 NLRB No. 149

(alleged threat made to Ee by another Ee (third party threat) that if Ee didn't want to join U or go on strike, *We'll put you in the hospital*, not objectionable, where threat was trivial in overall unit of 166 and thus was not so severe as to intimidate free choice of Ees)

Tom Wignell, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186

(election set aside where threats to kill and to blow up E's mine made by Ee in presence of Ees and not attributable to U, raised spectre of violence, personal injury and death; threat to blow up mine would affect bargaining unit and it was surely widely disseminated among relatively small unit of 28 Ees; threat, originally made some weeks before election was repeated and rejuvenated on day before election; and U official, when queried by Ee, failed to quell rumor about mine blowup)

Seaward International, Inc. 275 NLRB No. 130

(election set aside where Ee, who was not committed to U, was excessively sprayed in face by chemical used in work process, requiring hospital treatment; such incident had not previously occurred; U supporter, by subsequently indicating to noncommitted Ee that spraying was *wrong*, showed that it was U-related; U supporter also informed Ee that another named Ee would be next; and several Ees knew of spraying incident and its link to U)

Seaward International, Inc. 275 NLRB No. 130

(election set aside where heated argument occurred at work place during which Ee refused to wear U hat proffered by U supporter, evoking physical response from Ee when U supporter referred to his lack of courage; argument subsequently accelerated into confrontation in parking lot involving U supporter, nonpro-U Ee with a sickle and another Ee with a four-by-four; number of Ees witnessed confrontation; and at least 6 individuals out of unit of 25-30 Ees were aware that confrontation arose from U-related dispute)

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[U supporter's causing 3 accidents resulting in over $1,000 damage, 3 supporters' stopping work during processing of a boat, and poisoning of supervisor's dog by anonymous party, alleged to be U supporter, not interference absent E's showing that incidents were in fact acts of sabotage designed to intimidate voters]

5625-2900 Misstatement of law

Hydro Conduit Corporation 274 NLRB No. 190

(Ee's statement to other Ees prior to election that Ees would receive retroactive wage increase from NLRB only if they voted for the U, in reference to 8(a)(1) charge filed by U against E alleging E failed to grant wage increase because of pending *R* ptn, not objectionable, since statement at most constituted misrepresentation concerning Bd or its processes and there was no evidence that forgery was involved)

5625-3300 Predictions and threats of physical violence

Pony Express Courier Corporation 282 NLRB No. 036

[E informing fellow Ee, during conversation with another Ee and E's managers and officers, that if Ee acted as informer to E regarding U activities again, he would *beat shit out of him*, did not warrant setting election aside, since threat isolated, where no dissemination to other Ees, and directed to single Ee, notwithstanding relatively small unit of approximately 20 Ees]

Pony Express Courier Corporation 282 NLRB No. 036

[threats of Ee to *bust head of anyone who crossed picket line* and of Ee that he was *ready and anxious to get baseball bat out and warmed up in event of strike* which threat was disseminated to at least 2 Ees, did not warrant setting election aside since Ees not agents of U and incidents were several weeks before election]

Pony Express Courier Corporation 282 NLRB No. 036

[threats of bodily harm by Ees to fellow Ees did not warrant setting aside election, since insufficient to create atmosphere of fear and reprisals, where Ees not agents of U, threats were not directed to soliciting or influencing Ees to vote for U, were not made against backdrop of actual incident of physical injury or damage to property or followed act of violence, and incidents occured several weeks before election]

Sequatchie Valley Coal Corporation 281 NLRB No. 108

[cumulative effect of series of threats of serious nature, including threats of burning out non-supporters' house, bodily harm, and killing, was to create atmosphere of fear and coercion precluding fair election, notwithstanding threats were not attributable to U]

The John M. Horn Lumber Co. 280 NLRB No. 069

[U committeeman's statement to Ee who did not support U, 3 weeks before election, that, *I'm gonna blow his brains out...*, not objectionable, where there was no evidence threat was U related, threat occurred 3 weeks prior to election and there was no evidence other Ees learned of threat prior to election]

Kentucky Fried Chicken of the Virgin Islands, Inc. 278 NLRB No. 086

[conduct of Ee in calling another Ee *an old witch*, telling her that U would get rid of old workers, and declaring that *he would get his partner and they would beat her* held not interference where Ee was not U agent and incidents did not result in atmosphere of fear and reprisal]

Bristol Textile Co. 277 NLRB No. 182

[Ee's threat to slash tires of Ees who voted against petitioner, interference warranting setting aside close election where it was made in conversation with U's agent, who did not disavow it, and was disseminated among Ees]

The Marmon Group, Inc., A Division of Long Airdox Company 275 NLRB No. 94

(U supporter's threats, including threats of bodily harm, house bombing, and property damage, made directly to five Ees and disseminated to several

5625-3300—Cont.

other Ees found to be of such serious and aggravated nature that, viewed cumulatively, they created atmosphere in which free expression of choice by employees could not be made; election set aside and new election conducted)

Farmtronix **274 NLRB No. 118**
(remand for hearing on whether threats by pro-U Ees to blow up houses, beat up Ees and damage property, which E alleged as objections to election, created general atmosphere of fear of reprisal prior to election, since even accepting contention threats not attributable to U, there was sufficient evidence of widespread awareness of talk of violence, and in view of serious nature of alleged threats, which if proven, created atmosphere precluding free expression of choice)

Fruehauf Corpartion **274 NLRB No. 067**
(E's refusal to bargain on grounds that certification of election was invalid, not violative, and U business agent's threat to majority of Ees, several days before ptn for election was filed, that Ee who crossed a future picket line would be shot, held interference and election set aside, since statement tainted election atmosphere where threat was repeated to other Ees by rank-and-file Ees during critical preelection period and rumors continuously circulated around plant during critical preelection period that strike breakers would be shot, thus destroying required condition of freedom of choice)

Chicago Metallic Corporation **273 NLRB No. 207**
(pro-U Ee's threats against anti-U Ees not sufficiently egregious to warrant setting aside election; threats of discharge of anti-U Ees did not alter their decisions as to how to vote, and impact of the threats could have been dissipated by E's assurances that their jobs were secure; Ee whom pro-U Ee threatened to kill if he revealed their conversation about the U had his resolve to vote for U strengthened by the threat, and the threat's purpose was to protect pro-U Ee from discharge for talking about the U, about which he had been warned, rather than to coerce Ee into voting for U)

N.L.R.B. v. Newly Weds Foods, Inc. **758 F.2d 4 (C.A. 1, Mar. 1985)**
(Ee's isolated statement to fellow Ee two months before election that if there was a strike, anyone who crossed picket line would be *beat up* and *heads would be busted,* not conduct sufficient to create an atmosphere of fear and coercion)

N.L.R.B. v. Browning-Ferris Industries of Louisville, Inc. **803 F.2d 345 (C.A. 7, Oct. 1986)**
[two threats made to Ees did not affect results of election where no Ees not involved knew of threats, none attributed to U or agents, no patterns where one made 2 months before election and even month before ptn filed and parties to this threat remained friends, and other threat, made on day of election, was ambiguous]

N.L.R.B. v. Chicago Metallic Corporation **794 F.2d 527 (C.A. 9, July 1986)**
[election set aside where it was conducted in atmosphere of fear and reprisal exacerbated by fact that threats were made by domineering person perceived as supervisor in small unit and vote was relatively close]

5625-4500 Providing food and drink

Warner Cable Corporation of Pittsburgh **275 NLRB No. 190**
(E's *permitting* consumption of beer on its premises during runoff election, not objectionable where idea for (beer) party originated with Ees who paid for beer though it was purchased by supervisor. Record reveals many occassions when Ees began drinking prior to official end of Ees' shift. Record shows that mere presence of beer at E's facility had no effect on conduct of election, as neither E nor U provided beer, Ees knew that Ees purchased beer, and no beer drunk before voting)

5625-6700 Statements not attributable to the parties

Electra Food Machinery, Inc. **279 NLRB No. 040**
[widespread third-party threats to kill, physically harm, and inflicit property damage on Ees who did not support U over 2-month period up to election day interference]

5625-6733 Having substantial impact

Sequatchie Valley Coal Corporation **281 NLRB No. 108**
[cumulative effect of series of threats of serious nature, including threats of burning out non-supporters' house, bodily harm, and killing, was to create atmosphere of fear and coercion precluding fair election, notwithstanding threats were not attributable to U]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(election set aside where threats to kill and to blow up E's mine made by Ee in presence of Ees and not attributable to U, raised spectre of violence, personal injury and death; threat to blow up mine would affect bargaining unit and it was surely widely disseminated among relatively small unit of 28 Ees; threat, originally made some weeks before election was repeated and rejuvenated on day before election; and U official, when queried by Ee, failed to quell rumor about mine blowup)

5625-6767 Having insubstantial impact

Pony Express Courier Corporation **282 NLRB No. 036**
[threats of bodily harm by Ees to fellow Ees did not warrant setting aside election, since insufficient to create atmosphere of fear and reprisals, where Ees not agents of U, threats were not directed to soliciting or influencing Ees to vote for U, were not made against backdrop of actual incident of physical injury or damage to property or followed act of violence, and incidents occured several weeks before election]

The John M. Horn Lumber Co. **280 NLRB No. 069**
[U committeeman's statement to Ee who did not support U, 3 weeks before election, that, *I'm gonna blow his brains out...*, not objectionable, where there was no evidence threat was U related, threat occurred 3 weeks prior to election and there was no evidence other Ees learned of threat prior to election]

The John M. Horn Lumber Co. **280 NLRB No. 069**
[Ee, who supported U, assaulting Ee who did not support U by hitting his hat with enough force to knock it off his head and telling him that he better vote *for the fucking union*, not objectionable, where there was no evidence threat was rejuvenated at or near time of election and although other Ees heard threat, evidence showed that much rough language and horseplay was engaged in shop, even by supervisors, and such had always been tolerated]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(statement by Ee who said he was going to be U observer at election that he could tell how man voted by look in his eyes held not interference where statement occurred in context of good natured badinage rather than in context of serious threat)

Chicago Metallic Corporation **273 NLRB No. 207**
(pro-U Ee's threats against anti-U Ees not sufficiently egregious to warrant setting aside election; threats of discharge of anti-U Ees did not alter their decisions as to how to vote, and impact of the threats could have been dissipated by E's assurances that their jobs were secure; Ee whom pro-U Ee threatened to kill if he revealed their conversation about the U had his resolve to vote for U strengthened by the threat, and the threat's purpose was to protect pro-U Ee from discharge for talking about the U, about which he had been warned, rather than to coerce Ee into voting for U)

N.L.R.B. v. Monark Boat Company **800 F.2d 191 (C.A. 8, Aug. 1986)**
[U supporter's yelling to fellow Ee, *Just do what I told you,* followed by fellow Ee's getting in line to vote, not interference with Ee or fourteen other Ees observing him where E admitted in its brief that fellow Ee had stated that he was not threatened]

5625-8300 Threats to other employees

Pony Express Courier Corporation **282 NLRB No. 036**
[E informing fellow Ee, during conversation with another Ee and E's managers and officers, that if Ee acted as informer to E regarding U activities again, he would *beat shit out of him*, did not warrant setting election aside, since threat isolated, where no dissemination to other Ees, and directed to single Ee, notwithstanding relatively small unit of approximately 20 Ees]

Pony Express Courier Corporation **282 NLRB No. 036**
[threats of Ee to *bust head of anyone who crossed picket line* and of Ee that he was *ready and anxious to get baseball bat out and warmed up in event of strike* which threat was disseminated to at least 2 Ees, did not warrant setting election aside since Ees not agents of U and incidents were several weeks before election]

Pony Express Courier Corporation **282 NLRB No. 036**
[threats of bodily harm by Ees to fellow Ees did not warrant setting aside election, since insufficient to create atmosphere of fear and reprisals, where Ees not agents of U, threats were not directed to soliciting or influencing Ees to vote for U, were not made against backdrop of actual incident of physical injury or damage to property or followed act of violence, and incidents occured several weeks before election]

Springfield Hospital **281 NLRB No. 076**
[where no showing that rank-and-file Ees were agents of U, it is incombent on E to show that rank-and-file Ees warning to another Ee (loss of job and *make it rough on her*) if she did not support U were so disruptive that they created atmosphere of fear and reprisal such as to render free expression of choice in election impossible]

Sequatchie Valley Coal Corporation **281 NLRB No. 108**
[cumulative effect of series of threats of serious nature, including threats of burning out non-supporters' house, bodily harm, and killing, was to create atmosphere of fear and coercion precluding fair election, notwithstanding threats were not attributable to U]

Electra Food Machinery, Inc. **279 NLRB No. 040**
[widespread third-party threats to kill, physically harm, and inflicit property damage on Ees who did not support U over 2-month period up to election day interference]

5625-8300—Cont.

Futuramik Industries, Inc. 279 NLRB No. 021

[E's agent, who was fellow Ee, threatening to report certain Ees to Immigration Service if Ees chose U representation, objectionable and if U loses election, it shall be set aside, where comments were made either on election day or shortly before and at least 10 or 20 Ees heard comments; further, statements do not lose coercive effect merely because there is no direct evidence that some Ees were illegal aliens]

L & J Equipment Company, Inc. 278 NLRB No. 074

[applying ct's agency test in its opinion on remand as law of the case, Bd held that statements by Ee organizing committee's chairman, found agent of U, concerning possible future violence on picket line, and his statement to Ee considered anti-U that he should sign U card to reduce U-related pressure, plus incidents not attributable to U, which included total destruction of E's vehicle by unknown persons, and various other conduct not attributable to U, had cumulative effect and combined to create coercive atmosphere interfering with Ees' free choice in election]

The Marmon Group, Inc., A Division of Long Airdax Company 275 NLRB No. 94

(U supporter's threats, including threats of bodily harm, house bombing, and property damage, made directly to five Ees and disseminated to several other Ees found to be of such serious and aggravated nature that, viewed cumulatively, they created atmosphere in which free expression of choice by employees could not be made; election set aside and new election conducted)

Fruehauf Corpoartion 274 NLRB No. 067

(E's refusal to bargain on grounds that certification of election was invalid, not violative, and U business agent's threat to majority of Ees, several days before ptn for election was filed, that Ee who crossed a future picket line would be shot, held interference and election set aside, since statement tainted election atmosphere where threat was repeated to other Ees by rank-and-file Ees during critical preelection period and rumors continuously circulated around plant during critical preelection period that strike breakers would be shot, thus destroying required condition of freedom of choice)

Blue Island Newspaper Printing, Inc. 273 NLRB No. 208

(no atmosphere of fear and reprisal created by U adherent's statements 1-1/2 weeks before, and morning of, election that he would *take care* of Ees voting *no* where statements were heard by two Ees at most, knowledge of them was not disseminated to other Ees, Ee was not especially capable of carrying out threat of physical harm, it was not likely that Ees acted in fear of his doing so, and only a supervisor heard threat when it was reiterated the morning of the election)

Chicago Metallic Corporation 273 NLRB No. 207

(pro-U Ee's threats against anti-U Ees not sufficiently egregious to warrant setting aside election; threats of discharge of anti-U Ees did not alter their decisions as to how to vote, and impact of the threats could have been dissipated by E's assurances that their jobs were secure; Ee whom pro-U Ee threatened to kill if he revealed their conversation about the U had his resolve to vote for U strengthened by the threat, and the threat's purpose was to protect pro-U Ee from discharge for talking about the U, about which he had been warned, rather than to coerce Ee into voting for U)

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[U supporter's yelling to fellow Ee, *Just do what I told you,* followed by fellow Ee's getting in line to vote, not interference with Ee or fourteen other Ees observing him where E admitted in its brief that fellow Ee had stated that he was not threatened]

N.L.R.B. v. Chicago Metallic Corporation 794 F.2d 527 (C.A. 9, July 1986)

[election set aside where it was conducted in atmosphere of fear and reprisal exacerbated by fact that threats were made by domineering person perceived as supervisor in small unit and vote was relatively close]

5625-8500 Property damage

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186

(election set aside where threats to kill and to blow up E's mine made by Ee in presence of Ees and not attributable to U, raised spectre of violence, personal injury and death; threat to blow up mine would affect bargaining unit and it was surely widely disseminated among relatively small unit of 28 Ees; threat, originally made some weeks before election was repeated and rejuvenated on day before election; and U official, when queried by Ee, failed to quell rumor about mine blowup)

ATR Wire & Cable Co. v. N.L.R.B. 752 F.2d 201 (C.A. 6, Jan. 1985)

(minor property damage to antiU Ees' automobiles in E's parking lot insufficient to establish fear and coercion preventing fair election; only significant damage was not shown to have occurred in E's parking lot, and no proven damage was shown to be linked to U or proU Ees)

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[U supporter's causing 3 accidents resulting in over $1,000 damage, 3 supporters' stopping work during processing of a boat, and poisoning of supervisor's dog by anonymous party, alleged to be U supporter, not interference absent E's showing that incidents were in fact acts of sabotage designed to intimidate voters]

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(only exception to general principle that anonymous property damage is not enough to warrant new election is where coercive and disruptive conduct is so aggravated that free expression of choice of representation is impossible; any other rule would invite third parties or one of the protagonists who doubted election outcome to anonymously create incidents and then use them to set aside election)

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(Bd was justified in finding no effect on free choice by few acts which may have occurred before election involving several joking threats by Ees, and damage to 2 Ees' automobile tires; and this was so even though election was a close one subject to heightened scrutiny)

5650 EMPLOYEES OUTSIDE BARGAINING UNIT

5650-2500 Supervisors

N.L.R.B. v. Browning-Ferris Industries of Louisville, Inc. 803 F.2d 345 (C.A. 7, Oct. 1986)

[objection to election on basis that supervisor coerced Ees to support U overruled, where Ee, if supervisor at all, was low level one, no threats made by *supervisor* of retaliation, and fact that statements, if they had any impact at all, actually were likely to make Ees vote against U for fear of E reprisals]

Wright Memorial Hospital v. N.L.R.B. 771 F.2d 400 (C.A. 8, Aug. 1985)

(no interference with election in absence of evidence that supervisors threatened Ees with retaliation or domination if they did not vote for U; although most supervisors signed U authorization cards, the three supervisors who engaged in nearly every type of U activity merely expressed their personal opnions on unionization, served on committee chaired by U business agent, who directed the campaign, and answered Ees' questions in informal discussions; Bd's inference that Ees neither feared nor had reason to fear retaliation for not supporting U found reasonable)

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[supervisory participation in U campaign will not per se invalidate election; however, supervisory support for U organizing campaign will invalidate U's victory when it reasonably tends to have coercive effect or is likely to impair Ees' choice]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[when supervisors' conduct creates impression that E favors U or when supervisors' conduct creates fear of future retaliation, election must be invalidated; and fear of retaliation is created when pro-U supervisor's solicitation of Ees contains seeds of potential reprisal, punishment, or intimidation; in determining whether supervisor's conduct is impermissible solicitation, ct considers extent of supervisor's authority and extent of his pro-U activity; and evidence of actual threats are not required and implied threats of retaliation are sufficient]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[in case involving alleged pro-U conduct of supervisors, ct held characterization of supervisor as *minor* cannot save election when supervisor has power to punish or reward, and acts so that threat of exercising that power reasonably tends to coerce voting Ees; on other hand, classification of *minor* supervisor does not invalidate Bd's decision upholding election, so long as Bd properly focused on extent of supervisor's authority and extent of his pro-U activity in finding no coercion, and so long as substantial evidence in record supports Bd's findings]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[allegedly pro-U supervisor who called U representative to indicate interest in U and discussed U with at least 2 Ees and another supervisor before election held not to have acted in manner likely to coerce Ees in their vote; although conduct of supervisor, who had extensive supervisory authority, was relevant, it was not sufficient, in and of itself, to invalidate election]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[preelection conduct of supervisor, having limited authority, in signing authorization card and giving out authorization cards to Ees, and in stating to

5650-2500—Cont.

Ees that they should sign cards held not kind of pressure that could reasonably tend to coerce Ees in freedom of choice]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[preelection conduct of supervisor, who had limited authority and admittedly favored U, in talking to Ees about U, expressing personal views about U and answering questions about U, held permissible expressions of opinion since made in noncoercive and nonthreatening manner; moreover, as only supervisor to engage in pro-U activity, his conduct did not invalidate election]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[in case involving allegedly preelection pro-U conduct by supervisors, ct held, while evidence of actual coercion is not required, evidence was insufficient to support claim that Ees could reasonably fear retaliation from supervisors so as to interfere with Ees' freedom of choice]

5662 FORMER EMPLOYEES

Kentucky Fried Chicken of the Virgin Islands, Inc. 278 NLRB No. 086

[conduct of former Ee did not interfere with election where she did not engage in surveillance before election, notwithstanding contention that former Ee was U agent, by driving past, and also coming into store where former fellow Ee worked, *looking at* her, and asking whether E's vice president had told Ee not to talk to her]

7000 CONDUCT OF NON-PARTICIPANTS IN ELECTION

7099 OTHERS

Otterbacher Manufacturing, Inc. 279 NLRB No. 160

[labor relations consultant's purported memorandum about meeting with E's president asserting that E was vengeful and deceitful and, absent U's help, would discharge Ees for seeking U representation, not interference where it was single third-party assertion posted and removed same daay two weeks before election, its contents were denied by E's president, who was in position to know and control E's policies, in meeting two days later, and Ees were given enough information to evaluate situation by explanation that labor consultants were retaliating for E's failure to hire them]

E. A. Nord Company, Inc. 276 NLRB No. 161

(conduct of E's attorney, in polling areas during course of election, in releasing Ees early in disregard of preelection agreement, to which attorney was party as E's representative, objectionable since polling areas had *carnival atmosphere* when early released Ees crowded the polling areas which prevented Bd agents from maintaining order while Ees voted)

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[U supporter's causing 3 accidents resulting in over $1,000 damage, 3 supporters' stopping work during processing of a boat, and poisoning of supervisor's dog by anonymous party, alleged to be U supporter, not interference absent E's showing that incidents were in fact acts of sabotage designed to intimidate voters]

8400 ELECTIONEERING AT OR NEAR POLLS WHILE OPEN

8401 GENERALLY

N.L.R.B. v. Hudson Oxygen Therapy Sales Company 764 F.2d 729 (C.A. 9, June 1985)

(E's contention that Bd failed to evaluate crowd's chanting *Vote Yes, Vote Yes* for few minutes before opening of polls by general laboratory conditions standard, rejected since Bd's rule against electioneering at polling place is limited to times while polls are open and challenged conduct was not shown to be coercive or intimidating, denying voting Ees free and uninhibited choice)

N.L.R.B. v. Hudson Oxygen Therapy Sales Company 764 F.2d 729 (C.A. 9, June 1985)

(E's contention that Bd's rule prohibiting electioneering only after polls open is irrational, rejected since Bd, by announcing per se rules which establish categories of permitted and prohibited conduct, provides predictability for participants in election; rule permits voting to take place in atmosphere permitting sober reflection and calm deliberation)

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(ct held that standard in case involving alleged improper electioneering is that election will be set aside where representatives of any party to election engaged in *prolonged* conversations with voters waiting to cast their ballots, regardless of the content of such conversations; however, where improper conduct is not that of parties' agents, then such conduct will warrant setting aside election if acts disrupt voting procedure or destroy atmosphere necessary to exercise of free choice in election)

8410 AGENCY RELATIONSHIP IN COMMISSION OF ELECTIONEERING

State Garden Celery Company, Inc. JD-243-84

(Ee telling another Ee, who had yet to vote, *Vote Yes, more money* while rubbing thumb and fingers together, did not warrant setting aside election, since Ee urging yes vote was not agent of any party nor was he offering bribe, thus *Milchem* rule forbidding conversations between any party representative and voters waiting vote not applicable; nor could Ee's remark be construed as electioneering substantially impairing anyone's exercise of free choice)

8420 ORAL COMMUNICATION TO VOTERS

William Okie, Jr., et al. d/b/a Standby One Associates Center for Housing Partnerships 274 NLRB No. 140

(U observer's remark before voting started in state bd conducted election that U needed 3 votes to win election held not to constitute electioneering warranting setting aside election where, as here, there was no showing that U's representative engaged in sustained conversations with prospective voters, but rather that he made a *chance, isolated, innocuous comment*)

8420-3300 Location of communication

8420-3325 Conversation within voting area

8420-3325-5000 By union (representative, observer, or agent)

L & J Equipment Company, Inc. 278 NLRB No. 074

[applying ct's agency test in its opinion on remand as law of the case, Bd held that conduct of Ee, purportedlymember of Ee organizing committee, in hokding conversations with Ees waiting in line to vote in election was not attributable to U where ct's requirements for finding agency status were not met; namely, that member of Ee organizing committee, whose conduct is in question, must be sufficiently active in committee, indicating actual or apparent authority to act on behalf of committee, and member's acts must fall w/i scope of his role as member of committee]

Nestler, Division of Buckhorn, Inc. JD-(SF)-60-85

(on remand in light of *Alco Iron and Metal Co.* 269 NLRB No. 87, election set aside at E at which 80% of Ees could neither speak nor understand English, and neither E's observer nor Bd agent were conversant in Spanish. Bd agent had U observer translate voting instructions and U observer also spoke with substantial number of Ees w/o being instructed to do so by Bd agent; thus, voters instead of receiving voting instructions from neutral source received instructions from person identified with one of parties to election and voters were unaware that at times U observer was acting on instructions of Bd agent)

8420-3325-7500 Others

N.L.R.B. v. Newly Weds Foods, Inc. 758 F.2d 4 (C.A. 1, Mar. 1985)

(Ee's telling his brother *just yes* and pointing to the *Yes* box on sample ballot just before brother entered voting booth, not objectionable conduct, where Bd agent immediately ushered Ee out of voting area and gave his brother corrective instructions i.e., he could vote yes or no, and statement was isolated and not made by U member or agent)

8420-3350 Conversation just outside voting area or within designated 'no electioneering' area

8420-3350-5000 By union (representative or agent)

Blazes Broiler 274 NLRB No. 158

(business agent's extended conversations with Ees while he was seated at table located approximately 20 feet from entrance to room where voting was being conducted, not objectionable, where there was no evidence agent was electioneering but rather engaged only in *small talk* and agent was not w/i designated *polling area* as defined by Bd agent; further, E's contention that *polling area* extends beyond area designated by Bd agent, rejected)

Labor Services, Inc. 274 NLRB No. 068

(on ct remand for hearing on objection that U interfered with election by buying voters drinks in adjacent bar before and during election, ct's opinion was observed as law of the case, in view of similarity of facts found before and after remand, and U's conduct found objectionable; ct was concerned with effects of U's conduct and its tendency to interfere with voter's free choice, not U's motive or voters' sobriety, and did not judge conduct's impropriety on basis of its cost or fact drinking occurred outside polling area, since voters took drinking's physical and psychological effects into voting area with them)

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(U organizer's conversations with Ees after they voted held not objectionable activity since such conduct could not have intruded upon *the final minutes* before Ees cast their votes)

8420-3350-7500 Others

Season-All Industries, Inc. 276 NLRB No. 139

(E held obligated to bargain since setting aside of election not warranted where Ee who was held not agent of U stood a few feet from Ees who were waiting to vote in area outside room in which polling booths were located, and held very brief conversations with Ees for 10--20 minutes)

State Garden Celery Company, Inc. JD-243-84

(Ee telling another Ee, who had yet to vote, *Vote Yes, more money* while rubbing thumb and fingers together, did not warrant setting aside election, since Ee urging yes vote was not agent of any party nor was he offering bribe, thus *Milchem* rule forbidding conversations between any party representative and voters waiting vote not applicable; nor could Ee's remark be construed as electioneering substantially impairing anyone's exercise of free choice)

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(incidents involving U observer wearing U button and an Ee wearing U patches on his customary clothing and standing outside voting area for 5 to 10 minutes held not to constitute objectionable electioneering sufficient to set aside election; wearing of U button, occurring w/o objection during election and considered in isolation was not sufficient to invalidate election; and Ee here did not position himself outside of polling place during election nor orally urge voters to support U or gestures towards U patches he was wearing)

8420-3375 Conversation away from immediate vicinity or outside designated 'no electioneering' area

8420-3375-2500 By employer (representative or agent)

Decasper Corporation 278 NLRB No. 022

[E approaching Ees during polling period and asking them to vote for E and E's president asking Ees to *remember his face* when they voted, not such interference that would warrant setting aside election since restrictions on election day limited to captive Ee audiences and sustained conversations]

8420-3375-5000 By union (representative or agent)

Hy's of Chicago, Ltd. 276 NLRB No. 113

(U's massing business agents and other U representatives outside E's restaurant near location of election where they could intercept Ees on way to work and, in at least one case, attempted to engage Ee in conversation and to distribute pro-U material, not interference where there was no effort to impede Ees' access to polling place or to unduly intimidate them)

8420-3375-7500 Others

State Garden Celery Company, Inc. JD-243-84

(congestion caused by Ees who had already voted lingering on stairway to mezzanine voting area and Ees waiting to vote lined up between stairway and door to polls, did not warrant setting aside election, as no evidence of electioneering inside polling area, or persuasive evidence that any voter was physically or otherwise prevented from voting, or seriously hampered in effort to vote)

8430 MERE PHYSICAL PRESENCE

8430-2500 Within voting area

8430-2525 By employer or employer representative

Premier Maintenance, Inc. 282 NLRB No. 003

[supervisor checking off Ees' names as they voted in election warranted setting election aside]

8430-2575 Others

N.L.R.B. v. Browning-Ferris Industries of Louisville, Inc. 803 F.2d 345 (C.A. 7, Oct. 1986)

[no electioneering in voting area where pro-U Ee after voting left the area but shortly thereafter returned to voting area but did not speak to anyone, as Ee not representative of any party, and he left after few minutes when Bd representative asked him to]

8430-5000 Just outside voting area or within designated 'no electioneering' area

8430-5050 By union official or representative

Blazes Broiler 274 NLRB No. 158

(business agent's presence during polling period in restaurant at table approximately 20 feet from entrance to room where voting was being conducted, not objectionable, where there was no evidence Ees on their way to vote passed by agent, agent was not w/i designated *polling area* as defined by Bd agent but rather, was in portion of E's premises open to the public and to the extent agent left his table to pay tab at register located closer to, but not w/i *polling area*, such movements were isolated and of no impact on outcome of election)

8440 WEARING OF INSIGNIAS

8440-6700 Outside voting area

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(incidents involving U observer wearing U button and an Ee wearing U patches on his customary clothing and standing outside voting area for 5 to 10 minutes held not to constitute objectionable electioneering sufficient to set aside election; wearing of U button, occurring w/o objection during election and considered in isolation was not sufficient to invalidate election; and Ee here did not position himself outside of polling place during election nor orally urge voters to support U or gestures towards U patches he was wearing)

8470 PHYSICAL COERCION OR THREATS THEREOF AND OTHER TYPES OF RESTRAINT

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(Bd was justified in finding no effect on free choice by few acts which may have occurred before election involving several joking threats by Ees, and damage to 2 Ees' automobile tires; and this was so even though election was a close one subject to heightened scrutiny)

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(ct held that, in determining whether election should be set aside, alleged objectionable electioneering should be considered comulatively with alleged threats and violence; here, limited findings of threats and violence, so considered, required ct to uphold Bd's decision not to set aside election)

9000 ACTIONS OF BOARD OR BOARD AGENT

9033 ACTION OF BOARD

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center 275 NLRB No. 194

(prior election set aside notwithstanding nursing assistants, whom RD had originally excluded from unit, were informed late in afternoon of day before election that they could vote challenged ballot (Bd having granted request for review) where over half of nursing assistants did not avail themselves of this option. Bd unwilling to presume that those who did not cast ballot did so out of indifference or neglect)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[contention that election invalid, and E justified in its refusal to bargain, since held in inappropriate units where names omitted from Norris-Thermador list, rejected, inasmuch as requirement that list would be valid guide only if letter perfect would defeat saluatory effect of having parties stipulate to eligibility, and require constant and careful agency review to prevent clerical erors from upsetting elections]

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[inaccurate notice of election that contained same erroneous unit description as decertification ptn technical unit Ees were placed in service and maintenance unit and vacant positions omitted from technical unit did not warrant setting election aside and justify E's refusal to bargain, notwithstanding contention erroneous unit description resulted in voter confusion, low voter turn out and certification of inappropriate units, since error immaterial where Ee who was improperly not included in technical unit voted in technical unit and inclusion of vacant positions had no impact]

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[Bd's continuing use of improper unit descriptions based on erroneous descriptions in decertification ptn and election notice in its certification and bargaining orders does not warrant setting aside election which resulted in vote in favor of continued representation or justify E's refusal to bargain; however, bargaining order and all documents to be posted under it must be modified to reflect appropriate bargaining units]

9067 ACTION OF BOARD AGENT

Clarence E. Clapp 279 NLRB No. 051

[purported objection to election by individual who claimed he was denied opportunity to vote when polls closed prior to time stated in Notice of Election not proper, since objection made by individual who cannot be a *party* to this proceeding. Objection, by letter, filed 8 days after date for *timely* filing and not served on E as required by Sections 102.8 and 102.69(a) of Bd's R/R]

Brink's Armored Car, Inc. 278 NLRB No. 016

[actions by Bd personnel which tend to destroy confidence in Bd's election process are to be avoided rigorously and, in appropriate circumstances, are sufficient basis for setting aside election]

9067—Cont.

State Garden Celery Company, Inc. JD-243-84

(election set aside where Bd agent asked spanish speaking U observer to repeat his instructions on voting procedure to voters and later on to speak to spanish speaking Ees who were talking loudly outside voting area and tell them to *quiet down* and told Ees *I don't want to see you in there. We might get problems by you standing there* since Bd agent did not caution observer to limit statements to exact translation, but rather instructions were in nature of general directions to explain voting procedures and tell Ees to quiet down; thus, U's observer conveyed impression to voters that U, not Bd, was responsible for running election)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[refusal to allow Ee whose name was not on *Norris Thermador* List to cast challenged ballot did not warrant setting aside election and justify E's refusal to bargain since omission does not render voter list susceptible to challenge by either party unless mistake discovered in sufficient time to permit correction before balloting begins; requiring pre-election agreements, of which list is part, to adhere to standard of absolute perfection would undermine goal of having parties expedite handling of elections w/o extensive Bd involvement]

385 POST-CERTIFICATION AND UNIT CLARIFICATION ISSUES

0100 GENERALLY

0150 BOARD AUTHORITY TO AMEND, CLARIFY, AND POLICE CERTIFICATION INHERENT IN AUTHORITY TO ISSUE

ICI Americas, Inc. JD-328-85

(whether or not E, even prior to start of collective bargaining, should have sought unit clarification through Bd, where unit was split on direction of Army who had contracted out work to E is not determinative (of unit appropriateness) since clarification of unit in instant ULP procerding was entirely proper)

ICI Americas, Inc. JD-328-85

(E's powerlessness to affect Army's determination to cause split in unit (fire fighters *and* guards rather than single unit of combined firefighter-security department Ees) permits Bd to reexamine its existing prior certification (since 1964) and conclude that *essential factors* upon which Bd based its combined unit determination were eliminated due to Army's lawful action)

1200 VALIDITY OF CERTIFICATION

William Okie, Jr., et al. d/b/a Standby One Associates Center for Housing Partnerships 274 NLRB No. 140

(Bd did not consider issue raised by E's contention that state bd's conduct of election deviated from due process requirements, since E's arguments in support of such claim were previously made to state bd which carefully discussed and analyzed objections before overruling them; and Bd accords state bd elections and certifications same effect as Bd attaches to its own, provided state proceedings reflect true desires of affected Ees, election irregularities are not involved, and there has been no substantial deviation from due process requirements)

2500 AMENDMENT OF CERTIFICATION

2525 CHANGE IN REPRESENTATIVE

2525-0800 Affiliation of union with international

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[Bd's rule requiring that all Ees in bargaining unit--not merely U members--must have opportunity to participate in affiliation decision, even though organizational changes resulting from affiliation are not substantial enough to raise qcr, held to exceed Bd's authority under Act]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[argument that Bd's rule that all Ees in bargaining unit must have opportunity to participate in affiliation decision is reasonable means of protecting bargaining unit Ees' right to select bargaining representative under Sec. 7 of Act, rejected where Act authorizes Bd to conduct R election *only* where affiliation raises qcr; Bd's rule upsets accomodation drawn by statute by effectively decertifying reorganized U even where affiliation does not raise qcr]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[contention that Bd's rule stating all Ees in bargaining unit must have opportunity to participate in affiliation decision was necessary to protect interests of non-U Ees in that affiliation may affect U's representation of bargaining unit even if it does not raise qcr, rejected where U makes many decisions that *affect* its representation of nonmember Ees and dissatisfaction with decisions U members make may be tested by Bd-conducted R election only if it is unclear whether reorganized U retains majority support]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[argument that affiliation differs from other organizational changes because it results in Ees being represented by different organization, rejected since many organizational changes may operate to alter U's *identity* w/o raising qcr]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[contention that affiliation involves U's asking Bd to amend its certification or to order E to bargain and that therefore Bd has strong interest in insuring that its own election procedures have not been circumvented before placing its imprimatur on U's affiliation election, rejected since, in amending U's certification or ordering E to bargain, Bd does not *sanction* U's affiliation; rather it signifies only that reorganized U continues as ongoing entity that E should continue to recognize]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[if Bd finds that affiliation raises qcr undermining Bd's own election and certification procedures, it can refuse to reconsider U's ULP charge, and is authorized to conduct R election; however it may not condone E's refusal to bargain in absence of qcr and has no authority to prescribe internal procedures for U to follow in order to invoke Act's protections]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[argument that Bd's rule that all Ees in bargaining unit must have opportunity to participate in affiliation decision brings measure of certainty into bargaining relationship, rejected since Act assumes that stable bargaining relationships are best maintained by allowing affiliated U to continue representing bargaining unit unless Bd finds that affiliation raises qcr]

N.L.R.B. v. Financial Institution Employees of America, Local 1182, Chartered By Food & Commerical Workers —— U.S. —— (U.S. S.Ct, Feb. 1986)

[Bd's rule that all Ees in bargaining unit must have opportunity to participate in affiliation decision effectively gives E power to veto independent U's decision to affiliate, thereby allowing E to directly interfere with U decision-making Congress intended to insulate from outside interference]

2525-5000 Substitution of union with which certified representative has merged

Hydrotherm, Inc. 280 NLRB No. 167

[ptn to amend certification of elected local U granted where, although it had merged with another local before filing ptn for election, recognition of merger and receipt of new charter did not occur until after certification, and successor U retained its identity and was able to step into predecessor's shoes as Ees' representative]

Arizona Pork Products, Inc. 279 NLRB No. 167

[E's rejecting U's request for recognition and bargaining violation, notwithstanding allegedly inadequate assurance of ballot secrecy in U predecessor's merger election involving U's properly becoming successor to benefits of certification]

5000 SUSPENSION OR REVOCATION OF CERTIFICATION

5001 GENERALLY

5001-5000 Board has inherent authority to police own certifications

ICI Americas, Inc. JD-328-85
(E's powerlessness to affect Army's determination to cause split in unit (fire fighters *and* guards rather than single unit of combined firefighter-security department Ees) permits Bd to reexamine its existing prior certification (since 1964) and conclude that *essential factors* upon which Bd based its combined unit determination were eliminated due to Army's lawful action)

ICI Americas, Inc. JD-328-85
(certification vacated by ALJ when facts adduced at hearing showed that unit no longer appropriate)

5050 GROUNDS FOR SUSPENSION OR REVOCATION

5050-4300 Union misconduct

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[no Bd authority for proposition that U has duty not to disparage E whose Ees it represents, and that breach of such duty may justify U forfeiting its right to represent Ees; *where health care facility refuses to honor Bd certification of U, thereby precipitating peaceful strike in protest; doctrine of Laura Modes, 144 NLRB 1592, should not be extended to disqualify U as Ee representative on grounds that U and its pickets in course of strike disparaged quality of care in facility*]

Nassau Insurance Company 280 NLRB No. 103
[unprotected strike in support of U's insistence on non-mandatory subjects of bargaining which was accompanied by unlawful threats of violence, damage to property, and impeding of ingress to E's property, did not rise to level of violence that would justify revocation of U's certification, absent evidence U had engaged in similar misconduct in other disputes]

5050-6700 Domination and control by supervisory personnel

North Shore University Hospital 274 NLRB No. 188
(on ct remand, Bd vacated prior D/O, dismissed C and revoked Certification of Representative and found that nurses association should not be considered differently from other labor organizations regarding conflict of interest engendered by supervisors' active participation in association, lack of insulation of collective-bargaining process from governance of organization and lack of mechanism to assist Es from violating Sec. 8(a)(2) through supervisory Ees participation in association's affairs)

7500 UNIT CLARIFICATION

7501 GENERALLY

7501-2500 Board authority

7501-2501 Generally

ICI Americas, Inc. JD-328-85
(E's powerlessness to affect Army's determination to cause split in unit (fire fighters *and* guards rather than single unit of combined firefighter-security department Ees) permits Bd to reexamine its existing prior certification (since 1964) and conclude that *essential factors* upon which Bd based its combined unit determination were eliminated due to Army's lawful action)

7501-2577 Clarification of unit through unfair labor practice proceedings

ICI Americas, Inc. JD-328-85
(whether or not E, even prior to start of collective bargaining, should have sought unit clarification through Bd, where unit was split on direction of Army who had contracted out work to E is not determinative (of unit appropriateness) since clarification of unit in instant ULP proceeding was entirely proper)

7501-2581 Clarification not precluded by arbitrator's award or proceeding

N.L.R.B. v. Magna Corporation 734 F.2d 1057 (C.A. 5, June 1984)
[deferral inappropriate to arbitrator's decision which held that Ee employed in new job classification did not share *community of interest* with plant clerical unit, since determination of questions of representation, accretion and appropriate units do not depend on contract interpretations but involve application of statutory policies and thus are matters for the Bd, not an arbitrator]

7501-2587 Clarification not available to resolve jurisdictional dispute

Solar, Division of International Harvester Co. 187 NLRB No. 105

7533 ISSUES RESOLVABLE BY CLARIFICATION PROCEEDING

7533-2000 Job classification coverage

7533-2020 Classification existing at time of certification, recognition, or collective bargaining agreement

7533-2020 Classification existing at time of certification, recognition, or collective bargaining agreement

Marymount College of Virginia 280 NLRB No. 050
[in unit clarification proceeding, E's contention that professional librarians should be excluded from existing unit as managerial or supervisory, rejected, since they did not exercise control over areas indicative of managerial or supervisory status where none of the librarians had authority to evaluate Ees, establish salaries, grant time-off, hire or fire personnel or otherwise engage in the management of the library]

American Television & Communications Corporation d/b/a Austin Cablevision 279 NLRB No. 075
[certified unit of cablevision clericals, renamed customer service representatives, clarified to find no historical or contractual exclusion of salesclerks or waiver of right to represent them by failing to secure inclusion in contract, where E created and staffed position during strike w/o informing U, U treated them as members by enrolling discussing work-related problems with, and filing grievances on behalf of them, U did not agree to split clerical unit or acquiesce in E's position that they were excluded throught neglect or inaction, and they shared community of interest with unit Ees]

7533-2020-6700 Petitioner never represented employees sought

Marymount College of Virginia 280 NLRB No. 050
[in unit clarification proceeding, E's contention that new position of *program coordinator* should be excluded from unit as managerial or supervisory, rejected, since *program coordinators* did not exercise control over areas indicative of managerial or supervisory status where they performed only informal and casual recommendations for hire of faculty, did not determine courses to be taught, did not evaluate faculty members and were not involved in financial or economic planning]

7533-2020-8400 No claim made until after certification

ACL Corporation d/b/a Atlanta Hilton & Towers 278 NLRB No. 076
[E's withdrawal of recognition from U and refusal to bargain, on grounds unit was inappropriate because it contained Ees employed as guards, violative, where Ees in dispute were in no way entrusted with the protection of E's premises or safety of persons; further, if E believes certain individuals should be excluded from unit because of guard status, proper procedure is unit clarification, not withdrawal of recognition. See Bd's R.R's 102.60(b) and 102.61(d)]

7533-2060 Classification established subsequent to certification, recognition or collective bargaining agreement

7533-2060 Classification established subsequent to certification, recognition or collective bargaining agreement

N.L.R.B. v. Magna Corporation 734 F.2d 1057 (C.A. 5, June 1984)
[unit clarification procedure appropriate in determining inclusion of new full-time position of *plant storeroom specialist* in plant clerical unit, since new job classification represented a *substantial change* from former job, which was not included in unit, and included many additional responsibilities; unit clarification is appropriate for resolving disputes concerning placement of Ees who come w/i newly established job classifications or whose duties and responsibilities have undergone substantial changes which create doubt as to whether positions continue to fall in category, that Ees occupied in past]

N.L.R.B. v. Magna Corporation 734 F.2d 1057 (C.A. 5, June 1984)
[Bd's inclusion of *plant storeroom specialist*, a newly created and substantially changed job classification, in unit of plant clericals in unit clarification proceeding was inappropriate and case remanded, where Bd did not apply *community of interest standard* in determining community of interests between bargaining unit Ees and new job classification]

7533-4000 Expanded or changed operations following certification, recognition, or collective bargaining agreement

7533-4000 Expanded or changed operations following certification, recognition, or collective bargaining agreement

American Television & Communications Corporation d/b/a Austin Cablevision 279 NLRB No. 075
[certified unit of cablevision clericals, renamed customer service representatives, clarified to find no historical or contractual exclusion of salesclerks or waiver of right to represent them by failing to secure inclusion in contract, where E created and staffed position during strike w/o informing U, U treated them as members by enrolling discussing work-related problems with, and filing grievances on behalf of them, U did not agree to split clerical unit or acquiesce in E's position that they were excluded throught neglect or inaction, and they shared community of interest with unit Ees]

7533-4080 Reorganization of operations

JD-328-85

ICI Americas, Inc.

(E's powerlessness to affect Army's determination to cause split in unit (fire fighters *and* guards rather than single unit of combined firefighter-security department Ees) permits Bd to reexamine its existing prior certification (since 1964) and conclude that *essential factors* upon which Bd based its combined unit determination were eliminated due to Army's lawful action)

393 PROCEDURE IN REPRESENTATION PROCEEDINGS

0100 GENERALLY

0167 AUTHORITY OF REGIONAL DIRECTOR

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[under *Burns International Security Services Inc.* 256 N.L.R.B. 59, while Rd has discretion to determine scope of investigation of objections to election he/she can only consider after five day period after election, new objections based on investigation only if those objections were based on newly discovered or previously unavailable evidence relating to timely filed objections]

1000 PARTIES

1001 GENERALLY

1001-5000 Definition (R&R 102.8)

Clarence E. Clapp 279 NLRB No. 051

[individual Ees not *parties* w/i definition of *party* as set forth in Sec. 102.8 of Bd's R/R]

2000 INTERVENTION

3000 SERVICE OF DOCUMENTS

4000 SUBPOENAS

4001 GENERALLY

4001-5000 Nature and scope

Brink's Inc. 281 NLRB No. 074

[FRCP 45(b), dealing with subpoenas for the production of documentary evidence and FRCP 26(b)(1) and 26(c), regarding the scope and limits of discovery in civil cases, should be consulted by Regional Directors and Hearing Officers when ruling on mtns to revoke subpoenas filed under Section 102.66 of the Bd's R/Rs]

4001-5067 Production of any evidence

Brink's Inc. 281 NLRB No. 074

[FRCP 45(b), dealing with subpoenas for the production of documentary evidence and FRCP 26(b)(1) and 26(c), regarding the scope and limits of discovery in civil cases, should be consulted by Regional Directors and Hearing Officers when ruling on mtns to revoke subpoenas filed under Section 102.66 of the Bd's R/Rs]

4040 ISSUANCE OF SUBPOENAS

4040-4000 Showing of relevancy and adequacy of identification of documents requested not prerequisite to issuance

4040-4050 Determinable on motion to revoke

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting *All minutes of meetings* and related documents of nonguard U, did not *relate to any matter...in question in the proceedings* under Bd R/R 102.66(c) since it concerned nonguard Ees of other Es and thus it would be subject to petition to revoke; further, such request may also be revocable as unreasonably broad]

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting nonguard U's *membership lists* and related documents, may be revocable on grounds that it is unreasonable because no time limitations are specified and substantial privacy rights may be at stake]

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting all communications between petitioner and petitioner's officers and its law firm, clearly requested privileged information; however, Hearing Officer should not have revoked subpoena but rather, should have conducted an *in camera* inspection of documents in question to determine whether any of them were subject to the privilege; those not privileged should have been made available assuming other relevant standards were met]

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting individual tax records of petitioner's president for the purpose of determining whether president received money from nonguard U, was properly revoked since information was available *from another source that is more convenient* [*and*]

4060 REVOCATION

4060-0100 Generally

Brink's Inc. 281 NLRB No. 074

[FRCP 45(b), dealing with subpoenas for the production of documentary evidence and FRCP 26(b)(1) and 26(c), regarding the scope and limits of discovery in civil cases, should be consulted by Regional Directors and Hearing Officers when ruling on mtns to revoke subpoenas filed under Section 102.66 of the Bd's R/Rs]

4060-3300 Time for filing petition to revoke

Brink's Inc. 281 NLRB No. 074

[although petitioner's president failed to file a written petition to revoke subpoena as required by Section 102.66(c) of Bd's R/R, petition to revoke made as an oral amendment at the hearing was granted where E did not show it was prejudiced by Hearing Officer's ruling on petition and E had an opportunity to argue against the oral amendment to revoke]

4060-6700 Grounds for revocation

Brink's Inc. 281 NLRB No. 074

[U's ptn to revoke subpoenas granted in its entirety where many of the documents sought by E did not relate to E's general contention that U was affiliated with nonguard U and some of the requested information arguably was subject to attorney-client privilege; however, case remanded to RD, and E not prejudiced to make proper application for subpoenas]

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting *All minutes of meetings* and related documents of nonguard U, did not *relate to any matter...in question in the proceedings* under Bd R/R 102.66(c) since it concerned nonguard Ees of other Es and thus it would be subject to petition to revoke; further, such request may also be revocable as unreasonably broad]

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting nonguard U's *membership lists* and related documents, may be revocable on grounds that it is unreasonable because no time limitations are specified and substantial privacy rights may be at stake]

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, Hearing Officer's ruling that time period covered by subpoenas served by E could date only from time E notified U of its intent to withdraw recognition, rejected, since Bd decision allowing such withdrawal of recognition from such nonguard Us predated instant E's decision and E is entitled to seek information regarding any actions nonguard U may have taken in response to Bd's decision regarding petitioner's status]

4060-6750 Claim of privilege

Brink's Inc. 281 NLRB No. 074

[U's ptn to revoke subpoenas granted in its entirety where many of the documents sought by E did not relate to E's general contention that U was affiliated with nonguard U and some of the requested information arguably was subject to attorney-client privilege; however, case remanded to RD, and E not prejudiced to make proper application for subpoenas]

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting all communications between petitioner and petitioner's officers and its law firm, clearly requested privileged information; however, Hearing Officer should not have revoked subpoena but rather, should have conducted an *in camera* inspection of documents in question to deter-

4060-6750—Cont.

mine whether any of them were subject to the privilege; those not privileged should have been made available assuming other relevant standards were met]

Brink's Inc. 281 NLRB No. 074

[where E made contention that petitioner was affiliated with nonguard U, E's subpoena requesting individual tax records of petitioner's president for the purpose of determining whether president received money from nonguard U, was properly revoked since information was available *from another source that is more convenient* [*and*]

5000 EXPEDITED ELECTION PROCEDURE

6000 PRE-ELECTION PROCEDURE

6021 AMENDMENT OF PETITION

6021-6700 Addition of parties

Western Temporary Services, Inc. and The Classic Company, Inc. 278 NLRB No. 073

[Es not denied due process in R proceeding by not receiving actual knowledge of amendment to ptn naming them as joint Es until day of R hearing, where GC issued C alleging them as joint Es over two weeks before R ptn amendment and hearing, one E in its answer to C admitted that other E controlled wages, hours, and working conditions of its Ees working for other E, and other E, through Ees employed by both Es, presented evidence at R hearing of relationship between Es, referral of Ees from one to other, and control each exercised over Ees involved]

6027 WITHDRAWAL OF PETITION

6027-2500 Basis of withdrawal

Kodak Area Hospital 278 NLRB No. 033

[where unit held appropriate was broader than unit requested by petitioner, petitioner allowed to withdraw its ptn and not participate in election in unit held appropriate, upon written notice to ALJ w/i ten days from date of ALJ's decision]

6034 DISMISSAL OF PETITION

6034-2000 Basis for dismissal

Middletown Hospital Association 282 NLRB No. 079

[rather than adopting ALJ's recommendation to sever R case from ULP case and to remand to RD, Bd dismissed R ptn where, in its exceptions to ALJ's decision finding petitioned-for unit inappropriate, U stated that if Bd found such unit inappropriate, as Bd did find herein, U no longer wished to proceed to election in different unit]

The Green-Wood Cemetery 280 NLRB No. 157

[where negotiated contract expressly excluded office clerical Ees in contract's recognition clause, consistent with U's certification, and, following card check, E voluntarily recognized U as representative of office clerical Ees and executed another contract containing number of provisions applicable to clericals only and deleted exclusion of office clericals from recognition clause, Bd found that merger of units took place into single overall unit and refused to allow decertification election among office clericals only as unit in such election must be coextensive with certified or recognized unit]

Gibbs & Cox, Inc. 280 NLRB No. 110

[where E in NY set up separate division in VA and after card check voluntarily recognized certified U of NY unit as bargaining representative for new unit and applied existing contract of NY unit to VA unit, and thereafter negotiated new multilocation unit contract containing provisions specifically applicable to VA unit, E violated Act by withdrawing recognition from U at VA location and implementing unilateral changes there since unit became *merged* with NY unit to create multilocation unit notwithstanding VA unit could have qualified as separate unit at time of recognition, and E had good-faith doubt that VA unit no longer desired U as bargaining rep]

Concourse Village, Inc. 276 NLRB No. 004

(unit clarifiction ptn dismissed as moot where E permanently laid off all security guards and subcontracted their work; U's charge that layoffs were unlawful was dismissed by RD, and U's appeal of the dismissal was denied)

Charrette Drafting Supplies Corporation 275 NLRB No. 177

(petitioned for unit of Ees at single store of dealer in art supplies held inappropriate and ptn dismissed, since store had no independent activity and was completely integrated with another of E's stores, where E's general manager supervised both stores and managers of each store had limited authority, stock for both stores was unloaded and reloaded at one store for other store, and there were frequent between Ees at both stores, and temporary transfers of Ees between stores)

Arden Electric, et al. 275 NLRB No. 095

(U's ptns seeking single-E units of Es who had participated in multi-E unit represented by E association held not proper for dismissal, where E-members and E association intended to limit latter's authority so as to bargain only with IBEW or other Us as determined by board of directors and, upon accepting petitioner's disclaimer and thereby agreeing to dissolution of multi-E unit, E association could not bind Es to multi-E bargaining relationship with substitute for petitioner)

Arden Electric, et al. 275 NLRB No. 095

(U's disclaimer resulting in dissolution of multi-E unit represented by E association and concurrent ptn for single E units held not to constitute unlawful whipsawing requiring dismissal of ptn, since any whipsaw-effect results from parties' relationship and from E association's decision to attempt to substitute on multi-E basis new U for disclaiming U; if alleged whipsawing were basis for dismissing ptns, w/o returning parties to status quo ante, Bd would preclude any inquiry into Es' consent to bargaining with substitute U and obligate them to multi-E unit bargaining they had never authorized)

Wright Memorial Hospital v. N.L.R.B. 771 F.2d 400 (C.A. 8, Aug. 1985)

(mtn to dismiss election ptn, allegedly because it was tainted and showing of interest was invalid, properly denied; ptn was not tainted by supervisors' pro-U activities where the activities did not coerce Ees to vote for U out of fear of retaliation, and allegedly invalid showing of interest was not basis for mtn, since it is determined administratively, not litigated by the parties, and does not determine U's majority status, which depends on outcome of election)

6034-4200 Effect of

Arden Electric, et al. 275 NLRB No. 095

(U's disclaimer resulting in dissolution of multi-E unit represented by E association and concurrent ptn for single E units held not to constitute unlawful whipsawing requiring dismissal of ptn, since any whipsaw-effect results from parties' relationship and from E association's decision to attempt to substitute on multi-E basis new U for disclaiming U; if alleged whipsawing were basis for dismissing ptns, w/o returning parties to status quo ante, Bd would preclude any inquiry into Es' consent to bargaining with substitute U and obligate them to multi-E unit bargaining they had never authorized)

6038 REINSTATEMENT OF PETITION

Passavant Health Center 278 NLRB No. 077

[where RD dismissed original RD ptns subject to reinstatement upon final disposition of earlier C allegations in accordance w/Bd's blocking charge procedures, and subsequently U and E entered into informal Bd settlement providing, inter alia, *nonadmissions* clause and statement E and U had entered into contract, such contract did not act as bar to reinstatement of RD ptns as date original ptns filed, rather than date of request that ptns be reinstated is controlling]

6041 CONSOLIDATION OF PROCEEDINGS

6041-3300 R case with C case

SDC Investment, Inc. 278 NLRB No. 097

[summary judgment for consolidated cases--objections to election and ULP allegations that tracked objections to elections--denied, and hearing before ALJ directed, notwithstanding E's attorney filed charge of its own in which he admitted that objections in pending RC case were identical to ULP charge he was filing. Bd held that it did not consider charge filed by E's attorney as admission that ULPs were actually committed and therefore could serve as basis for mtn for summary judgment, but rather was questionable procedural folderol to test hearing officer's authority to rule on matters in objections case which, if proven, would constitute ULP violation]

6054 CONSENT ELECTION AGREEMENTS

William Okie, Jr., et al. d/b/a Standby One Associate Center for Housing Partnerships 274 NLRB No. 140

(E's contesting of validity of consent election agreement in state bd conducted election on ground E did not make knowledgeable, meaningful consent to election held w/o merit, where none of E's objections that state agent failed to explain state and Bd jurisdiction, to state or explain Bd's requirements for voter eligibility, to investigate supervisory status of superintendents, and to prevent terminated superintendent from being placed on list of eligible voters raised issues which would require Bd to deny comity to state proceedings)

6054-6700 Agreements for determination of post election issues by Board

6054-6750 Stipulation of unit

Sunrise, A Community For The Retarded, Inc. 282 NLRB No. 035

[where stipulated unit at health care institution was defective on its face because it included professional RNs and nonprofessional Ees, but hearing officer proposed modifying unit by excluding RNs, to which E excepted on ground Bd had no authority to rewrite inclusions and exclusions in stipulated unit, Bd held defect could not be removed by modifying unit, and set aside election because of inappropriateness of unit, vacated stipulation and remanded to RD to process ptn by either assisting parties to agree on new stipulation or, in absence thereof, conducting hearing on unit issue]

6054-6750—Cont.

The Northern Virginia Solid Waste Collection District of Browning Ferris, Inc. 275 NLRB No. 049

(challenged ballot of *dispatcher* ordered to be opened and counted, since record evidence shows that he has daily contact with (unit) drivers, similar fringe benefits, and is subject to same rules and policies as unit Ees. *Community-of-interest* principles properly utilized where intent of parties was unclear from language of unit description in *stipulated-unit election* which did not include or exclude classification of dispatcher)

6054-8200 Circumstances warranting withdrawal from agreement

Hollywood Presbyterian Medical Center 275 NLRB No. 047

(E's contention raised for first time in post-election objections, that stipulated unit of professional Ees was inappropriate because it included nonprofessional Ees contrary to provisions of 9(b)(1), rejected, and direction of hearing on that issue reversed, since review of those classifications did not indicate they were not professional Ees and stipulated unit was binding on parties, not contrary to statute or Bd policy and safeguarded rights of professional Ees by providing them opportunity to vote for or against inclusion in nonprofessional unit)

6061 BLOCKING CHARGE POLICY

6061-3300 Pending charge of ULP affecting unit employees

6061-3333 Deferral of election where outcome might be affected

S.M.S. Automotive Products, Inc. 282 NLRB No. 006

[alleged unlawful contract held to be bar to election and *R* case held in abeyance pending resolution of ULP case; were RD to make determination in *R* case that contract was violative of 8(a)(2), such would be contrary to established Bd policy that ULP allegations are not properly litigable in *R* proceedings]

6061-3362 Dismissal of petition

Island Spring, Inc. 278 NLRB No. 130

[following dismissal of ULP allegations that were resolved pursuant to informal settlement agreement, Bd ordered election ptn reinstated and remanded case to RD to open and count ballots cast in election and issue appropriate certification; *Passavant Health Center* 278 NLRB No. 77, followed]

Passavant Health Center 278 NLRB No. 077

[where RD dismissed original RD ptns subject to reinstatement upon final disposition of earlier C allegations in accordance w/Bd's blocking charge procedures, and subsequently U and E entered into informal Bd settlement providing, inter alia, *nonadmissions* clause and statement E and U had entered into contract, such contract did not act as bar to reinstatement of RD ptns as date original ptns filed, rather than date of request that ptns be reinstated is controlling]

6061-3367 Not subject to waiver

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198

(U's written request to proceed with election notwithstanding pending 8(a)(3) charge held not waiver of such allegation as grounds for objecting to election, where parties were aware of charge at time of hearing and no 8(a)(2) or 8(a)(5) conduct was involved; Bd policy enables nonoffending party to proceed with election knowing that in event of adverse result, it could nevertheless object to election on basis of unlawful interference, regardless of prior knowledge of such conduct and regardless of whether ULP charges were filed)

6061-7900 Conduct of election after processing of charges

6061-7533 Dismissal of charges

Island Spring, Inc. 278 NLRB No. 130

[following dismissal of ULP allegations that were resolved pursuant to informal settlement agreement, Bd ordered election ptn reinstated and remanded case to RD to open and count ballots cast in election and issue appropriate certification; *Passavant Health Center* 278 NLRB No. 77, followed]

Passavant Health Center 278 NLRB No. 077

[where RD dismissed original RD ptns subject to reinstatement upon final disposition of earlier C allegations in accordance w/Bd's blocking charge procedures, and subsequently U and E entered into informal Bd settlement providing, inter alia, *nonadmissions* clause and statement E and U had entered into contract, such contract did not act as bar to reinstatement of RD ptns as date original ptns filed, rather than date of request that ptns be reinstated is controlling]

6061-7567 Remedying of violations

Island Spring, Inc. 278 NLRB No. 130

[following dismissal of ULP allegations that were resolved pursuant to informal settlement agreement, Bd ordered election ptn reinstated and remanded case to RD to open and count ballots cast in election and issue appropriate certification; *Passavant Health Center* 278 NLRB No. 77, followed]

6068 HEARING

6068-6000 Hearing Officer

6068-6067 Authority of

SDC Investment, Inc. 278 NLRB No. 097

[summary judgment for consolidated cases--objections to election and ULP allegations that tracked objections to elections--denied, and hearing before ALJ directed, notwithstanding E's attorney filed charge of its own in which he admitted that objections in pending RC case were identical to ULP charge he was filing. Bd held that it did not consider charge filed by E's attorney as admission that ULPs were actually committed and therefore could serve as basis for mtn for summary judgment, but rather was questionable procedural folderol to test hearing officer's authority to rule on matters in objections case which, if proven, would constitute ULP violation]

6068-8000 Procedural due process at hearing

Western Temporary Services, Inc. and The Classic Company, Inc. 278 NLRB No. 073

[Es not denied due process in R proceeding by not receiving actual knowledge of amendment to ptn naming them as joint Es until day of R hearing, where GC issued C alleging them as joint Es over two weeks before R ptn amendment and hearing, one E in its answer to C admitted that other E controlled wages, hours, and working conditions of its Ees working for other E, and other E, through Ees employed by both Es, presented evidence at R hearing of relationship between Es, referral of Ees from one to other, and control each exercised over Ees involved]

6081 DECISION ON PETITION

6081-6000 Decision by Board

6081-6050 Dismissal of petition

Middletown Hospital Association 282 NLRB No. 079

[rather than adopting ALJ's recommendation to sever R case from ULP case and to remand to RD, Bd dismissed R ptn where, in its exceptions to ALJ's decision finding petitioned-for unit inappropriate, U stated that if Bd found such unit inappropriate, as Bd did find herein, U no longer wished to proceed to election in different unit]

7000 POST-ELECTION PROCEDURE

7011 FILING OF CHALLENGES AND OBJECTIONS TO ELECTION

7011-2000 Time for filing

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research 793 F.2d 503 (C.A. 2, June 1986)

[Bd's contention that objections to unit should have been filed before election, rejected, since there was no cause for objection until voters learned that after election Bd had modified unit's scope from all-faculty to part-time faculty only and counted only latter's votes, so that voters were not properly informed at time of election]

7011-2001 Generally

N.L.R.B. v. Hudson Oxygen Therapy Sales Company 764 F.2d 729 (C.A. 9, June 1985)

(E's argument that its objection to election relating to its allegations that supervisor encouraged Ees and subordinate supervisors to sign authorization cards and to vote for U should have been considered by Bd, rejected where E failed to raise objection in timely fashion or otherwise give Bd reasonable notice of nature of objection, RD considered evidence that was before him and under Sec. 10(e), ct would have been w/o jurisdiction to hear supervisory taint claim)

7011-2050 Within 5 days of furnishing of tally of ballots

Clarence E. Clapp 279 NLRB No. 051

[purported objection to election by individual who claimed he was denied opportunity to vote when polls closed prior to time stated in Notice of Election not proper, since objection made by individual who cannot be a *party* to this proceeding. Objection, by letter, filed 8 days after date for *timely* filing and not served on E as required by Sections 102.8 and 102.69(a) of Bd's R/R]

Paintsville Hospital Company, Inc. 278 NLRB No. 107

[in hearing on challenged ballots consolidated with ULP case, ALJ properly denied E mtn to file objections to election, where E had filed no other timely objections to election, since objections must be filed with RD w/i 5 days of ballot tally]

7011-2050—Cont.

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[under *Burns International Security Services Inc.* 256 NLRB 959, while RD has discretion to determine scope of investigation of objections to election he/she can only consider after five day period after election, new objections based on investigation only if those objections were based on newly discovered or previously unavailable evidence relating to timely filed objections]

7011-8000 Obligation to furnish evidence in support of objections

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital 274 NLRB No. 124

(mtn for reconsideration asserting that Bd did not have entire record compiled by RD before it when it overruled E's exceptions to RD's Supplemental Report on Objections and Certification of Representatives, denied where E proffered no evidence to show RD's finding was erroneous; there was no evidence that alleged discrepancies (between units described in *Norris-Thermador* list and notices of elections) caused disenfranchisement of any Ee, let alone voter confusion)

7011-8080 Service on other parties

Clarence E. Clapp 279 NLRB No. 051

[purported objection to election by individual who claimed he was denied opportunity to vote when polls closed prior to time stated in Notice of Election not proper, since objection made by individual who cannot be a *party* to this proceeding. Objection, by letter, filed 8 days after date for *timely* filing and not served on E as required by Sections 102.8 and 102.69(a) of Bd's R/R]

7022 INVESTIGATION OF CHALLENGES AND OBJECTIONS

7022-1700 Regional Director's authority to resolve issues on basis of investigation

Kohler Food Service, Inc. 274 NLRB No. 166

(case remanded for hearing on whether two individuals active in decertification movement were supervisors after U presented evidence in its exception to RD's overruling of its objection that at least one of them was a supervisor; RD had based his determination that they were not supervisors on his conclusion to that effect in dismissing a concurrent ULP charge, and did not otherwise describe evidence relied upon)

7022-3300 Obligation of protesting party to furnish supporting evidence

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital 274 NLRB No. 124

(mtn for reconsideration asserting that Bd did not have entire record compiled by RD before it when it overruled E's exceptions to RD's Supplemental Report on Objections and Certification of Representatives, denied where E proffered no evidence to show RD's finding was erroneous; there was no evidence that alleged discrepancies (between units described in *Norris-Thermador* list and notices of elections) caused disenfranchisement of any Ee, let alone voter confusion)

7022-8000 Consideration of conduct not included in objections by parties

Bell Halter, Inc. 276 NLRB No. 136

(while not set forth as objection to election, E's pre-election discriminatory evaluation of Ee's job performance having been fully litigated, ALJ held it appropriate to consider impact of such conduct upon election, notwithstanding absence of specific objection on the point)

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[RD properly refused to consider hearsay evidence alleging Ee had made threatening statements to other Ees about consequences of U defeat, and that another Ee had been promised position of shop steward if U won election, submitted after original timely objections, since evidence entirely unrelated to timely objections of misrepresentation and E may not expand timely-filed objections by furnishing evidence of unrelated objections unless evidence was either newly discovered or previously unavailable]

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[under *Burns International Security Services Inc.* 256 NLRB 959, while RD has discretion to determine scope of investigation of objections to election he/she can only consider after five day period after election, new objections based on investigation only if those objections were based on newly discovered or previously unavailable evidence relating to timely filed objections]

N.L.R.B. v. Hudson Oxygen Therapy Sales Company 764 F.2d 729 (C.A. 9, June 1985)

(E's argument that its objection to election relating to its allegations that supervisor encouraged Ees and subordinate supervisors to sign authorization cards and to vote for U should have been considered by Bd, rejected where E failed to raise objection in timely fashion or otherwise give Bd reasonable notice of nature of objection, RD considered evidence that was before him and under Sec. 10(e), ct would have been w/o jurisdiction to hear supervisory taint claim)

7022-8300 Waiver of challenges or objections

Monarch Building Supply 276 NLRB No. 016

(E's objection to election that U had chosen a supervisor as an election observer overruled, since E had waived the objection and was estopped from raising the issue for the first time in postelection objections by its failure to comment or protest when U announced at the preelection conference that it would use as an observor an individual whom it considered a supervisor)

7033 HEARING ON CHALLENGES AND OBJECTIONS

7033-0100 Generally

Bekins Moving & Storage Co. 279 NLRB No. 109

[*even though hearing on objections investigative in nature, objecting party nevertheless has burden to bring forth evidence which will sustain allegations. Absent meeting such burden objections are to be overruled*]

Kusan Manufacturing Company, a division of Kusan, Inc. v. N.L.R.B. 749 F.2d 362 (C.A. 6, Dec. 1984)

(delay of 3-1/2 years between conduct of election and hearing held on E's objection, not prejudicial, as E presented no evidence to support claim of prejudice; furthermore, in every instance that U prevails in election, economic burden caused by any delay is borne by U and its Ees, not E)

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[no hearing required to determine voting eligibility of challenged Ee who Bd determined was ineligible as *casual Ee*, where prior to eligibility period Ee's status as part-time Ee was changed to that of on-call Ee and, as such, did not work during eligibility period; hence, nothing would be accomplished by holding hearing to determine if she enjoyed pattern of regular employment despite on-call status]

7033-1100 Required where substantial and material issues of fact

Van Leer Containers, Inc. 279 NLRB No. 079

[E's contention that it was denied due process because Bd allegedly failed to articulate its reasons for adopting RD's recommendation in prior *R* case, rejected, since Bd's Decision and Certification of Representative stated that Bd had considered E's objections, and that adoption of findings and recommendations of RD was based on review of the record, exceptions and briefs; further, RD properly denied E hearing on objections where RD assumed the truth of E's evidence and thus, an ex parte investigation was proper]

Farmtronix 274 NLRB No. 118

(remand for hearing on whether threats by pro-U Ees to blow up houses, beat up Ees and damage property, which E alleged as objections to election, created general atmosphere of fear of reprisal prior to election, since even accepting contention threats not attributable to U, there was sufficient evidence of widespread awareness of talk of violence, and in view of serious nature of alleged threats, which if proven, created atmosphere precluding free expression of choice)

Seth Thomas Division, General Time Corporation 274 NLRB No. 039

(where Bd had rejected E's affidavits included with documents submitted with its exceptions to RD's report on objections because they had not been served on U, which E had not done in order to preserve affidavits' confidentiality, but GC provided them to U by appending them to its mtn for summary judgment, Bd denied GC's mtn and remanded case to RD for hearing, since E's exceptions raised substantial and material issues of fact and law and established prima facie showing that U's and third parties' conduct created general atmosphere of fear and coercion)

N.L.R.B. v. Newly Weds Foods, Inc. 758 F.2d 4 (C.A. 1, Mar. 1985)

(RD did not err in refusing to hold evidentiary hearing on E's various objections where RD assumed E's version of relevant disputed factual matters and thoroughly investigated E's objections)

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[where Bd sustained challenge to Ee's ballot on ground she was *casual Ee*, but E claimed stipulation established her eligibility, ct held that, in view of broad scope of stipulation and E's failure to raise significant allegations before RD regarding U's understanding that Ee was to be included in stipulation by reference to *all Ees*, no material and substantial issue was raised below regarding parties' understanding and, therefore, no hearing was

7033-1100—Cont.

required on issue, and it was too late to raise potential fact questions on appeal]

7033-8800 Procedural due process at hearing

Vitek Electronics, Inc. v. N.L.R.B. 763 F.2d 561 (C.A. 3, June 1985)

(despite failure of Bd to follow ct remand and hold R hearing but instead held ULP hearing (Federal Rules of Evidence followed in latter), ct did not order another hearing since such action would have unduly delayed further the certification of representative, and also, no prejudice shown by form of hearing)

7055 HEARING OFFICER'S REPORT

7055-3300 Contents

7055-3325 Resolutions of credibility

Calplant Constructors, A Division of Calplant Engineering Service, Inc. 274 NLRB No. 043

(Bd reversed hearing officer's recommendation that objection to election be sustained on ground U representative's statement to Ee that *all initiation fees would be waived for Ees in bargaining unit at time of election* was ambiguous because word *unit* could be interpreted to mean *union*; and Bd remanded case to hearing officer for findings of fact, credibility resolutions, conclusions of law and recommendations to Bd concerning similar comment made to Ee in another instance, but hearing officer made no factual findings nor resolution of conflict in testimony over alleged statements)

7077 DECISION ON OBJECTIONS OR CHALLENGES

7077-2000 Decision by Regional Director

7077-2090 Consideration of conduct not included in objections

N.L.R.B. v. Hudson Oxygen Therapy Sales Company 764 F.2d 729 (C.A. 9, June 1985)

(E's argument that its objection to election relating to its allegations that supervisor encouraged Ees and subordinate supervisors to sign authorization cards and to vote for U should have been considered by Bd, rejected where E failed to raise objection in timely fashion or otherwise give Bd reasonable notice of nature of objection, RD considered evidence that was before him and under Sec. 10(e), ct would have been w/o jurisdiction to hear supervisory taint claim)

7077-4000 Review of Regional Director's decision

7077-4025 Effect of consent election agreement

Hollywood Presbyterian Medical Center 275 NLRB No. 047

(E's contention raised for first time in post-election objections, that stipulated unit of professional Ees was inappropriate because it included nonprofessional Ees contrary to provisions of 9(b)(1), rejected, and direction of hearing on that issue reversed, since review of those classifications did not indicate they were not professional Ees and stipulated unit was binding on parties, not contrary to statute or Bd policy and safeguarded rights of professional Ees by providing them opportunity to vote for or against inclusion in nonprofessional unit)

7077-6000 Decision by Board

7077-6015 Remand for processing consistent with Board's decision

Sunrise, A Community For The Retarded, Inc. 282 NLRB No. 035

[where stipulated unit at health care institution was defective on its face because it included professional RNs and nonprofessional Ees, but hearing officer proposed modifying unit by excluding RNs, to which E excepted on ground Bd had no authority to rewrite inclusions and exclusions in stipulated unit, Bd held defect could not be removed by modifying unit, and set aside election because of inappropriateness of unit, vacated stipulation and remanded to RD to process ptn by either assisting parties to agree on new stipulation or, in absence thereof, conducting hearing on unit issue]

J.C.L. Zigor Corporation 274 NLRB No. 213

(contrary to RD's recommendation, Bd found that commingling of challenged ballots with other ballots before determining eligibility of particular voters whose ballots would in some circumstances be determinative of election would make it impossible to ascertain the identity and eligibility of those individuals whose votes were crucial, thus precluding a determination as to whether they should be counted)

7077-6017 Remand for hearing or investigation of issues

Kohler Food Service, Inc. 274 NLRB No. 166

(case remanded for hearing on whether two individuals active in decertification movement were supervisors after U presented evidence in its exception to RD's overruling of its objection that at least one of them was a supervisor; RD had based his determination that they were not supervisors on his conclusion to that effect in dismissing a concurrent ULP charge, and did not otherwise describe evidence relied upon)

Industrial Agrico Processing, Inc. 274 NLRB No. 102

(R case (concerning objections and challenges) severred from companion consolidated C case and remanded to RD for taking of evidence on *special status* issue of certain Ees and their eligibility to vote where record does not indicate whether or not supervisor's relatives had special privileges or benefits not accorded other Ees in unit)

Calplant Constructors, A Division of Calplant Engineering Service, Inc. 274 NLRB No. 043

(Bd reversed hearing officer's recommendation that objection to election be sustained on ground U representative's statement to Ee that *all initiation fees would be waived for Ees in bargaining unit at time of election* was ambiguous because word *unit* could be interpreted to mean *union*; and Bd remanded case to hearing officer for findings of fact, credibility resolutions, conclusions of law and recommendations to Bd concerning similar comment made to Ee in another instance, but hearing officer made no factual findings nor resolution of conflict in testimony over alleged statments)

Seth Thomas Division, General Time Corporation 274 NLRB No. 039

(where Bd had rejected E's affidavits included with documents submitted with its exceptions to RD's report on objections because they had not been served on U, which E had not done in order to preserve affidavits' confidentiality, but GC provided them to U by appending them to its mtn for summary judgment, Bd denied GC's mtn and remanded case to RD for hearing, since E's exceptions raised substantial and material issues of fact and law and established prima facie showing that U's and third parties' conduct created general atmosphere of fear and coercion)

Seth Thomas Division, General Time Corporation 274 NLRB No. 039

(in finding that E's exceptions to RD's report on objections raised substantial and material issues of fact and law warranting remand for hearing, Bd did not rely on affidavits attached to E's exceptions and excluded from R proceeding record by Bd; and Bd found it unnecessary to decide whether examination of affidavits was required herein because they were attached to GC's mtn for summary judgment)

7077-6033 Remand for revised tally or for counting impounded ballots

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017

[Bd ordered revised tally of ballots and if U lost election, RD was directed to set election aside and direct new election where E discharged U supporter during critical period and announced new rule changes detrimental to Ee during critical period]

Ballou Brick Co. 277 NLRB No. 009

(challenges to ballots of 13 discriminatees overruled and RD directed to count their votes and if U had not obtained a majority, RD must set aside election and conduct a new election)

Moe Warehouse & Accessory 275 NLRB No. 165

Glover Bottled Gas Corp. 275 NLRB No. 096

(R case ordered severed from other two election-ULP cases with which it had been consolidated where R case remanded to RD for opening and counting of challenged ballots of unlawfully discharged Ees that might prove dispositive of election)

The Northern Virginia Solid Waste Collection District of Browning Ferris, Inc. 275 NLRB No. 049

(challenged ballot of *dispatcher* ordered to be opened and counted, since record evidence shows that he has daily contact with (unit) drivers, similar fringe benefits, and is subject to same rules and policies as unit Ees. *Community-of-interest* principles properly utilized where intent of parties was unclear from language of unit description in *stipulated-unit election* which did not include or exclude classification of dispatcher)

7077-6050 Direction of another election

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018

[where ALJ phrased necessity for second election in language customarily used in *Gissel* bargaining order case, Bd directed second election on basis of its finding that E's conduct destroyed laboratory conditions needed to ensure Ees' uninhibited choice of representative; Bd specifically noted that E's interrogation, threats of plant closure, threats of discharge, and solicitation of Ee to abandon U, constituting 8(a)(1) violations during critical period, were also basis of timely filed election objections]

Horizon Foods, Inc. 280 NLRB No. 127

[second election directed where E engaged in egregious violations involving unlawful interrogations, threats of reprisal, solicitation of grievances, promise of benefits, surveillance and discharges]

United States Aviex Company 279 NLRB No. 110

[Bd provided that if revised tally of opened and counted challenged ballots shows majority of valid votes had been cast for U, U's objections to election will be considered moot and appropriate certification of U will be issued;

7077-6050—Cont.

however, if tally shows majority of votes has not been cast for U, Bd ordered that election be set aside and new election be directed]

Lorimar Productions, Inc. **279 NLRB No. 036**
[second election directed pursuant to ct remand where ct found that proce dure followed by Bd in holding election while request for review was pending on scope of bargaining unit, significantly impaired conduct of election by misleading voters as to scope of unit, an issue essential to voters ability to cast an intelligent, voluntary vote]

Ballou Brick Co. **277 NLRB No. 009**
(challenges to ballots of 13 discriminatees overruled and RD directed to count their votes and if U had not obtained a majority, RD must set aside election and conduct a new election)

Noral Color Corporation **276 NLRB No. 061**
(election set aside and new election directed where E interrogated 3 Ees in a formal setting concerning their U sympathies, threatened Ee with loss of his job if the U were selected and the intensity of E's anti-U campaign made it highly probable that statements were transmitted to the entire unit)

Medina County Publications, Inc. **274 NLRB No. 127**
(Bd directed RD to conduct second election where Ee's ballot, whom ct found to be supervisor, was commingled with other ballots and was determinative of outcome of election)

Haynes Motor Lines, Inc. **273 NLRB No. 221**
(second election ordered where E threatened Ees with discharge and plant closure, unlawfully interrogated Ees concerning U activities and created impression of surveillance of U activities during critical period)

7077-6050-5000 To be held within 30 days

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center **275 NLRB No. 194**
(prior election set aside notwithstanding nursing assistants, whom RD had originally excluded from unit, were informed late in afternoon of day before election that they could vote challenged ballot (Bd having granted request for review) where over half of nursing assistants did not avail themselves of this option. Bd unwilling to presume that those who did not cast ballot did so out of indifference or neglect)

7077-6067 Certification of results

Kokomo Tube Company **280 NLRB No. 035**
[supervisor's unlawful threat to Ee *I guarantee E will shut down if U comes in* did not warrant setting election aside, where only ULP in critical period, occured 1 month prior to election and no evidence remark was disseminated]

7077-6083 Certification of representative

United States Aviex Company **279 NLRB No. 110**
[Bd provided that if revised tally of opened and counted challenged ballots shows majority of valid votes had been cast for U, U's objections to election will be considered moot and appropriate certification of U will be issued; however, if tally shows majority of votes has not been cast for U, Bd ordered that election be set aside and new election be directed]

Moe Warehouse & Accessory **275 NLRB No. 165**

7077-6091 Consideration of conduct not included in objections

McLean Roofing Company **276 NLRB No. 093**
(E's challenge to ballot of Ee not employed on eligibility date upheld where there was no C allegation that Ee was unlawfully denied employment, nor was issue litigated as ULP at hearing)

Iowa Lamb Corporation **275 NLRB No. 035**
(election not to be set aside if tally after opining of challenged ballots showed union lost, for conduct by E which RD had found objectionable where E's conduct was neither the subject of objections related to issue litigated, nor fully litigated at post-election hearing)

7077-6095 Disposition of objections to election

United States Aviex Company **279 NLRB No. 110**
[Bd provided that if revised tally of opened and counted challenged ballots shows majority of valid votes had been cast for U, U's objections to election will be considered moot and appropriate certification of U will be issued; however, if tally shows majority of votes has not been cast for U, Bd ordered that election be set aside and new election be directed]

7077-8000 Reconsideration of decision

Avis Rent-A-Car System, Inc. **281 NLRB No. 087**
[Bd majority denied mtn for reconsideration or reopening of record in case in which Bd had overruled E's objections to election; while agreeing with dissenting member that delay in issuing decision herein was unfortunate, majority noted that such delay did not reflect on Bd's substantive expertise]

Avis Rent-A-Car System, Inc. **281 NLRB No. 087**
[Bd majority denied mtn for reconsideration or reopening of record in case in which Bd had overruled E's objections to election; while agreeing with dissenting member that delay in issuing decision herein was unfortunate, majority noted that such delay did not reflect on Bd's substantive expertise]

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital **274 NLRB No. 124**
(mtn for reconsideration asserting that Bd did not have entire record compiled by RD before it when it overruled E's exceptions to RD's Supplemental Report on Objections and Certification of Representatives, denied where E proffered no evidence to show RD's finding was erroneous; there was no evidence that alleged discrepancies (between units described in *Norris-Thermador* list and notices of elections) caused disenfranchisement of any Ee, let alone voter confusion)

7077-8025 Reconsideration by Board in subsequent ULP proceeding

L & J Equipment Company, Inc. **278 NLRB No. 074**
[applying ct's agency test in its opinion on remand as law of the case, and finding that conduct of Ee organizing committee, found agent of U, and various other conduct not attributable to U had cumulative effect and combined to create coercive atmosphere interfering with Ees' free choice in election rendering election results invalid, Bd vacated earlier decision finding E unlawfully refused to bargain, dismissed C, reopened underlying R case, revoked U certification, and remanded to RD for appropriate action, including direction of new election if U wished to proceed to new election]

7088 RECORD

7088-1600 Where hearing held

Kline's Potato Chips, Inc. **274 NLRB No. 088**
(E's defense to refusal to bargain that Bd had ignored ct's mandate in *NLRB v. North Electric Co.* as to completeness of record in representation cases, rejected; Bd's revised regulations state that record in objections cases in which no hearing has been held include all documentary evidence relied on by RD except statements of witnesses, and Sec. 102.65(g)(1)(i) states that records in which a hearing has been held, as here, any material not listed is not part of the record, and statements of witnesses are not listed; thus certification of U herein was not invalidated by RD's failure to transmit statements of witnesses to Bd)

7088-3300 Where administrative investigation made

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital **274 NLRB No. 124**
(mtn for reconsideration asserting that Bd did not have entire record compiled by RD before it when it overruled E's exceptions to RD's Supplemental Report on Objections and Certification of Representatives, denied where E proffered no evidence to show RD's finding was erroneous; there was no evidence that alleged discrepancies (between units described in *Norris-Thermador* list and notices of elections) caused disenfranchisement of any Ee, let alone voter confusion)

7088-6700 Inclusion of affidavits

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital **274 NLRB No. 124**
(Bd *excludes from record investigatory affidavits of witnesses who have not testified at a hearing* in order to protect their *confidentiality* But see Bd's R/R Section 102.69(g)(3) concerning parties' opportunity to supplement record before Bd with documents including affidavits, previously submitted to RD which have not been forwarded to Bd)

Kline's Potato Chips, Inc. **274 NLRB No. 088**
(E's defense to refusal to bargain that Bd had ignored ct's mandate in *NLRB v. North Electric Co.* as to completeness of record in representation cases, rejected; Bd's revised regulations state that record in objections cases in which no hearing has been held include all documentary evidence relied on by RD except statements of witnesses, and Sec. 102.65(g)(1)(i) states that records in which a hearing has been held, as here, any material not listed is not part of the record, and statements of witnesses are not listed; thus certification of U herein was not invalidated by RD's failure to transmit statements of witnesses to Bd)

Seth Thomas Division, General Time Corporation **274 NLRB No. 039**
(in finding that E's exceptions to RD's report on objections raised substantial and material issues of fact and law warranting remand for hearing, Bd did not rely on affidavits attached to E's exceptions and excluded from R proceeding record by Bd; and Bd found it unnecessary to decide whether examination of affidavits was required herein because they were attached to GC's mtn for summary judgment)

N.L.R.B. v. Browning-Ferris Industries of Louisville, Inc. **803 F.2d 345 (C.A. 7, Oct. 1986)**
[it is the responsibility of party filing objections to election to file supporting affidavits with Bd. Here, Bd had before it affidavits that E proferred to RD, but not affidavits generated by RD in its investigation. E, while it may have been uncertain as to how it could file with Bd affidavits it did not have access to, should have raised its concerns before Bd at first opportunity--in underlying certification proceeding--rather than waiting until ULP proceeding]

7096 REOPENING RECORD AND REMAND

Avis Rent-A-Car System, Inc. **281 NLRB No. 087**

[Bd majority denied mtn for reconsideration or reopening of record in case in which Bd had overruled E's objections to election; while agreeing with dissenting member that delay in issuing decision herein was unfortunate, majority noted that such delay did not reflect on Bd's substantive expertise]

Avis Rent-A-Car System, Inc. **281 NLRB No. 087**

[Bd majority denied mtn for reconsideration or reopening of record in case in which Bd had overruled E's objections to election; while agreeing with dissenting member that delay in issuing decision herein was unfortunate, majority noted that such delay did not reflect on Bd's substantive expertise]

National Brands of Ft. Lauderdale, Inc. **277 NLRB No. 089**

(mtn for summary judgment in ULP proceeding granted, notwithstanding E's argument that Bd's Associate Executive Secretary had no standing, in underlying R case, to deny mtn to reopen record on alleged misrepresentations in pre-election letter, since Associate Executive Secretary, who signed denial of mtn, did so *by direction of the Board*

Monark Boat Company **276 NLRB No. 121**

(ALJ properly refused to expand scope of hearing where circuit ct specifically remanded certain objections for further hearing and consideration by Bd; and such objections, therefore, were only matters before Bd)

N.L.R.B. v. Monark Boat Company **800 F.2d 191 (C.A. 8, Aug. 1986)**

[ALJ's and Bd's limitation of scope of hearing on remand from ct to specific incidents alleged in nine objections, proper where remand was so limited, and E's attempt to expand scope by proffering unrelated evidence was in effect attempt to gain *second bite at the apple*]

8000 UNIT CLARIFICATION PROCEDURE

The Green-Wood Cemetery **280 NLRB No. 157**

[where negotiated contract expressly excluded office clerical Ees in contract's recognition clause, consistent with U's certification, and, following card check, E voluntarily recognized U as representative of office clerical Ees and executed another contract containing number of provisions applicable to clericals only and deleted exclusion of office clericals from recognition clause, Bd found that merger of units took place into single overall unit and refused to allow decertification election among office clericals only as unit in such election must be coextensive with certified or recognized unit]

Concourse Village, Inc. **276 NLRB No. 004**

(unit clarifiction ptn dismissed as moot where E permanently laid off all security guards and subcontracted their work; U's charge that layoffs were unlawful was dismissed by RD, and U's appeal of the dismissal was denied)

N.L.R.B. v. Magna Corporation **734 F.2d 1057 (C.A. 5, June 1984)**

[unit clarification procedure appropriate in determining inclusion of new full-time position of *plant storeroom specialist* in plant clerical unit, since new job classification represented a *substantial change* from former job, which was not included in unit, and included many additional responsibilities; unit clarification is appropriate for resolving disputes concerning placement of Ees who come w/i newly established job classifications or whose duties and responsibilities have undergone substantial changes which create doubt as to whether positions continue to fall in category, that Ees occupied in past]

N.L.R.B. v. Magna Corporation **734 F.2d 1057 (C.A. 5, June 1984)**

[deferral inappropriate to arbitrator's decision which held that Ee employed in new job classification did not share *community of interest* with plant clerical unit, since determination of questions of representation, accretion and appropriate units do not depend on contract interpretations but involve application of statutory policies and thus are matters for the Bd, not an arbitrator]

9000 AMENDMENT OF CERTIFICATION PROCEDURE

400 BARGAINING UNITS

401 GENERALLY

1200 STATUTORY OBJECTIVES IN DEFINING BARGAINING UNITS

2500 POWER AND DISCRETION OF BOARD

2501 GENERALLY

N.L.R.B. v. Carson Cable TV; et al. — 795 F.2d 879 (C.A. 9, July 1986)

[Bd is not strictly bound by prior decisions regarding unit determinations because such determinations are dependent on slight variations of fact in each case; and each decision ultimately rests on unique circumstances of case]

2525 BOARD AUTHORITY UNDER STATUTE

N.L.R.B. v. Action Automotive, Inc. — ———U.S.——— (U.S. S.CT, Feb. 1985)

[Bd's discretion in determining appropriate unit under authority vested in it by Sec. 9(b) is broad, reflecting Congress' recognition of need for flexibility in shaping unit to particular case; in defining bargaining units, Bd's focus is on whether Ees share *community of interest;* cohesive unit, which is relatively free of conflicts of interest, serves Act's purpose of collective bargaining and prevents minority interest group from being sumberged in overly large unit]

N.L.R.B. v. Action Automotive, Inc. — ———U.S.——— (U.S. S.CT, Feb. 1985)

[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held Bd's decision to exclude some family members is not inconsistent with fundamental structure or policies of Act; Congress has limited Bd's discretion to define bargaining units as it has done under Sec. 9(c)(5) making extent to which Ees have organized not controlling; but there is no express direction in Act that Bd define units only by reference to job-related benefits to Ee-relatives; and ct is not authorized to bind Bd in ways not mandated by Congress]

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research — 793 F.2d 503 (C.A. 2, June 1986)

[no deference to Bd's discretion in using Sec. 102.67(b) *vote and impound procedure* to segregate small full-time (10%) from overwhelming part-time faculty's vote w/o informing voters of reason where, pursuant to pre-election grant of request for review, Bd modified unit after election, since voters might have voted differently had they known of possible unit modification, and Bd could have avoided misinforming voters by developing another balloting process besides *vote and impound* procedure to allow voters to vote on U representation in alternative units]

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. — 802 F.2d 280 (C.A. 7, Sept. 1986)

[ct rejected Bd's conclusion below and argument before ct that E *waived* objection to appropriateness since 9(b) imposes nondelegable duty on Bd to determine appropriateness]

N.L.R.B. v. L & B Cooling, Inc. — 757 F.2d 236 (C.A. 10, Mar. 1985)

(Bd's conclusion that *extras* hired by E engaged in lettuce cooling business in prior growing season were not included in bargaining unit, is supported by substantial evidence in record even if E shows that another unit might be more appropriate)

2575 LIMITATIONS UPON AUTHORITY IMPOSED BY NLRA

2575-1460 Professional employees

2575-1450 May not be included in unit with nonprofessionals without self-determination election (See also 355-2260)

Sunrise, A Community For The Retarded, Inc. — 282 NLRB No. 035

[where stipulated unit at health care institution was defective on its face because it included professional RNs and nonprofessional Ees, but hearing officer proposed modifying unit by excluding RNs, to which E excepted on ground Bd had no authority to rewrite inclusions and exclusions in stipulated unit, Bd held defect could not be removed by modifying unit, and set aside election because of inappropriateness of unit, vacated stipulation and remanded to RD to process ptn by either assisting parties to agree on new stipulation or, in absence thereof, conducting hearing on unit issue]

Baldwin League of Independent Schools — 281 NLRB No. 134

[GC's mtn for summary judgment denied and case severed from remaining CA portions and remanded to RD where RD did not determine whether or not librarians were professional Ees to be included in unit with teachers found to be professional Ees; if RD finds librarians to be nonprofessional, *Sonotone* election must be conducted to determine whether teachers desire to have librarians included in unit, see *Sonotone Corp.*, 90 NLRB 1236 (1950)]

Gibbs & Cox, Inc. — 280 NLRB No. 110

[bargaining unit composed of professional and technical Ees held appropriate. While Bd will not, because of Sec. 9(b)(1), initially establish unit of professional and technical Ees w/o former being given opportunity to vote on inclusion in such unit, such combined units are not unlawful per se and will be upheld if unit was voluntarily created by parties and maintained by them for years]

Hollywood Presbyterian Medical Center — 275 NLRB No. 047

(E's contention raised for first time in post-election objections, that stipulated unit of professional Ees was inappropriate because it included nonprofessional Ees contrary to provisions of 9(b)(1), rejected, and direction of hearing on that issue reversed, since review of those classifications did not indicate they were not professional Ees and stipulated unit was binding on parties, not contrary to statute or Bd policy and safeguarded rights of professional Ees by providing them opportunity to vote for or against inclusion in nonprofessional unit)

2575-2800 Guards

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) — 755 F.2d 5 (C.A. 2, Feb. 1985)

(while Bd cannot compel an E to recognize mixed guard U as bargaining agent for unit of guards, E may voluntarily recognize mixed guard U as bargaining agent for unit; based on language and legislative history of Sec. 9(b)(3), Bd was warranted in interpreting section as proscribing Bd direction to an E to bargain with mixed guard U despite prior voluntary recognition)

2575-2825 May not be included in unit with other employees

Burns International Security Services, Inc. — 278 NLRB No. 070

[*Guards are fully entitled to representatives of their own choosing and to join and form labororganizations. Concomitantly, guard U is fully entitled to seek certification as representative of guard Ees and to include all guards in any appropriate units. Although provision restricts guards in their choice of bargaining representative, Section 9(b) requires that w/i three restrictions we are to assure Ees fullest freedom in exercising these rights. Accordingly, provision to Section 9(b), when read in context, requires that noncertiablity of guard U must be shown by definative evidence*]

Burns International Security Services, Inc. — 278 NLRB No. 070

[election ordered in unit of guards, since contention U admitted nonguards to membership, rejected, where E failed to show by definitive evidence that U had continued to represent or admit to membership any Ee determined not to be guard by agreement wtih U, or through appropriate Bd proceeding, and herein whether Ees which E contended were not guards were guards or not presented close question, which would be difficult to litigate; to apply Section 9(b)(3) in literal sense would preclude certification of national guard U, contrary to intent of Congress]

2575-2850 Union admitting employees other than guards to membership may not represent guards

MGM Grand Hotel, Las Vegas **274 NLRB No. 015**
(operators of building automation system used by E for fire protection, security functions, and engineering functions held guards, where operators were as closely involved in protecting E's property and enforcing security as were E's plainclothes officiers and uniformed guards; accordingly, U was barred from being certified as their representative)

2575-2875 Union affiliated with union representing other employees may not represent guards

Burns International Security Services, Inc. **278 NLRB No. 070**
[*Guards are fully entitled to representatives of their own choosing and to join and form labororganizations. Concomitantly, guard U is fully entitled to seek certification as representative of guard Ees and to include all guards in any appropriate units. Although provision restricts guards in their choice of bargaining representative, Section 9(b) requires that w/i three restrictions we are to assure Ees fullest freedom in exercising these rights. Accordingly, provision to Section 9(b), when read in context, requires that noncertiability of guard U must be shown by definative evidence*]

2575-4200 Supervisors

Burns International Security Services, Inc. **278 NLRB No. 070**
[lieutenants in guard service held supervisors, and excluded from unit, based on their authority to suspend guards, notwithstanding they had no authority to hire or fire]

Burns International Security Services, Inc. **278 NLRB No. 070**
[sergeants in guard service held supervisors, since they played significant role in evaluating and disciplining guards where they trained, retrained, evaluated probabtionary guards, have authority to give oral and writtenreprimands, notwithstanding no authority to suspend Ees]

3700 EFFECT OF ACTION BY OTHER AUTHORITIES

3750 STATE AGENCY ACTION

Renaissance West Community Mental Health Center **276 NLRB No. 050**
(Bd will not recognize validity of state-conducted election and certification unless 9(b)(1) provision has been followed in case of mixed unit of professional and nonprofessional Ees)

William Okie, Jr., et al. d/b/a Standby One Associates Center for Housing Partnerships **274 NLRB No. 140**
(Bd held it need not resolve status of working superintendent to determine that state bd conducted valid election in unit not repugnant to Act, where state bd permitted superintendent to cast challenged ballot, and its certification expressly excluded statutory supervisors; and, therefore, only issue herein concerns unit placement of superintendent; state bd's election reflected Ees' true desires and it should be recognized on that basis; and, as in Bd's similar situation, U and E are free to bargain over superintendent's status and, if that fails, unit clarification ptn may be filed)

William Okie, Jr., et al. d/b/a Standby One Associates Center for Housing Partnerships **274 NLRB No. 140**
(Bd did not consider issue raised by E's contention that state bd's conduct of election deviated from due process requirements, since E's arguments in support of such claim were previously made to state bd which carefully discussed and analyzed objections before overruling them; and Bd accords state bd elections and certifications same effect as Bd attaches to its own, provided state proceedings reflect true desires of affected Ees, election irregularities are not involved, and there has been no substantial deviation from due process requirements)

5000 EFFECT OF STIPULATIONS BY PARTIES TO BOARD PROCEEDINGS

5001 GENERALLY

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company **768 F.2d 151 (C.A. 7, July 1985)**
[pre-election agreements are binding upon Bd, and once it has approved agreement, Bd's role with respect to determining bargaining unit and voter eligibility is limited to construing agreement according to contract principles consistent with parties' intent; where pre-election stipulation is ambiguous as to whether challenged Ee was included w/i bargaining unit, stipulation is to be construed consistently with established Bd policy and Bd's *community of interest* standard for determining unit in absence of pre-election agreement]

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company **768 F.2d 151 (C.A. 7, July 1985)**
[inclusion or exclusion of Ees in unit per pre-election stipulation, clearly indicating which Ees are eligible to vote, may not contravene or violated Act or settled Bd policy; however, Bd is prohibited from applying *community of interest* standard to change result mandated by an unambiguous pre-election stipulation which does not contravene Act or Bd policy]

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company **768 F.2d 151 (C.A. 7, July 1985)**
[since use of general or all-inclusive term *all Ees* in stipulation does not evidence clear intent to include all Ees not expressly excluded, Bd can properly resolve ambiguity by applying community of interest standard; however, Bd is precluded from applying such standard where stipulation contains relatively specific terminology which identifies particular class of Ees]

5050 STIPULATIONS BY PARTIES NOT INCLUDING RD

5050-3300 Stipulations as to scope

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center **275 NLRB No. 194**
(where parties stipulated to exclude all other enumerated categories of Ees from service & maintenance unit, Bd held appropriate unit should include nurses aides and orderlies as they were not among the enumerated categories to be excluded. Further disparities of interest not so great to cause their exclusion and direct versus indirect patient care functions not valid basis for making unit determinations in health care industry)

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company **768 F.2d 151 (C.A. 7, July 1985)**
[while other evidence of intent regarding voting eligibility of particular Ee may come from outside pre-election stipulation itself, *Excelsior* list is of little help in determining intended scope of stipulation, and submission into evidence of list does not preclude U ballot challenges since list is required for U's benefit; and to allow use of extremely broad language in standard pre-election stipulation combined with naming of specific Ee in *Excelsior* list to preclude ballot challenge to named Ee would severely undermine Bd's important and proper role in regulating elections]

5050-6700 Stipulations as to composition

Sunrise, A Community For The Retarded, Inc. **282 NLRB No. 035**
[where stipulated unit at health care institution was defective on its face because it included professional RNs and nonprofessional Ees, but hearing officer proposed modifying unit by excluding RNs, to which E excepted on ground Bd had no authority to rewrite inclusions and exclusions in stipulated unit, Bd held defect could not be removed by modifying unit, and set aside election because of inappropriateness of unit, vacated stipulation and remanded to RD to process ptn by either assisting parties to agree on new stipulation or, in absence thereof, conducting hearing on unit issue]

5075 STIPULATIONS IN CONSENT AGREEMENT APPROVED BY RD

5075-0100 Generally

N.L.R.B. v. Barker Steel Company, Inc. **800 F.2d 284 (C.A. 1, Sept. 1986)**
[if dispute arises concerning Ee's eligibility to vote in stipulated unit election, Bd's function limited to ascertaining parties' intent with regard to disputed Ee. If intent of parties is expressed in stipulation in clear and unmistakable terms, Bd will hold parties to their literal agreement. If stipulation is ambiguous, primary question is what parties meant. Thus, Bd has authority to interpret agreement according to what it finds to have been intent of parties]

N.L.R.B. v. Barker Steel Company, Inc. **800 F.2d 284 (C.A. 1, Sept. 1986)**
[Bd erred in overruling challenge to ballot as name not on eligibility list, and stipulation for consent election agreed upon by parties: 1) named E different from one where Ee works (fact Bd found single E relationship not relevant); 2) stated Ees employed by named E were the ones parties intended to include in appropriate unit; 3) E's payroll was designated as basis for preparing eligibility list; 4) named E signed stip w/ U; and 5) description of E does not fit voter's E. Thus, stip clear on its face that intent of parties was that Ees of other E not eligible to vote and Bd must hold parties to their literal agreement]

5075-6700 Stipulations as to composition

ACL Corporation d/b/a Atlanta Hilton & Towers **278 NLRB No. 076**
[E's withdrawal of recognition from U and refusal to bargain, on grounds unit was inappropriate, notwithstanding it agreed to stipulation for certification 5 years prior, violative, since unit in stipulation was approved by RD and unit on its face, did not violate any express statutory provision or established Bd policy; further, although Bd is required under 9(b) to determine appropriate unit, fact that RD initially approved stipulation signifies that unit was not contrary to Act or established Bd policy]

The Northern Virginia Solid Waste Collection District of Browning Ferris, Inc. **275 NLRB No. 049**
(challenged ballot of *dispatcher* ordered to be opened and counted, since record evidence shows that he has daily contact with (unit) drivers, similar fringe benefits, and is subject to same rules and policies as unit Ees. *Commu-*

5075-6700—Cont.

nity-of-interest principles properly utilized where intent of parties was unclear from language of unit description in *stipulated-unit election* which did not include or exclude classification of dispatcher)

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[while other evidence of intent regarding voting eligibility of particular Ee may come from outside pre-election stipulation itself, *Excelsior* list is of little help in determining intended scope of stipulation, and submission into evidence of list does not preclude U ballot challenges since list is required for U's benefit; and to allow use of extremely broad language in standard pre-election stipulation combined with naming of specific Ee in *Excelsior* list to preclude ballot challenge to named Ee would severely undermine Bd's important and proper role in regulating elections]

7500 CRITERIA FOR DETERMINATION OF UNIT SCOPE AND COMPOSITION

7550 EMPLOYEE COMMUNITY OF INTEREST CONTROLLING

The Royal Sonesta, Inc. d/b/a Royal Laundry 277 NLRB No. 085

(Ees designated as *valets* held included in unit where stipulated unit description included job title *valet* and there was clear objective to include these Ees in unit and parties were bound by their stipulation; it is only when objective intent cannot be discerned that Bd finds party's subjective intent relevant and consequently considers community of interest factors)

Donnie M. Parris, A Sole Proprietorship d/b/a D & B Masonry 275 NLRB No. 193

(Ees who were employed by E intermittently w/o reasonable expectation of recall from layoff w/i reasonable period of time found casual Ees w/o community of interest with regular Ee and therefore not part of unit with him)

The Northern Virginia Solid Waste Collection District of Browning Ferris, Inc. 275 NLRB No. 049

(challenged ballot of *dispatcher* ordered to be opened and counted, since record evidence shows that he has daily contact with (unit) drivers, similar fringe benefits, and is subject to same rules and policies as unit Ees. *Community-of-interest* principles properly utilized where intent of parties was unclear from language of unit description in *stipulated-unit election* which did not include or exclude classification of dispatcher)

Shepherd's Uniform and Linen Supply Co. 274 NLRB No. 200

(U's contention that vocational education students did not share community of interest with unit Ees because shcool's guidelines for participation in program removed control over student Ees from E, rejected, since degree of control did not prevent them from sharing community of interest with unit Ees where students performed same duties, worked under same supervision, received same wages and benefits as unit Ees and E encouraged them to continue employment upon completion of the program and student had more of employment relationship with E rather than educational because he was not learning skill)

N.L.R.B. v. DMR Corp. and Harrill Electric Contractors, Inc. 795 F.2d 472 (C.A. 5, July 1986)

[in assessing Ees' community of interests, Bd must consider entire factual situation, and its discretion is not limited by requirement that its judgment by supported by all, or even most, of potentially relevant factors; therefore, harmonizing cases into uniform pattern is not wholly feasible, because of factual nature of determination, broad discretion in agency in making one of several acceptable choices, and limited scope of correctly applied judicial scrutiny]

N.L.R.B. v. Magna Corporation 734 F.2d 1057 (C.A. 5, June 1984)

[Bd's inclusion of *plant storeroom specialist*, a newly created and substantially changed job classification, in unit of plant clericals in unit clarification proceeding was inappropriate and case remanded, where Bd did not apply *community of interest standard* in determining community of interests between bargaining unit Ees and new job classification]

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[until Bd expressly modifies or repudiates rule that Ees in dealership's parts and service departments should be in *same* bargaining unit, *unless* there is affirmative showing that there is no substantial community of interest between 2 groups of Ees, Bd is bound by such rule]

7575 HEALTH CARE INSTITUTIONS

7575-2500 Direct versus indirect patient care

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center 275 NLRB No. 194

(concept of direct (RNs, LPNs, nursing assistants) versus indirect patient care (service and maintenance Ees) as basis for making unit determinations in health care institutions, rejected)

7575-5000 Disparity among community of interest elements

North Arundel Hospital Association, Inc. 279 NLRB No. 048

[separate unit of registered nurses was inappropriate and all professional unit including registered nurses was smallest appropriate unit where it was not established that there were *sharper than usual differences* between terms and conditions of employment of registered nurses and other professional Ees]

Baker Hospital, Inc. 279 NLRB No. 038

[applying disparity-of-interest analysis to sought-for unit of hospital Ees, Bd found insufficient disparity of interests between office clericals and service and maintenance and technical Ees unit to justify exclusion of clericals from unit, where clericals had significant, work-related contact with unit Ees and shared many terms and conditions of employment with them; hence, there was no *sharper than usual differences* to demonstrate disparity of interests justifying clericals' exclusion]

Kodiak Area Hospital 278 NLRB No. 033

[on remand unit of professionals at hospital, including pharmacists, medical labaratory technologists, nurse anesthetists, social service director, and registered nurses, held appropriate, rather than separate unit of registered nurses, since separate unit of registered nurses did not meet sharper than usual differences from other Ees required to justify separate units at health care facilities, in light of *St. Francis II*, 271 NLRB 948, where all professional Ees subject to same personnel policies and procedures, and in view of overlap of functions and regular contact among professional Ees]

The Community Hospital at Glen Cove 278 NLRB No. 018

[separate unit of maintenance Ees inappropriate and unit consisting of those Ees and other non-professional Ees is only appropriate unit under *disparity of interests* test where petitioned-for unit consisted of only 30 out of 1100 Ees, various other non-professional Ees also possessed special skills i.e. EKG Technicians and Lab Technicians etc., pay grades and fringe benefits were the same, hospital had central labor relations policy and maintenance workers had frequent contact with other non-professional Ees]

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center 275 NLRB No. 194

(appropriateness of petitioned-for-units is judged in terms of normal criteria, but sharper than usual differences (or *disparities*) between wages, hours, and working conditions, etc., of the requested Ees and those in overall professional or nonprofessional unit must be established to grant the unit)

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center 275 NLRB No. 194

(where parties stipulated to exclude all other enumerated categories of Ees from service & maintenance unit, Bd held appropriate unit should include nurses aides and orderlies as they were not among the enumerated categories to be excluded. Further disparities of interest not so great to cause their exclusion and direct versus indirect patient care functions not valid basis for making unit determinations in health care industry)

Southern Maryland Hospital Center, Inc. 274 NLRB No. 212

(unit of technical Ees appropriate rather than unit of technical, service, maintenance and other nonprofessional Ees, since there was disparity of interests between technical, service, maintenance and nonprofessional Ees, where there were *sharper than usual* differences in wages and working conditions, technical Ees required special training, were highly skilled and rarely-transferred between other Ee groups; further, fact that some interchange existed between technical and nontechnical Ees because of *team* concept of patient care was irrelevant since much contact involved mere delivery of materials or messages by service Ees)

St. Luke's Memorial Hospital 274 NLRB No. 202

(Bd held petitioned-for unit of licensed practical nurses, inappropriate; contrary to RD's finding that separate bargaining history continues to be relevant and controlling factor in unit determination, Bd held that, under *St. Francis*, 271 NLRB No. 160, bargaining history is relevant but *not* controlling in that it is to be considered along with all other relevant factors in determining whether under disparity of interests test, unit is appropriate in health care industry)

St. Francis Medical Center JD-(SF)-069-85

[upon further consideration in light of *St. Francis Hospital*, 371 NLRB 948, separate unit of registered nurses at acute care hospital held inappropriate and ptn dismissed, and smallest appropriate unit would be unit of all professional Ees, especially in view of cooperation among professionals in interdisciplinary approach to health care, and lack of any sharper than usual difference between wages, hours, working conditions of registered nurses and other professionals]

8700 EFFECT UPON DETERMINATION OF IMMINENT CHANGE IN EMPLOYER'S OPERATION

420 FACTORS RELEVANT TO DETERMINATION OF SCOPE OR COMPOSITION OF UNIT

0100 GENERALLY

N.L.R.B. v. Paper Manufacturers Company, et al. 786 F.2d 163 (C.A. 3, Mar. 1986)

[*factors relevant to determination of appropriate bargaining unit include (1) integration of operations (2) centralization of managerial and administrative control (3) geographic proximity (4) similarity of working conditions, skill, and functions (5) common control over labor relations (6) collective bargaining history, and (7) interchangeability of Ees*]

0150 PRESUMPTION OF APPROPRIATENESS OF 9(b) UNITS

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[where U requested and Bd designated multi-location unit as appropriate, presumption that single location unit is appropriate does not apply but only works to assure that Bd determination that smaller unit is appropriate will almost never be subject to challenge; consequently, Bd herein was not required to *rebut* any presumptive appropriateness of single location units]

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(Bd's conclusion that *extras* hired by E engaged in lettuce cooling business in prior growing season were not included in bargaining unit, is supported by substantial evidence in record even if E shows that another unit might be more appropriate)

0600 PRIOR UNIT DETERMINATION

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[until Bd expresly modifies or repudiates rule that Ees in dealership's parts and service departments should be in *same* bargaining unit, *unless* there is affirmative showing that there is no substantial community of interest between 2 groups of Ees, Bd is bound by such rule]

0642 PRIOR BOARD DETERMINATION OR CERTIFICATION IN R CASE

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[Bd is not strictly bound by prior decisions regarding unit determinations because such determinations are dependent on slight variations of fact in each case; and each decision ultimately rests on unique circumstances of case]

0684 DETERMINATION OF STATE AGENCIES

Renaissance West Community Mental Health Center 276 NLRB No. 050

(Bd will not recognize validity of state-conducted election and certification unless 9(b)(1) provision has been followed in case of mixed unit of professional and nonprofessional Ees)

1200 BARGAINING HISTORY AND PRACTICE

1201 GENERALLY

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119

[*single location unit presumptively appropriate, absent controlling history of bargaining on broader basis*]

St. Luke's Memorial Hospital 274 NLRB No. 202

(Bd held petitioned-for unit of licensed practical nurses, inappropriate; contrary to RD's finding that separate bargaining history continues to be relevant and controlling factor in unit determination, Bd held that, under *St. Francis*, 271 NLRB No. 160, bargaining history is relevant but *not* controlling in that it is to be considered along with all other relevant factors in determining whether under disparity of interests test, unit is appropriate in health care industry)

1209 BARGAINING HISTORY IN APPROPRIATE UNIT

The Green-Wood Cemetery 280 NLRB No. 157

[where negotiated contract expresly excluded office clerical Ees in contract's recognition clause, consistent with U's certification, and, following card check, E voluntarily recognized U as representative of office clerical Ees and executed another contract containing number of provisions applicable to clericals only and deleted exclusion of office clericals from recognition clause, Bd found that merger of units took place into single overall unit and refused to allow decertification election among office clericals only as unit in such election must be coextensive with certified or recognized unit]

Gibbs & Cox, Inc. 280 NLRB No. 110

[where E in NY set up separate division in VA and after card check voluntarily recognized certified U of NY unit as bargaining representative for new unit and applied existing contract of NY unit to VA unit, and thereafter negotiated new multilocation unit contract containing provisions specifically applicable to VA unit, E violated Act by withdrawing recognition from U at VA location and implementing unilateral changes there since unit became *merged* with NY unit to create multilocation unit notwithstanding VA unit could have qualified as separate unit at time of recognition, and E had good-faith doubt that VA unit no longer desired U as bargaining rep]

Gibbs & Cox, Inc. 280 NLRB No. 110

[Bd accorded greater weight to history of meaningful bargaining --4 years as bargaining representative and one negotiated contract-- over factors supporting shared community of interest at single location when it held that merger took place between two potentially separate units to create single multilocation unit]

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. 276 NLRB No. 070

(separate units of operating engineers performing same and gravel pit operations and operating engineers performing highway construction found appropriate where, although Ees worked for two highly integrated companies found single E, and Ees shared community of interest, industry had history of separate units for two types of companies, and companies had history of separate U contract with different wages and benefits; Ees who worked for both companies at different times were compensated according to the U contract covering the unit of which they formed a part at that time)

Rock-tenn Company, Mill Division, Inc. and Rock-Tenn Company (Partition Division) 274 NLRB No. 114

(former two-plant unit of Ees at paper mill and partition plant, found no longer appropriate on basis of completely separate corporate and operational structure, lack of functional integration between paper mill and partition plant, decentralized labor relations and absence of Ee interchange or contact; *compelling circumstances* existed for disregarding bargaining history on two-plant basis where significant changes in organizational structure and operations of two plants occurred which negate any community of interest that may have existed previously among Ees)

ICI Americas, Inc. JD-328-85

(circumstances, such as U.S. Army's action in splitting bargaining unit in instant case, occurring after (Bd) certification may affect appropriateness of unit and negate long history of collective bargaining)

1218 ABSENCE OF BARGAINING HISTORY

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119

[unit of candy attendants, cashiers, and usher/doormen at one E's movie theatres, appropriate, rather than area wide unit, absent history of bargaining on broader basis or interchange of Ees among locations, and where manager at each location had full responsibility for day to day operations, hiring, firing, disciplining of Ees, notwithstanding E's labor policies formulated on national scale]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[in case involving appropriateness of multi-location unit, ct held that where there is no history of bargaining at any of the locations, and no other U

1218—Cont.

seeks to represent Ees, Bd may reasonably give some weight to petitioning U's desires for representation on multi-location basis]

1227 EMPLOYEES COVERED BY EXISTING CONTRACT

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170

[where E's ans to C denied knowledge sufficient to form belief as to truth or falsity of allegation regarding appropriateness of unit, ALJ held unit description in C was correct and appropriate, consistent with that described in contract between E and U]

1245 BARGAINING HISTORY OF EMPLOYER'S PREDECESSOR

Hotel & Restaurant Employees, Local 19 (Vicorp Restaurants, Inc. d/b/a Seasons Restaurant) 277 NLRB No. 090

(bargaining units of Ees identical to units of predecessor E's Ees appropriate for collective-bargaining purposes w/i meaning of Sec. 9)

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[ct rejected Bd's argument that it could rely on bargaining history of predecessor alone to find unit was appropriate; Bd must examine facts and cannot simply rely on attenuated inference based on bargaining history of predecessor in absence of necessary factual predicate]

1281 BARGAINING PRACTICE IN INDUSTRY

Victor Black, Inc. and Syracuse Sand and Gravel, Inc. 276 NLRB No. 070

(separate units of operating engineers performing sand and gravel pit operations and operating engineers performing highway construction found appropriate where, although Ees worked for two highly integrated companies found single E, and Ees shared community of interest, industry had history of separate units for two types of companies, and companies had history of separate U contract with different wages and benefits; Ees who worked for both companies at different times were compensated according to the U contract covering the unit of which they formed a part at that time)

1700 REASONS FOR DISREGARD OF BARGAINING HISTORY

1787 BARGAINING HISTORY CONTRARY TO BOARD POLICY

St. Luke's Memorial Hospital 274 NLRB No. 202

(Bd held petitioned-for unit of licensed practical nurses, inappropriate; contrary to RD's finding that separate bargaining history continues to be relevant and controlling factor in unit determination, Bd held that, under *St. Francis*, 271 NLRB No. 160, bargaining history is relevant but *not* controlling in that it is to be considered along with all other relevant factors in determining whether under disparity of interests test, unit is appropriate in health care industry)

2300 CHANGED CIRCUMSTANCES SINCE PRIOR DETERMINATION OR HISTORY

2305 IN OPERATIONS

Ramada Inns, Inc. d/b/a Ramada Beverly Hills 278 NLRB No. 095

[in finding overall unit of hotel personnel, rather than separate units appropriate, Bd did not rely on prior RD decision finding separate units appropriate, where E's operation did not remain essentially unchanged but was substantially more centralized in its administration, particularly in personnel and labor relations, than it was previously when RD issues his decision]

2310 IN OWNERSHIP

Hotel & Restaurant Employees, Local 19 (Vicorp Restaurants, Inc. d/b/a Seasons Restaurant) 277 NLRB No. 090

(bargaining units of Ees identical to units of predecessor E's Ees appropriate for collective-bargaining purposes w/i meaning of Sec. 9)

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[under Act, appropriateness of unit and continuity between structure and operation of predecessor and successor are to be determined independently; fact that some of same evidence may bear on both questions does not mean that two are continuous; there may have been substantial continuity between businesses as whole, but changes made to specific department may call for reconsideration of appropriateness determination]

2315 IN REORGANIZATION

Rock-tenn Company, Mill Division, Inc. and Rock-Tenn Company (Partition Division) 274 NLRB No. 114

(former two-plant unit of Ees at paper mill and partition plant, found no longer appropriate on basis of completely separate corporate and operational structure, lack of functional integration between paper mill and partition plant, decentralized labor relations and absence of Ee interchange or contact; *compelling circumstances* existed for disregarding bargaining history on two-plant basis where significant changes in organizational structure and operations of two plants occurred which negate any community of interest that may have existed previously among Ees)

2320 IN PLANT LOCATION

N.L.R.B. v. Paper Manufacturers Company, et al. 786 F.2d 163 (C.A. 3, Mar. 1986)

[move of medical packaging division to same facility where regular packaging products manufactured w/i certification year not such changed circumstances that would justify E's refusal to bargain with U certified as representative of medical packaging Ees prior to move, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions, skills, and functions, with exception of two maintenance Ees, separate and distinct, no interchange of Ees; contention relocated Ees accretion to Ees in other division at same facility and represented by another U, rejected]

2325 IN UNIT SIZE

Donnie M. Parris, A Sole Proprietorship d/b/a D & B Masonry 275 NLRB No. 199

(unit reduced to one-man no longer appropirate under statute)

2370 NEW PLANT OR LOCATION

N.L.R.B. v. Paper Manufacturers Company, et al. 786 F.2d 163 (C.A. 3, Mar. 1986)

[move of medical packaging division to same facility where regular packaging products manufactured w/i certification year not such changed circumstances that would justify E's refusal to bargain with U certified as representative of medical packaging Ees prior to move, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions, skills, and functions, with exception of two maintenance Ees, separate and distinct, no interchange of Ees; contention relocated Ees accretion to Ees in other division at same facility and represented by another U, rejected]

2375 NEW OPERATION AT PLANT

N.L.R.B. v. Paper Manufacturers Company, et al. 786 F.2d 163 (C.A. 3, Mar. 1986)

[move of medical packaging division to same facility where regular packaging products manufactured w/i certification year not such changed circumstances that would justify E's refusal to bargain with U certified as representative of medical packaging Ees prior to move, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions, skills, and functions, with exception of two maintenance Ees, separate and distinct, no interchange of Ees; contention relocated Ees accretion to Ees in other division at same facility and represented by another U, rejected]

2900 SIMILARITY OF TERMS AND CONDITIONS OF EMPLOYMENT

2901 GENERALLY

N.L.R.B. v. DMR Corp. and Harrill Electric Contractors, Inc. 795 F.2d 472 (C.A. 5, July 1986)

[indicia which ultimately determine whether E-wide unit of 2 groups of electricians constitute appropriate bargaining unit are similarity of their work, skills, qualifications, duties and working conditions, centralized local control of labor policies which most immediately affect interest of Ees involved and common supervision]

2906 DIFFERENT WAGE RATES

Lycee Francais de New York 273 NLRB No. 191

(Bd found improper inclusion of certain Ees (exchange visitors) who are on leave from French Ministry of Education (Ministry) to teach at E for up to 3 years because they did not enjoy community of interest with locally hired Ees as they must comply with French rules of their profession, can be discharged only with permission of Ministry, are evaluated by Ministry, continue their French pension and health care plans, work same hours as in France and no taxes paid first 2 years)

2918 DIFFERENT HOURS OF WORK

Lycee Francais de New York 273 NLRB No. 191

(Bd found improper inclusion of certain Ees (exchange visitors) who are on leave from French Ministry of Education (Ministry) to teach at E for up to 3 years because they did not enjoy community of interest with locally hired

2918—Cont.

Ees as they must comply with French rules of their profession, can be discharged only with permission of Ministry, are evaluated by Ministry, continue their French pension and health care plans, work same hours as in France and no taxes paid first 2 years)

2924 DIFFERENT FRINGE BENEFITS

Lycee Francais de New York 273 NLRB No. 191

(Bd found improper inclusion of certain Ees (exchange visitors) who are on leave from French Ministry of Education (Ministry) to teach at E for up to 3 years because they did not enjoy community of interest with locally hired Ees as they must comply with French rules of their profession, can be discharged only with permission of Ministry, are evaluated by Ministry, continue their French pension and health care plans, work same hours as in France and no taxes paid first 2 years)

2930 DIFFERENT WORKING CONDITIONS

Lycee Francais de New York 273 NLRB No. 191

(Bd found improper inclusion of certain Ees (exchange visitors) who are on leave from French Ministry of Education (Ministry) to teach at E for up to 3 years because they did not enjoy community of interest with locally hired Ees as they must comply with French rules of their profession, can be discharged only with permission of Ministry, are evaluated bu Ministry, continue their French pension and health care plans, work same hours as in France and no taxes paid first 2 years)

2936 SEPARATE SUPERVISION

Save Mart of Modesto, Inc. JD-(SF)-25-85

]*accretion* to present unit of Ees outweighed by 2 significant factors--absence of interchange or regular contact between meat department Ees in new store and meat department Ees in E's other stores notwithstanding occasional use of floaters and lack of common day-to-day supervision over Ees of different stores as each one is autonomous)

3400 CHARACTERISTICS OF EMPLOYEES

4000 EMPLOYER'S ADMINISTRATIVE STRUCTURE

4025 CENTRAL CONTROL OF LABOR RELATIONS

Ramada Inns, Inc. d/b/a Ramada Beverly Hills 278 NLRB No. 095

[in finding overall unit of hotel personnel, rather than separate units appropriate, Bd did not rely on prior RD decision finding separate units appropriate, where E's operation did not remain essentially unchanged but was substantially more centralized in its administration, particularly in personnel and labor relations, than it was previously when RD issued his decision]

4075 CLASSIFICATION OF EMPLOYEES

The Royal Sonesta, Inc. d/b/a Royal Laundry 277 NLRB No. 085

(Ees designated as *valets* held included in unit where stipulated unit description included job title *valet* and there was clear objective to include these Ees in unit and parties were bound by their stipulation; it is only when objective intent cannot be discerned that Bd finds party's subjective intent relevant and consequently considers community of interest factors)

4600 EXTENT OF INTEGRATION OF OPERATION

4617 HIGHLY INTEGRATED OPERATIONS

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. 276 NLRB No. 070

(separate units of operating engineers performing same and gravel pit operations and operating engineers performing highway construction found appropriate where, although Ees worked for two highly integrated companies found single E, and Ees shared community of interest, industry had history of separate units for two types of companies, and companies had history of separate U contract with different wages and benefits; Ees who worked for both companies at different times were compensated according to the U contract covering the unit of which they formed a part at that time)

4633 LITTLE OR NO INTEGRATION OF OPERATION

Save Mart of Modesto, Inc. JD-(SF)-25-85

]*accretion* to present unit of Ees outweighed by 2 significant factors--absence of interchange or regular contact between meat department Ees in new store and meat department Ees in E's other stores notwithstanding occasional use of floaters and lack of common day-to-day supervition over Ees of different stores as each one is autonomous)

5000 EXTENT OF CONTACT BETWEEN EMPLOYEES

5027 FREQUENT INTERCHANGE OR TRANSFER OF THE EMPLOYEES

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. 276 NLRB No. 070

(separate units of operating engineers performing same and gravel pit operations and operating engineers performing highway construction found appropriate where, although Ees worked for two highly integrated companies found single E, and Ees shared community of interest, industry had history of separate units for two types of companies, and companies had history of separate U contract with different wages and benefits; Ees who worked for both companies at different times were compensated according to the U contract covering the unit of which they formed a part at that time)

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[frequency of Ee interchange is regarded as *critical factor* in ascertaining community of interest among Ees]

5034 LITTLE OR NO INTERCHANGE OR TRANSFER OF EMPLOYEES

Save Mart of Modesto, Inc. JD-(SF)-25-85

]*accretion* to present unit of Ees outweighed by 2 significant factors--absence of interchange or regular contact between meat department Ees in new store and meat department Ees in E's other stores notwithstanding occasional use of floaters and lack of common day-to-day supervision over Ees of different stores as each one is autonomous)

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[frequency of Ee interchange is regarded as *critical factor* in ascertaining community of interest among Ees]

5068 EMPLOYEES WORK IN SAME AREA

Raskin Brothers, Inc. 274 NLRB No. 053

(bargaining order for separate unit of warehouse Ees held inappropriate, and unit composed of warehouse Ees and other Ees would negate the possibility of U's majority status, where E's entire facility consisted of a single one-story building and all categories of Ees--warehouse, sales and office--have occasion to be in all areas performing their jobs, warehouse Ees' duties are substantially integrated with other Ees, all Ees share common fringe benefits, are subject to common work rules and hiring, and discharge policies)

5600 FREQUENCY OR REGULARITY OF WORK

5650 PART-TIME WORK

N.L.R.B. v. Parsons School of Design, A Division of, The New School for Social Research 793 F.2d 503 (C.A. 2, June 1986)

[no deference to Bd's discretion in using Sec. 102.67(b) *vote and impound procedure* to segregate small full-time (10%) overwhelming part-time faculty's vote w/o informing voters of reason where, pursuant to pre-election grant of request for review, Bd modified unit after election, since voters might have voted differently had they known of possible unit modification, and Bd could have avoided misinforming voters by developing another balloting process besides *vote and impound* procedure to allow voters to vote on U representation in alternative units]

6200 DIFFERENCE IN EMPLOYER OR IN LOCATION OF WORK

6280 GEOGRAPHICAL LOCATION OF PLANTS

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[in considering appropriateness of multi-location unit, ct held geographical distances between facilities is important as to whether it is feasible for all Ees in such unit to participate w/o great difficulty in U activities; and fact that Ee transfers between facilities had occurred herein, at least on an infrequent basis, indicated that the distance was not so great as to present any severe obstacle to Ee participation in U activities]

6700 LEGAL REQUIREMENTS OF OTHER AUTHORITIES

7300 DESIRE OF PARTIES OR OF EMPLOYEES

7303 UNIT SOUGHT BY PETITION

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[in case involving appropriateness of multi-location unit, ct held that where there is no history of bargaining at any of the locations, and no other U seeks to represent Ees, Bd may reasonably give some weight to petitioning U's desires for representation on multi-location basis]

7306 DESIRE OF EMPLOYEES

7306—Cont.

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[in case involving appropriateness of multi-location unit, ct held that, although Ees' wishes cannot supplant all other considerations. Ee choice can tip the balance in determining which of two equally appropriate units should be preferred]

7312 STIPULATION BY PARTIES

The Royal Sonesta, Inc. d/b/a Royal Laundry 277 NLRB No. 085

(Ees designated as *valets* held included in unit where stipulated unit description included job title *valet* and there was clear objective to include these Ees in unit and parties were bound by their stipulation; it is only when objective intent cannot be discerned that Bd finds party's subjective intent relevant and consequently considers community of interest factors)

Eastern Container Corporation 275 NLRB No. 215

(residual unit of maintenance mechanics and boiler firemen at corrugated box manufacturer, appropriate, where parties stipulated that all unrepresented Ees, other than maintenance Ees, should be excluded from either petitioned for unit or combined production and maintenance unit and these maintenance Ees are only unrepresented Ees who could appropriately be included in existing production unit, and existing representative of production unit does not seek to represent them)

N.L.R.B. v. Barker Steel Company, Inc. 800 F.2d 284 (C.A. 1, Sept. 1986)

[if dispute arises concerning Ee's eligibility to vote in stipulated unit election, Bd's function limited to ascertaining parties' intent with regard to disputed Ee. If intent of parties is expressed in stipulation in clear and unmistakable terms, Bd will hold parties to their literal agreement. If stipulation is ambiguous, primary question is what parties meant. Thus, Bd has authority to interpret agreement according to what it finds to have been intent of parties]

N.L.R.B. v. Barker Steel Company, Inc. 800 F.2d 284 (C.A. 1, Sept. 1986)

[Bd erred in overruling challenge to ballot as name not on eligibility list, and stipulation for consent election agreed upon by parties: 1) named E different from one where Ee works (fact Bd found single E relationship not relevant); 2) stated Ees employed by named E were the ones parties intended to include in appropriate unit; 3) E's payroll was designated as basis for preparing eligibility l' t; 4) named E signed stip w/ U; and 5) description of E does not fit voter's E. Thus, stip clear on its face that intent of parties was that Ees of other E not eligible to vote and Bd must hold parties to their literal agreement]

7900 ANTICIPATED CHANGES IN WORK CIRCUMSTANCES

8400 AVOIDANCE OF INCONGRUOUS RESULTS

8490 PROPORTION OF PART-TIME EMPLOYEES

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research 793 F.2d 503 (C.A. 2, June 1986)

[no deference to Bd's discretion in using Sec. 102.67(b) *vote and impound procedure* to segregate small full-time (10%) from overwhelming part-time faculty's vote w/o informing voters of reason where, pursuant to pre-election grant of request for review, Bd modified unit after election, since voters might have voted differently had they known of possible unit modification, and Bd could have avoided misinforming voters by developing another balloting process besides *vote and impound* procedure to allow voters to vote on U representation in alternative units]

9000 MULTIEMPLOYER UNIT DETERMINATION FACTORS

9005 EMPLOYER ASSENTED TO JOINING ASSOCIATION

Vincent Electric Company, Inc. 281 NLRB No. 122

[ptn for deauthorization of unit of E's Ees only, dismissed as for inappropriate unit where E, by signing IBEW letter of Assent-A, became part of multi-E association, and E's execution of memorandum permitting it to pay current wages for six months or until current contracts were completed was not inconsistent with assent to be bound by group bargaining, as letter of assent looked toward future contracts as well as the current one, memorandum provided for future jobs to be performed under association contractual terms, and E based all bids after execution of letter of assent on association-negotiated wage rates]

Accetta Millwork, Inc. 274 NLRB No. 020

(essential element warranting establishment of multi-E unit is clear evidence that Es *unequivocally intend to be bound in collective bargaining by group rather than individual action*)

Accetta Millwork, Inc. 274 NLRB No. 020

(Es held not to be bound by, or to have established, multi-E bargaining unit and RM ptns reinstated, where evidence clearly established that formal multi-E group was disbanded, subsequent to disbandment Es had engaged in *informal group bargaining* with U, joining and withdrawing from group w/o written notice to or consent by U, and there was no evidence that after disbandment of multi-E group, any Es had agreed to be bound by group decisions; further, fact that U bargained individually with *splinter groups* of Es, after disbandment of formal multi-E group, effectively fragmented any multi-E bargaining so as not to bind any Es to group decisions)

9013 EMPLOYER DID NOT AUTHORIZE ASSOCIATION TO BARGAIN FOR HIM

Accetta Millwork, Inc. 274 NLRB No. 020

(Es held not to be bound by, or to have established, multi-E bargaining unit and RM ptns reinstated, where evidence clearly established that formal multi-E group was disbanded, subsequent to disbandment Es had engaged in *informal group bargaining* with U, joining and withdrawing from group w/o written notice to or consent by U, and there was no evidence that after disbandment of multi-E group, any Es had agreed to be bound by group decisions; further, fact that U bargained individually with *splinter groups* of Es, after disbandment of formal multi-E group, effectively fragmented any multi-E bargaining so as not to bind any Es to group decisions)

9035 EMPLOYER MAY NEGOTIATE SEPARATELY FROM ASSOCIATION

Accetta Millwork, Inc. 274 NLRB No. 020

(Es held not to be bound by, or to have established, multi-E bargaining unit and RM ptns reinstated, where evidence clearly established that formal multi-E group was disbanded, subsequent to disbandment Es had engaged in *informal group bargaining* with U, joining and withdrawing from group w/o written notice to or consent by U, and there was no evidence that after disbandment of multi-E group, any Es had agreed to be bound by group decisions; further, fact that U bargained individually with *splinter groups* of Es, after disbandment of formal multi-E group, effectively fragmented any multi-E bargaining so as not to bind any Es to group decisions)

9048 EMPLOYER NOT BOUND BY RESULTS OF ASSOCIATION BARGAINING

Accetta Millwork, Inc. 274 NLRB No. 020

(Es held not to be bound by, or to have established, multi-E bargaining unit and RM ptns reinstated, where evidence clearly established that formal multi-E group was disbanded, subsequent to disbandment Es had engaged in *informal group bargaining* with U, joining and withdrawing from group w/o written notice to or consent by U, and there was no evidence that after disbandment of multi-E group, any Es had agreed to be bound by group decisions; further, fact that U bargained individually with *splinter groups* of Es, after disbandment of formal multi-E group, effectively fragmented any multi-E bargaining so as not to bind any Es to group decisions)

9600 MISCELLANEOUS OTHER FACTORS

9610 APPROPRIATENESS OF OTHER UNITS

Otasco, Inc. 278 NLRB No. 054

[election ordered in appropriate unit of over-the-road drivers, rather than petitioned for unit of over-the-road and local drivers, where contract in another unit including local drivers would constitute bar to election, and U was willing to proceed to election in alternative unit found appropriate]

9680 CONTINUITY OF OPERATIONS

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[under Act, appropriateness of unit and continuity between structure and operation of predecessor and successor are to be determined independently; fact that some of same evidence may bear on both questions does not mean that two are continuous; there may have been substantial continuity between businesses as whole, but changes made to specific department may call for reconsideration of appropriateness determination]

440 DETERMINATIONS OF SCOPE OF UNIT

1700 SINGLE LOCATION UNITS

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[where U requested and Bd designated multi-location unit as appropriate, presumption that single location unit is appropriate does not apply but only works to assure that Bd determination that smaller unit is appropriate will almost never be subject to challenge; consequently, Bd herein was not required to *rebut* any presumptive appropriateness of single location units]

1720 PLANTWIDE UNITS

1720-0100 Generally

1720-0133 Presumptive appropriateness

Charrette Drafting Supplies Corporation 275 NLRB No. 177

]*when making unit determination in multi-facility operation in the retail industry, Bd finds single-facility presumptively appropriate, this presumption, however, may be overcome by showing of substantial integration which negates separate identity of single-facility unit, based on examination of factors such as control over daily operations and labor relations, Ees skills and functions, working conditions, Ee interchange, and geographic proximity of functions*)

1720-3300 Specific unit determinations (by SIC category)

The Longcrier Company 277 NLRB No. 062

(countywide unit of dual function Ees who spend majority of time operating construction equipment for E who is constructing several large projects in county, inappropriate, but units of all ees on each project, appropriate, where each project is separate with each superintendent doing own hiring and disciplining, sets wages and work schedules, almost no transfer of Ees from one project to another, Ees terminated when project completed, and overlapping duties and functioned integration of work performed by dual function Ees with remaining Ees)

Charrette Drafting Supplies Corporation 275 NLRB No. 177

(petitioned for unit of Ees at single store of dealer in art supplies held inappropriate and ptn dismissed, since store had no independent activity and was completely integrated with another of E's stores, where E's general manager supervised both stores and managers of each store had limited authority, stock for both stores was unloaded and reloaded at one store for other store, and there were frequent between Ees at both stores, and temporary transfers of Ees between stores)

Ramada Inns, Inc. d/b/a Ramada Beverly Hills 278 NLRB No. 095

[overall unit of hotel personnel, rather than separate hotel service unit and food and beverage unit, appropriate, in view of E's high degree of functional integration and centralized policy making as evidenced by common pay rates and fringe benefits as well as centralized control of day-to-day operations and centralized formation of personnel practices, and fact that, although each Ee group has primary function, Ees in those groups assist each other, work in close and repeated contact, and generally act toward common goal of providing highly integrated services for hotel's guests]

1740 PLANT SUBDIVISION UNITS

1740-5000 Departmental units (See 440-1760, for departmental units defined by employee types or category)

1740-5025 Specific determinations (by SIC category)

N.L.R.B. v. Paper Manufacturers Company, et al. 786 F.2d 163 (C.A. 3, Mar. 1986)

[Bd did not err in concluding medical packaging division remained appropriate unit rather than accretion to unit of Ees in regular packaging division, following relocation of medical packaging division to same plant where regular packaging division located w/i certification year of medical packaging division unit, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions with possible exception of two maintenance Ees, separate and distinct and no interchange of Ees]

1760 EMPLOYEE TYPE OR CATEGORY UNITS

1760-1000 Maintenance employees unit

1760-1040 Specific determination (by SIC category)

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[Bd did not abuse its discretion in concluding that, maintenance and engineering Ees at two Cleveland, Ohio office buildings (500 yards apart) constitute appropriate bargaining units, since maintenance superintendent and his immediate superior *jointly supervise* maintenance and engineering Ees at *both locations* which joint supervision indicates common supervision and centralized control of labor relations, similar wages, fringe benefits, holidays, job classifications and absence reporting systems show Ees have sufficient community of interest]

1760-1080 Placement of other employees in maintenance unit (by SIC category)

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[painter and garage maintenance Ee included in two building maintenance and engineer Ee bargaining unit, since they share community of interest with maintenance, engineering Ees unit because they enjoy common supervision and assistance as well as being paid on similar benefits as other Ees in unit]

1760-1500 Production & maintenance unit employees unit

1760-1580 Placement of other employees in P&M unit (by SIC category)

Eastern Container Corporation 275 NLRB No. 215

(residual unit of maintenance mechanics and boiler firemen at corrugated box manufacturer, appropriate, where parties stipulated that all unrepresented Ees, other than maintenance Ees, should be excluded from either petitioned for unit or combined production and maintenance unit and these maintenance Ees are only unrepresented Ees who could appropriately be included in existing production unit, and existing representative of production unit does not seek to represent them)

The Royal Sonesta, Inc. d/b/a Royal Laundry 277 NLRB No. 085

(plant clericals included in P&M unit at laundry where they performed unit work on laundry floor and thus shared community of interests with other unit Ees)

1760-1900 Office clerical employees unit

1760-1980 Placement of other employees in office clerical unit (by SIC category) (See also 440-1760-2900)

Consolidated Papers, Inc. 274 NLRB No. 197

]*merchant account representatives, merchant account trainees,* and *administrative assistant,* who were transferred from location, held not accretion and not included in unit of office clericals at manufacturer of paper products, where Ees sought to be included were salaried Ees promoted on basis of merit, and in view of different benefits, supervision, and lack of interchange between unit Ees and those sought)

American Television & Communications Corporation d/b/a Austin Cablevision 279 NLRB No. 075

[salesclerks included in unit of office clericals employed by cablevision company by clarification, notwithstanding they work in separate department under separate supervision w/o interchange with other clericals, where their duties do not significantly differ from, and their functions are integrated with, those of other clericals, and they share the same breakroom, work the same hours, and receive the same benefits as other clericals, any difference in pay and benefits being due to E's position that they are not in unit and not covered by contract]

1760-2400 Plant clerical employees unit

1760-2480 Placement of other employees in plant clerical unit (by SIC category) (See also 440-1760-2900)

N.L.R.B. v. Magna Corporation 734 F.2d 1057 (C.A. 5, June 1984)

[Bd's inclusion of *plant storeroom specialist,* a newly created and substantially changed job classification, in unit of plant clericals in unit clarification

1760-2480—Cont.

proceeding was inappropriate and case remanded, where Bd did not apply *community of interest standard* in determining community of interests between bargaining unit Ees and new job classification]

1760-3400 Technical employees unit

1760-3420 Identifying characteristics

1760-3420-0100 Generally

Westvaco, Virginia, Folding Box Division v. N.L.R.B. **795 F.2d 1171 (C.A. 4, July 1986)**

[*Bd has adhered to policy of not joining technical and non-technical Ees in same unit where unit placement of technical Ees is in issue. Technical Ees* are those Ees who perform work of technical nature, requiring specialized training, to be acquired in colleges and technical schools and through special courses, and involving use of independent judgment]

1760-4300 Professional employees unit

1760-4301 Generally

1760-4301-5000 Statutory prerequisite of self-determination election

Baldwin League of Independent Schools **281 NLRB No. 134**

[GC's mtn for summary judgment denied and case severed from remaining CA portions and remanded to RD where RD did not determine whether or not librarians were professional Ees to be included in uni. with teachers found to be professional Ees; if RD finds librarians to be nonprofessional, *Sonotone* election must be conducted to determine whether teachers desire to have librarians included in unit, see *Sonotone Corp.*, 90 NLRB 1236 (1950)]

1760-4340 Specific determination (by SIC category)

David Walcott Kendall Memorial School a/k/a Kendall School of Design **279 NLRB No. 042**

[ptn for clarification of unit of faculty members at art and technical school seeking to have them declared managerial Ees dismissed, since faculty did not formulate or effectuate management practices, particularly in view of fact individual faculty members' did not make decisions regarding their own classes, including determining course content and text, take field trips, cancel class, or substitute teacher w/o obtaining permission. Service on committees which made recommendations with varying results not indicia of managerial status since administration retained tight control of committees]

David Walcott Kendall Memorial School a/k/a Kendall School of Design **279 NLRB No. 042**

[chairpersons at technical school held not managerial Ees and included in unit of faculty members, notwithstanding sat on dean's council which ostensibly had authority to make decisions not made in regular committee structure, evaluated faculty, decided whether teachers from other departments might teach in their departments, prepared schedules, budgets, made recommendations on hiring, since not clear what use made of faculty evaluations, chairpersons had no greater role in curriculum committee than othan other members, control over their departments and time spent in functions other than teaching limited]

1760-4380 Placement of other employees in professional employee unit (by SIC category)

Baldwin League of Independent Schools **281 NLRB No. 134**

[GC's mtn for summary judgment denied and case severed from remaining CA portions and remanded to RD where RD did not determine whether or not librarians were professional Ees to be included in unit with teachers found to be professional Ees; if RD finds librarians to be nonprofessional, *Sonotone* election must be conducted to determine whether teachers desire to have librarians included in unit, see *Sonotone Corp.*, 90 NLRB 1236 (1950)]

1760-6200 Drivers (including driver-salesmen) unit

1760-6240 Specific determination (by SIC category)

Typecraft Press, Inc. **275 NLRB No. 078**

(separate unit of drivers, apart from other nonlithographic Ees employed by E engaged in printing student and local shopping newspapers, inappropriate where driving duties take only 55 to 60 percent of their time, and during the rest of their time they assist bindery department Ees, haul trash, clean up, and deliver messages; further, they receive same wages and benefits as nondriving Ees, share same facilities, work same hours, and are supervised and evaluated by same managers)

Otasco, Inc. **278 NLRB No. 054**

[unit of all over-the-road drivers, rather than all over-the-road and local drivers, employed by E engaged in retail and wholesale sale of automotive and household goods, excluding warehouse and service Ees (which includes maintenance and repair men and local truckdrivers), salesmen, and watchmen, appropriate where latter unit was rendered inappropirate by inclusion of local drivers covered by contract barring election, and U was willing to proceed to election in alternative unit found appropriate]

1760-6700 Warehouse Employees Unit

1760-6720 Identifying characteristics

Raskin Brothers, Inc. **274 NLRB No. 053**

(Bd will find separate unit of warehouse Ees appropriate if: (1) warehouse Ees are under separate supervision from other Ees; (2) they perform substantially all of their work tasks in buildings geographically separated from those in which the bulk of remaining Ees of the E work; and (3) the warehouse Ees' duties are not substantially integrated with other Ees'; further, only where all three of these conditions are met is a separate unit of warehouse Ees appropriate)

1760-6740 Specific determination (by SIC category)

Raskin Brothers, Inc. **274 NLRB No. 053**

(bargaining order for separate unit of warehouse Ees held inappropriate, and unit composed of warehouse Ees and other Ees would negate the possibility of U's majority status, where E's entire facility consisted of a single one-story building and all categories of Ees--warehouse, sales and office--have occasion to be in all areas performing their jobs, warehouse Ees' duties are substantially integrated with other Ees, all Ees share common fringe benefits, are subject to common work rules and hiring, and discharge policies)

Crest Industries Corp. **276 NLRB No. 067**

(unit of warehouse Ees, appropriate, rather than unit which also included office clerical Ees, where occasional, minimal involvement between clericals and warehouse Ees, such as bringing orders to warehouse, unpacking, marking and packing cartons and preparing paperwork, could not serve to provide community of interest between two groups of Ees)

Charrette Drafting Supplies Corporation **275 NLRB No. 177**

(separate unit of operations Ees at retail store dealing in art supplies, held not appropriate, since substantial integration of operations Ees with other Ees in performance of duties, and no geographical separation from other Ees or separate supervision as required by *A. Harris Co.*, 116 NLRB 1628, and *Robards, Inc.*, 272 NLRB No. 203, for separate warehouse units)

1760-6780 Placement of other employees in warehouse employees unit (by SIC category)

S & S Parts Distributors Warehouse, Inc. **277 NLRB No. 138**

]*customer credit clerk* in *core* (returned goods) department at auto parts wholesaler, included in unit, in view of face to face contact with warehouse Ees, close integration of her function with that of core department Ees, and similarity between her skills and those of regular order takers in unit)

S & S Parts Distributors Warehouse, Inc. **277 NLRB No. 138**

(customer catalogue Ee at auto parts wholesaler not included in unit, not withstanding she goes into warehouse several times a day to place catalogues and for shipping and contention her duties analogous to those of warehouse Ees in that she provided catalogues needed by customers to intiate order filling process by supplying identification information to customers, where her duties were not so bound up in order filling process itself so as to provide her with community of interest with order filling and processing Ees)

S & S Parts Distributors Warehouse, Inc. **277 NLRB No. 138**

]*bookkeeper substitute order taker* at auto parts wholesaler who kept small sets of books for E's customers who requested service, shared office with head bookkeeper, cashier, and accounts payable bookkeeper, not included in unit notwithstanding she had previously worked as regular order taker, and it was anticipated she would substitute as order taker in future (but it was indefinite to what extent))

S & S Parts Distributors Warehouse, Inc. **277 NLRB No. 138**

]*special order takers* at auto parts wholesaler included in unit in view of community of interest with unit Ees where *special order takers* must have knowledge of way merchandise is moved through warehouse, preparation and handling of pick tickets (notices of what was actually shipped to customer) is central to their functions, and further, both Ees in this classification dalt directly with customers on telephone as did regular order takers who were in unit)

1760-7200 Sales personnel (including driver- salesmen when grouped with sales personnel) unit

1760-7280 Placement of other employees in sales personnel unit (by SIC category)

Sahara Datsun, Inc. **278 NLRB No. 148**

[lease manager of automobile dealer excluded from unit of new and used car salesmen for lack of community of interest where he had different wages, hours, and kind of work]

1760-7600 Service employees unit

1760-7640 Specific determination (by SIC category)

U.S. Pollution Control, Inc. **278 NLRB No. 042**

[pollution control specialist employed by E engaged in hazardous waste disposal found dual function Ee and excluded from unit, since he lacked community of interest with unit Ees where he spent half his time on nonunit sales work, had different supervisor, had no interchange of duties with unit

1760-7640—Cont.

Ees and, unlike them, received sick leave benefits and did not punch time clock or receive overtime pay]

1760-9100 Craft unit

1760-9133 Identifying characteristics

1760-9133-4300 Need for special training or skill

Dodge City of Wauwatosa, Inc. **282 NLRB No. 071**

[separate craft unit of auto mechanics rather than overall service department unit at auto dealership held appropriate, where training and skills--almost all are certified and all are required to take periodic training classes--which must be and are possessed by E's mechanics set them apart from rest of service department Ees as craftsmen who may be represented in separate unit]

1760-9167 Specific determination (by specific craft)

1760-9167-0200 Automobile mechanics

1760-9167-0233 Found appropriate

Dodge City of Wauwatosa, Inc. **282 NLRB No. 071**

[separate craft unit of auto mechanics rather than overall service department unit at auto dealership held appropriate, where training and skills--almost all are certified and all are required to take periodic training classes--which must be and are possessed by E's mechanics set them apart from rest of service department Ees as craftsmen who may be represented in separate unit]

1760-9167-2400 Electricians

1760-9167-2433 Found appropriate

DMR Corp. and Harrill Electric Contractors, Inc. **274 NLRB No. 007**

(upon ct remand, Bd upheld ALJ's finding that on basis of newly developed evidence that only appropriate unit was single unit of electricians, where during employment by Es herein found to constitute single E, electricians performed mix of same kinds of commercial and residential work, using much the same skills, there was carryover of on-the-job supervision and substantial continuity of top management, and first E's purpose in avoiding U obligation in shift from first E to second E warrants observation that only real difference, other than name, between first E working on projects and second E was absence of U labor)

1760-9167-4800 Meatcutters

1760-9167-4867 Found inappropriate

Hall's Super Markets, Inc. d/b/a Hall's Super Duper **281 NLRB No. 150**

[separate unit of meat department Ees at grocery store, inappropriate where less than 1 percent of business involved traditional meatcutting skills, and Ees principally shelved prepackaged products and trimmed and cut boxed beef into smaller portions for sale; nor did separate work area, lack of interchange, and U's representation of separate meat department units in area stores make unit appropriate where Ees had wages, facilities and supervision in common with other Ees, and meat business had changed during two-year interim since meat department Ees were previously represented in separate unit]

1760-9900 Other units defined by employee type or category, or combinations of such

1760-9940 Specific determination (by SIC category)

Concourse Village, Inc. **276 NLRB No. 004**

(unit at cooperative apartment complex clarified to include all maintenance Ees, including handymen, porters, utility porter, dispatcher, truck driver, stock clerk, boilerman and touchup painter, and excluding assistant maintenance director and superintendents, who are supervisors)

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research **793 F.2d 503 (C.A. 2, June 1986)**

[unit of part-time faculty at one of three campuses of design school division of university found appropriate unit by ct based on Bd's findings and to avoid further delay of election where ct had refused to enforce order that E bargain with U representing part-time faculty because it found Bd had denied voters opportunity to make informed choice where it had reduced unit's scope after election from all faculty to part-time faculty only and counted only latter's ballots, which had been segregated]

1760-9980 Placement of (other) employees in (subject) unit (by SIC category)

Typecraft Press, Inc. **275 NLRB No. 078**

(paste-up Ees included in unit of lithographic production Ees, including camera, web press and sheet-fed press department Ees, of E engaged in printing student and local shopping newspapers where they are trained on the job and punch time-clock like unit Ees, receive same benefits and wage scale, share common facilities, have significant amount of interchange with camera department Ees, who are in unit, and have same managers handling personnel and labor-related matters)

Typecraft Press, Inc. **275 NLRB No. 078**

(typesetters included in unit of lithographic production Ees, including camera, web press and sheet-fed press department Ees, of E engaged in printing student and local shopping newspapers where they are trained on the job and punch a time-clock like unit Ees, receive same benefits and wage scale, have substantial daily contact and interchange with paste-up Ees, found part of unit herein, and are frequently helped by camera Ees, also part of unit)

Quality Plastic Molds, Inc., and Titan Enterprises, Corp. **JD-(NY)-143-86**

(operator and operator programmer of CNC machine for milling and cutting included in unit of tool and mold makers, machinists, polishers, and apprentices, excluding official, clerical, and professional Ees and designers, employed by designer and manufacturer of plastic molds in view of close physical and working contact with unit members, shared working conditions, common supervision and control of labor relations, job interchange, and bargaining history)

Central Broadcast Company **280 NLRB No. 056**

[dual function Ee operating primarily as sales representative for country music radio station but also as announcer excluded from unit of announcers where he announced on irregular, rather than regular, part-time basis, had specialized announcement duties outside the studio, and was compensated by commission, rather than salary]

Central Broadcast Company **280 NLRB No. 056**

[dual function Ee operating primarily as sales representative for country music radio station but also as sports broadcaster excluded from unit of announcers where he received salary plus commission, rather than salary alone, did not prepare his broadcasts in same area as, or work with, copywriters or continuity department Ees like announcers, worked irregularly and broadcasted irregularly for total of only seven minutes a week]

Central Broadcast Company **280 NLRB No. 056**

[*farm show announcer* at country music radio station excluded from unit of announcers where it was questionable as towhether her future employment had even been agreed upon prior to date of U demand and she was unknown to unit Ees]

Central Broadcast Company **280 NLRB No. 056**

[Ee listed as *sec/traffic/billing/news/Disc Jockey* at country music radio station excluded from unit of announcers where she did no announcing work, had had only one 30-second report that she called in broadcast, and was not a statutory Ee but an *individual employed by (her) parent*, her father being president and sole stockholder of E]

Central Broadcast Company **280 NLRB No. 056**

[copywriter at country music radio station excluded from unit of announcers where she did commercials on the air on irregular basis]

Mid-State Distributing Co., Inc. **276 NLRB No. 172**

(inventory clerk invluded in unit of drivers and warehousemen of wholesale beer distributor and held eligible to vote as dual function Ee, where majority of Ee's time was spent on duties more associated with shipping and receiving duties of plant clerical rather than those of office clerical, notwithstanding her not insignificant office clerical functions such as those of receptionist, and notwithstanding different method of pay and supervision than unit Ees)

College of English Language, Los Angeles, Inc. **277 NLRB No. 105**

(separate unit of teachers at college teaching English as second language to foreign language students, rather than unit including nonteachers, held appropriate, irrespective of teachers' professional status, in view of nonteachers' lack of qualifications to be teachers; difference in work schedules of teachers and nonteachers; office and work designated areas provided for nonteachers, but not for teachers; teachers' higher pay; and fact that teachers' employment conditions were governed by teachers' handbook, and they are only Ees having contracts with E)

1780 OTHER EMPLOYEE GROUPINGS

1780-6000 Residual employee units

1780-6080 Appropriateness of residual employees

1780-6080-6700 Previously represented employees

Eastern Container Corporation **275 NLRB No. 215**

(residual unit of maintenance mechanics and boiler firemen at corrugated box manufacturer, appropriate, where parties stipulated that all unrepresented Ees, other than maintenance Ees, should be excluded from either petitioned for unit or combined production and maintenance unit and these maintenance Ees are only unrepresented Ees who could appropriately be included in existing production unit, and existing representative of production unit does not seek to represent them)

3300 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

3301 GENERALLY

3301—Cont.

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[Bd enumerated factors it considers in evaluating community of interests among Ees working at more than one location: (1) similarity in Ee skills, duties, and working conditions, (2) functional integration of business, including Ee interchange, (3) centralized control of management and supervision, (4) geographical separation of facilities, (5) bargaining history and extent of U organization, and (6) Ee choice]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[although appropriateness of unit is distinct issue from that of scope of E's operation, factors involved in evaluating each question substantially overlap; thus, finding that Es are single integrated E is relevant to assessment of functional integration in determining appropriateness of unit]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[where U requested and Bd designated multi-location unit as appropriate, presumption that single location unit is appropriate does not apply but only works to assure that Bd determination that smaller unit is appropriate will almost never be subject to challenge; consequently, Bd herein was not required to *rebut* any presumptive appropriateness of single location units]

3325 CRITERIA OF APPROPRIATENESS

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119

[single location unit presumptively appropriate, absent controlling history of bargaining on broader basis]

Charrette Drafting Supplies Corporation 275 NLRB No. 177

[when making unit determination in multi-facility operation in the retail industry, Bd finds single-facility presumptively appropriate, this presumption, however, may be overcome by showing of substantial integration which negates separate identity of single-facility unit, based on examination of factors such as control over daily operations and labor relations, Ees skills and functions, working conditions, Ee interchange, and geographic proximity of functions]

Rock-tenn Company, Mill Division, Inc. and Rock-Tenn Company (Partition Division) 274 NLRB No. 114

(former two-plant unit of Ees at paper mill and partition plant, found no longer appropriate on basis of completely separate corporate and operational structure, lack of functional integration between paper mill and partition plant, decentralized labor relations and absence of Ee interchange or contact; *compelling circumstances* existed for disregarding bargaining history on two-plant basis where significant changes in organizational structure and operations of two plants occurred which negate any community of interest that may have existed previously among Ees)

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[Bd did not abuse its discretion in concluding that, maintenance and engineering Ees at two Cleveland, Ohio office buildings (500 yards apart) constitute appropriate bargaining units, since maintenance superintendent and his immediate superior *jointly supervise* maintenance and engineering Ees at *both locations* which joint supervision indicates common supervision and centralized control of labor relations, similar wages, fringe benefits, holidays, job classifications and absence reporting systems show Ees have sufficient community of interest]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[single unit covering separate cable TV systems and their managing company held appropriate, particularly in view of striking similarity of Ee skills, duties, and working conditions, and notwithstanding day-to-day management and personnel relations by system managers and some extent of interrelation and Ee interchange, which tended to make separate units *more* appropriate, but Bd need only designate *an* appropriate unit which need not be *most* appropriate unit; and there was failure to show not merely that some other unit would have been more appropriate, but that Bd's designated unit was clearly inappropriate]

3350 EMPLOYERWIDE UNITS

3350-2500 Separate firms as single employer

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121

[Fact that two affiliated firms constitute single E does not necessarily establish that E wide unit is appropriate. Factors relevant in identifying breadth of E's operation not conclusively determinative of scope of appropriate unit, factors which must be considered include separateness of supervision of Ees, separateness of location, lack of Ee interchange, evidence of functional integration, and whether labor policies in different companies involved are dependent on their own needs or common needs]

Kenneth L. Hand Sr. d/b/a Neighborhood Roofing and Contracting, and Kenneth L. Hand Jr. and Sylvia Hand d/b/a Farrand Park Services 276 NLRB No. 081

(single unit encompassing roofing Ees of both respondents found to be single E, appropriate where record shows that control of labor relations and daily operations were centralized in one individual, degree of interchange and contact among Ees was so extensive as to negate mtn that there were two separate and definable groups of Ees)

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[single unit covering separate cable TV systems and their managing company held appropriate, particularly in view of striking similarity of Ee skills, duties, and working conditions, and notwithstanding day-to-day management and personnel relations by system managers and some extent of interrelation and Ee interchange, which tended to make separate units *more* appropriate, but Bd need only designate *an* appropriate unit which need not be *most* appropriate unit; and there was failure to show not merely that some other unit would have been more appropriate, but that Bd's designated unit was clearly inappropriate]

3350-7500 Specific unit determination (by SIC category)

The Longerier Company 277 NLRB No. 062

(countywide unit of dual function Ees who spend majority of time operating construction equipment for E who is constructing several large projects in county, inappropriate, but units of all ees on each project, appropriate, where each project is separate with each superintendent doing own hiring and disciplining, sets wages and work schedules, almost no transfer of Ees from one project to another, Ees terminated when project completed, and overlapping duties and functioned integration of work performed by dual function Ees with remaining Ees)

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. 276 NLRB No. 070

(separate units of operating engineers performing same and gravel pit operations and operating engineers performing highway construction found appropriate where, although Ees worked for two highly integrated companies found single E, and Ees shared community of interest, industry had history of separate units for two types of companies, and companies had history of separate U contract with different wages and benefits; Ees who worked for both companies at different times were compensated according to the U contract covering the unit of which they formed a part at that time)

New England Telephone and Telegraph Company 280 NLRB No. 016

[districtwide units of nonmanagement Ees in telephone company's business marketing and residence marketing departments inappropriate, since smallest appropriate unit was systemwide unit for each department, in view of high degree of centralization in labor relations and employment policies; limited autonomy of departments' district managers; Ee interchange between both departments' districts; and fact that, while requested units constituted administrative subdivisions, Ees did not share sufficiently distinct community of interest to warrant bargaining in less than systemwide unit, and terms and conditions of employemnt were uniform]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[single unit covering separate cable TV systems and their managing company held appropriate, particularly in view of striking similarity of Ee skills, duties, and working conditions, and notwithstanding day-to-day management and personnel relations by system managers and some extent of interrelation and Ee interchange, which tended to make separate units *more* appropriate, but Bd need only designate *an* appropriate unit which need not be *most* appropriate unit; and there was failure to show not merely that some other unit would have been more appropriate, but that Bd's designated unit was clearly inappropriate]

N.L.R.B. v. First Union Management, Inc. 777 F.2d 330 (C.A. 6, Nov. 1985)

[Bd did not abuse its discretion in concluding that, maintenance and engineering Ees at two Cleveland, Ohio office buildings (500 yards apart) constitute appropriate bargaining units, since maintenance superintendent and his immediate superior *jointly supervise* maintenance and engineering Ees at *both locations* which joint supervision indicates common supervision and centralized control of labor relations, similar wages, fringe benefits, holidays, job classifications and absence reporting systems show Ees have sufficient community of interest]

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119

[unit of candy attendants, cashiers, and usher/doormen at one E's movie theatres, appropriate, rather than area wide unit, absent history of bargaining on broader basis or interchange of Ees among locations, and where manager at each location had full responsibility for day to day operations, hiring, firing disciplining of Ees, notwithstanding E's labor policies formulated on national scale]

3375 LESS THAN EMPLOYERWIDE UNITS

440-DETERMINATIONS OF SCOPE OF UNIT

3375-3700 Metropolitan area (including multistate metropolitan areas)

3375-3750 Specific determination (by SIC category)

The Longcrier Company **277 NLRB No. 062**
(countywide unit of dual function Ees who spend majority of time operating construction equipment for E who is constructing several large projects in county, inappropriate, but units of all ees on each project, appropriate, where each project is separate with each superintendent doing own hiring and disciplining, sets wages and work schedules, almost no transfer of Ees from one project to another, Ees terminated when project completed, and overlapping duties and functioned integration of work performed by dual function Ees with remaining Ees)

3375-5000 Less than statewide other than metropolitan area

3375-5050 Specific determination (by SIC category)

Kobacker Stores, Inc. d/b/a Pic-Way Shoe Mart **274 NLRB No. 132**
(district-wide unit of retail shoe stores located in 2 city areas found appropriate rather than 1 city area unit, where stores in one area are sufficiently close to other area to be easily accessible to district supervisor, district supervisor does not *rubber stamp* decisions of store managers, and he participates substantially in control of stores w/i his district; furthermore, integration of those stores is demonstrated by movement of personnel between two areas)

5000 MULTIEMPLOYER UNITS (SEE ALSO 530-5700)

5001 GENERALLY

Accetta Millwork, Inc. **274 NLRB No. 020**
(essential element warranting establishment of multi-E unit is clear evidence that Es *unequivocally intend to be bound in collective bargaining by group rather than individual action*)

5033 IDENTIFYING CHARACTERISTICS

5033-6000 Employers associated in bargaining

5033-6020 Intent of employers

Vincent Electric Company, Inc. **281 NLRB No. 122**
[ptn for deauthorization of unit of E's Ees only, dismissed as for inappropriate unit where E, by signing IBEW letter of Assent-A, became part of multi-E association, and E's execution of memorandum permitting it to pay current wages for six months or until current contracts were completed was not inconsistent with assent to be bound by group bargaining, as letter of assent looked toward future contracts as well as the current one, memorandum provided for future jobs to be performed under association contractual terms, and E based all bids after execution of letter of assent on association-negotiated wage rates]

Accetta Millwork, Inc. **274 NLRB No. 020**
(Es held not to be bound by, or to have established, multi-E bargaining unit and RM ptns reinstated, where evidence clearly established that formal multi-E group was disbanded, subsequent to disbandment Es had engaged in *informal group bargaining* with U, joining and withdrawing from group w/o written notice to or consent by U, and there was no evidence that after disbandment of multi-E group, any Es had agreed to be bound by group decisions; further, fact that U bargained individually with *splinter groups* of Es, after disbandment of formal multi-E group, effectively fragmented any multi-E bargaining so as not to bind any Es to group decisions)

5033-6040 Authority of association

Arden Electric, et al. **275 NLRB No. 095**
(U's ptns seeking single-E units of Es who had participated in multi-E unit represented by E association held not proper for dismissal, where E-members and E association intended to limit latter's authority so as to bargain only with IBEW or other Us as determined by board of directors and, upon accepting petitioner's disclaimer and thereby agreeing to dissolution of multi-E unit, E association could not bind Es to multi-E bargaining relationship with substitute for petitioner)

5033-6080 Withdrawal from association

Accetta Millwork, Inc. **274 NLRB No. 020**
(Es held not to be bound by, or to have established, multi-E bargaining unit and RM ptns reinstated, where evidence clearly established that formal multi-E group was disbanded, subsequent to disbandment Es had engaged in *informal group bargaining* with U, joining and withdrawing from group w/o written notice to or consent by U, and there was no evidence that after disbandment of multi-E group, any Es had agreed to be bound by group decisions; further, fact that U bargained individually with *splinter groups* of Es, after disbandment of formal multi-E group, effectively fragmented any multi-E bargaining so as not to bind any Es to group decisions)

5033-8000 Assent of union to multiemployer unit (for multiunion bargaining, See 554-700)

Arden Electric, et al. **275 NLRB No. 095**
(U's disclaimer resulting in dissolution of multi-E unit represented by E association and concurrent ptn for single E units held not to constitute unlawful whipsawing requiring dismissal of ptn, since any whipsaw-effect results from parties' relationship and from E association's decision to attempt to substitute on multi-E basis new U for disclaiming U; if alleged whipsawing were basis for dismissing ptns, w/o returning parties to status quo ante, Bd would preclude any inquiry into Es' consent to bargaining with substitute U and obligate them to multi-E unit bargaining they had never authorized)

6700 ADDITIONS OF GROUPS OF EMPLOYEES TO EXISTING UNITS

6701 GENERALLY

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. **282 NLRB No. 001**
[Bd has refused to *accrete* a larger complement of Ees into a smaller unit invariably when it involved attempt to include in the smaller unit a separate group of preexisting Ees with a separate history of representation or nonrepresentation]

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. **281 NLRB No. 128**
[Where E, by restructuring job classifications, seeks to separate certain Ees from established bargaining unit, combine them with a smaller number of formerly unrepresented Ees, and avoid bargaining with representative of established unit, Bd, in applying accretion analysis, will focus primarily on policy encouraging stable bargaining relationships, accord lesser weight to freedom of choice, and place burden on E to show that new Ee grouping is sufficiently dissimilar from previously established unit to warrant separation]

United States Steel Corporation **280 NLRB No. 098**
[Bd considers such factors as functional integration, shared supervisors, relative job skills, physical proximity, and bargaining history in determining whether new job classification constitutes accretion to existing unit]

Safeway Stores, Inc. **276 NLRB No. 099**
(while agreeing with ALJ that new chain retail store was not accretion to existing multi-store unit in light of factors relied on by ALJ, Bd noted fact that district manager rather than new store manager was engaged in adjusting grievances was relevant in determining whether new store was accreted to existing multistore unit)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(whether new group of Ees may properly be accreted into existing unit turns on entire congeries of facts in each case; however, accretion is to be regarded as narrow exception to general rule against premature recognition and valid accretion will be found only when the additional Ees have *little or no separate group identity* and thus cannot be considered to be separate appropriate unit and when additional Ees share an *overwhelming* community of interest with preexisting unit to which they are accreted)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
(party arguing *accretion* must demonstrate that expanded unit would be appropriate for bargaining, as well as demonstrating that group to be added would not in itself constitute an appropriate unit)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
(right of unit Ees to select their bargaining representative is predominant consideration under Section 7 of Act and is to be restricted only under *compelling conditions* concerning resolution of unit and accretion issues)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
]*accretion* to present unit of Ees outweighed by 2 significant factors--absence of interchange or regular contact between meat department Ees in new store and meat department Ees in E's other stores notwithstanding occasional use of floaters and lack of common day-to-day supervision over Ees of different stores as each one is autonomous)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
(Us should resolve close questions concerning extension of bargaining agreements in favor of proselytizing Ees in question rather than seeking to represent them through the fait accomplai of accretion)

Westvaco, Virginia, Folding Box Division v. N.L.R.B. **795 F.2d 1171 (C.A. 4, July 1986)**
[*Bd has determined that accretion of Ees to existing unit can be made only when additional Ees have little or no separate identity and thus cannot be considered to be separate appropriate unit and when additional Ees share overwhelming community of interests with preexisting unit to which they are accreted*]

Westvaco, Virginia, Folding Box Division v. N.L.R.B. **795 F.2d 1171 (C.A. 4, July 1986)**
[*Bd has cautious policy towards accretion. When substantial factors militate against accretion ptn, Bd has permitted U election. Refusing accretion in doubt-*

6701—Cont.

ful cases is preferable because it protects Ees' freedom to choose bargaining representative]

Westvaco, Virginia, Folding Box Division v. N.L.R.B. **795 F.2d 1171 (C.A. 4, July 1986)**

[*Bd has adopted multi-factor approach to decision making in accretion cases. In making its determination Bd closely analyzes circumstances of workers to determine whether new and old Ees truly share community of interests. To do this several factors are scruntinized: (1) similarity of working conditions; (2) job classification; (3) skills and functions; (4) similarity of products; (5) interchangability of Ees; (6) geographical proximity; (7) centralization of managerial contral; (8) functional integration of business; (9) collective bargaining history*]

Westvaco, Virginia, Folding Box Division v. N.L.R.B. **795 F.2d 1171 (C.A. 4, July 1986)**

[Bd abused its discretion when it held Ees to be accretion to existing unit, and departed from its existing standard for accretion of *overwhelming community of interests* w/o stating its reasons for change. Record revealed no similarity of working conditions, working area, status of Ees, methods of compensation, or fringe benefits]

N.L.R.B. v. DMR Corp. and Harrill Electric Contractors, Inc. **795 F.2d 472 (C.A. 5, July 1986)**

[in certification case, unit need not be most appropriate, but only one which is appropriate under circumstances; by contrast, in accretion case, group of Ees is properly accreted to existing bargaining unit when they have such close community of interests with existing unit that they have no true identity distinct from it]

N.L.R.B. v. DMR Corp. and Harrill Electric Contractors, Inc. **795 F.2d 472 (C.A. 5, July 1986)**

[heightened concern for interests of Ees to be accreted arises from accretion's interference with Ees' freedom to choose their own bargaining agents]

Machinists, District Lodge No. 190, Local Lodge No. 1414 v. N.L.R.B. (Towne Ford Sales and Town Imports) **759 F.2d 1477 (C.A. 9, May 1985)**

(in finding no accretion, Bd does *not* need to find that these Ees sought to be accreted constitute separate appropriate bargaining unit)

6725 SINGLE-LOCATION UNITS

6725-5000 Plant subdivision units

6725-5050 Departmental units

6725-5050-5000 Specific determination

6725-5050-5067 Employees held not to be accretion

N.L.R.B. v. Paper Manufacturers Company, et al. **786 F.2d 163 (C.A. 3, Mar. 1986)**

[Bd did not err in concluding medical packaging division remained appropriate unit rather than accretion to unit of Ees in regular packaging division, following relocation of medical packaging division to same plant where regular packaging division located w/i certification year of medical packaging division unit, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions with possible exception of two maintenance Ees, separate and distinct and no interchange of Ees]

6725-7500 Employee type or category units

6725-7515 Production and maintenance employees unit

6725-7515-5000 Specific determination

6725-7515-5067 Employees held not to be accretion

Westvaco, Virginia, Folding Box Division v. N.L.R.B. **795 F.2d 1171 (C.A. 4, July 1986)**

[*utility technicians* who operated solvent recovery equipment at manufacturer of cartons engraved by rotogravure process held not accretion to existing P&M unit, since utilities technicians and P&M Ees did not share required *overwhelming community of interest*, where utilities technicians performed unique tasks in distinct area under separate supervision, were specially trained for their positions, were not interchangeable with P&M Ees, were paid salaries rather than hourly wages, enjoyed different fringe benefits, and also have separate identity]

6725-7519 Office clerical employees unit

6725-7519-5000 Specific determination

6725-7519-5067 Employees held not to be accretion

Consolidated Papers, Inc. **274 NLRB No. 197**

]*merchant account representatives, merchant account trainees,* and *administrative assistant,* who were transferred from location, held not accretion and not included in unit of office clericals at manufacturer of paper products, where Ees sought to be included were salaried Ees promoted on basis of merit, and in view of different benefits, supervision, and lack of interchange between unit Ees and those sought)

6725-7534 Technical employees unit

6725-7534-5000 Specific determination

6725-7534-5067 Employees held not to be accretion

Abbott-Northwestern Hospital **274 NLRB No. 162**

(withdrawing recognition as to, and unilaterally changing working conditions of, 9 represented psychiatric assistants after transfer to same facility of 63 historically unrepresented psychiatric assistants, not violative, since consolidation obliterated unit of 9 represented Ees and unit of only part of group of Ees in same classification was inappropriate; unrepresented Ees were not accreted to former unit of represented Ees, parties had agreed that U would not represent previously unrepresented Ees, and U had reserved its representative position only as to previously represented Ees and complaint alleged violations only as to them)

6725-7553 Plant protection employees unit

6725-7553-5000 Specific determination

6725-7553-5067 Employees held not to be accretion

Rainey Security Agency, Inc. **274 NLRB No. 041**

(newly established goup of security guards held not accretion to existing guard unit in view of considerable geographical distances between new group's place of employment and E's other locations, different problems and needs of each separate group of Ees, absence of history of temporary or permanent Ee interchange between new guard group and other facilities of E, lack of operational integration between locations, and degree of autonomy exercised over day-to-day operations of new group; fact that contract's recognition clause exitends w/o limitation to all guard Ees of E is of no consequence)

6725-7562 Drivers (including driver-salesmen) unit

6725-7562-5000 Specific determination

6725-7562-5033 Employees held to be accretion

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. **281 NLRB No. 128**

[E's refusal to recognize U as representative of driver-salesmen, repudiation of contract and unilateral changes, following operational change in which E had eliminated job category's duties into new driver-salesman category, unlawful, notwithstanding E contention that creation of new category created qcr, where change was not technological and required no major hiring, job was similar to former category, no other U claimed to represent the E's, and Ees from old category substantially outnumbered additional driver-salesmen, who are viewed as accretion to old unit]

6725-7562-5067 Employees held not to be accretion

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. **275 NLRB No. 182**

(warehousemen not accreted to truckdrivers' unit where warehousemen had formed separate unit for many years, and they outnumbered truckdrivers almost two to one)

6725-7567 Warehouse employees unit

6725-7567-5000 Specific determination

6725-7567-5067 Employees held not to be accretion

United States Steel Corporation **280 NLRB No. 098**

[truckdrivers not accretion to existing unit of warehouse Ees at separate facility to which E moved operations where the two Ee groups continued to maintain their separate identities despite certain changes made in the drivers' duties]

6725-7574 Combined selling and nonselling personnel unit

6725-7574-5000 Specific determinations

6725-7574-5033 Employees held to be accretion

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. **282 NLRB No. 001**

[newly hired delicatessen Ees accreted to unit of E's cafe Ees, notwithstanding they were more numerous than cafe Ees, where delicatessen was expansion of cafe, new hires stabilized at ratio of 1:2 to cafe Ees and shared overwhelmingly strong community of interest, in particular similar job functions and classifications, integration of operations, and common supervision]

6750 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

6750-3300 Employerwide units

6750-3350 Specific determination

6750-3350-3300 **Employees held to be accretion**

N.L.R.B. v. DMR Corp. and Harrill Electric Contractors, Inc. 795 F.2d 472 (C.A. 5, July 1986)

[Bd properly found that electricians of old and new companies at separate locations, also found single E, performed mix of same kinds of work, using much same skills during both old and new company phases so that new company's Ees did not possess community of interests sufficiently separate and distinct so as to preclude their accretion to bargaining unit of old company's Ees]

6750-6700 Less than employerwide units

6750-6750 Specific determination

6750-6750-6700 **Employees held not to be accretion**

Safeway Stores, Inc. 276 NLRB No. 099

(new chain retail store on Hawaiian island of Maui held not accretion to existing multistore unit in islands, notwithstanding integration of operations and product lines, similarity ow working conditions, skills, and functions, and number of Maui store Ees as compared to existing unit, where new facility would likely be treated as independent operation, inasmuch as new Ees were hired specifically for new facility, facility was separately managed, there was no Ee interchange between new and previous operations, and facilities were geographically distant)

6775 MULTIEMPLOYER UNITS

6775-5000 Specific determination

6775-5067 Employees held not to be accretion

Phillip A. Hunt Corporation JD-14-86

[no accretion found where there was no addition of new Ees to existing unit but rather relocation of certain work performed by unit Ees at one of E's two plants represented by U to new non-U plant]

8300 SEVERANCE OF GROUPS OF EMPLOYEES FROM EXISTING UNITS

460 DETERMINATION OF COMPOSITION OF UNIT

2500 DETERMINATIONS INCLUDING OR EXCLUDING EMPLOYEE JOB CATEGORIES FROM UNITS (SEE APPROPRIATE HEADING UNDER TYPE OF UNIT INVOLVED, UNDER 440-0000)

5000 EFFECT OF EMPLOYMENT CATEGORY, STATUS, OR TENURE UPON PLACEMENT IN A UNIT

5033 CATEGORY OR TYPE OF EMPLOYEE

5033-2500 Employees allied with management

5033-2501 Generally

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[Bd considers variety of factors in deciding whether Ee's familial ties are sufficient to align his interests with management and thus warrant his exclusion from unit; for instance, Ee who resides with or is financially dependent on relative who owns or manages business is typically excluded; and the greater the family involvement in ownership or management, the more likely Ee-relative will be viewed as aligned with management and hence excluded]

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[in deciding whether Ee's familial ties are sufficient to align his interests with management and thus warrant his exclusion, Bd is always concerned with whether Ee receives special job-related benefits such as high wages or favorable working conditions; when other criteria satisfy Bd that Ee-relative's interests are aligned with management, however, he may be excluded even though he enjoys no special job-related benefits]

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[where issue was whether Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held its review was limited to whether Bd's practice of excluding some close relatives who do not enjoy special job-related benefits has *reasonable basis in law*; in reviewing Bd decisions ct consistently yields to Bd's reasonable interpretations and applications of Act; and Bd's orders defining bargaining units are rarely to be disturbed]

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held Bd's policy regarding family members was reasonable application of *community of interest* standard; it is reasonable for Bd to assume that family members significantly dependent on management member will equate their personal interests with those of E; and their presence at U meetings could inhibit free expression of views and threaten confidentiality of U attitudes and voting]

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held it does not make labor policy under Sec. 9(b) which vested that authority in Bd whose extensive experience in administration of Act is brought to bear on question of unit determinations; ct does not require mathematical precision and is not prepared to second-guess Bd's informed judgment that unit's community of interest may be diluted by circumstances other than job-related benefits granted to Ee-relatives of management]

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held Bd's decision to exclude some family members is not inconsistent with fundamental structure or policies of Act; Congress has limited Bd's discretion to define bargaining units as it has done under Sec. 9(c)(5) making extent to which Ees have organized not controlling; but there is no express direction in Act that Bd define units only by reference to job-related benefits to Ee-relatives; and ct is not authorized to bind Bd in ways not mandated by Congress]

5033-2550 Nature of relationship

5033-2550-2900 Parent

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[Bd properly excluded from unit wife of part owner of corporation conjointly with his 2 brothers, and mother of owners, since wife's and mother's interests were more likely aligned with family's than with Ees' interests, where brothers were actively involved in running business on daily basis; wife worked as clerk at same location as her husband, occasionally taking coffee breaks in his office; and mother, who worked as cashier at one of E's locations, lived with one of the owners and had daily contacts with all her sons]

5033-2550-3300 Child

Terrailion Corp. 280 NLRB No. 037
[part time Ee who was high school age son of E's vice-president held not eligible to vote, since he enjoyed *special status* where he was allowed to work hours of his own choosing to accomodate his studies, had no income tax or social security deducted from his wages, and made personal telephone calls from his father's office]

The Royal Soneata, Inc. d/b/a Royal Laundry 277 NLRB No. 085
(challenge to ballot of son of personnel director sustained where he was not shown to have performed unit work on even regular part-time basis)

Marion Center Supply, Inc. 277 NLRB No. 026
(challenge to ballots of E's children sustained)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. 277 NLRB No. 001
(son of supervisor who was also minority stockholder, and nephew and cousin respectively of individual who was board member, supervisor, and primary stockholder, and another primary stockholder held to qualify as close relative of management whose interests are more aligned with business interests of his family than with those of Ees and, therefore, he was excluded from unit even though he performed unit work)

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86
[assistant mechanic who occasionally drove trucks excluded from unit of drivers, yardmen, and mechanics at hauling company since, as son of corporate owner-official and nephew of other owners and managers, he did not share community of interest with unit Ees]

5033-2550-5000 Husband or wife

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[Bd properly excluded from unit wife of part owner of corporation conjointly with his 2 brothers, and mother of owners, since wife's and mother's interests were more likely aligned with family's than with Ees' interests, where brothers were actively involved in running business on daily basis; wife worked as clerk at same location as her husband, occasionally taking coffee breaks in his office; and mother, who worked as cashier at one of E's locations, lived with one of the owners and had daily contacts with all her sons]

5033-2550-8300 Other type of relative

N.L.R.B. v. Action Automotive, Inc. ——U.S.——
(U.S. S.CT, Feb. 1985)

[ct held E's reliance on Sec. 2(3) which excludes from Act's definition of *employee any individual employed by his parent or spouse*, in support of position that Bd had no authority to exclude Ee-relatives from unit, was misplaced; such person is completely outside scope of statute and may not invoke its protection; family members who fall w/i Act's broad definition of

5033-2550-8300—Cont.

employee, however, have no statutory right to be included in units under Sec. 9(b); and Bd is free to exclude from unit persons who are statutory *employees* otherwise protected by Act]

N.L.R.B. v. Action Automotive, Inc. ———U.S.——— (U.S. S.CT, Feb. 1985)

[Bd's policy of excluding close relatives of management w/o a showing of job-related benefits granted to them does not run afoul of Act's mandate that Bd remain *wholly neutral* between contending parties in R election; Bd does not exclude family member from unit because he is likely to vote against U; rather, family member is excluded because of lack of common interests with other Ees; however, a disparate impact does not violate principle of neutrality inasmuch as every Bd decision concerning bargaining unit favors one side or the other]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86

[assistant mechanic who occasionally drove trucks excluded from unit of drivers, yardmen, and mechanics at hauling company since, as son of corporate owner-official and nephew of other owners and managers, he did not share community of interest with unit Ees]

5033-5000 Confidential employees

5033-5001 Generally

Moe Warehouse & Accessory 275 NLRB No. 165

(challenge to ballot of individual at auto parts warehouse who assisted in preparing invoices, writing orders, and placing orders in stores, based on contention she was confidential Ee, overruled)

5033-5050 Identifying characteristics

5033-5050-5000 Access to information regarding

5033-5050-5020 Labor relations

Terrillon Corp. 280 NLRB No. 037

[secretary to vice-president and highest U.S. official of E, who handled E's correspondence with NLRB and labor attorneys, held not confidential Ee and eligible to vote where vice-president was not responsible for formulating labor relations or personnel policies, which were established by his superiors abroad, nor was secretary present at conferences with labor counsel; found not significant was her occasional typing of letters to or filing of letters from labor counsel]

Intermountain Rural Electric Association 277 NLRB No. 003

(secretary to director of engineering department held not confidential Ee with labor nexus, where director's duties consisted of no more than occasional contribution to possible management decision-making which was inadequate to show responsibility or regular involvement in labor policy function; director's relationship to secretary did not exhibit any evidence of sharing of management policy or entrusting her with information relative to labor relations formulation; and single instance of note-taking at management meeting and typing 3 memos of uncertain labor policy content are inadequate basis for finding confidential status)

5033-7500 Managerial employees

N.L.R.B. v. The Cooper Union For The Advancement of Science and Art 783 F.2d 29 (C.A. 2, Jan. 1986)

[faculty members of private, non-profit, educational institution, Ees rather than managers or supervisors, where they were not aligned with management and did not effectively recommend or exercise control over academic or nonacademic affairs, and administration implemented changes in such core academic areas as curriculum and unilaterally revised governances and terms and conditions of employment]

N.L.R.B. v. The Cooper Union For The Advancement of Science and Art 783 F.2d 29 (C.A. 2, Jan. 1986)

[faculty members of private, non-profit, educational institution, Ees rather than managers or supervisors, where they were not aligned with management and did not effectively recommend or exercise control over academic or nonacademic affairs, and administration implemented changes in such core academic areas as curriculum and unilaterally revised governances and terms and conditions of employment]

5033-7501 Generally

United Artists Theatre Circuit, Inc. 277 NLRB No. 015

(challenge to ballots of Ees sustained where Ees, because of their use of independent judgment, were found to be managerial)

5033-7550 Identifying characteristics

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. 277 NLRB No. 001

(leadman, while not supervisor, excluded from operation-wide unit at coal strip mining operation, since his functions and interests were more closely aligned with those of management, where his work was separate and apart from that of unit Ees; he had authority to make purchases up to $300 on his own initiative; Ee maintained and serviced his personal vehicle which he used in his work; and his wages substantially exceeded that of Ee who worked with him)

5033-7550-0100 Generally

Maccabees Mutual Life Insurance Company v. N.L.R.B. 757 F.2d 767 (C.A. 6, Mar. 1985)

(policy warranting exclusion)

5033-7550-2000 Formulation or effectuation of employer's policies

American International College 282 NLRB No. 016

[unit of full-time faculty at college held inappropriate, as faculty was managerial and excluded from coverage of Act, since it made effective decisions in majority of critical areas relied on by S.Ct in *Yeshiva University* (144 U.S. 672), where faculty, through their participation on faculty committees, as departmental chairpersons, and as members of faculty as a whole, effectively determined curriculum and academic policies and standards of college and exerted significant influence in decisions regarding hiring, tenure, and evaluation of their fellow faculty members]

Trustees of Boston University 281 NLRB No. 115

[department chairmen and faculty at university held managerial Ees under *Yeshiva* standard, where faculty had absolute authority over grading, teaching methods, graduation requirements, and student discipline; also, faculty almost always effectively controlled matriculation requirements, curriculum, academic calendars, and course schedules, and played effective and determinative role in recommending faculty hiring, tenure, promotions, and reappointments, and, in particular, had authority to effectively veto curriculum and personnel decisions, all of which enumerated matters were important facets of university policy]

Trustees of Boston University 281 NLRB No. 115

[in determining that department chairmen and faculty at university were managerial Ees under *Yeshiva* standard, Bd held fact that ultimate authority for decision making at university rested with president and board of trustees did not alter fact that, in practice, faculty decisions on all those policy matters were effected in great majority of instances; nor did fact that administration occasionally made and implemented policy decisions w/o faculty input detract from collegial managerial authority exercised by faculty]

Marymount College of Virginia 280 NLRB No. 050

[in unit clarification proceeding, E's contention that new position of *program coordinator* should be excluded from unit as managerial or supervisory, rejected, since *program coordinators* did not exercise control over areas indicative of managerial or supervisory status where they performed only informal and casual recommendations for hire of faculty, did not determine courses to be taught, did not evaluate faculty members and were not involved in financial or economic planning]

Marymount College of Virginia 280 NLRB No. 050

[in unit clarification proceeding, E's contention that professional librarians should be excluded from existing unit as managerial or supervisory, rejected, since they did not exercise control over areas indicative of managerial or supervisory status where none of the librarians had authority to evaluate Ees, establish salaries, grant time-off, hire or fire personnel or otherwise engage in the management of the library]

David Walcott Kendall Memorial School a/k/a Kendall School of Design 279 NLRB No. 042

[ptn for clarification of unit of faculty members at art and technical school seeking to have them declared managerial Ees dismissed, since faculty did not formulate or effectuate management practices, particularly in view of fact individual faculty members' did not make decisions regarding their own classes, including determining course content and text, take field trips, cancel class, or substitute teacher w/o obtaining permission. Service on committees which made recommendations with varying results not indicia of managerial status since administration retained tight control of committees]

David Walcott Kendall Memorial School a/k/a Kendall School of Design 279 NLRB No. 042

[chairpersons at technical school held not managerial Ees and included in unit of faculty members, notwithstanding sat on dean's council which ostensibly had authority to make decisions not made in regular committee structure, evaluated faculty, decided whether teachers from other departments might teach in their departments, prepared schedules, budgets, made recommendations on hiring, since not clear what use made of faculty evaluations, chairpersons had no greater role in curriculum committee than othan other members, control over their departments and time spent in functions other than teaching limited]

U.S. Pollution Control, Inc. 278 NLRB No. 042

[pollution control specialist employed by E engaged in hazardous waste disposal, not managerial, notwithstanding he bid on work for E, since he did not exercise significant independent discretion and authority where he consulted with corporate headquarters before making bid]

5033-7550-2000—Cont.

FHP, Inc. 274 NLRB No. 168
(full-time physicians and dentists, as members of E's committees at non-profit HMO clinics, managerial where they formulated and effectuated policies on matters at core of E's operations, including protocol and record systems, medical prescriptions, staff benefits and working conditions, medical emergency procedures, peer review and minimization of medical malpractice liability risks; their committee participation was not primarily advisory and patient-care related where they played same roles in committees as their supervisors, part-time physicians and dentists, who were not members of committees, not managerial)

N.L.R.B. v. Louisville Gas & Electric Company 760 F.2d 99 (C.A. 6, Apr. 1985)
(data records analyst at utility company who simply monitor pollution findings, flag violations and draft possible remedial solutions, held nonmanagerial, as they have no authority to make fundamental decisions about whether or how company will comply with Clean Air Act; thus, their duties do not reflect level of discretionary action or decision making consistent with S.Ct's decision in Yeshiva University, 444 U.S. 672 (1980))

Maccabees Mutual Life Insurance Company v. N.L.R.B. 757 F.2d 767 (C.A. 6, Mar. 1985)
(insurance company's contention that RD should have clarified unit to exclude as managerial E's claims representatives, whose positions replaced those of E's former claims examiners, rejected, and Bd bargaining order enforced where RD, contrary to E's contention, did consider degree of representatives' discretion and found it *somewhat illusory*, and, although RD did apply older cases, as contended, he did note that the tasks of E's representatives were not essentially unlike those of claims adjusters in earlier insurance company cases)

N.L.R.B. v. Lewis University 765 F.2d 616 (C.A. 7, June 1985)
(fact that expired contract contained management rights clause reserving to management all powet, right, authority, duty and responsibility to and for management and operation of university and therefore faculty members merely exercise independent professional judgment but that college policies are established and implemented pursuant bargaining agreement with university's administration dominating decision making process by virtue of management rights clause, rejected, as faculty members formulate and implement major educational policies almost all of which are adopted by administration)

N.L.R.B. v. Lewis University 765 F.2d 616 (C.A. 7, June 1985)
(faculty members at university held managerial where as *faculty convened* they approved proposals and recommendations emanating from faculty committees regarding student admission policies, graduation requirements, grading guidelines, faculty tenure, workloads, promotions, hiring and final budget notwithstanding administration had veto power over recommendations as overwhelming majority of these proposals were adopted and implemented; thus faculty members clearly represent management interests by taking or recommending discretionary actions that effectively control or implement educational policies of college)

N.L.R.B. v. Lewis University 765 F.2d 616 (C.A. 7, June 1985)
(assertion that decisions of full-time faculty members not managerial, but rather independent judgments exercised in faculty members' own interest, rejected, since faculty's professional interest-as applied to governance et a university-cannot be separated from those of the institution)

N.L.R.B. v. Lewis University 765 F.2d 616 (C.A. 7, June 1985)
(assertion that because final authority invested not in faculty, but in administration and therefore faculty members not managerial, rejected, as ultimate authority has never been thought to be prerequisite to supervisory or managerial status. Relevant consideration is effective recommendation or control rather than final authority)

Noranda Aluminum, Inc. 751 F.2d 268 (C.A. 8, Dec. 1984)
(nurses at aluminum plant not managerial, where they primarily treat Ees' injuries and illnesses, administer routine physical examinations, and maintain records under direction of nursing services supervisor and part-time physician; they had no independent authority to purchase medicine and equipment, their discretion was limited to applying their professional medical skills, any conflict of interest between their responsibilities and loyalty to the U was insufficient to exclude them from coverage, and they had access to personnel and medical records but did not help set labor relations)

5033-7550-4000 Attendance at management meetings

Sahara Datsun, Inc. 278 NLRB No. 148
[finance and insurance manager at automobile dealership, held managerial where he attended management meetings and had wide latitude in deciding whether E's credit would be extended to customer]

5033-7550-6000 Authority to pledge employer's credit

Salinas Newspapers, Inc., A Division of Gannett Newspapers 279 NLRB No. 142
[credit manager, managerial where he possessed and exercised discretionary powers to extend or deny credit to E's customers in substantial amounts, was solely responsible for administering E's collection efforts, and effectively recommended and accomplished credit cutoffs and account writeoffs]

Sahara Datsun, Inc. 278 NLRB No. 148
[finance and insurance manager at automobile dealership, held managerial where he attended management meetings and had wide latitude in deciding whether E's credit would be extended to customer]

5067 STATUS OR TENURE OF EMPLOYEE

5067-1400 Apprentices and trainees

5067-1450 Criteria relevant to placement

Kobacker Stores, Inc. d/b/a Pic-Way Shoe Mart 274 NLRB No. 132
(management trainees at retail shoe stores included in unit of assistant managers and store associates notwithstanding fact that substantial portion of trainees become managers after year of training, where they have community of interest with associates, they possess no supervisory authority, their duties, compensation, and benefits are similar to those of associates, and some of those who fail to become managers remain in unit as associates)

5067-4500 Students

5067-4550 Criteria relevant to placement

Shepherd's Uniform and Linen Supply Co. 274 NLRB No. 200
(U's contention that vocational education students did not share community of interest with unit Ees because shcool's guidelines for participation in program removed control over student Ees from E, rejected, since degree of control did not prevent them from sharing community of interest with unit Ees where students performed same duties, worked under same supervision, received same wages and benefits as unit Ees and E encouraged them to continue employment upon completion of the program and student had more of employment relationship with E rather than educational because he was not learning skill)

5067-7700 Intermittent, occasional, or casual employees

5067-7701 Generally

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)
(Bd's conclusion that *extras* hired by E engaged in lettuce cooling business in prior growing season were not included in bargaining unit, is supported by substantial evidence in record even if E shows that another unit might be more appropriate)

5067-7750 Criteria relevant to placement

Donnie M. Parris, A Sole Proprietorship d/b/a D & B Masonry 275 NLRB No. 193
(Ees who were employed by E intermittently w/o reasonable expectation of recall from layoff w/i reasonable period of time found casual Ees w/o community of interest with regular Ee and therefore not part of unit with him)

5067-8400 Employees on layoff or leave-of-absence status

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. 277 NLRB No. 001
(Ee who was permitted to take extended leaves of absence during winter months in order to take his wife to warmer climate because of her health conditions, but then returned to employment with E, included in unit where, with exception of extended leaves, Ee is employed on regular basis and under same conditions as other unit Ees' and upon his return from leaves, he has every reasonable expectation of continued employment)

5067-9200 Employees employed under government programs

5067-9250 Criteria relevant to placement

Shepherd's Uniform and Linen Supply Co. 274 NLRB No. 200
(U's contention that vocational education students did not share community of interest with unit Ees because shcool's guidelines for participation in program removed control over student Ees from E, rejected, since degree of control did not prevent them from sharing community of interest with unit Ees where students performed same duties, worked under same supervision, received same wages and benefits as unit Ees and E encouraged them to continue employment upon completion of the program and student had more of employment relationship with E rather than educational because he was not learning skill)

5067-9900 Other employees

5067-9950 Criteria relevant to placement

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(Social Security annuitant working under same conditions and supervisors as other unit Ees, included in unit, since such annuitants, who otherwise share same community of interest with unit Ees, are not excluded from units solely for limiting their working time and earnings so as not to jeopardize their annuities)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(social security annuitant, asserted!y casual part-time Ee who, apart from special arrangement to limit his earnings to avoid decrease in his annuity, worked full-time, included in unit, since there was no evidence his terms and conditions of employment differed from those of other unit Ees)

7500 EMPLOYEE CATEGORIES EXCLUDED FROM UNIT BY STATUTORY DEFINITION (FOR DEFINITIONS, SEE 177-2484)

7550 TYPES OF EMPLOYEES AFFECTED BY STATUTE

7550-4500 Guards

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(watchmen at coal strip mining site excluded from unit, since they protect E's property w/i meaning of 9(b)(3), where their primary function is to protect E's buildings and equipment from intruders; unlike other Ees, they carry keys to E's buildings and, while not required, they can carry firearms when performing their patrolling duties; and they report to management any infraction of job rules committed by Ees)

7550-7500 Relatives of management

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— **(U.S. S.CT, Feb. 1985)**
[Bd considers variety of factors in deciding whether Ee's familial ties are sufficient to align his interests with management and thus warrant his exclusion from unit; for instance, Ee who resides with or is financially dependent on relative who owns or manages business is typically excluded; and the greater the family involvement in ownership or management, the more likely Ee-relative will be viewed as aligned with management and hence excluded]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— **(U.S. S.CT, Feb. 1985)**
[in deciding whether Ee's familial ties are sufficient to align his interests with management and thus warrant his exclusion, Bd is always concerned with whether Ee receives special job-related benefits such as high wages or favorable working conditions; when other criteria satisfy Bd that Ee-relative's interests are aligned with management, however, he may be excluded even though he enjoys no special job-related benefits]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— **(U.S. S.CT, Feb. 1985)**
[where issue was whether Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held its review was limited to whether Bd's practice of excluding some close relatives who do not enjoy special job-related benefits has *reasonable basis in law*; in reviewing Bd decisions ct consistently yields to Bd's reasonable interpretations and applications of Act; and Bd's orders defining bargaining units are rarely to be disturbed]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— **(U.S. S.CT, Feb. 1985)**
[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held Bd's policy regarding family members was reasonable application of *community of interest* standard; it is reasonable for Bd to assume that family members significantly dependent on management member will equate their personal interests with those of E; and their presence at U meetings could inhibit free expression of views and threaten confidentiality of U attitudes and voting]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— **(U.S. S.CT, Feb. 1985)**
[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held it does not make labor policy under Sec. 9(b) which vested that authority in Bd whose extensive experience in administration of Act is brought to bear on question of unit determinations; ct does not require mathematical precision and is not prepared to second-guess Bd's informed judgment that unit's community of interest may be diluted by circumstances other than job-related benefits granted to Ee-relatives of management]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— **(U.S. S.CT, Feb. 1985)**
[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held Bd's decision to exclude some family members is not inconsistent with fundamental structure or policies of Act; Congress has limited Bd's discretion to define bargaining units as it has done under Sec. 9(c)(5) making extent to which Ees have organized not controlling; but there is no express direction in Act that Bd define units only by reference to job-related benefits to Ee-relatives; and ct is not authorized to bind Bd in ways not mandated by Congress]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— **(U.S. S.CT, Feb. 1985)**
[ct held E's reliance on Sec. 2(3) which excludes from Act's definition of *employee any individual employed by his parent or spouse*, in support of position that Bd had no authority to exclude Ee-relatives from unit, was misplaced; such person is completely outside scope of statute and may not invoke its protection; family members who fall w/i Act's broad definition of *employee*, however, have no statutory right to be included in units under Sec. 9(b); and Bd is free to exclude from unit persons who are statutory *employees* otherwise protected by Act]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— **(U.S. S.CT, Feb. 1985)**
[Bd's policy of excluding close relatives of management w/o a showing of job-related benefits granted to them does not run afoul of Act's mandate that Bd remain *wholly neutral* between contending parties in R election; Bd does not exclude family member from unit because he is likely to vote against U; rather, family member is excluded because of lack of common interests with other Ees; however, a disparate impact does not violate principle of neutrality inasmuch as every Bd decision concerning bargaining unit favors one side or the other]

Terrailion Corp. **280 NLRB No. 037**
[part time Ee who was high school age son of E's vice-president held not eligible to vote, since he enjoyed *special status* where he was allowed to work hours of his own choosing to accomodate his studies, had no income tax or social security deducted from his wages, and made personal telephone calls from his father's office]

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(challenge to ballot of Ee sustained where Ee lacked community of interest with other Ees by virtue of his blood relationship to certain of E's owners and managers, and Ee was immune from review or correction by lower level supervision as result of relationship)

7550-8700 Supervisors

Terrailion Corp. **280 NLRB No. 037**
[clerical did not become supervisor and ineligible to vote upon her promotion to *office manager*, where her actual duties did not change; her taking calls regarding Ees' absences and keeping leave records were merely ministerial functions, and she had no authority to grant time off or arrange schedules, nor did she hire and fire or effectively recommend doing so]

Offshore Shipbuilding, Inc. **274 NLRB No. 077**
]*leadmen* at shipyard who were held not supervisors eligible to vote)

470 HEALTH CARE INSTITUTION UNITS

0100 GENERALLY (FOR DEFINITIONS OF HEALTH CARE INSTITUTIONS SEE 177-9700-0000-0000)

Kirksville College of Osteopathic Medicine, Inc. **274 NLRB No. 121**
(contention that Ees of hospital share community of interest separate from college and unit limited to hospital Ees is only appropriate unit, rejected and appropriate unit includes Ees of hospital *and* college, since hospital and college combined is *health care institution* w/i meaning of 2(14) of Act where Ees in several departments serve both hospital and college in highly integrated manner and because a strike among any group of Ees would have profound effect upon functioning of hospital, policy dictates that no lone between college and hospital be drawn; *Albany Medical College*, 239 NLRB 853, overruled)

0125 EFFECT OF STIPULATIONS

Sunrise, A Community For The Retarded, Inc. **282 NLRB No. 035**
[where stipulated unit at health care institution was defective on its face because it included professional RNs and nonprofessional Ees, but hearing officer proposed modifying unit by excluding RNs, to which E excepted on ground Bd had no authority to rewrite inclusions and exclusions in stipulated unit, Bd held defect could not be removed by modifying unit, and set aside election because of inappropriateness of unit, vacated stipulation and remanded to RD to process ptn by either assisting parties to agree on new stipulation or, in absence thereof, conducting hearing on unit issue]

0150 LEGISLATIVE HISTORY

Kirksville College of Osteopathic Medicine, Inc. **274 NLRB No. 121**
(primary focus of legislative debates surrounding 1974 health care amendments was the need to avoid interruptions in the delivery of health care services and towards this end, Congress provided in 8(g) that special strike notice provisions be applicable and cautioned Bd not to allow undue proliferation of bargaining units; Congress further indicated that term *health care institution* should be construed broadly, *Albany Medical College* 239 NLRB 853, overruled)

1700 PROFESSIONAL UNITS

1701 GENERALLY

1701-5000 Statutory prerequisite

Renaissance West Community Mental Health Center **276 NLRB No. 050**
(unit of Ees at nonprofit corporation providing mental health services for city-county mental health board, inappropriate, where it contained professional and non-professional Ees and professional Ees were never afforded opportunity of separate vote in state-conducted election; there was no Bd certification and no history of bargaining between parties; and should Bd honor state certification it would, in effect, be initially establishing mixed unit in violation of 9(b)(1))

1716 PHYSICIANS AND SURGEONS UNIT

1716-4000 Specific determination

FHP, Inc. **274 NLRB No. 168**
(regular part-time physicians and dentists at HMO appropriate unit, excluding as managerial all full-time physicians and dentists, and excluding licensed clinical social workers, office clerical employees, guards and supervisors)

1733 REGISTERED NURSES UNIT

1733-0100 Generally

North Shore University Hospital **274 NLRB No. 188**
(on ct remand, Bd vacated prior D/O, dismissed C and revoked Certification of Representative and found that nurses association should not be considered differently from other labor organizations regarding conflict of interest engendered by supervisors' active participation in association, lack of insulation of collective-bargaining process from governance of organization and lack of mechanism to assist Es from violating Sec. 8(a)(2) through supervisory Ees participation in association's affairs)

1733-2000 Identifying characteristics

Middletown Hospital Association **282 NLRB No. 079**
[in adopting ALJ's ultimate conclusion that unit of hospital RNs was inappropriate and holding unit of all professional Ees appropriate, Bd held differences between ALJ's characterization of frequency of contact between both groups and characterization of such factor in case relied on by ALJ, did not warrant reversal of ALJ's conclusion that level of contact was not so negligible as to justify separate RN unit; and meaningful degree of contact between RNs and other professionals clearly existed]

1733-4000 Specific determination

Middletown Hospital Association **282 NLRB No. 079**
[Bd adopted ALJ's second supplemental decision finding separate unit of hospital RNs inappropriate, and held unit of all professional Ees appropriate; claimed contradiction in ALJ's first and second supplemental decisions concerning functional integration of both groups did not undermine ALJ's unit determination; his conclusion that both groups did not have disparity of interests sufficient to find RN unit appropriate was premised on factors other than functional integration; and even if ALJ was off mark regarding such integration, it did not warrant reversal of his ultimate conclusion]

St. Francis Medical Center **JD-(SF)-069-85**
[upon further consideration in light of *St. Francis Hospital*, 371 NLRB 948, separate unit of registered nurses at acute care hospital held inappropriate and ptn dismissed, and smallest appropriate unit would be unit of all professional Ees, especially in view of cooperation among professionals in interdisciplinary approach to health care, and lack of any sharper than usual difference between wages, hours, working conditions of registered nurses and other professionals]

1733-6000 Placement of registered nurses in other unit

Sunrise, A Community For The Retarded, Inc. **282 NLRB No. 035**
[where stipulated unit at health care institution was defective on its face because it included professional RNs and nonprofessional Ees, but hearing officer proposed modifying unit by excluding RNs, to which E excepted on ground Bd had no authority to rewrite inclusions and exclusions in stipulated unit, Bd held defect could not be removed by modifying unit, and set aside election because of inappropriateness of unit, vacated stipulation and remanded to RD to process ptn by either assisting parties to agree on new stipulation or, in absence thereof, conducting hearing on unit issue]

North Arundel Hospital Association, Inc. **279 NLRB No. 048**
[separate unit of registered nurses was inappropriate and all professional unit including registered nurses was smallest appropriate unit where it was not established that there were *sharper than usual differences* between terms and conditions of employment of registered nurses and other professional Ees]

Kodiak Area Hospital **278 NLRB No. 033**
[on remand unit of professionals at hospital, including pharmacists, medical labaratory technologists, nurse anesthetists, social service director, and registered nurses, held appropriate, rather than separate unit of registered nurses, since separate unit of registered nurses did not meet sharper than usual differences from other Ees required to justify separate units at health care facilities, in light of *St. Francis II*, 271 NLRB 948, where all professional Ees subject to same personnel policies and procedures, and in view of overlap of functions and regular contact among professional Ees]

1787 ALL PROFESSIONAL UNIT

1787-2000 Identifying characteristics

Middletown Hospital Association **282 NLRB No. 079**
[in adopting ALJ's ultimate conclusion that unit of hospital RNs was inappropriate and holding unit of all professional Ees appropriate, Bd held differences between ALJ's characterization of frequency of contact between both groups and characterization of such factor in case relied on by ALJ, did not warrant reversal of ALJ's conclusion that level of contact was not so negligible as to justify separate RN unit; and meaningful degree of contact between RNs and other professionals clearly existed]

1787-4000 Specific determination

1787-4000—Cont.

Middletown Hospital Association **282 NLRB No. 079**
[Bd adopted ALJ's second supplemental decision finding separate unit of hospital RNs inappropriate, and held unit of all professional Ees appropriate; claimed contradiction in ALJ's first and second supplemental decisions concerning functional integration of both groups did not undermine ALJ's unit determination; his conclusion that both groups did not have disparity of interests sufficient to find RN unit appropriate was premised on factors other than functional integration; and even if ALJ was off mark regarding such integration, it did not warrant reversal of his ultimate conclusion]

Keoduk Area Hospital **278 NLRB No. 033**
[on remand unit of professionals at hospital, including pharmacists, medical labaratory technologists, nurse anesthetists, social service director, and registered nurses, held appropriate, rather than separate unit of registered nurses, since separate unit of registered nurses did not meet sharper than usual differences from other Ees required to justify separate units at health care facilities, in light of *St. Francis II*, 271 NLRB 948, where all professional Ees subject to same personnel policies and procedures, and in view of overlap of functions and regular contact among professional Ees]

3300 TECHNICAL EMPLOYEES UNIT

3320 IDENTIFYING CHARACTERISTICS

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
(unit of technical Ees appropriate rather than unit of technical, service, maintenance and other nonprofessional Ees, since there was disparity of interests between technical, service, maintenance and nonprofessional Ees, where there were *sharper than usual* differences in wages and working conditions, technical Ees required special training, were highly skilled and rarely-transferred between other Ee groups; further, fact that some interchange existed between technical and nontechnical Ees because of *team* concept of patient care was irrelevant since much contact involved mere delivery of materials or messages by service Ees)

3340 SPECIFIC DETERMINATION

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*EKG Technicians* excluded from technical unit where they did not have to be licensed and job involved routine procedures in which operator did not analyze test results of EKG)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Monitoring Technicians* excluded from technical unit where they needed only high-school education, underwent on-the-job training and did not analyze readings on equipment)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Emergency Room Technicians* excluded from technical unit where they needed only high-school education, E did not require specialized training and tasks of taking medical histories, vital signs, preparing splints and drawing blood did not require use of independent judgment)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Pharmacy Technicians* excluded from technical unit where they needed only high-schoold education, skills were obtained from on-the-job training and they were paid substantially less than other stipulated technical Ees)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Printer* excluded from technical unit where qualifications did not require specialized training and job was routine, not requiring use of independent judgment)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Phlebotomists* excluded from technical unit where primary function was simply to draw blood, they learned skills from on-the-job training and there was no evidence they were required to hold registration or certification of any kind)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Darkroom Technician* excluded from technical unit where only high-school education was required and job involved only routine function of developing exposed x-ray film)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Central Supply Technicians* excluded from technical unit where only high-school education and one to two years of supply experience was required in order to sterilize and decontaminate hospital equipment)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Delivery Room Technicians* excluded from technical unit where they did not assist in any surgical procedures but rather, duties involved maintenance of equipment and passing of instruments during delivery of infants and no specialized or formal training was required)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Nursery Technicians* excluded from technical unit where job of monitoring heartbeats and preparing reports on infant development required no special training and they worked under supervision of nurse)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Mental Health Counselors* included in technical unit where E required them to have BS in psychology, be an LPN or possess other specialized degree in mental health and they assisted other professional Ees in carrying out treatment plans which involved use of independent judgment)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*EEG Technicians* included in technical unit where E required them to have completed training in accredited school or hold EEG certificate and they evaluated EEG data which involved use of independent judgment)

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
]*Draftsman* included in technical unit, notwithstanding he did not share substantial community of interest with technical Ees in that he had little if any working contact with them, where he possessed 4-year college degree and job of preparing blueprints for new construction involved use of independent judgment)

St. Luke's Memorial Hospital **274 NLRB No. 202**
(Bd held petitioned-for unit of licensed practical nurses, inappropriate; contrary to RD's finding that separate bargaining history continues to be relevant and controlling factor in unit determination, Bd held that, under *St. Francis*, 271 NLRB No. 160, bargaining history is relevant but *not* controlling in that it is to be considered along with all other relevant factors in determining whether under disparity of interests test, unit is appropriate in health care industry)

3380 PLACEMENT OF OTHER EMPLOYEES IN TECHNICAL UNIT

Baker Hospital, Inc. **279 NLRB No. 038**
[applying disparity-of-interest analysis to sought-for unit of hospital Ees, Bd found insufficient disparity of interests between office clericals and service and maintenance and technical Ees unit to justify exclusion of clericals from unit, where clericals had significant, work-related contact with unit Ees and shared many terms and conditions of employment with them; hence, there was no *sharper than usual differences* to demonstrate disparity of interests justifying clericals' exclusion]

Baker Hospital, Inc. **279 NLRB No. 038**
[hospital's activities director who arranges recreational patient activity, and social services director who places patients in long-term care unit and plans their discharge, included in service and maintenance and technical Ees unit, where requisite disparity of interest between directors and unit Ees for excluding them from unit did not exist, in view of Bd's finding that directors may appropriately be considered technical Ees, who parties agreed should be included in unit; terms and conditions of employment which they shared in common with unit Ees; and congressional admonition against undue proliferation of health care units]

Baker Hospital, Inc. **279 NLRB No. 038**
[in deciding that hospital's activities director and social services director were properly included in service and maintenance and technical Ees unit, Bd noted that if both directors were excluded from Ee unit, effect would either be to leave them w/o representation or require their representation in separate unit; first result is inconsistent with Congress' extension of Act to afford representation rights to Ees in health care institutions, and latter is inconsistent with admonition against undue proliferation of bargaining units]

The Community Hospital at Glen Cove **278 NLRB No. 010**
[separate unit of maintenance Ees inappropriate and unit consisting of those Ees and other non-professional Ees is only appropriate unit under *disparity of interests* test where petitioned-for unit consisted of only 30 out of 1100 Ees, various other non-professional Ees also possessed special skills i.e. EKG Technicians and Lab Technicians etc., pay grades and fringe benefits were the same, hospital had central labor relations policy and maintenance workers had frequent contact with other non-professional Ees]

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**
(unit of technical Ees appropriate rather than unit of technical, service, maintenance and other nonprofessional Ees, since there was disparity of interests between technical, service, maintenance and nonprofessional Ees, where there were *sharper than usual* differences in wages and working conditions, technical Ees required special training, were highly skilled and rarely-transferred between other Ee groups; further, fact that some interchange existed between technical and nontechnical Ees because of *team* concept of patient care was irrelevant since much contact involved mere delivery of materials or messages by service Ees)

5000 SERVICE AND MAINTENANCE EMPLOYEES UNIT

5040 SPECIFIC DETERMINATION

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center **275 NLRB No. 194**
(on review *nursing assistants* included in unit of E's service and maintainance Ees which unit was clearly appropriate in view of parties' agreement to exclude all other Ees. Even in nonhealthcare facilities, Bd has recognized that disparaties w/i unit are generally not sufficient to render an otherwise appropriate unit inappropriate)

5060 PLACEMENT OF SERVICE AND MAINTENANCE EMPLOYEES IN OTHER UNIT

Southern Maryland Hospital Center, Inc. **274 NLRB No. 212**

(unit of technical Ees appropriate rather than unit of technical, service, maintenance and other nonprofessional Ees, since there was disparity of interests between technical, service, maintenance and nonprofessional Ees, where there were *sharper than usual* differences in wages and working conditions, technical Ees required special training, were highly skilled and rarely-transferred between other Ee groups; further, fact that some interchange existed between technical and nontechnical Ees because of *team* concept of patient care was irrelevant since much contact involved mere delivery of materials or messages by service Ees)

5080 PLACEMENT OF OTHER EMPLOYEES IN SERVICE AND AND MAINTENANCE UNIT

Baker Hospital. Inc. **279 NLRB No. 038**

[applying disparity-of-interest analysis to sought-for unit of hospital Ees, Bd found insufficient disparity of interests between office clericals and service and maintenance and technical Ees unit to justify exclusion of clericals from unit, where clericals had significant, work-related contact with unit Ees and shared many terms and conditions of employment with them; hence, there was no *sharper than usual differences* to demonstrate disparity of interests justifying clericals' exclusion]

Baker Hospital, Inc. **279 NLRB No. 038**

[hospital's activities director who arranges recreational patient activity, and social services director who places patients in long-term care unit and plans their discharge, included in service and maintenance and technical Ees unit, where requisite disparity of interest between directors and unit Ees for excluding them from unit did not exist, in view of Bd's finding that directors may appropriately be considered technical Ees, who parties agreed should be included in unit; terms and conditions of employment which they shared in common with unit Ees; and congressional admonition against undue proliferation of health care units]

Baker Hospital, Inc. **279 NLRB No. 038**

[in deciding that hospital's activities director and social services director were properly included in service and maintenance and technical Ees unit, Bd noted that if both directors were excluded from Ee unit, effect would either be to leave them w/o representation or require their representation in separate unit; first result is inconsistent with Congress' extension of Act to afford representation rights to Ees in health care institutions, and latter is inconsistent with admonition against undue proliferation of bargaining units]

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center **275 NLRB No. 194**

(on review *nursing assistants* included in unit of E's service and maintainance Ees which unit was clearly appropriate in view of parties' agreement to exclude all other Ees. Even in nonhealthcare facilities, Bd has recognized that disparaties w/i unit are generally not sufficient to render an otherwise appropriate unit inappropriate)

Health-Care Enterprises of America, Inc. d/b/a Bay St. Joseph Care Center **275 NLRB No. 194**

(where parties stipulated to exclude all other enumerated categories of Ees from service & maintenance unit, Bd held appropriate unit should include nurses aides and orderlies as they were not among the enumerated categories to be excluded. Further disparities of interest not so great to cause their exclusion and direct versus indirect patient care functions not valid basis for making unit determinations in health care industry)

5800 MAINTENANCE EMPLOYEES UNIT

5840 SPECIFIC DETERMINATION

The Community Hospital at Glen Cove **278 NLRB No. 018**

[separate unit of maintenance Ees inappropriate and unit consisting of those Ees and other non-professional Ees is only appropriate unit under *disparity of interests* test where petitioned-for unit consisted of only 30 out of 1100 Ees, various other non-professional Ees also possessed special skills i.e. EKG Technicians and Lab Technicians etc., pay grades and fringe benefits were the same, hospital had central labor relations policy and maintenance workers had frequent contact with other non-professional Ees]

6700 OFFICE CLERICAL UNITS

6760 PLACEMENT OF OFFICE CLERICALS IN OTHER UNIT

Baker Hospital, Inc. **279 NLRB No. 038**

[applying disparity-of-interest analysis to sought-for unit of hospital Ees, Bd found insufficient disparity of interests between office clericals and service and maintenance and technical Ees unit to justify exclusion of clericals from unit, where clericals had significant, work-related contact with unit Ees and shared many terms and conditions of employment with them; hence, there was no *sharper than usual differences* to demonstrate disparity of interests justifying clericals' exclusion]

7500 CRAFT UNITS

8300 OTHER UNITS DEFINED BY TYPE OR CATEGORY OR COMBINATIONS THEREOF

8301 GENERALLY

Renaissance West Community Mental Health Center **276 NLRB No. 050**

(unit of Ees at nonprofit corporation providing mental health services for city-county mental health board, inappropriate, where agreement between E's predecessor and U indicated that there were unit Ees of predecessor who were not in E's unit, and unit status of Ees was unresolved; no one knew which Ees should be included in unit and which should be excluded because job duties of Ees were not matched with job classifications in unit description, notwithstanding that some job classifications had changed, thereby leaving unit in state of disarray)

8500 MULTIPLE-LOCATION UNITS OF SINGLE EMPLOYER

8800 RESIDUAL EMPLOYEE UNITS

9000 ADDITIONS OF GROUPS OF EMPLOYEES TO EXISTING UNITS

9100 SEVERANCE OF GROUPS OF EMPLOYEES FROM EXISTING UNITS

480 POSTAL SERVICE UNITS

0100 GENERALLY

3300 SCOPE OF UNITS (SEE 480-6700 FOR PLACEMENT OF PARTICULAR CATEGORIES OF EMPLOYEES IN THESE UNITS)

6700 COMPOSITION OF UNITS

500 UNFAIR LABOR PRACTICES

501 GENERALLY

1400 NATURE AND SCOPE OF PROSCRIPTIONS

2800 Section 8(c)

2837 STATEMENTS NOT CONTAINING THREATS OR PROMISES MAY BE COERCIVE

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**
[coercion may be inferred even though conduct engaged in is not of blatant and starkly vindictive nature where conduct occurs in context of ULP]

2875 CONDUCT PROTECTED BY SECTION 8(c)

2875-3500 Solicitation of repudiation of union

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(telling Ees that they would make the same money working by the piece rather than by the hour and did not need a U to keep their jobs or negotiate raises, not violative in context of previous good bargaining relationship and absence of interrogation or U animosity)

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(manager's soliciting economic strikers on the picket line to return to work protected by Sec. 8(c) where three of those solicited were U negotiating committee members, and E had shown willingness to negotiate and had not committed ULPs during strike; his asking two negotiating committee members how long they would strike or how long the strike would last, not coercive but innocuous, casual pleasantries addressed to strikers as he passed the picket line where they were not accompanied by threats, promises or evidence of U animus)

2875-4500 Expression of opinion

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's statement to Ee that negotiations would start from *scratch* and that there was possibility E would not want to agree with everything U asked for, not unlawful, where thrust of remarks was not that Ees would automatically lose benefits if they selected U, but rather, in context of all of supervisor's remarks, he was expressing permissible opinion which could not reasonably be interpreted as threat to deliberately extend bargaining]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[supervisor's telling Ee that U was *nothing but a rip-off* held not to convey impression that it would be futile to select U as representative, since supervisor was obviously expressing his own distaste for U in simple colloquialism which did not rise to level of violating Act]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[supervisor's telling Ee that she was afraid that if U came in plant would close, not unlawful, where Ee initiated casual conversation with supervisor who clearly phrased her response in terms of her personal opinion, not as spokesperson for E]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[supervisor's statement to Ee that plant would close if U came in, unlawful and not expression of supervisor's personal opinion, where Ee believed that supervisor was expressing more than his personal opinion and was repeating *something which came from higher up* because otherwise supervisor would not have known whether plant would close; and supervisor did not offer any objective basis for his prediction that plant would close nor explain that decision to do so would be sole result of economic considerations]

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's president's memorandum to Ees informing them that w/o customers *we are all doomed to look for other jobs* and *let's be careful that we do not vote ourselves into a new situation*, violative and not protected by 8(c) where such statement was not linked to E's business but rather was linked to Ees' voting and statements were not based on objective facts regarding E's business situation or customers and thus, were not merely projected statements of opinion]

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's supervisor telling Ee that *the union probably won't get you anything more than you have now*, not violative and protected by 8(c) since statement was merely one of opinion from which no threat reasonably could be perceived]

Central Broadcast Company **280 NLRB No. 056**
[E's telling Ees that economic impact of a strike would be disastrous, that everyone lost in a strike but U orgnizer, that the only big airline that was not having problems was only one w/o a U, not violation where E did not predict strikes, bankruptcy, and loss of employment, but only stated that they were possible and did not threaten retaliation or promise benefit for refraining from supporting U]

Rood Industries, Inc. **278 NLRB No. 026**
[supervisor's response to Ee who approached him during U organizing compaign that, if supervisor were E *I'd shut plant down because it's not big enough for U*, not unlawful, since remark was protected by 8(c) inasmuch as it was expression of supervisor's personal attitude toward U, and Ee could readily discern that supervisor was not speaking for E, but for himself]

Bozzuto's, Inc. **277 NLRB No. 100**
(E's disparaging remarks about U found noncoercive statements of opinion and not violation)

Noral Color Corporation **276 NLRB No. 061**
(telling Ee that *things would get better* after U's contract expired, not violative, where statement was unaccompanied by any promise of benefit and was thus a general opinion protected by 8(c))

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. **274 NLRB No. 105**
(no violation or objectionable conduct by E's distributing to its Ees a letter in which another E's Ee recounted his past personal experience with unionization; E's apprising Ees of others' experience and opinions did not predict or threaten retaliatory conduct by E and was intended to enable Ees to make informed decision)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. **274 NLRB No. 105**
(no unlawful threat of Ees' loss of right to speak directly with management upon unionization or objectionable conduct by E's distributing to Ees another E's Ee's letter recounting his past personal experience with and opinion about unionization in which he stated that, once a U came in, it did the talking whereas now Ees could discuss differences with management on one-to-one basis)

Newsday, Inc. **274 NLRB No. 019**
(telling Ees that certain U was no good for them and that its president was corrupt not violative as merely expression of opinion)

East Central Communications, Inc. **JD-116-86**
[supervisor's statement to leading U ahderent that matter of U representation probably would not get to a vote held lawful expression of opinion protected under 8(c)]

The Setterlin Company **JD-56-86**
[E's status reports describing current status of bargaining listing contract provisions standing in way of agreement, and supporting E's bargaining position, not violation but privileged under 8(c)]

Rana Management, Inc. **JD-(NY)-01-85**
(supervisors' comments to Ee that E would not go for U and that a U was not necessary, respectively, merely lawful expressions of opinion)

2875-5600 Opposition to union or collective bargaining, expression of

Westinghouse Electric Corporation **277 NLRB No. 016**
(supervisor stating E *would do everything it could begally do to keep plant non-U* not unlawful)

2875-6300 Economic prediction of consequences of unionization

Bo-Ed Inc. d/b/a Golden Fan Inn **281 NLRB No. 035**
[E's attorney telling Ees in group meetings that a unionized restaurant in the State was not doing well and two other unionized restaurants had closed but that he did not know whether the restaurants' business problems had anything to do with the U, not violative and protected by 8(c); E's attorney's comments were lawful statements of fact and attorney expresaly stated he

2875-6300—Cont.

did not know whether the U had caused business problems and GC did not challenge the accuracy or truthfulness of the statements]

Central Broadcast Company **280 NLRB No. 056**
[E's telling Ees that economic impact of a strike would be disastrous, that everyone lost in a strike but U orgnizaer, that the only big airline that was not having problems was only one w/o a U, not violation where E did not predict strikes, bankruptcy, and loss of employment, but only stated that they were possible and did not threaten retaliation or promise benefit for refraining from supporting U]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[telling Ees that after bargaining their benefits might not be what they presently had, not violation where E expressed legal position that E did not have to start bargaining from present level of benefits and what Ees might expect as result w/o threatening to take away benefits]

Clark Equipment Company **278 NLRB No. 085**
[statements not unlawful implication of futility of selecting U where they were not made in context of threat of loss of benefits and inevitability of strikes, but of accurate reflection of bargaining process and presentation of economic realities of negotiation]

Reed Industries, Inc. **278 NLRB No. 026**
[E's remarks to Ees during U organizing drive that E's customers *were anxious for us to get back to normal*, and that if Ees voted against U it would be message to customers that *you're behind me* held not unlawful, since remarks did not carry suggestion of plant closing; rather, E's remarks raised customer dissatisfcation with interruptions in production and increased costs as possible effect of U's compaign; consequently, E's threat that it would impose any economic burden on Ees because of loss of customers was protected by 8(c)]

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(E's comments allegedly threatening Ees with layoffs by stating that major customer had warned E it would discontinue patronage of E if E became organized, not unlawful, since comments had factual basis and therefore were protected by 8(c), where comments were corroborated by major customer's manager who testified he had *concerns* about his company's ability to receive equipment if strike occurred and about possible interruption and efficiency of workforce in connection with product delivery)

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(E's comments to Ees that customers would refrain from sending any work to E's repair facility if E became organized and that customers had policies not to send work to *U company*, unlawful, since comments were not based on objective facts; although major customer's manager testified to his concern regarding unionization at E's plant, he failed to confirm E's comments about company policy to refrain from sending work to unionized companies altogether)

Westinghouse Electric Corporation **277 NLRB No. 016**
(supervisor implying Ees might be blacklisted in regard to applications for employment elsewhere were they to sign ptn protesting discharge of Ee by citing example that he had been informed when applying for job in past that had he signed ptn supporting discharge of principal at school where he had previously been employed he would had been refused job. Statement not protected under Section 8(c) as mere prediction of likely economic consequences of unionization, since any blacklisting would require E to inform prospective E about Ee's concerted activities)

Walter Garson, Jr & Associates **276 NLRB No. 137**
(E's statement to Ees that if Ees became unionized and if E and negotiated higher labor costs, and if E suffered loss of work, Ees might be laid off, not coercive and hence not violative, since not prediction of inevitable events under E's control, but reminder of economic facts of life i.e. negotiated wage and benefit increases sometimes have debilitating effect on ability to compete)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(E's remarks at meeting with Ees that if Ees selected U as their representative E would close his business because he could not afford a U operation held lawful prediction, where E provided objective support for prediction by emphasizing his previous experience with U, by pointing to decline in business, and by telling Ees he could not afford U previously when it represented Ees before being decertified even though business was better then than it was now)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's president stating he would not sign new contract with U since could not then compete with non-U manufacturers, and if he signed U contract result would be closing plant doors, unlawful, since comments not limited to consequences of agreeing to any particular contract or contract language, rather in context of bypassing U, he implied that any agreement with U would cause him to close business)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. **274 NLRB No. 168**
(cumulative effect of E's literature and consultant's speech, not unlawful threat of job loss and objectionable conduct; Ee's letter describing post-unionization layoffs due to higher wages was personal experience; lawfully posted newspaper article describing strikers' hardships not support for broader violation; trade journal article about store closings and Ees' letter asking help in keeping jobs merely described economic conditions; Ee's letter about U focused on Ee-U relations not store closings; and consultant's speech about store closings and *striking* stated economic realities)

2875-7000 Predictions about unionization

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[threat to Ees that if they selected U E would relocate its plant held unlawful threat of plant closure and not prediction based on objective facts from which E could have conveyed reasonable belief to Ees as to demonstratable probable consequences of unionization]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[supervisor's statement to Ee that plant would close if U came in, unlawful and not expression of supervisor's personal opinion, where Ee believed that supervisor was expressing more than his personal opinion and was repeating *something which came from higher up* because otherwise supervisor would not have known whether plant would close; and supervisor did not offer any objective basis for his prediction that plant would close nor explain that decision to do so would be sole result of economic considerations]

Clark Equipment Company **278 NLRB No. 085**
[E statements that bargaining means *putting everything on the table* including present benefits and that ct decision had upheld E's right to inform Ees that E need not agree to continue existing wages and benefits, found accurate reflection of obligations and possibilities of bargaining process rather than unlawful and objectionable implied threat to take away benefits or bargain regressively if U won]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(E informing Ees that E was suffering from serious financial problems, asking Ees for suggestions as to how E could save money, urging Ees to persuade U to *move off a dime* on E's bargaining proposals, and informed Ees that if Ees went non-U E would give pay increases, equal or better health benefits than U offering, financial assistance to Ees who wished to purchase own trucks, but if U refused to accept E's proposals, E would operate non-U, unlawful; statements not predictions of economic consequences protected by Sec. 8(c) inasmuch as E did not substantiate financial losses and in view of other contemporaneous illegal statements)

Tri-Cast, Inc. **274 NLRB No. 089**
(E's letter stating that as a young company it could not afford to lose business and jobs by having to make higher bids than before or having its customers feel threatened due to U strikes and could not stay healthy if it lost flexibility due to U restrictions, not objectionable, since E's comments contained no threat of retaliation but merely pointed out reasonably possible results of unionization in moderate tone)

Easthampton Electrical Services, Inc. **JD-85-85**
(E's president informing Ee that E had received R ptn and did not think Ees or E needed U to represent them and telling Ee of his understanding of U's jurisdictional work rules, not unlawful, where no interrogation of Ee and reference to U's jurisdicitonal rules was legitimate expression allowed by Section 8(c))

2875-7050 In answer to employee's question

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place **281 NLRB No. 008**
[no violation, where in response to Ee's question, whether Ees would lose credit union if U voted in, E's administrator replied *there is possibility because all benefits must be negotiated*, since statement *merely explanation of what could happen as result of collective bargaining negotiations*]

2875-8000 Announcement of lawfully granted benefits

Clark Equipment Company **278 NLRB No. 085**
[announcement and implementation of new job evaluation system resulting in wage increase and institution of new wage rate on election day, not violation or conduct interfering with election where implementation was already planned and Ees informed of its imminent announcement when U filed request to proceed]

2875-8000 Statements concerning labor strife

Clark Equipment Company **278 NLRB No. 085**
[E's statements found lawful and unobjectionable presentation of economic realities of unionization rather than unlawful threat of inevitability of strikes where they pointed out possibility of strikes and fact U could only try to force certain conditions by striking]

2875-8800—Cont.

Pillod of Mississippi, Inc. 275 NLRB No. 117
(E's statements to Ees through letters and lesflets during U campaign that U would compound Ees' problems, U had propensity for strikes and violence and other unionized plants had experienced loss of jobs and Ee benefits, held not coercive and w/i bounds of permissible campaign propaganda)

SCA Services of Georgia, Inc. 275 NLRB No. 120
(manager's statement that he would not sign contract with a checkoff clause protected by Sec. 8(c) where it was made after start of strike, which followed 7 months of unsuccessful bargaining)

SCA Services of Georgia, Inc. 275 NLRB No. 120
(manager's soliciting economic strikers on the picket line to return to work protected by Sec. 8(c) where three of those solicited were U negotiating committee members, and E had shown willingness to negotiate and had not committed ULPs during strike; his asking two negotiating committee members how long they would strike or how long the strike would last, not coercive but innocuous, casual pleasantries addressed to strikers as he passed the picket line where they were not accompanied by threats, promises or evidence of U animus)

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(setting aside of election not warranted where E showed Ees documentary film *Strike Town USA*, with question and answer period following film, and personnel manager stated no one wanted strike situation, since unlawful prediction made and Ees free choice not negated where film depicted anatomy of labor dispute which depiction was privileged under Section 8(c))

2875-9000 Statements and/or communications concerning bargaining negotiations

Putnam Buick, Inc. 280 NLRB No. 101
[in finding that E did not unlawfully attempt to deal directly with unit Ees concerning changes in terms and conditions of employment, Bd held E's communications with Ees during negotiations with U concerning its proposals to U were noncoercive and privileged under Sec. 8(c) for reasons set forth in *United Technologies Corp.* cases (274 NLRB 163 and 274 NLRB No. 87)]

Putnam Buick, Inc. 280 NLRB No. 101
[Act does not countenance negotiating with individuals when they have bargaining representatives; however, under Sec. 8(c), E is entitled to communicate noncoercively with its unit Ees during negotiations since Ees ought to be fully informed as to all issues relevant to negotiations and parties' positions as to those issues, and Ees are fully capable of evaluating relative merits of those positions for themselves; nonetheless, 8(a)(5) violations will be found if E communications are coercive or invite direct bargaining]

Joan Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home 275 NLRB No. 171
(E's statements to various Ees that they could lose benefits if they chose to be represented by a U, not violative, where statements were made in context of a description of the give and take of future collective bargaining)

Pillod of Mississippi, Inc. 275 NLRB No. 117
(E did not violate Act by telling Ees that if U got in E did not have to give anything in negotiations, could begin bargaining at *ground zero* and Ees might lose their benefits where views reasonably communicated view that U cannot compel concessions in negotiations and cannot guarantee retention of all present benefits because such benefits are subject to negotiation and thus remarks accurately reflect the bargaining process)

SCA Services of Georgia, Inc. 275 NLRB No. 120
(manager's statement to Ee that E would sign only the kind of contract it wanted to sign, not violative, since it was innocuous expression of E's views of its bargaining position and privileged under Sec. 8(c) rather than statement indicating that E would not sign any contract with U)

SCA Services of Georgia, Inc. 275 NLRB No. 120
(manager's statement that he would not sign contract with a checkoff clause protected by Sec. 8(c) where it was made after start of strike, which followed 7 months of unsuccessful bargaining)

United Technologies Corporation 274 NLRB No. 163
(E's numerous communications with Ees concerning reopener negotiations which compared E's wages and benefits with those of local competitors, informed Ees of E's bargaining proposals and criticized U's proposals as unrealistic, held not direct dealing and such communications were protected by 8(c); U initially rejected E's proposal to refrain from publicity and at no time did E disseminate proposals or ideas that were not first submitted to U at bargaining table, further, E has a fundamental right protected by 8(c) to communicate with its Ees concerning its position during bargaining negotiations)

United Technologies Corporation 274 NLRB No. 087
(E's communications to Ees publicizing terms of contract offer and stating E's preference of contract options, not violative where E's efforts were undertaken in noncoercive manner, publicity fully acknowledged U's rightful role as Ees' statutory bargaining representative, and E did not seek to achieve elimination of U or otherwise alter bargaining relationship)

The Setterlin Company JD-56-86
[E's status reports describing current status of bargaining listing contract provisions standing in way of agreement, and supporting E's bargaining position, not violation but privileged under 8(c)]

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)
[E's communications with Ees held not direct dealing where information was first given to U, language was non-coercive, and U was consistently acknowledged as legitimate bargaining representative; existing ULPs found herein did not so limit U's bargaining power or coerce workers to abandon U in favor of E as to support finding of direct dealing]

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)
[E's proposal of 3 year contract held not direct dealing where offer was made first to U and then presented to Ees in factually correct, non-coercive language]

2875-9200 Statements relating to economic position

Central Broadcast Company 280 NLRB No. 056
[E's telling Ees that economic impact of a strike would be disastrous, that everyone lost in a strike but U orgnizaer, that the only big airline that was not having problems was only one w/o a U, not violation where E did not predict strikes, bankruptcy, and loss of employment, but only stated that they were possible and did not threaten retaliation or promise benefit for refraining from supporting U]

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152
(E informing Ees that E was suffering from serious financial problems, asking Ees for suggestions as to how E could save money, urging Ees to persuade U to *move off a dime* on E's bargaining proposals, and informed Ees that if Ees went non-U E would give pay increases, equal or better health benefits than U offering, financial assistance to Ees who wished to purchase own trucks, but if U refused to accept E's proposals, E would operate non-U, unlawful; statements not predictions of economic consequences protected by Sec. 8(c) inasmuch as E did not substantiate financial losses and in view of other contemporaneous illegal statements)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(contrary to ALJ, Bd found that E did not threaten Ees with declining orders because of U campaign; E's alleged statement that, since U campaign began work orders had declined and warehouses were getting stockpiled, if made, was statement of fact, not threat of reprisal, and Ees' other alleged version of statement, that U stuff was slowing things down so that E could not get things out, described an incidental effect of campaign, not a threat, and was too obscure and vague to be a threat)

Engineered Control Systems, Inc. 274 NLRB No. 191
(E's president stating he would not sign new contract with U since could not then compete with non-U manufacturers, and if he signed U contract result would be closing plant doors, unlawful, since comments not limited to consequences of agreeing to any particular contract or contract language, rather in context of bypassing U, he implied that any agreement with U would cause him to close business)

Easthampton Electrical Services, Inc. JD-85-85
(E's president informing small groups of Ees on a couple of ocasions that *times were slow, there was little to bid on, and he didn't know how U men would make it*, not unlawful, since such isolated off the cuff remarks by E are not enough to draw inference of knowledge of U activity, nor do they constitute violation of Section 8(a)(1) of Act)

2875-9600 Statements regarding union membership obligations

SCA Services of Georgia, Inc. 275 NLRB No. 120
(asking Ee if he would be able to pay his U dues if E did not deduct them, not coercive in context of casual easy-going conversation w/o threats or promises, showing of E's displeasure with remittance of U dues or tendency to interfere with Ee's right to engage in U activity)

2887 CONDUCT NOT PROTECTED BY 8(c)

2887-5800 Interrogation

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[asking Ee, after unlawfully interrogating her about U and stating to her that E knew she was active in U, in she liked her job, unlawful and, unlike in *Rossmore House*, not permissible and protected free speak]

2887-6600 Predictions about unionization

H. Treffinger Repair Services, Inc. 281 NLRB No. 085
[threats made to Ee that U would put E out of business or that E would pull out if U got in, unlawful, where E did not state why U's advent would result in threatened consequences, and therefore threats did not constitute predictions]

2887-6600—Cont.

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's president telling Ees that U *would not work to your benefit but to your serious harm*, violative and not protected by 8(c) where E had also told Ees that they would have received a raise had they not attempted to organize and told an Ee if U got in E could close down, thus, under the circumstances, the *serious harm* statement is not ambiguous but had a *sinister meaning* which was in reference to the U]

Kokomo Tube Company **280 NLRB No. 035**
[supervisor asking Ee what Ee's opinion of U was, why he and other Ees couldn't communicate with management w/o outside interference, and when Ee was noncommittal, asking Ee *if* it didn't work out between U and E did not Ee *think it was possible E could close its doors* constituted unlawful interrogation, rather than lawful expression of opinion as to possible effects unionization permitted by Section 8(c), notwithstanding this particular Ee and supervisor were longtime acquaintances and use of word *if*, in view of E's persistent and unwarranted questioning of Ees accompanied by threats of closing]

Reed Industries, Inc. **278 NLRB No. 026**
[E's remarks to Ees containing prediction of plant closure, unlawful, where prediction was not carefully phrased on basis of objective fact to convey E's belief as to demonstrably probable consequences beyond his control, or to convey management decision already arrived at to close plant in case of unionization; instead, E's language strongly suggested that it had already decided to remove machinery from plant and possibly relocate outside state if U's organizing effort succeeded]

Walter Garson, Jr & Associates **276 NLRB No. 137**
(supervisor asking Ee why she wanted U, requesting that Ee talk to other Ees about U, and informing Ee closure was possibility if E could not afford U, unlawful, since coercive inasmuch as *prediction of effect of unionization not carefully phrased on basis of objective fact to demonstrate probable consequences beyond E's control, but rather on implication that E would take action unrelated to economic necessities and thus it lost it status as reasonable based upon available facts, and constituted threat of retaliation based upon mere representation)*

2887-7500 Promise of economic or other benefits

2887-7501 Generally

Central Broadcast Company **280 NLRB No. 056**
[E's telling Ees that economic impact of a strike would be disastrous, that everyone lost in a strike but U orgnizaer, that the only big airline that was not having problems was only one w/o a U, not violation where E did not predict strikes, bankruptcy, and loss of employment, but only stated that they were possible and did not threaten retaliation or promise benefit for refraining from supporting U]

2887-7550 Implied promises

Electronic Data Systems International Corporation **278 NLRB No. 014**
[supervisor suggesting that Ee think over whether to support U because if U came in Ees could lose benefits, and stating that E knew about problems, but they could not be solved immediately, not unlawful threat, since no evidence of coercion, but was simply statement of what might result from U representation, and could not be construed as implied promise of benefit for voting against U; however, supervisor's subsequent remarks that best thing that could happen would be for U to lose election because problems would then be solved and leaders of U movement would be fired, constituted unlawful promise of benefit if U were defeated

2887-9100 Threats of reprisal

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[E's statement to Ees and U negotiators that it would retract its last contract offer and substitute less desirable one if ees rejected offer and struck was not *economic forecast*. Rather, it was threat of retaliation conditioned on Ees exercising their right to strike and would reasonably tend to interfere with free exercise of Ee rights]

2887-9101 Generally

Central Broadcast Company **280 NLRB No. 056**
[E's telling Ees that economic impact of a strike would be disastrous, that everyone lost in a strike but U orgnizaer, that the only big airline that was not having problems was only one w/o a U, not violation where E did not predict strikes, bankruptcy, and loss of employment, but only stated that they were possible and did not threaten retaliation or promise benefit for refraining from supporting U]

2887-9120 Discharge or layoff

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's president's memorandum to Ees informing them that w/o customers *we are all doomed to look for other jobs* and *let's be careful that we do not vote ourselves into a new situation*, violative and not protected by 8(c) where such statement was not linked to E's business but rather was linked to Ees' voting and statements were not based on objective facts regarding E's business situation or customers and thus, were not merely projected statements of opinion]

Electronic Data Systems International Corporation **278 NLRB No. 014**
[supervisor suggesting that Ee think over whether to support U because if U came in Ees could lose benefits, and stating that E knew about problems, but they could not be solved immediately, not unlawful threat, since no evidence of coercion, but was simply statement of what might result from U representation, and could not be construed as implied promise of benefit for voting against U; however, supervisor's subsequent remarks that best thing that could happen would be for U to lose election because problems would then be solved and leaders of U movement would be fired, constituted unlawful promise of benefit if U were defeated

2887-9160 Threats not to rehire strikers

Gaso Pumps, Inc. **274 NLRB No. 076**
(no violation by E informing Ees that in event of strike they may be permanently replaced w/o at same time informing them of their preferential reinstatement rights unless statement may be fairly understood as threat of reprisal or is explicitly coupled with such threats)

2887-9170 Blacklisting

Westinghouse Electric Corporation **277 NLRB No. 016**
(supervisor implying Ees might be blacklisted in regard to applications for employment elsewhere were they to sign ptn protesting discharge of Ee by citing example that he had been informed when applying for job in past that had he signed ptn supporting discharge of principal at school where he had previously been employed he would had been refused job. Statement not protected under Section 8(c) as mere prediction of likely economic consequences of unionization, since any blacklisting would require E to inform prospective E about Ee's concerted activities)

2887-9180 Threats of shutdown

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's president telling Ees that U *would not work to your benefit but to your serious harm*, violative and not protected by 8(c) where E had also told Ees that they would have received a raise had they not attempted to organize and told an Ee if U got in E could close down, thus, under the circumstances, the *serious harm* statement is not ambiguous but had a *sinister meaning* which was in reference to the U]

Kokomo Tube Company **280 NLRB No. 035**
[supervisor asking Ee what Ee's opinion of U was, why he and other Ees couldn't communicate with management w/o outside interference, and when Ee was noncommittal, asking Ee *if* it didn't work out between U and E did not Ee *think it was possible E could close its doors* constituted unlawful interrogation, rather than lawful expression of opinion as to possible effects unionization permitted by Section 8(c), notwithstanding this particular Ee and supervisor were longtime acquaintances and use of word *if*, in view of E's persistent and unwarranted questioning of Ees accompanied by threats of closing]

4200 EFFECTIVENESS OF UNFAIR LABOR PRACTICE NEED NOT BE SHOWN

5600 EMPLOYER'S CONTROL OF BUSINESS PRESERVED

5601 GENERALLY

5601-5000 Unrestricted by Act if no unfair labor practice

Morco Industries, Inc. And All Southern Fabricators, A division of Morco Industries, Inc. **279 NLRB No. 100**
[E's transferring work from one plant to another w/o bargaining with U about transfer, not violative where decision turned entirely on need to expand E's metal fabrication facilities, which involved change in nature and scope of facet of enterprise; E did not seek to undermine status of U or escape labor costs embodied in contract]

Uniglass Industries, Div. United Merchants & Mfrs. **276 NLRB No. 035**

Phillip A. Hunt Corporation **JD-14-86**
[E's decision to relocate certain work performed by unit Ees at plant represented by U to new non-U plant, excluded from limited scope of 8(d) where decision to relocate was not based upon labor costs but instead was based upon change in direction and nature of its business]

5614 DISCHARGE POWER FOR NORMAL REASONS UNIMPAIRED

Uniglass Industries, Div. United Merchants & Mfrs. **276 NLRB No. 035**

5656 DISCIPLINE: EMPLOYER MAY TAKE ACTION TO MAINTAIN

5656—Cont.

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods **JD-(SF)-101-86**

[discharge of key U organizer assertedly for sexual harassment of female Ees, not unlawful since, assuming E had knowledge of Ee's U activities and even though E found such activities unwelcome, E nevertheless had right to manage his enterprise and to discipline Ee for misconduct even though he was protected under Act]

7000 CIRCUMSTANCES INDICATING VIOLATION

7060 ANTIUNION ATTITUDE AND POLICIES OF EMPLOYER

7060-3300 Indicia of antiunion attitude

National Car Rental **JD-NY)-60-85**

(Bd has frequently held that use of such words as *troublemaker* or *instigator* are code words for U adherent or activist and constitute evidence of discriminatory motivation. However, where there is absence of protected activity and comments made in response to Ees' unjustified complaints, use of such words does not constitute evidence of discriminatory motivation)

7060-6700 Motive of employer in interpreting conduct

Supermarkets General Corporation d/b/a Howland-Steinbach-Hochschilds **JD-(NY)-50-86**

[*it is well established that if E takes discriminatory action against Ee on belief, well founded or not, that Ee was engaged in protected activity, E no less violates Act than if Ee had in fact engaged in such conduct*]

8400 AFFIRMATIVE DEFENSES

8407 ECONOMIC NECESSITY, PRESSURE OR HARDSHIP

8407-7500 Statute permits no immunity because of hardship or economic pressure

Sandpiper Convalescent Center and Sandpiper Village **279 NLRB No. 147**

[*while compelling economic considerations could justify unilateral change which might otherwise be prohibited, economic expediency or sound business considerations are insufficient defenses to justify unilateral changes in terms and conditions of employment*]

8421 MOOTNESS

Local 3, Electrical Workers (Telecom Plus of Downstate New York, Inc.) **280 NLRB No. 031**

[where C alleged that U had unlawfully insisted on tape recording parties' contract negotiations and generally refused to bargain, issuance of RO was inappropriate, even assuming that U's conduct was unlawful, inasmuch as E, after hearing, ceased its operations and terminated all Ees in unit and there was little likelihood that E would resume operations and that U would resume its representative status; notwithstanding issues were moot, C dismissed w/o prejudice to E's filing new charge if it resumed operations and U resumed its representative status]

General Truck Drivers, Office, Food & Warehouse, Local 952, Teamsters (Westside Building Material Corporation; etc.) **275 NLRB No. 141**

(in finding reasonable cause existed to believe 8(b)(4)(D) was violated, Bd held dispute did not become moot by U's retraction of its threats to take economic action, including picketing, if work in dispute was assigned to another U, where retraction was not made until hearing herein, and U continued to claim work in dispute)

8427 MOTIVE AND INTENT

8427-2500 Absence of unlawful motive may not be defense

Mail Handlers, Local Union No. 308 (United States Postal Service) **281 NLRB No. 143**

[U removing Ee from his position as shop steward because he had filed ULP charges previously against U violative, since internal U considerations raised by U-Respondent Ee's alleged dereliction of duty as shop steward and his alleged failure, as treasurer, to properly protect monies belonging to Ee's Social and Recreation committee as well as alleged altercation with U president cannot prevail in face of overriding public interest in unimpeded access to Bd and fact that violation turns on coercive nature of U's conduct rather than on U's motivation which may be factor to be considered]

8434 NEUTRALITY OF EMPLOYER

8434-1700 Action taken to maintain neutrality

The Union National Bank of Pittsburgh **276 NLRB No. 013**

(E forwarding letters from U addressed to Ees at work at E's branches to E's main office instead of distributing them to Ees, unlawful implementation of discriminatory no distribution rule, where Ees frequently received personal mail at office; E's contentions that by its use of *E's Internal Distribution Code* on letters, U made E its delivery service and use of E's resources for delivery would violate Sec. 8(a)(2), rejected, since no exposure to liability for one time distribution especially where letters sent directly to branch offices and not sorted in mail room, E's directory not confidential)

8437 REPUDIATION OF UNLAWFUL CONDUCT

Auto Workers, Local 785 (The Dayton Forging & Heat-Treating Company) **281 NLRB No. 102**

[attempted repudiation by U's executive board of U's misconduct involving unlawful threats found inadequate where it was not shown that all Ees who received threat also received retraction]

Auto Workers, Local 376 (Emhart Industries, Hartford Division, etc.) **278 NLRB No. 037**

[U's notice to members threatening them with discharge for failure to pay dues at a time U's contract had expired, violative; further, U's contention it had repudiated threat by posting notice at plant accurately setting forth dues obligations and held meetings with Ees to explain threat was in error and no Ees were obligated to pay dues as condition of employment, rejected, where U failed to distribute written retraction to any Ees who received threat, notice repudiating conduct was untimely and meetings with Ees did not reach Ees receiving threat]

Goodman Holding Company, Inc., and Its Wholly-Owned Subsidiaries, Goodman Manufacturing Corp., etc. **276 NLRB No. 098**

(C allegations of unlawful surveillance were properly dismissed where E unilaterally posted notice for 60 days which fully remedied C allegations)

Bell Halter, Inc. **276 NLRB No. 136**

(E unlawfully maintained overly broad no-distribution rule and unlawfully enforced it by confiscating U literature, where E's posted notice, properly authorizing distribution of literature, failed to repudiate old rule, since notice did not assure Ees against further interference with their rights but created impression among Ees of E benevolence in authorizing that which E could not have lawfully prohibited, and notice suggested to Ees that authorization for lawful distribution was subject to withdrawal; moreover, there were no assurances new Ees will not be requested to read and understand old rule)

The Kroger Company **275 NLRB No. 202**

(E cured its initial unlawful recognition and execution of U contract where E timely repudiated such conduct w/i days of its occurrence; repudiation was unambiguous and specific, as E expressly withdrew recognition, rescinded contract, and assured Ees of their free choice in joining U; there was adequate publication and Ees were assured their Sec. 7 rights would not be interfered with in future, as E told each Ee that he would be employed regardless of whether he joined U; and there was no other illegal conduct by E)

The Kroger Company **275 NLRB No. 202**

(in finding that E remedied its prior unlawful recognition and execution of U contract by repudiating such action, Bd distinguished instant case from those in which E's initial unlawful recognition so tainted subsequent events that U's eventual receipt of majority support was irrelevant and did not validate initial recognition; unlike those cases E here withdrew recognition, rescinded contract, and advised each Ee that he would be employed whether or not he chose to join U, thereby effectively removing *deceptive cloak of authority* and remedying earlier violation)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**

(E's statement to strikers that they could not come back to work for E as members of U, but only as non-members, violative, nor was statement effectively repudiated by president's subsequent letter where he indicate E was continuing to violate Act by its unlawful refusal to recognize and bargain with U)

BASF Wyandotte Corporation **274 NLRB No. 147**

(E's contention that its granting of privileges to U i.e. permitting U chairman to spend 4 hours of paid time each workday conducting U business including grievance processing, use of office, telephone, and copying machine, violated Section 8(a)(2) as unlawful support of U, and thus justified unilateral withdrawal of privileges as illegal rather than mandatory subject of bargaining, rejected, since grant of time and property not violative of Section 8(a)(2) where U had been recognized and dealt with at arms length, but merely friendly cooperation of amiable labor management relationship, absent deeper E involvement or intrusion into U affairs)

8444 RETROACTIVE APPLICATION OF CHANGE IN BOARD LAW OR POLICY

Metropolitan Edison Company **279 NLRB No. 047**

[ALJ finding what no-strike clause did not waive Ee's right to honor stranger picket line, overturned in light of subsequent Bd decision holding that broad no strike clause waives such right absent evidence of parties' intent to exclude sympathy strikes from clause's coverage]

8461 CONTRACTUAL RIGHTS OR OBLIGATIONS

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[U's contention that its filing of a grievance cannot be basis for ULP charge, rejected, since Bd is fully empowered to enjoin pursuit of a grievance where its object is enforcement of illegal contractual provision such as that he rein granting U officials superseniority solely because of their status]

8481 UNION MISCONDUCT, AND FEAR OR THREATS THEREOF

8481-5000 Strike misconduct

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[misconduct of striking Ee directed against patrons or customers of E, or others seeking to enter (E's) premises for business purposes, is equivalent of misconduct against fellow Ees]

506 EMPLOYEE RIGHTS PROTECTED BY SECTION 7

0100 GENERALLY

0128 RIGHT TO FORM, JOIN, OR ASSIST LABOR ORGANIZATIONS

Baker et al. v. General Motors Corp. et al —— U.S. ——— (U.S. S.Ct, July 1986)

[Ees' payment of emergency dues to support strikes at workplaces other than their own, protected]

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors 279 NLRB No. 068

[Ee's participation in U disciplinary proceeding against E's supervisor, held protected activity, notwithstanding proceeding may have violated 8(b)(1)(B) of the Act, since Ee was engaged in Sec. 7 activity of assisting U by participating in U meeting and was not a *perpetrator* of the proceeding; rather, U officials had initiated the proceeding; Congress's intent was that generally labor organizations and their agents, but not individual Ees, should be responsible for the unlawful practices of labor organizations]

Castricone Contractors, Inc. JD-(NY)-80-85

(discharge of Ee who joined U after starting work and when he gave E his U papers was told by E that Ee *could either finish off the day or go home now — there were other people in U laid off that are not working*, violative as E member of E association that signed contract with U and Ee discharged because E would have had to pay Ee contract wage)

0142 RIGHT TO BARGAIN COLLECTIVELY THROUGH REPRESENTATIVE OF OWN CHOOSING

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ———U.S.——— (U.S. S.CT, July 1984)

[fundamental difference exists between Ees' absolute Sec. 7 right to choose U to act as their representative and their less-absolute right to select U officials; thus, while agency shop nonmember has right to participate in selection of U, he often has no say in selecting U officials; Ees, while empowered to select U, may be unable to select official of their choice because of vote against such official but that would not constitute interference with their right to bargain through representative of their choice]

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ———U.S.——— (U.S. S.CT, July 1984)

[ct emphasized that its conclusion that state's regulation of casino industry U officials was not preempted by Act did not implicate Ees' Sec. 7 right to select particular U as their representative but only their subsidiary right to select U officials; Congress has distinguished between the two and has accorded less than absolute protection to Ees' right to choose U officials; and casino industry Ees' freedom to select U as their representative was not affected by state's qualification criteria for U officials]

Carpenters Local 925; et al. (Charlene Seier, an Individual) 279 NLRB No. 145

[sole Ee seeking U representation is engaging in *concerted* activity w/i meaning of Section 7 of Act, w/o regard to fact that Ee may have acted alone, since S.Ct has recognized that Section 7 *—defines both joining and assisting labor organizations– activities in which a single Ee can engage– as concerted activities*]

Save Mart of Modesto, Inc. JD-(SF)-25-85

(right of unit Ees to select their bargaining representative is predominant consideration under Section 7 of Act and is to be restricted only under *compelling conditions* concerning resolution of unit and accretion issues)

0170 RIGHT TO ENGAGE IN OTHER CONCERTED ACTIVITIES FOR MUTUAL AID OR PROTECTION

Baker et al. v. General Motors Corp. et al —— U.S. ——— (U.S. S.Ct, July 1986)

[Ees' payment of emergency dues to support strikes at workplaces other than their own, protected]

Springfield Hospital 281 NLRB No. 076

[presenting ptns to management protesting their retention of a particular law firm and a management consulting firm to combat U's organizing campaign, held protected activity, as Ees perceived law firm and consulting firm as threat to their efforts to achieve better working conditions and wages through collective bargaining. Any false or malicious accusations, if any, in ptns were directed to law firm and consulting firm and did not disparage E's conduct in labor relations or in any other way injare it. Furthermore, use of terms *notorious U busters, known for trampling on workers' rights, provoking strikes* are just expression of opinion and protected

Meyers Industries, Inc. 281 NLRB No. 118

[Bd distinguished, in defining protected activity, between single Ee asserting bargaining contract right and single Ee reporting safety violation to government agency, stating that invocation of contract rights is continuation of ongoing process of Ees' concerted bargaining activity, whereas Ee's invocation of statutory right is not]

Cordura Publications, Inc., d/b/a Mitchell Maxwell, Inc. 280 NLRB No. 023

[claim that letter by Ees to chairman concerned setting up new department and therefore did not concern terms and conditions of employment, but rather management concerns and had only attenuated relationship to Ees' own terms and conditions of employment, rejected, as clear from letter that these Ees expected to staff new department. And, proposal to create new department intertwined with Ees' request that their jobs be upgraded by, increased professionalism and remuneration]

Quality C.A.T.V., Inc. 278 NLRB No. 156

[discharge of two TV linemen who installed television strands on utility poles and who refused to work during and after rainstorm because they were wet, violative, since their concerted refusal to work was to protest requirement that they climb poles when wet, an employment condition. Ee's protest was protected whether Ees acted because they were concerned about their safety, their personal comfort, or their supervisor's attitude. In carrying out their protest, Ees did not exceed permissable bounds of protected activity]

Hancor, Inc. 278 NLRB No. 030

[drivers participating in E's *quality circle* meetings were engaged in protected concerted activity, since issues drivers' representatives discussed in these meetings were related to wages, hours, and working conditions of all drivers. *The activity of a single Ee in enlisting the support of his fellow Ees for their mutual aid and protection is as much concerted activity as is ordinary group activity*]

Squier Distributing Company 276 NLRB No. 133

(discharge of Ees for giving statements to sheriff in connection with his investigation of possible embezzlement of corporate funds by E, violative, as Ees were acting for their *mutual aid or protection* since they viewed -- as result of 2 after work meetings -- that their concerted cooperation with sheriff as best method of safeguarding their jobs which bears relationship to Ees' interests as Ees and is, therefore, concerted activity. Disloyalty claim rejected)

Technicolor Government Services, Inc. 276 NLRB No. 041

(U steward's distribution to E's Ees of application forms for employment with another E, who was bidder in competition for E's position as air force contractor, concerted activity, since, as U steward, he was acting as representative of a group and on authority of bargaining representative, and thus pursuant to authority of other Ees)

Educational Broadcasting Corporation d/b/a WNET/Thirteen JD-(NY)-125-85

[violation]

0170—Cont.

Puerto Rican Association for Human Development JD-(NY)-148-84
(Ees intervening on behalf of disciplined Ee and at request of this Ee writing memos setting forth their version of incident where memos not malicious, recklessly false, nor excessively disparaging of E's reputation or services, engaged in protected activities and suspension for writing these memos, violative. Additionally, suspension of Ee over his conduct in supervisor's office during discussion of memos, violative also, since E may not rely on Ee's conduct that it has unlawfully provoked as basis for disciplining Ees)

N.L.R.B. v. Technicolor Government Services, Inc. 795 F.2d 916 (C.A. 11, Aug. 1986)
[ct upheld Bd's conclusion that U steward was engaged in U and protected concerted activity when he distributed to E's Ees application forms for employment with another E, who was bidder in competition for E's position as service contractor, on U's behalf]

0180 ATTITUDE TOWARD MANAGEMENT REFLECTING DISSATISFACTION WITH WORKING CONDITIONS AND/OR LACK OF SUCCESS OF UNION CAMPAIGN, ETC.

Murray Sandblast and Paint, Inc. JD-276-85
(discharge of U adherent because he complained to his fellow Ees about having his (time) card pulled for clocking in one minute late and during this incident calling management a perjorative term, violative, since Ee's initial complaint was (protected) concerted activity w/i meaning of Act. Using obscenity did not deprive Ee of right to relief)

0184 RIGHT TO REFRAIN FROM EXERCISE OF SECTION 7 RIGHTS

0184-0100 Generally

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132
[U's establishing seniority list which placed bargaining unit Ees at E's more recently organized plant behind previously unionized Ees at another of E's facilities, violative, since U could not refuse to consider or negotiate a dovetailing system solely because Ees at E's non-U plant joined U more recently than did Ees at E's unionized plant. By favoring Ees at its unionized plant, U in effect (if not intent) penalized Ees of non-U plant for refraining from engaging in U activity]

0184-5000 Subject to membership requirement of valid agreement

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) 278 NLRB No. 052
[statutory guarantees of 8(a)(3) and 8(b)(2) that Ees will be protected against discrimination are not unlimited; rather, they are subject to agreement requiring membership in U as condition of employment by tender of periodic dues and initiation fees, as authorized by 8(a)(3)]

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) 278 NLRB No. 052
[first proviso of 8(a)(3), subjecting statutory guarantees against employment discrimination to agreement requiring membership in U as condition of employment by tender of periodic dues and fees, must be literally observed and strictly limited in its restriction of Ees' normal exercise of their Sec. 7 right to refrain from membership or support of a U]

0188 RIGHT TO BE FREE FROM UNFAIR, IRRELEVANT, OR INVIDIOUS TREATMENT BY REPRESENTATIVE

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081
(U's refusal to refer dissident U member for reasons which were determined at hearing to be arbitrary, invidious or irrelevant to legitimate U interests (opposed U leadership), violative since U failed to *act in an even-handed manner*)

0188-5000 Differentiation on basis of sex

Hack's, Inc. JD159-86
[protesting male supervisor's sexual harassment of female Ees, protected]

0192 RIGHTS DERIVED FROM OTHER FEDERAL LABOR STATUTES

Meyers Industries, Inc. 281 NLRB No. 118
[in connection with its refusal to find discharge for reporting safety violation to government agency unlawful, since not concerted activity, Bd stated that although it was its duty to construe labor laws so as to accomodate purposes of other federal statutes, Bd was not intended to be forum in to assist in enforcing other statutes and rectifying all injustices in workplace]

2000 NATURE OF ACTIVITIES PROTECTED

2001 GENERALLY

Robert T. Ewing, an individual v. N.L.R.B. 768 F.2d 51 (C.A. 2, July 1985)
(ct rejected view that presumption of concertedness based on invocation of employment-related statutory right is irrebutable and that therefore concertedness is read out of Act; E may demonstrate that Ee's presumptively concerted action was, in fact, frivolous or in bad faith and, therefore, both unprotected and lacking in group support; consequently, although Bd is not charged by Congress with responsibility of enforcing all state and federal laws, Bd may protect workers from retaliatory discharges in their collective effort to achieve statutorily guaranteed working conditions)

2001-5000 Concerted activity defined

N.L.R.B. v. City Disposal Systems, Inc. ———U.S.——— (U.S. S.CT, Mar. 1984)
[S.Ct approved Bd's use of *Interboro doctrine* 157 N.L.R.B. 1295 (1966), whereby individual Ee is deemed to have engaged in *concerted activity* w/i meaning of Sec. 7, if right Ee reasonably and in good faith asserts is grounded in his E's collective bargaining agreement. Good faith assertion of right contained in agreement is extension of concerted activity that produced agreement; alternatively, reasonable, good faith assertion of contract right is said to affect rights of all other Ees in workforce]

N.L.R.B. v. City Disposal Systems, Inc. ———U.S.——— (U.S. S.CT, Mar. 1984)
[as long as Ee's statement or action is based on reasonable or honest belief that he is being, or has been, asked to perform task he is not required to perform under bargaining agreement, and statement or action is reasonably directed toward enforcement of collectively bargained right, Ee is engaged in concerted activity]

N.L.R.B. v. City Disposal Systems, Inc. ———U.S.——— (U.S. S.CT, Mar. 1984)
[honest and reasonable invocation of collectively bargained right constitutes concerted activity, regardless of whether Ee turns out to have been correct in his belief that his right was violated. However, if bargaining agreement imposes limitation on means by which right may be invoked, concerted activity would be unprotected if it went beyond that limitation]

Chelsea Laboratories, Inc. 282 NLRB No. 074
[protesting to E's president, in presence of shop steward and on Ees' behalf, E's apparent decision not to recognize U w/o first discussing matter with Ee committee, as promised, found concerted protected activity that did not lose protection merely because protesting Ee raised his voice]

Every Woman's Place, Inc. 282 NLRB No. 048
[Ee's telephoning Wage and Hour Division of Labor Department to ask what pay Ees were legally entitled to receive for working on holidays, concerted, protected activity, notwithstanding it was not made pursuant to express instructions of fellow Ees, where it was outgrowth of three Ees' protest to management about holidays and compensatory time]

Every Woman's Place, Inc. 282 NLRB No. 048
[fellow Ees' express instructions for Ee to call Wage and Hour Division of Labor Department, not required, since Ee's conduct was concerted as continuation of Ees' protected activity of complaining about holidays and compensatory time]

Consumers Power Company 282 NLRB No. 024
[Ee held to have engaged in concerted activity since he clearly acted *with* and *on authority of* coworker, where he and coworker approached supervisor about lack of police protection when coworker made service call to customer exhibiting violent attitude toward coworker, and coworker had previously acquiesced in Ee's suggestion that *we had better go and get supervision* concerning such matter; coworker's action in walking away from Ee's discussion with supervisor was not intended to indicate repudiation of Ee's assertions or that coworker was not party to Ee's complaint]

Consumers Power Company 282 NLRB No. 024
[Ee's actions in complaining to supervisor about lack of police protection for coworker making service call to customer exhibiting violent attitude toward coworker held protected concerted activity, even if Ee had approached supervisor alone and not accompanied by coworker, since Ee's individual complaint would have been continuation of his and other Ees' concerted activity in bringing safety complaints to E's weekly meetings and discussing with E how it should have reacted to violent incidents]

Consumers Power Company 282 NLRB No. 024
[supervisor held to have known that Ee and coworker were acting in concert when they approached him together to discuss coworker's involvement, while making service call, with customer exhibiting violent attitude toward coworker; E was well aware of Ee's and other Ees concerted safety complaints made at E's weekly meetings and that Ee's complaint to supervisor was continuation of such activity; and since Ee acted for Ees' mutual aid

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or protection, his actions in approaching supervisor about lack of police protection for coworker while on service call, was protected]

Meyers Industries, Inc. **281 NLRB No. 118**
[on remand, Bd affirmed its *Meyers Industries*, 268 NLRB 493, definition of concerted activity which overruled *Alleluia Cushion*, 221 NLRB 999, and required some group action for conduct to be considered concerted distinguishing between *mutual aid and protection* and *concerted activities* provisions of Section 7 of Act; thus absent evidence of linkage to group activity, Ee's reporting alleged violation of safety regulation to government agency, not concerted activity]

Meyers Industries, Inc. **281 NLRB No. 118**
[individual, not a designated spokesman, bringing group complaint to attention of management is engaged in concerted activity. No requirement spokesman be *specifically authorized* by group to act in some formal declarative manner]

Meyers Industries, Inc. **281 NLRB No. 118**
[in general to find Ee's activity to be concerted, Bd will require that it be engaged in with or on authority of other Ees, and not solely on behalf of Ee himself, distinguishing, however, between single Ee asserting bargaining contract right and other statutory rights]

Meyers Industries, Inc. **281 NLRB No. 118**
[concerted activity encompasses those circumstances where individual Ees seek to initiate, or to induce, or to prepare for group action, as well as individual Ees bringing truly group complaints to attention of management]

Meyers Industries, Inc. **281 NLRB No. 118**
[Bd distinguished, in defining protected activity, between single Ee asserting bargaining contract right and single Ee reporting safety violation to government agency, stating that invocation of contract rights is continuation of ongoing process of Ees' concerted bargaining activity, whereas Ee's invocation of statutory right is not]

Thomas Steel Company **281 NLRB No. 060**
[E's letter to former Ee threatening him with a lawsuit if he did not cease interfering with E's business relationships with customers and suppliers, not violation where Ee's telephone call to supplier, which prompted E's letter, was unprotected in view of Ee's misrepresentation that he was independent safety consultant hired by E, and E, at time it sent letter, did not know and could not reasonably have known of arguably concerted nature of Ee's conduct]

Unico Replacement Parts, Inc. **281 NLRB No. 046**
[comment to Ee about closing plant, which could reasonably have been construed as indicating that complaints to OSHA about safety conditions at plant, whether made by one or by several Ees together, would result in plant closing held unlawful restraint of Ees in exercise of their right to act, in concerted manner, to report alleged plant safety violations to OSHA]

Dresser Industries, Inc. **281 NLRB No. 023**
[filing grievances found concerted, protected activity]

Cherokee Heating and Air Conditioning Co. **280 NLRB No. 044**
[service sales contract representative's writing E letter seeking change in sales commission payments, concerted, notwithstanding second representative's failure to include her name in first representative's charge filed with Bd or to testify, where second representative was involved in commission dispute and supportive of joint effort to resolve it, and letter stated its subject was of mutual concern to both representatives]

B & P Trucking, Inc. **279 NLRB No. 092**
[activity concerted and known to be concerted where Ee was delegated to speak for fellow Ees and repeatedly informed E that he was voicing all Ees' complaints]

B & P Trucking, Inc. **279 NLRB No. 092**
[threatening to get drivers together and go to U to secure assistance in resolving their complaints, concerted and protected]

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[discharge of driver violative of Sec. 8(a)(1) where for requesting installation of airconditioning in E's trucks, since request concerted inasmuch as driver had spoken to several other Ees about matter, notwithstanding he discussed airconditioning with E's president w/o going through chain of command thus violating rule, where E's president himself did not attempt to enforce rule, and discharge memo did not spedifically mention violation of rule as reason for discharge; however, discharge not violative of Sec. 8(a)(3) in view of lack of knowledge of Ee's U activities by E's officials who discharged him]

Hancor, Inc. **278 NLRB No. 030**
[drivers participating in E's *quality circle* meetings were engaged in protected concerted activity, since issues drivers' representatives discussed in these meetings were related to wages, hours, and working conditions of all drivers. *The activity of a single Ee in enlisting the support of his fellow Ees for their mutual aid and protection is as much concerted activity as is ordinary group activity*]

Zartic, Inc. **277 NLRB No. 171**
[Ee's pursuit of worker's compensation claim, not concerted activity]

The Loft (Showcase Inc,) **277 NLRB No. 170**
Ee's complaining to E at Ee meeting concerning tip pool policy, held concerted protected activity, where Ees had previously met together regarding problem, Ee spoke on behlaf of all Ees, and it may be inferred E considered Ee spokesman; further, Ee's subsequent discussion of tip pool policy with other Ees was continuation of this protected activity]

United States Postal Service **277 NLRB No. 156**
(Ee's telling management that he had reported E's building code violations to the city, not concerted where Ee acted alone w/o discussing matter with other Ees)

Wheeling-Pittsburgh Steel Corporation **277 NLRB No. 160**
(operator's refusal to run equipment until inspected by U safety representative, concerted where prompted by four Ees calling operator's attention to equipment's dangerous condition)

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Employers **277 NLRB No. 142**
(Ees' complaint to Corp. of Engineers about E's failure to comply with Davis-Bacon wage and job-classification requirements at federal military installation, concerted where Ees conferred together about it, gave their chosen spokesman copies of their paycheck stubs as evidence, and expressly authorized their fellow Ee to speak for them)

Airlines Transportation Company **277 NLRB No. 037**
(Ee's honest and reasonable invocation of his collectively bargained right to half-hour lunch break, concerted)

A. N. Electric Corp. **276 NLRB No. 092**
(Ee's confronting supervisor demanding to know whether job was federally funded in presence of Ee's son, a fellow Ee, discussing supervisor's responses with son, and pressing supervisor for higher wages for Ee and others held concerted activity which was aimed at attaining higher wages and thus protected under Sec. 7; E's discharge of these two Ees, motivated by their concerted activity, violative)

A. N. Electric Corp. **276 NLRB No. 092**
(three Ees agreeing among themselves to contact Labor Department investigator to pursue possibility of their cooperating in wage investigation to secure higher wages and giving statements to investigator together with fourth Ee's subsequent statement which was result of another meeting with investigator, held protected concerted activity; E's discharge of four Ees, violative where E knew of concerted nature of activities and was motivated by activities in discharging them)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(where Ee, at E's meeting with Ees, entered discussion to support another Ee's comments that E's cutting dependent insurance, a term and condition of employment, was particularly harsh on Mexican Ees who had large families held concerted activity since it was engaged in on authority of other Ees, and not solely by and on behalf of Ee himself)

Technicolor Government Services, Inc. **276 NLRB No. 041**
(U steward's distribution to E's Ees of application forms for employment with another E, who was bidder in competition for E's position as air force contractor, concerted activity, since, as U steward, he was acting as representative of a group and on authority of bargaining representative, and thus pursuant to authority of other Ees)

Union Electric Company **275 NLRB No. 059**
(Ees' refusal to use stairway that they claimed was unsafe to go down to inspect caisson, concerted where they discussed it among themselves, met with E about it with steward representing them, and were attempting to invoke right under collective bargaining agreement between E and U)

Country Crest Creations, Ltd. **JD-271-86**
[two Ees' walkout, concerted, notwithstanding walkout supported complaint by only one Ee, where both Ees told other Ees we were going home because it was too cold]

Pacific Bell **JD-(SF)-113-86**
[Ee's attempt to invoke seniority provisions of contract in dispute with E held not concerted, where Ee was neither attempting to induce group action nor acting as representative of other Ees, Ee was not in unit covered by contract and invocation of contract covering other unit was not integrally related to group action]

Lacks Industries, Inc. **JD-150-86**
[discharge of Ee for making threats to E's plant manager in course of discussion about other Ees, not unlawful, where Ee's actions were neither concerted nor protected]

Bombay Palace of Westchester, Inc. **JD-(NY)-81-85**
[complaint to state department of labor, concerted where Ees discussed concern about working conditions and filing of complaint among themselves, met with state investigator and was known by E to be concerted where, in meeting with three managers, Ee spokesman expressed concerns substantially parallelling those in state proceeding]

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Sue-Gio Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86

[Ee's getting newspaper article published about E's alleged ULPs, concerted where fellow Ees and U stewards had agreed that Ee should publicize E's actions, and action was known by E to be concerted because Ee was referred to in article as *Union spokesman*]

Dr. Olinda Flavo JD-12-86

[protesting E's procedures and requirement of unpaid attendance at seminars concerted where two Ees discussed common problems together and agreed to jointly present concerns to E]

Educational Broadcasting Corporation d/b/a WNET/Thirteen JD-(NY)-125-85

[discharge, allegedly for inability to work closely with another Ee, violation, since real reason was Ee's filing and pursuing grievance, where Ee had reasonable and honest belief in entitlement to relief under U contract]

Baltimore Newspaper Graphic Communications Union Local No. 31, International Printing and Graphic Communications Union, AFL-CIO (The A. S. Abell Company) JD-327-85

(single Ee's presentation of grievance directly to E held not concerted activity since Ee did not act in conjunction with any other Ee, nor was he acting in furtherance of joint effort or taking a step in contractual grievance procedure; U's conduct in fining Ee for by passing U's contractual grievance procedure not unlawful)

Murray Sandblast and Paint, Inc. JD-276-85

(for action to qualify as concerted activity where only speaker and listener involved in its inception, it must appear at very least it was engaged in with object of initiating or preparing for group action or that it had some relation to group action in interest of Ees. However, this requirement is satisfied if problems addressed by speaker had been subject of meetings between management and Ees aimed at resolving it, was currently being addressed by concerted activity among Ees not necessarily including speaker, or grew out of earlier concerted activities directed at same problem)

Robert T. Ewing, an individual v. N.L.R.B. 768 F.2d 51 (C.A. 2, July 1985)

(in view of S.Ct's decision in *City Disposal*, ct held Bd incorrectly concluded in its *Meyers* case that Ee activity is *concerted* only if it involves some sort of *group action* and that its *Alleluia* decision, overruled by *Meyers*, was inconsistent with Act because it allowed group support to be presumed absent evidence to the contrary)

Robert T. Ewing, an individual v. N.L.R.B. 768 F.2d 51 (C.A. 2, July 1985)

(Bd has discretion to find that individual Ee's reasonable and good faith invocation of employment-related statutory right is not so remotely related to activities of fellow Ees that it cannot be said that Ee is engaged in concerted activity; it is reasonable to presume that co-Ees support individual Ees right to seek statutorily guaranteed terms and conditions of employment; and such group support may rationally be assumed, absent evidence to the contrary, because fellow Ees presumably want to be free to assert such right w/o fear of losing their jobs)

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. 801 F.2d 636 (C.A. 3, Sept. 1986)

[Ee's conversation with two other Ees about wage increases for all of them and contacting U if next wage increase was disappointing, concerted protected activity]

N.L.R.B. v. Esco Elevators, Inc. 794 F.2d 1078 (C.A. 5, July 1986)

[Bd's conclusion on remand that Ee's safety complaints were not merely personal undertaking, but rather part of Ee's U campaign for U president Ee had emphasized safety issues, and supervisors' minds campaign was related to his safety complaints, U had investigated and discussed need for correction of alleged unsafe conditions with E's management]

Dayton Typographic Service, Inc. v. N.L.R.B. 778 F.2d 1188 (C.A. 6, Dec. 1985)

[discharge of Ee, assertedly because he presented a *personal gripe* to E concerning work w/o pay rather than engaging in group activity, violative, since Ee was engaged in a continuation of concerted activity where, prior to discharge, Ee and other Ees had complained to E about working w/o pay and other conditions of employment and Ee continued thereafter to press Ees' complaints, albeit w/o their formal authorization, but a fact which will not negate concert of action]

JMC Transport, Inc. v. N.L.R.B. 776 F.2d 612 (C.A. 6, Nov. 1985)

[Ee's conduct in protesting E's change in pay policy held concerted activity since Ee acted both with and on authority of other Ees, where Ee went to E's office to discuss pay structure together with another Ee who was not an inadvertent bystander; Ee expressed concern that E was *taking our money*, thereby putting E on notice that Ee's activity was concerted; Ee discussed changes with other Ees who assured that they would help him; and over half of Ees commented in writing in revisions when they signed copies of policy changes]

City Disposal Systems, Inc. v. N.L.R.B. 766 F.2d 969 (C.A. 6, July 1985)

(single Ee's refusal to drive truck reported as unsafe found concerted activity, since Ee had contractual right to refuse to drive truck reported as unsafe until E demonstrated truck's safety; Ee reasonably believed he was being asked to drive truck he was not required to drive under contract in view of reports it was unsafe, large number of trucks awaiting repairs, and supervisors' lack of concern about safety, and Ee honestly believed truck was unsafe as shown by his statements)

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[to fall w/i scope of concerted activity. Ee's action must be taken for purpose of inducing or preparing for group action to correct grievance or complaint; thus, such activity was found in Ee's honoring another U's picket line; individual's filing of grievance concerning own discharge was found concerted because sufficiently related to collective U objectives]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[U member's publication of newspaper to expose what he believed to be corruption in U president's administration of U held concerted activity where member acted with another U member in publishing newspaper for purpose of inciting action against U president and his U practices; and, alternatively, individual Ee engaged in concerted activity by taking action to align U membership with his own position against U representative]

N.L.R.B. v. Technicolor Government Services, Inc. 795 F.2d 916 (C.A. 11, Aug. 1986)

[ct upheld Bd's conclusion that U steward was engaged in U and protected concerted activity when he distributed to E's Ees application forms for employment with another E, who was bidder in competition for E's position as service contractor, on U's behalf]

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(Bd decision announcing new restrictive definition of *concerted activities* remanded to Bd for reconsideration in light of S.Ct's intervening *City Disposal* decision which held, contrary to Bd herein, that neither language nor legislative history of Sec. 7 required that term *concerted activities* be interpreted to protect most narrowly defined forms of common action by Ees and that Bd has substantial responsibility to determine scope of protection in order to promote Act's purposes)

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(Bd decision announcing new restrictive definition of *concerted activities* under which Ee's conduct is not concerted unless engaged in, with, or on authority of other Ees and not solely by and on behalf of himself remanded to Bd for reconsideration under S.Ct's *NLRB v. City Disposal Systems*, 104 S.Ct. 1505, since Bd misread precedent in claiming that it was returning to standard on which Bd and cts relied before Bd's *Alleluia* decision, which Bd overruled herein; rather, precedent shows that Bd's new test is substantially narrower than that followed by past Bds and most cts)

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(in remanding Bd decision announcing new restrictive test for *concerted activities* for reconsideration because of Bd's erroneous view of law, ct held S.Ct's intervening *City Disposal* decision made it clear that Bd is not *required* to give a narrowly literal interpretation to concerted activities but has substantial authority to define scope of Sec. 7 in first instance as it considers wide variety of cases that come before it)

2017 NOT ALL CONCERTED ACTIVITIES PROTECTED

2017-0800 Activity of such character as to render employee unfit for further service

Chelsea Laboratories, Inc. 282 NLRB No. 074

[protesting to E's president, in presence of shop steward and on Ees' behalf, E's apparent decision not to recognize U w/o first discussing matter with Ee committee, as promised, found concerted protected activity that did not lose protection merely because protesting Ee raised his voice]

Dandridge Textile, Inc., Ronald W. Woods, Individually and As Officer and Managing Agent 279 NLRB No. 015

[discharge of 2 Ees for remarks made to E's owner in meeting concerning wage increases, violative notwithstanding owner may have found Ees' remarks unpleasant or distressing, where Ees' statements were not so vulgar or defamatory as to render them unfit for further service]

BASF Wyandotte Corporation 278 NLRB No. 028

[U official's destroying copy of new safety rule in meeting with E, not outrageous or extreme enough for Ee to lose protection of the Act]

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Caterpillar Tractor Company 276 NLRB No. 151

276 NLRB No. 151

(suspending U steward for drawing and disseminating cartoon containing obnoxious obscenities directed at foreman whom steward dealt with on grievances, not violative where Ee's misconduct was so egregious that it exceeded scope of whatever protection it might otherwise have been entitled, and obscenities had inevitable negative effect on foreman's supervisory status in eyes of other Ees)

Technicolor Government Services, Inc. 276 NLRB No. 041

(U steward's distribution to E's Ees of application forms for employment with another E, who was bidder in recompetition for E's service contract with air force, protected, since it was not malicious or disloyal where it was U's effort to secure employment with contractor replacing E in case E lost bid competition and not solicitation to quit working for E)

Georgia Kraft Company, Woodcraft Division 278 NLRB No. 091

(striking Ees, who visited home of non-striking Ee and in presence of Ee's pregnant wife and young daughter stated that they would *take care of* him if he returned to work, while cursing in drunken state and refusing requests to leave, were lawfully discharged, since Act does not protect such intimidating conduct with respect to an Ee who is exercising his Sec. 7 right to refrain from striking)

Lacks Industries, Inc. JD-150-86

[discharge of Ee for making threats to E's plant manager in course of discussion about other Ees, not unlawful, where Ee's actions were neither concerted nor protected]

Murray Sandblast and Paint, Inc. JD-276-85

(discharge of U adherent because he complained to his fellow Ees about having his (time) card pulled for clocking in one minute late and during this incident calling management a perjorative term, violative, since Ee's initial complaint was (protected) concerted activity w/i meaning of Act. Using obscenity did not deprive Ee of right to relief)

2017-1700 Activities tending to disrupt employer's or union's operations

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027

[hotel refusing to permit non-Ee U representatives to continue to handbill for area standards for Ees of one of hotel's suppliers on hotel's private property near its main entrance, not unlawful, since herein E's property rights outweighed U's Section 7 right to inform public regarding lack of area standards, where activity at hotel's entrance increased possibility of theft of luggage, tort liability, and congestion and litter, atmosphere expected by guests violated, hotel had no interest in economic success of E with which U had dispute, nor was there vital link to Ees located on hotel's property]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

Turner Beverage Company, Inc. 279 NLRB No. 024

[discharge of two Ees, husband and wife, assertedly because husband was U supporter and because both Ees engaged in concerted activity of making anonymous calls to E's franchisor which put E in jeopardy of losing its franchise, not violative, since E's real reason was not Ees' U activity but was their perceived role in making anonymous calls, activity that was unprotected, where calls were simply act of retaliation, having nothing to do with working conditions but related to Ees' general discontent with management and attempt to direct philosophy of E]

The Zack Company 278 NLRB No. 134

[while filing of grievance by Ees is protected activity and ordinarily Ees' discussions with fellow Ees about their grievance were essential means of drumming up support for their position and were clearly designed to induce group action, Bd held that, as result of Ees' discussions with other Ees, they spent more time than normal talking about their grievances and less time working, thereby interfering with their production and, as a result, losing protection of Act]

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General Teamsters and Food Processing Local 87, Teamsters (Harry Shain, an Individual) 273 NLRB No. 225

(notwithstanding assurances that omission was inadvertant clerical error member becoming upset and telling U's office manager to *keep her damn hand off his name on out of work list* when he discovered that posted unofficial referral list did not include his name, not protected activity)

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86

[warning Ee about repestedly asking guest to sign statement about waiter's service and conduct which resulted in guest's annoyance and E's loss of future business from guest, lawful, notwithstanding Ee was acting in capacity as U steward, since that protected U activity lost protection]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. JD-(SF)-132-85

(discharge of Ees for authoring and sending letter to Chairman of the Board complaining about E's labor research practices and expressing concern for *the industry and our product,* not violative, since letter did not directly relate to wages, hours and working conditions but rather was an attack upon E's management and product and organizational structure of the company, thus rendering it unprotected)

2017-2500 Activities relating to intra-union affairs

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 061

(U's failure and refusal to refer particular Ee to E, at E's request, because Ee had solicited and encouraged Ees to run for position of business manager of U and attempted to oust present U business manager from office by running, himself for that office held violative, since activities of Ees designed to oust incumbent U leadership and to elect different U officers are concerted activities protected by Section 7 of Act)

2017-4000 No impact upon terms and conditions of employment

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[claim that letter by Ees to chairman concerned setting up new department and therefore did not concern terms and conditions of employment, but rather management concerns and had only attenuated relationship to Ees' own terms and conditions of employment, rejected, as clear from letter that these Ees expected to staff new department. And, proposal to create new department intertwined with Ees' request that their jobs be upgraded by, increased professionalism and remuneration]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

Turner Beverage Company, Inc. 279 NLRB No. 024

[discharge of two Ees, husband and wife, assertedly because husband was U supporter and because both Ees engaged in concerted activity of making anonymous calls to E's franchisor which put E in jeopardy of losing its franchise, not violative, since E's real reason was not Ees' U activity but was their perceived role in making anonymous calls, activity that was unprotected, where calls were simply act of retaliation, having nothing to do with working conditions but related to Ees' general discontent with management and attempt to direct philosophy of E]

Thrifty Nickel Want Ads of Albuquerque, Inc. JD-(SF)-179-85

[group of Ees concertedly complaining to management about the policy and procedure used in running the business, not protected activity, since Ees banded together not to improve rank-and-file working conditions but because they could not accept E's management and it is not an Ee's responsibility to tell E how it should run its business]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. JD-(SF)-132-85

(discharge of Ees for authoring and sending letter to Chairman of the Board complaining about E's labor research practices and expressing concern for *the industry and our product,* not violative, since letter did not directly relate to wages, hours and working conditions but rather was an attack upon E's management and product and organizational structure of the company, thus rendering it unprotected)

Interchecks Incorporated, A Subsidiary of United Graphics, Inc. JD-(SF)-23-85

(dischagring Ee for engaging in personal vendetta to undermine authority of his supervisor, whom he had supervised before he was demoted, in order to take her place, not violative; Ee's voluntarily informing E about supervisor's falsification of her timecard did not concern Ees' conditions of employment, and fellow Ees' individual complaints about supervisor were not concerted

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nor intended to remove her, as were dischargee's, who was acting for himself)

2017-5000 Resort to prohibited means

Thomas Steel Company — 281 NLRB No. 060
[E's letter to former Ee threatening him with a lawsuit if he did not cease interfering with E's business relationships with customers and suppliers, not violation where Ee's telephone call to supplier, which prompted E's letter, was unprotected in view of Ee's misrepresentation that he was independent safety consultant hired by E, and E, at time it sent letter, did not know and could not reasonably have known of arguably concerted nature of Ee's conduct]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. — 280 NLRB No. 023
[claim that letter sent by Ees to chairman of the board and president of E's parent company are outside of E's management and, accordingly, Ees' communication should be treated as if made to third party, rejected, as letter distinguishable from those in cases which involve disparagement of E's product to customers or public at large. Further, even if considered as appeal to third party, appeal was clearly tied to Ees' own working conditions and part of ongoing labor dispute]

Georgia Kraft Company, Woodcraft Division — 275 NLRB No. 091
(striking Ees, who visited home of non-striking Ee and in presence of Ee's pregnant wife and young daughter stated that they would *take care of* him if he returned to work, while cursing in drunken state and refusing requests to leave, were lawfully discharged, since Act does not protect such intimidating conduct with respect to an Ee who is exercising his Sec. 7 right to refrain from striking)

The Mead Corporation-Publishing Paper Division-Escanaba — 275 NLRB No. 052
(U steward's refusal to work overtime to perform emergency repairs held unprotected insubordination, since Ee eschewed grievance system or other protected form of protest and sought to dictate terms of employment by refusing to honor E's overtime practice)

2017-6700 Activities prohibited by statute

Rapid Armored Truck Corp. — 281 NLRB No. 057
[E's discharge of and refusal to reinstate strikers, not unlawful, since their conduct unprotected, where strikers' objective was to compel E to recognize and bargain with U which was ineligible for certification because of its policy of admitting both guard and non-guard Ees to membership and picketing was also violative of Section 8(b)(7)(C)]

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors — 279 NLRB No. 068
[Ee's participation in U disciplinary proceeding against E's supervisor, held protected activity, notwithstanding proceeding may have violated 8(b)(1)(B) of the Act, since Ee was engaged in Sec. 7 activity of assisting U by participating in U meeting and was not a *perpetrator* of the proceeding; rather, U officials had initiated the proceeding; Congress's intent was that generally labor organizations and their agents, but not individual Ees, should be responsible for the unlawful practices of labor organizations]

2017-8300 Conduct violating valid provisions of contract

N.L.R.B. v. City Disposal Systems, Inc. — ———U.S.——— (U.S. S.CT, Mar. 1984)
[honest and reasonable invocation of collectively bargained right constitutes concerted activity, regardless of whether Ee turns out to have been correct in his belief that his right was violated. However, if bargaining agreement imposes limitation on means by which right may be invoked, concerted activity would be unprotected if it went beyond that limitation]

Metropolitan Edison Company — 279 NLRB No. 047
[issuing written warning slips to 14 Ees who failed to cross stranger picket line to report to work in violation of no-strike clause, not unlawful, notwithstanding Ees were motivated by fear of injury to themselves or their cars, since acts of picketers did not meet objective test for *abnormally dangerous conditions* under Section 502, where there were threats and damage to Ees' vechiles but no physical assaults, and 611 of 625 Ees crossed the picket line]

Metropolitan Edison Company — 279 NLRB No. 047
[threatening discipline, including suspension, for refusing to cross stranger picket line, not violation where braod no-strike clause waived Ee's right to honor stranger picket line, in absence of any evidence in bargaining history or past practice demonstrating that parties expressly excluded sympathy strikes from no-strike clause coverage]

Certified Grocers of Illinois, Inc. — 273 NLRB No. 196
(picketing by discharged Ees in attempt to deal directly with E over their grievances which U was then pursuing under contractual grievance machinery held not protected)

City Disposal Systems, Inc. v. N.L.R.B. — 766 F.2d 969 (C.A. 6, July 1985)
(Ee's refusal to drive trucks as unsafe not conduct violating contract, since Ee reasonably and honestly believed that he was being asked to do something he was not required to do under contract, and his refusal was not *unjustified* under the no-strike clause and therefore not unprotected)

2017-9100 Conduct in derogation of bargaining representation

AAL, Inc., d/b/a River Oaks Nursing Home — 275 NLRB No. 012
(discharge of 2 (U) unit Ees because of their *walkout* over E's staffing proposals not violative, since facts establish walkout occurred w/o prior U knowledge and was not in support of policies and actions theretofore taken by U since U had decided against proffering contract proposal for specific staffing of aides, and U agent did not avail himself of opportunity at meeting to discuss walkout to join in with demands of dischargees for specific staffing of aides)

Certified Grocers of Illinois, Inc. — 273 NLRB No. 196
(picketing by discharged Ees in attempt to deal directly with E over their grievances which U was then pursuing under contractual grievance machinery held not protected)

2060 EMPLOYEES' MISTAKEN BELIEF AS TO VALIDITY OF GRIEVANCE IMMATERIAL

North Vernon Forge, Inc. — 278 NLRB No. 106
[discharge of rehired probationary Ee because Ee complained about his job assignment to his supervisor and to U making him alleged unsatisfactory probationary Ee, held violative since attempts by Ee to enforce provisions of existing collective bargaining agreement, even though agreement was ambiguous as to Ee's rights, are protected concerted activity under Act, as long as Ee's interpretations of agreement had reasonable basis]

Dave Castellino & Sons — 277 NLRB No. 050
(determination of whether Ee concerted activity is, or is not, protected does not turn upon ultimate merit or validity of concerted activity's objective)

Dubovsky and Sons, Inc. — JD-(NY)-47-86

2083 UNION ACTIVITY NEED NOT BE INVOLVED OR COLLECTIVE BARGAINING CONTEMPLATED

Squier Distributing Company — 276 NLRB No. 133
(discharge of Ees for giving statements to sheriff in connection with his investigation of possible embezzlement of corporate funds by E, violative, as Ees were acting for their *mutual aid or protection* since they viewed -- as result of 2 after work meetings -- that their concerted cooperation with sheriff as best method of safeguarding their jobs which bears relationship to Ees' interests as Ees and is, therefore, concerted activity. Disloyalty claim rejected)

3000 REFUSAL TO CROSS PICKET LINE

3033 AT PREMISES OF ANOTHER EMPLOYER

Metropolitan Edison Company — 279 NLRB No. 047
[threatening discipline, including suspension, for refusing to cross stranger picket line, not violation where broad no-strike clause waived Ee's right to honor stranger picket line, in absence of any evidence in bargaining history or past practice demonstrating that parties expressly excluded sympathy strikes from no-strike clause coverage]

3033-5000 Primary picket line

Arizona Public Company — 273 NLRB No. 210
(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work*, and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

Indianapolis Power & Light Company — 273 NLRB No. 211
(broad no-strike clause in bargaining agreement though not expressly mentioning sympathy strikes nevertheless held to include sympathy strikes in its proscription, unless extrinsic evidence indicates parties intended otherwise, and suspension and threat of discharge made to sympathy striker, not violative)

3033-7500 Secondary picket line

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) — 788 F.2d 1412 (C.A. 9, May 1986)
[whether contract waives Ees' right to strike turns upon the proper interpretation of particular contract. It must be read as a whole and in light of the law relating to it when made. Other relevant considerations include bargaining history, context in which contract was negotiated, interpretation of contract by the parties, and conduct of the parties bearing upon its meaning]

3067 AT OWN EMPLOYER'S PREMISES

3067-0100 Generally

Dave Castellino & Sons — 277 NLRB No. 050
(Act protects Ees in refusing to cross fellow Ees' picket line even where sole reason is Ee's fear of personal bodily injury, since focal point of Bd's inquiry is nature of activity itself, and Ee's motives for engaging in activity are irrelevant)

Dave Castellino & Sons — 277 NLRB No. 050
(Ee's walkout from job, occurring in response to protected Ee picket line at E's jobsite, held protected activity even though motivated solely by personal fear)

4000 OBJECTIVE AS DETERMINANT OF PROTECTED STATUS OF ACTIVITY

4001 GENERALLY

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers — 279 NLRB No. 116
[irrelevant whether Ee of construction company which was performing construction work for mining company understood threat of layoff of construction company Ees would be effectuated by mining company as result of his complaint, rather than by construction company (E), since whether statement interferes with Ees' exercise of Section 7 rights is objective determination in which Ee's subjective understanding is not relevant consideration]

4001-5000 Racial discrimination

N.L.R.B. v. Vought Corporation - MLRS Systems Division — 788 F.2d 1378 (C.A. 8, Apr. 1986)
[E warning Ee regarding his passing rumor to other black Ees that white Ee was being groomed for supervisory position over recently promoted black Ee and suggesting that black Ees meet with management regarding situation, unlawful, since Ee's remarks constituted protected concerted activity inasmuch related to group action concerning possible racial discrimination; thus Ee's motives irrelevant, and absent evidence his discussions disrupted production]

4033 OBJECTIVES WARRANTING PROTECTION OF ACTIVITY

4033-0100 Generally

Dave Castellino & Sons — 277 NLRB No. 050
(determination of whether Ee concerted activity is, or is not, protected does not turn upon ultimate merit or validity of concerted activity's objective)

N.L.R.B. v. Local 1131, Local 1161, Auto Workers — 777 F.2d 1131 (C.A. 6, Dec. 1985)
[contention that Ees' right to be free of U officials' superseniority's burden on their seniority rights contained in superseniority clause is economic right subject to waiver, rejected, since it is not related to right to engage in concerted activity for economic advantage, but right to be free of discrimination that encourages U membership]

4033-0600 Holding union or employee meeting

Dandridge Textile, Inc., Ronald W. Woods, Individually and As Officer and Managing Agent — 279 NLRB No. 015
[discharge of 2 Ees for remarks made to E's owner in meeting concerning wage increases, violative notwithstanding owner may have found Ees' remarks unpleasant or distressing, where Ees' statements were not so vulgar or defamatory as to render them unfit for further service]

4033-1000 Protesting disciplinary measures

Murray Sandblast and Paint, Inc. — JD-276-85
(discharge of U adherent because he complained to his fellow Ees about having his (time) card pulled for clocking in one minute late and during this incident calling management a perjorative term, violative, since Ee's initial complaint was (protected) concerted activity w/i meaning of Act. Using obscenity did not deprive Ee of right to relief)

Puerto Rican Association for Human Development — JD-(NY)-148-84
(Ees intervening on behalf of disciplined Ee and at request of this Ee writing memos setting forth their version of incident where memos not malicious, recklessly false, nor excessively disparaging of E's reputation or services, engaged in protected activities and suspension for writing these memos, violative. Additionally, suspension of Ee over his conduct in supervisor's office during discussion of memos, violative also, since E may not rely on Ee's conduct that it has unlawfully provoked as basis for disciplining Ees)

4033-1100 Protesting lawful discharge

Rockwell International Corp. — 278 NLRB No. 013
[Ee talking with other Ees regarding discharges of Ees whose unanlysis showed presence of drugs and protesting discharges to management, protected concerted activity]

Westinghouse Electric Corporation — 277 NLRB No. 016
(supervisor informing Ee who had given speech supporting Ee who had been discharged that she *had better be careful, she was being perceived as U trouble-maker*, unlawful)

4033-1200 Criticizing or protesting actions of supervisor

Waggener-Walker Newspapers, Inc. — 282 NLRB No. 070
[summary discharge of 11 Ees who presented group complaint concerning air conditioning and supervisor's behavior, violation, notwithstanding E's contention that Ees had voluntarily quit]

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer — 281 NLRB No. 161
[Ee's remarking to other Ees that E's CEO was a *cheap son of a bitch*, held protected concerted activity where comment was addressed to other Ees, Ee made it while Ees were on break and statement was not accompanied by any threat; further, Ee's supervisor telling Ee sometime after this comment, that he understood Ee was unhappy and if supervisor was that unhappy he would leave, violative, since remark was implied threat of retaliation for either Ee's comment about CEO or for signing a U card, both of which constituted protected activity]

Fourjay Industries Inc. — 278 NLRB No. 043
[discharge of two Ees, assertedly because of their poor attitude and absentee problems, violative, since real reason was Ees' complaints to supervisor about his close supervision and disparate treatment concerning absenteeism where both Ees had excellent work record and had never been warned about their attitude, supervisor had tolerated and accommodated Ees' attendance and supervisor was never concerned about Ees' attitude until they kept complaining about working conditions]

Herrick & Smith — 275 NLRB No. 062
(Ees meeting with management to discuss personnel problems held concerted protected activity and not individual griping where Ees voiced similar complaints against supervisors, meeting arranged and prepared for in concert with other Ees, and purpose was to air variety of complaints relating to their terms and conditions of employment)

N.L.R.B. v. Fair Mercantile Company — ———F.2d——— (C.A. 8, June 1985)
[Ees' complaints to management regarding quality of supervision which has direct impact on Ees' job interests is protected concerted activity]

4033-1700 Protesting employment practices based on racial and other minority group considerations

Churchill's Catering Corporation d/b/a Churchill's Restaurant — 276 NLRB No. 087
(Ee's protesting E's alleged discriminatory treatment against Hispanics regarding terms and conditions of employment held protected activity)

N.L.R.B. v. Vought Corporation - MLRS Systems Division — 788 F.2d 1378 (C.A. 8, Apr. 1986)
[E warning Ee regarding his passing rumor to other black Ees that white Ee was being groomed for supervisory position over recently promoted black Ee and suggesting that black Ees meet with management regarding situation, unlawful, since Ee's remarks constituted protected concerted activity inasmuch related to group action concerning possible racial discrimination; thus Ee's motives irrelevant, and absent evidence his discussions disrupted production]

4033-2600 Protesting overtime

Airlines Transportation Company — 277 NLRB No. 037
(Ee's refusal to waive lunch period that was contractually mandated and would have resulted in overtime that was not mandatory under contract found protected where Ee made specific reference to contractual provision supporting his claim)

4033-2800 Protesting deprivation of overtime

Hyde Park Community Hospital — JD-62-85

4033-3000 Seeking assistance of Union representative or co-worker at investigatory interview

Port Plastics, Inc. — 279 NLRB No. 050
[E's refusal to allow U representative attend discharge meeting with Ee, not violative, where E had signed discharge letter prior to meeting and had already made decision to discharge Ee prior to meeting, thus meeting was held simply for purpose of informing Ee of discharge]

Electronic Data Systems International Corporation — 278 NLRB No. 014
[Ee's refusal to meet with supervisor w/o witness, not protected, where Ee had no reason to believe that purpose of meeting was investigatory but rather to merely inform Ee of disciplinary decision already made; further, under current Bd law representation rights afforded by *Weingarten* do not apply where, as herein, there was no certified or recognized U]

4033-3000—Cont.

Amoco Oil Company **278 NLRB No. 003**
[refusal to provide Ees with U representative upon request at investigatory interview which Ees reasonably expected would result in discipline, violative, where expectation of discipline was present from fact that Ees were accused of burning up $1,000,000.00 boiler and objective of interview was to fix responsibility, Ees asked for U representative and one was available for them and E had not determined who was to be disciplined prior to investigation]

United States Postal Service **277 NLRB No. 156**
(E held not to have unlawfully denied Ee's request, in course of an investigation and disciplinary interview with E, for U representative, where Ee never asked for contractual U representative but, instead, asked for fellow Ee who was officer of labor organization not representing E's Ees nor in anyway related to E; under *Weingarten* rule, requested representative must be agent of U which is exclusive representative of Ees)

Harry M. Stevens, Inc., A/K/A Harry M. Stevens Services, Inc. **277 NLRB No. 031**
(E's refusal to allow unrepresented Ee have coworker attend investigatory interview, not violative, since the right to representation at *Weingarten*--type interviews applies only to unionized Ees)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(Ee's request for U representation at meeting with E held not w/i ambit of *Weingarten* and E's actions not unlawful where E called Ee into his office for purpose of delivering disciplinary writeup concerning Ee's poor attendance, since E had reached final determination to issue such writeup prior to calling Ee into his office)

TCC Center Companies, Inc. **275 NLRB No. 085**
(E's refusing Ee's, (U adherent) request that his attorney be present during investigatory interview which Ee reasonably believed might result in disciplining not violative, since Ee's request was not protected concerted activity. See *Sears, Roebuck & Co.* 274 NLRB No. 55 (Feb. 22, 1985) *Ees have no statutorily protected right to be represented at investigatory and/or disciplinary interviews by their private counsel from the outside....*)

Prudential Insurance Company of America **275 NLRB No. 030**
(although *Weingarten* right is triggered only by Ee's request and although that Ee alone may have an immediate stake in outcome of interview, U's duty of fair representation allows for flexibility in collective bargaining negotiations and *Weingarten* right, like right to strike, is subject to being waived by U)

Sears, Roebuck and Co. **274 NLRB No. 055**
(right to representation at *Weingarten*-type interviews applies only to represented Ees; *Material Research Corp.*overruled)

Greyhound Lines, Inc. **273 NLRB No. 180**
(Ee's *Weingarten* rights violated by E's policy of requiring U representative to remain silent during investigatory interview)

Exxon Shipping Company **JD-(NY)-96-85**
]*Weingarten* rights to U representation at interview with E apply when (1) interview is investigatory i.e. designed to elicit answers to work related questions which might affect Ees or unit, and (2) Ee reasonably fears that discipline might result from interview. Main focus of analysis turns on Bd's perception of state of mind of interviewee and reasonableness of same, rather than purpose of E in conducting interview. Further, regardless of original purpose of interview, when E goes beyond such purpose and questions Ee about misconduct, *full panoply of protections accorded Ee under Weingarten may be applicable*)

Union Underwear Company, Inc. **JD-77-85**
(Bd has held that *Weingarten rights* (Ee's right to presence of U representative at investigatory interview which Ee reasonably believed would result in disciplinary action) *are inapplicable where there is no certified or recognized U*----, C dismissed since it was undisputed that there was no certified or recognized U involved)

4033-3300 Protesting refusal to bargain with union or meet with employees

4033-3300 Protesting refusal to bargain with union or meet with employees

Chelsea Laboratories, Inc. **282 NLRB No. 074**
[protesting to E's president, in presence of shop steward and on Ees' behalf, E's apparent decision not to recognize U w/o first discussing matter with Ee committee, as promised, found concerted protected activity that did not lose protection merely because protesting Ee raised his voice]

4033-3500 Seeking union membership or representation

B & P Trucking, Inc. **279 NLRB No. 092**
[threatening to get drivers together and go to U to secure assistance in resolving their complaints, concerted and protected]

Penn Jersey Paper Co. **275 NLRB No. 064**
(contents of letter to U in which Ee requested U action to admit him to membership and to obtain *U wage* for him, and U steward's possession of letter when he showed it to E, put E on notice that Ee was engaged in protected activities since Ee was asking steward and other Ees through U to let him participate in concerted and U activities and to help him in obtaining wage increase)

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. **801 F.2d 636 (C.A. 3, Sept. 1986)**
[Ee's conversation with two other Ees about wage increases for all of them and contacting U if next wage increase was disappointing, concerted protected activity]

4033-3800 Protesting amount of tip received from employer

Club Monte Carlo Corporation **280 NLRB No. 030**
[waitresses who had served at party asking E's vice-president if there was a tip for them, protected activity, notwithstanding E's contention inquiry unprotected since tips did not comprise terms and conditions of employment inasmuch as tips were infrequent; E's further contention protection lost because conduct unwarranted and hostile intrusions upon E's vice-president where they had interrupted his discussion with other Ees, rejected, as reasonableness of method of engaging in otherwise protected activity does not detract from its protected character]

The Loft (Showcase, Inc) **277 NLRB No. 170**
[Ee's complaining to E at Ee meeting concerning tip pool policy, held concerted protected activity, where Ees had previously met together regarding problem, Ee spoke on behalf of all Ees, and it may be inferred E considered Ee spokesman; further, Ee's subsequent discussion of tip pool policy with other Ees was continuation of this protected activity]

4033-3900 Performance of union representative's duties

N.L.R.B. v. Cleveland Pneumatic Company **777 F.2d 339 (C.A. 6, Nov. 1985)**
[threat of discharge to U steward, violation, since steward properly performing his duties when he wrote on list of Ees scheduled for overtime that U did not authorize this overtime as overtime scheduled in contravention of bargaining agreement]

4033-4100 Demanding compliance with union contract

N.L.R.B. v. City Disposal Systems, Inc. **———U.S.——— (U.S. S.CT, Mar. 1984)**
[S.Ct approved Bd's use of *Interboro doctrine* 157 N.L.R.B. 1295 (1966), whereby individual Ee is deemed to have engaged in *concerted activity* w/i meaning of Sec. 7, if right Ee reasonably and in good faith asserts is grounded in his E's collective bargaining agreement. Good faith assertion of right contained in agreement is extension of concerted activity that produced agreement; alternatively, reasonable, good faith assertion of contract right is said to affect rights of all other Ees in workforce]

North Vernon Forge, Inc. **278 NLRB No. 106**
[discharge of rehired probationary Ee because Ee complained about his job assignment to his supervisor and to U making him alleged unsatisfactory probationary Ee, held violative since attempts by Ee to enforce provisions of existing collective bargaining agreement, even though agreement was ambiguous as to Ee's rights, are protected concerted activity under Act, as long as Ee's interpretations of agreement had reasonable basis]

Wheeling-Pittsburgh Steel Corporation **277 NLRB No. 160**
(Ee's refusal to run equipment he believed unsafe until he implemented contractual provision permitting Ees to call for U safety inspection)

Dave Castellino & Sons **277 NLRB No. 050**
(demonstrators picketing E at construction site held statutory Ees engaged in protected activity, where demonstrators included members of working class and unsuccessful applicants for employment with E, and were demonstrating in protest of E's alleged failure to comply with statutory duty and contractual commitment to provide work force composed of 50 percent of area residents, thereby protesting or seeking to influence E's hiring policies and practices)

Airlines Transportation Company **277 NLRB No. 037**
(Ee's refusal to waive lunch period that was contractually mandated and would have resulted in overtime that was not mandatory under contract found protected where Ee made specific reference to contractual provision supporting his claim)

The Acme-Arsuna Co., Inc. **276 NLRB No. 144**
(U steward's complaints about safety matters on job held attempts to enforce contract containing safety provision and therefore protected by Act under nationale of S.Ct's decision in *N.L.R.B. v. City Disposal System*)

Garland Coal & Mining Co. **276 NLRB No. 102**
(refusal by U official to sign E's memorandum advising members of grievance and safety committees that if they interfered in any activity outside their own unit they would be discharged for insubordination held to constitute protected activity engaged in by U representative in support of U's interpretation of contract)

4033-4100—Cont.

Union Electric Company — 275 NLRB No. 089
(Ees' refusal to use stairway that they claimed was unsafe to go down to inspect caisson, protected since Ees were attempting to invoke contractual right under clause stating that they would be subject to discipline for refusing to perform assigned job unless question of safety was involved, and they had good-faith belief that the job was unsafe, which belief the parties had stipulated gave them the right to refuse to perform work pursuant to ALJ's conclusion in prior case involving same contractual clause)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer — 274 NLRB No. 198
(driver complaining about E's interpretation of contract provision requiring that drivers pay fee in connection with loading and unloading of their trailers at customers' premises held protected activity)

Trans Tech Electric, Inc. — 274 NLRB No. 089
(E's complaining to E that certain work should be done by members of his and fellow Ees' U held concerted protected activity, where Ee was assisting U in enforcing contract for benefit of U members, including himself and fellow)

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club — JD-(NY)-10-86
[Ee's publicizing in newspaper article E's alleged ULPs of declaring contract *null and void*, firing three Ees, ignoring seniority in scheduling work, and changing work rules, protected, notwithstanding contract was no longer applicable, and some of the complaints were inaccurate, where statements were not malicious or disparaging]

The Fred B. Debra Company — JD-337-85
(Ee's remarks to supervisor that he was performing unit work under U contract, protected)

N.L.R.B. v. CER Inc. — 762 F.2d 482 (C.A. 5, June 1985)
(Ee abandoning work station to correct other Ees about proper work assignments as per bargaining agreement and complaining to U steward and E's foreman about compliance with bargaining agreement, held protected activity, notwithstanding E's contention that such complaining was not proper manner to handle complaints given the parties grievance machinery; grievance procedures do not preclude an effort to resolve grievances in an informal manner)

City Disposal Systems, Inc. v. N.L.R.B. — 766 F.2d 969 (C.A. 6, July 1985)
(Ee's refusal to drive trucks as unsafe not conduct violating contract, since Ee reasonably and honestly believed that he was being asked to do something he was not required to do under contract, and his refusal was not *unjustified* under the no-strike clause and therefore not unprotected)

4033-4200 Demanding contract wage

Penn Jersey Paper Co. — 275 NLRB No. 064
(contents of letter to U in which Ee requested U action to admit him to membership and to obtain *U wage* for him, and U steward's possession of letter when he showed it to E, put E on notice that Ee was engaged in protected activities since Ee was asking steward and other Ees through U to let him participate in concerted and U activities and to help him in obtaining wage increase)

Jim Miller, A Sole Proprietor, d/b/a Action Drywall — JD-(SF)-136-86
[discharge of Ees, unlawful, where for their concerted activity of inquiring whether they were being compensated in manner required by Davis-Bacon Act]

4033-4500 Demanding additional benefits

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. — 280 NLRB No. 023
[claim that letter by Ees to chairman concerned setting up new department and therefore did not concern terms and conditions of employment, but rather management concerns and had only attenuated relationship to Ees' own terms and conditions of employment, rejected, as clear from letter that these Ees expected to staff new department. And, proposal to create new department intertwined with Ees' request that their jobs be upgraded by, increased professionalism and remuneration]

4033-4900 Obtaining wage increase

Modern Iron Works, Inc. — 281 NLRB No. 151
[discharge of Ees for engaging in work stoppage when they sought to get larger wage increase than they had received from E, unlawful, notwithstanding E's contention that they had quit, where work stoppage was protected concerted activity, and there was no evidence Ees voluntarily relinquished their employment with E, which was clearly evidenced by their spokesman's express disclaimer that they had quit]

B & P Trucking, Inc. — 279 NLRB No. 092
[protesting pay for layovers, backhauls, and loading, protected]

Dandridge Textile, Inc., Ronald W. Woods, Individually and As Officer and Managing Agent — 279 NLRB No. 015
[discharge of 2 Ees for remarks made to E's owner in meeting concerning wage increases, violative notwithstanding owner may have found Ees' remarks unpleasant or distressing, where Ees' statements were not so vulgar or defamatory as to render them unfit for further service]

D & D Distribution Company, A Division of D & D Sewing Company — 277 NLRB No. 097
(Ee's conversations with other Ees about their prospects for getting bigger wage increases than in past and possibility of bringing in U if they did not succeed held characteristic protected concerted pre-U activity)

A. N. Electric Corp. — 276 NLRB No. 092
(Ee's confronting supervisor demanding to know whether job was federally funded in presence of Ee's son, a fellow Ee, discussing supervisor's responses with son, and pressing supervisor for higher wages for Ee and others held concerted activity which was aimed at attaining higher wages and thus protected under Sec. 7; E's discharge of these two Ees, motivated by their concerted activity, violative)

A. N. Electric Corp. — 276 NLRB No. 092
(three Ees agreeing among themselves to contact Labor Department investigator to pursue possibility of their cooperating in wage investigation to secure higher wages and giving statements to investigator together with fourth Ee's subsequent statement which was result of another meeting with investigator, held protected concerted activity; E's discharge of four Ees, violative where E knew of concerted nature of activities and was motivated by activities in discharging them)

Penn Jersey Paper Co. — 275 NLRB No. 064
(contents of letter to U in which Ee requested U action to admit him to membership and to obtain *U wage* for him, and U steward's possession of letter when he showed it to E, put E on notice that Ee was engaged in protected activities since Ee was asking steward and other Ees through U to let him participate in concerted and U activities and to help him in obtaining wage increase)

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. — 801 F.2d 636 (C.A. 3, Sept. 1986)
[Ee's conversation with two other Ees about wage increases for all of them and contacting U if next wage increase was disappointing, concerted protected activity]

4033-5000 Protest regarding benefit plans

Tecom, Inc. — 277 NLRB No. 038
(Ee's efforts to find out provisions of group health insurance policy, and writing letter to E complaining about E's confused handling insurance matter, held protected concerted activity, notwithstanding some of Ee's questions related to his own personal medical problems, where several questions were raised on behalf of other Ees and in letter he stated he was complaining for himself and other Ees, and especially where other Ees bought letter to attention of E)

4033-5100 Protesting pay shortages or late payment

Barnes Excavating — 282 NLRB No. 013
[protesting overdue paychecks]

Spartan Business Equipment, Inc. — 274 NLRB No. 216
(joint protest of Ees over E's alleged failure to reimburse one of Ees for expenses he incurred from using his own car to perform services for E, held concerted protected activity; Ees discussed reimbursement issue with each other and approached E together to state their position)

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company — 762 F.2d 769 (C.A. 9, June 1985)
(discharge of Ee, who had filed wage claim with state agency, asserted for *skimming* and moonlighting, unlawful, where E failed to set forth reasons for firing Ee until Bd hearing, other Ee purportedly involved in skimming was transferred not discharged, and E refused to rehire other Ees who had filed wage claims against E)

4033-5200 Refusal to work without pay or complaint about doing so

Dr. Olinda Flores — JD-12-86
[Ees' discussions about being required to attend weekend seminars w/o being paid, and subsequent presentation of concerns to E, protected]

New Hope Industries, Inc., and Its Alter Ego and Owner Emil Brandt Thiec — JD-(ATL)-61-85
(Ees striking to protest E's failure to meet scheduled pay dates held protected activity and further, Ees continuation of that strike in protest over their discharges for striking converted strike from economic strike to ULP strike)

Electrical Individual Contractor — JD-6-86
(Ee's complaining through spokesman about E's order that they drive E's trucks to jobsite 30 miles away w/o being paid and consequently w/o being

4033-5200—Cont.

covered by workmen's compensation insurance while doing so, concerted protected activity)

Dayton Typographic Service, Inc. v. N.L.R.B. 778 F.2d 1180 (C.A. 6, Dec. 1985)

[discharge of Ee, assertedly because he presented a *personal gripe* to E concerning work w/o pay rather than engaging in group activity, violative, since Ee was engaged in a continuation of concerted activity where, prior to discharge, Ee and other Ees had complained to E about working w/o pay and other conditions of employment and Ee continued thereafter to press Ees' complaints, albeit w/o their formal authorization, but a fact which will not negate concert of action]

4033-5300 Protesting change in computing pay (piece rate, etc.)

JMC Transport, Inc. v. N.L.R.B. 776 F.2d 612 (C.A. 6, Nov. 1985)

[where Ee's extremely hostile and abusive outbursts while engaged in protesting E's change in pay policy clearly could be seen as unprotected in context in which discharge is based on specific allegedly unprotected conduct, ct held E's failure to fire Ee for his abusive conduct defeated E's contention that Ee's conduct was unprotected; in context in which E had not found conduct so disruptive as to justify discharge at the time, ct declined to impose post hoc classification of unprotected conduct]

4033-5500 Protesting working conditions

Waggoner-Walker Newspapers, Inc. 282 NLRB No. 070

[summary discharge of 11 Ees who presented group complaint concerning air conditioning and supervisor's behavior, violation, notwithstanding E's contention that Ees had voluntarily quit]

Wabash Alloys, Inc. 282 NLRB No. 089

[assigning Ee to more arduous work as result of his safety complaint, violative]

Consumers Power Company 282 NLRB No. 024

[Ee's actions in complaining to supervisor about lack of police protection for coworker making service call to customer exhibiting violent attitude toward coworker held protected concerted activity, even if Ee had approached supervisor alone and not accompanied by coworker, since Ee's individual complaint would have been continuation of his and other Ees' concerted activity in bringing safety complaints to E's weekly meetings and discussing with E how it should have reacted to violent incidents]

Consumers Power Company 282 NLRB No. 024

[supervisor held to have known that Ee and coworker were acting in concert when they approached him together to discuss coworker's involvement, while making service call, with customer exhibiting violent attitude toward coworker; E was well aware of Ee's and other Ees concerted safety complaints made at E's weekly meetings and that Ee's complaint to supervisor was continuation of such activity; and since Ee acted for Ees' mutual aid or protection, his actions in approaching supervisor about lack of police protection for coworker while on service call, was protected]

Springfield Hospital 281 NLRB No. 076

[presenting ptns to management protesting their retention of a particular law firm and a management consulting firm to combat U's organizing campaign, held protected activity, as Ees perceived law firm and consulting firm as threat to their efforts to achieve better working conditions and wages through collective bargaining. Any false or malicious accusations, if any, in ptns were directed to law firm and consulting firm and did not disparage E's conduct in labor relations or in any other way injure it. Furthermore, use of terms *notorious U busters, known for trampling on workers' rights, provoking strikes* are just expression of opinion and protected]

Quality C.A.T.V., Inc. 278 NLRB No. 156

[discharge of two TV linemen who installed television strands on utility poles and who refused to work during and after rainstorm because they were wet, violative, since their concerted refusal to work was to protest requirement that they climb poles when wet, an employment condition. Ee's protest was protected whether Ees acted because they were concerned about their safety, their personal comfort, or their supervisor's attitude. In carrying out their protest, Ees did not exceed permissable bounds of protected activity]

Woodline Motor Freight, Inc. 278 NLRB No. 152

[discharge of driver violative of Sec. 8(a)(1) where for requesting installation of airconditioning in E's trucks, since request concerted inasmuch as driver had spoken to several other Ees about matter, notwithstanding he discussed airconditioning with E's president w/o going through chain of command thus violating rule, where E's president himself did not attempt to enforce rule, and discharge memo did not spedifically mention violation of rule as reason for discharge; however, discharge not violative of Sec. 8(a)(3) in view of lack of knowledge of Ee's U activities by E's officials who discharged him]

Fourjay Industries Inc. 278 NLRB No. 043

[discharge of two Ees, assertedly because of their poor attitude and absentee problems, violative, since real reason was Ees' complaints to supervisor about his close supervision and disparate treatment concerning absenteeism where both Ees had excellent work record and had never been warned about their attitude, supervisor had tolerated and accommodated Ees' attendance and supervisor was never concerned about Ees' attitude until they kept complaining about working conditions]

Hancor, Inc. 278 NLRB No. 030

[drivers participating in E's *quality circle* meetings were engaged in protected concerted activity, since issues drivers' representatives discussed in these meetings were related to wages, hours, and working conditions of all drivers. *The activity of a single Ee in enlisting the support of his fellow Ees for their mutual aid and protection is as much concerted activity as is ordinary group activity*]

Bechtel Power Corporation 277 NLRB No. 080

(discharge of ee, assertedly for violating E's hardhat rules, violative, since real reason was Ee's complaints about breathing exhaust fumes in working area which complaints were protected concerted activity under *City Disposal*, where Ee's complaints were embodied in contract which had clause providing that all workmen and E's were to see that *safe working conditions are maintained on all jobs*. Ee complained to E-official who admitted receiving similar complaints from other Ees, Ee was longtime U member and told official he wanted to talk to steward and other Ees were not similarly discharged for similar hardhat violations)

Daniel Construction Company, A Division of Daniel International Corporation 277 NLRB No. 081

(Ees' spontaneous refusal to work for 1 day in protest of unique and adverse working conditions, even in face of company rule requiring permission to leave job, held protected; such single concerted walkout was presumptively protected in absence of evidence that work stoppage was part of plan or pattern of intermittent action inconsistent with genuine withholding of services or strike)

The Acme-Arsons Co., Inc. 276 NLRB No. 144

(Ee's complaints to E about work jurisdiction and safety matters held protected concerted activity where Ee lodged complaints in his capacity as U steward)

Esco Elevators, Inc. 276 NLRB No. 138

(on ct remand, Bd held Ee's safety-related complaints constituted U endeavor and not personal undertaking, and his discharge purportedly because of fist fight with another Ee, unlawful, where Ee emphasized safety matters in campaign for U office before being elected U president; inspection of safety conditions at job sites was part of his role as U official; E was discharged by supervisor who had ascertained Ee was pressing safety conditions because he was U president; and other U officers were involved in attempting to resolve safety problem)

McEver Engineering, Inc. 275 NLRB No. 128

(Ees striking in protest over being required to work in what they perceived to be unsafe weather conditions held not to constitute partial strike where it was one-time event and Ees' withholding of services was of short duration and ended when weather conditions improved)

Herrick & Smith 275 NLRB No. 062

(Ees meeting with management to discuss personnel problems held concerted protected activity and not individual griping where Ees voiced similar complaints against supervisors, meeting arranged and prepared for in concert with other Ees, and purpose was to air variety of complaints relating to their terms and conditions of employment)

Storall Manufacturing Company, Inc. 275 NLRB No. 039

(three Ees meeting with plant manager regarding their concern about working conditions, including supervisor's on-the-job conduct, possible changes in work rules, and job security, protected)

Fremont, A Division of Dynamics Corporation of America 274 NLRB No. 131

(actions of Ee and co-worker in concert respecting their complaints as to safe operations of traffic department where they worked, protected)

Shimazaki Corporation 274 NLRB No. 004

(Ee engaged in protected concerted activity by asking U steward whether a) change in quitting time was permitted by contract, b) E could take such action, and c) U could do something about it. Even if taken alone, such conduct is concerted. It is not necessary to decide whether Ee said he wanted to file grievance as long as nature of complaint is reasonably clear to person to whom communicated)

Country Crest Creations, Ltd. JD-271-86

[walkout protesting factory temperature, protected, regardless of E's alleged inability to control temperature, where Ees in fact felt uncomfortably cold]

Bombay Palace of Westchester, Inc. JD-(NY)-81-85

[discharging Ee spokesman for complaining about conditions of employment and filing complaint with state department of labor, violation]

Dr. Olinda Flores JD-12-86

[protesting requirement that Ees take and develop x-rays under unsafe conditions, and expression of possible intention to refuse to take x-rays in the future protected]

4033-5500—Cont.

Carrollton Fast Foods, Inc., d/b/a Burger King JD-(ATL)-28-85
(discussing announcement that E would not pay Ees while the power was off was protected concerted activity)

GG Dewitt, Inc., d/b/a Sterling Car Care JD-38-85
(discharge of Ees who were gas station attendants for complaining about working conditions: work schedules, cleanup duties, threatened layoffs, and especially problem of recurrent cash shortages on their shift, unlawful, where discharges came at time when Ees were complaining about matters about which under law they had right to complain, and absent any action during conversation about these matters which would strip them of protection of law)

N.L.R.B. v. Esco Elevators, Inc. 794 F.2d 1079 (C.A. 5, July 1986)
[Bd's conclusion on remand that Ee's safety complaints were not merely personal undertaking, but rather part of Ee's U campaign for U president Ee had emphasized safety issues, and supervisors' minds campaign was related to his safety complaints, U had investigated and discussed need for correction of alleged unsafe conditions with E's management]

N.L.R.B. v. McEver Engineering, Inc. 784 F.2d 634 (C.A. 5, Mar. 1986)
[no need for protesting Ees to confront E with *specific demand* for relief from circumstances (dangerous working conditions at lime tanks) precipitating Ees' concerted action, since E was on reasonable notice that Ees were protesting unsafe working conditions, and it was in position to make informed judgment as to how to respond]

N.L.R.B. v. McEver Engineering, Inc. 784 F.2d 634 (C.A. 5, Mar. 1986)
[discharge of Ees who failed to return to work because of their perceived hazzardous conditions on job, violative. Ees were engaged in one-time strike of short duration (protected) as opposed to partial strike (unprotected). E had constructive knowledge of protected nature of activity notwithstanding when Ees told company clerk, sent by supervisor to ask Ees why they were not returning to work, they would return to work after it stopped raining, and he only reported to supervisor that the men were not ready to come back to work]

4033-5700 Protesting the hiring of outside organizations (law firms, management consulting firms, etc.)

Springfield Hospital 281 NLRB No. 076
[presenting pins to management protesting their retention of a particular law firm and a management consulting firm to combat U's organizing campaign, held protected activity, as Ees perceived law firm and consulting firm as threat to their efforts to achieve better working conditions and wages through collective bargaining. Any false or malicious accusations, if any, in pins were directed to law firm and consulting firm and did not disparage E's conduct in labor relations or in any other way injure it. Furthermore, use of terms *notorious U busters, known for trampling on workers' rights, provoking strikes* are just expression of opinion and protected]

Springfield Hospital 281 NLRB No. 076
[U organizer's statements depicting law firm and consulting firm hired by E to thwart U's organizing campaign as *known violators of the law* and firms were retained *to brutalize, to attack their Ees in organizing drive* and to beat down Ees are not grounds for setting aside election]

4033-6600 Protesting removal or discharge of supervisor

Electronic Data Systems International Corporation 278 NLRB No. 014
[discharge of 10 Ees, who engaged in unprotected work stoppage of a few minutes which was spontaneous reaction to discharge of supervisor, but not in protest of impact of discharge on employment, unlawful, notwithstanding unprotected nature of work stoppage and fact took place 9 months after U organizing campaign, in view of E's superficial investigation, previous good record of dischargees, severity of discipline in relationship to misconduct, disparity of treatment between U adherents and other Ees]

Ozark Properties, Inc. d/b/a Holiday Inn 274 NLRB No. 096
(Ees protesting E's decision to terminate a supervisor, not protected)

4033-9200 Engaging in intrasunion activities

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081
(U's failure and refusal to refer particular Ee to E, at E's request, because Ee had solicited and encouraged Ees to run for position of business manager of U and attempted to oust present U business manager from office by running himself for that office held violative, since activities of Ees designed to oust incumbent U leadership and to elect different U officers are concerted activities protected by Section 7 of Act)

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)
[member's expressing his opposition to local U president concerning a new absenteeism program, held protected activity]

4033-9300 Protesting hiring or job assignment practices

B & P Trucking, Inc. 279 NLRB No. 092
[protesting work assignments, protected]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[Ee's publicizing in newspaper article E's alleged ULPs of declaring contract *null and void,* firing three Ees, ignoring seniority in scheduling work, and changing work rules, protected, notwithstanding contract was no longer applicable, and some of the complaints were inaccurate, where statements were not malicious or disparaging]

Signal Delivery Service, Inc. JD-231-85
(discharging driver Ees, violative notwithstanding E's contention that they had voluntarily quit, where discharge of Ees was made because Ees had complained to E about dispatch procedure and withheld their services because they were unable to satisfactorily resolve matter with E)

4033-9600 Publicizing adverse working conditions

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027
[in regard to right of non-Ee U agents right to access to E's property. *It is Bd's task to weigh relative strength of each party's claim. If property owner's claim is strong one, while U's Sec. 7 right at issue is clearly less compelling one, property right will prevail. If property claim is tenuous one, Sec. 7 right is clearly more compelling, then Sec. 7 right will prevail. Factors which may affect relative strengths or weaknesses of claim of Sec. 7 rights include, but are not limited to, nature of right asserted, purpose for which it is being asserted, E that is target of activity, relationship of situs to target, intended*

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027
[U's handbilling for area standards directed at consumers, held protected activity, notwithstanding handbilling was at location where targeted Ees not located; however, in balancing U's Sec. 7 rights against any detriment to E's property rights to determine which should prevail, if E asserts rights not to allow activity on its property, fact activity directed at narrow, inaccessible segment of public considered]

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027
[although area standards activity may incidentally have effect on improving wages of Ees of targeted E, and it has no vital link to Ees located on targeted E's proeprty, it is protected, even when not at locus of target E, essentially because U has legitimate interest in protecting wage standards of its members by competitors of targeted E; however, area standards objective does not have as high a status as organizing when considered in balancing against E's property rights]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023
[claim that letter sent by Ees to chairman of the board and president of E's parent company are outside of E's management and, accordingly, Ees' communication should be treated as if made to third party, rejected, as letter distinguishable from those in cases which involve disparagement of E's product to customers or public at large. Further, even if considered as appeal to third party, appeal was clearly tied to Ees' own working conditions and part of ongoing labor dispute]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023
[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[Ee's publicizing in newspaper article E's alleged ULPs of declaring contract *null and void,* firing three Ees, ignoring seniority in scheduling work, and changing work rules, protected, notwithstanding contract was no longer applicable, and some of the complaints were inaccurate, where statements were not malicious or disparaging]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[Ee's publicizing in newspaper article E's alleged ULPs of declaring contract *null and void,* firing three Ees, ignoring seniority in scheduling work, and changing work rules, protected, notwithstanding contract was no longer applicable, and some of the complaints were inaccurate, where statements were not malicious or disparaging]

4067 OBJECTIVES RENDERING ACTIVITIES UNPROTECTED

4067-1000 To obtain objective only for self

4067-1000—Cont.

N.L.R.B. v. City Disposal Systems, Inc. ———U.S.——— (U.S. S.CT, Mar. 1984)

[S.Ct approved Bd's use of *Interboro doctrine* 157 N.L.R.B. 1295 (1966), whereby individual Ee is deemed to have engaged in *concerted activity* w/i meaning of Sec. 7, if right Ee reasonably and in good faith asserts is grounded in his E's collective bargaining agreement. Good faith assertion of right contained in agreement is extension of concerted activity that produced agreement; alternatively, reasonable, good faith assertion of contract right is said to affect rights of all other Ees in workforce]

N.L.R.B. v. City Disposal Systems, Inc. ———U.S.——— (U.S. S.CT, Mar. 1984)

[as long as Ee's statement or action is based on reasonable or honest belief that he is being, or has been, asked to perform task he is not required to perform under bargaining agreement, and statement or action is reasonably directed toward enforcement of collectively bargained right, Ee is engaged in concerted activity]

N.L.R.B. v. City Disposal Systems, Inc. ———U.S.——— (U.S. S.CT, Mar. 1984)

[honest and reasonable invocation of collectively bargained right constitutes concerted activity, regardless of whether Ee turns out to have been correct in his belief that his right was violated. However, if bargaining agreement imposes limitation on means by which right may be invoked, concerted activity would be unprotected if it went beyond that limitation]

Meyers Industries, Inc. 281 NLRB No. 118

[individual, not a designated spokesman, bringing group complaint to attention of management is engaged in concerted activity. No requirement spokesman be *specifically authorized* by group to act in some formal declarative manner]

Meyers Industries, Inc. 281 NLRB No. 118

[in general to find Ee's activity to be concerted, Bd will require that it be engaged in with or on authority of other Ees, and not solely on behalf of Ee himself, distinguishing, however, between single Ee asserting bargaining contract right and other statutory rights]

Meyers Industries, Inc. 281 NLRB No. 118

[concerted activity encompasses those circumstances where individual Ees seek to initiate, or to induce, or to prepare for group action, as well as individual Ees bringing truly group complaints to attention of management]

Meyers Industries, Inc. 281 NLRB No. 118

[Bd distinguished, in defining protected activity, between single Ee asserting bargaining contract right and single Ee reporting safety violation to government agency, stating that invocation of contract rights is continuation of ongoing process of Ees' concerted bargaining activity, whereas Ee's invocation of statutory right is not]

Unico Replacement Parts, Inc. 281 NLRB No. 046

[comment to Ee about closing plant, which could reasonably have been construed as indicating that complaints to OSHA about safety conditions at plant, whether made by one or by several Ees together, would result in plant closing held unlawful restraint of Ees in exercise of their right to act, in concerted manner, to report alleged plant safety violations to OSHA]

Cherokee Heating and Air Conditioning Co. 280 NLRB No. 044

[service sales contract representative's writing E letter seeking change in sales commission payments, concerted, notwithstanding second representative's failure to include her name in first representative's charge filed with Bd or to testify, where second representative was involved in commission dispute and supportive of joint effort to resolve it, and letter stated its subject was of mutual concern to both representatives]

Carpenters Local 925; et al. (Charlene Seier, an Individual) 279 NLRB No. 145

[sole Ee seeking U representation is engaging in *concerted* activity w/i meaning of Section 7 of Act, w/o regard to fact that Ee may have acted alone, since S.Ct has recognized that Section 7 *—defines both joining and assisting labor organizations-- activities in which a single Ee can engage-- as concerted activities*]

Esco Elevators, Inc. 276 NLRB No. 138

(on ct remand, Bd held Ee's safety-related complaints constituted U endeavor and not personal undertaking, and his discharge purportedly because of fist fight with another Ee, unlawful, where Ee emphasized safety matters in campaign for U office before being elected U president; inspection of safety conditions at job sites was part of his role as U official; E was discharged by supervisor who had ascertained Ee was pressing safety conditions because he was U president; and other U officers were involved in attempting to resolve safety problem)

Center Ridge Co. 276 NLRB No. 015

(discharge of security officer after he complained to news media about alleged conflict between county licensing requirements and new work procedures announced by E, not violative where Ee's concern about conflict between its procedures and county's licensing requirements for security guards was not shared by any of his fellow Ees)

Herrick & Smith 275 NLRB No. 062

(Ees meeting with management to discuss personnel problems held concerted protected activity and not individual griping where Ees voiced similar complaints against supervisors, meeting arranged and prepared for in concert with other Ees, and purpose was to air variety of complaints relating to their terms and conditions of employment)

Electrical Workers, Local Union No. 596 (Lylloth G. Woodall, an Individual) 274 NLRB No. 196

(threatening reduction of U adherent's benefits because of her involvement in U handbilling, violative, notwithstnading she was in single-Ee unit, where her involvement in handbilling was form of assistance to labor organization protected by Sec. 7)

Shimazaki Corporation 274 NLRB No. 004

(Ee engaged in protected concerted activity by asking U steward whether a) change in quitting time was permitted by contract, b) E could take such action, and c) U could do something about it. Even if taken alone, such conduct is concerted. It is not necessary to decide whether Ee said he wanted to file grievance as long as nature of complaint is reasonably clear to person to whom communicated)

Murray Sandblast and Paint, Inc. JD-276-85

(for action to qualify as concerted activity where only speaker and listener involved in its inception, it must appear at very least it was engaged in with object of initiating or preparing for group action or that it had some relation to group action in interest of Ees. However, this requirement is satisfied if problems addressed by speaker had been subject of meetings between management and Ees aimed at resolving it, was currently being addressed by concerted activity among Ees not necessarily including speaker, or grew out of earlier concerted activities directed at same problem)

Interchecks Incorporated, A Subsidiary of United Graphics, Inc. JD-(SF)-23-85

(dischagring Ee for engaging in personal vendetta to undermine authority of his supervisor, whom he had supervised before he was demoted, in ooder to take her place, not violative; Ee's voluntarily informing E about supervisor's falsification of her timecard did not concern Ees' conditions of employment, and fellow Ees' individual complaints about supervisor were not concerted nor intended to remove her, as were dischargee's, who was acting for himself)

N.L.R.B. v. Esco Elevators, Inc. 794 F.2d 1078 (C.A. 5, July 1986)

[Bd's conclusion on remand that Ee's safety complaints were not merely personal undertaking, but rather part of Ee's U campaign for U president Ee had emphasized safety issues, and supervisors' minds campaign was related to his safety complaints, U had investigated and discussed need for correction of alleged unsafe conditions with E's management]

City Disposal Systems, Inc. v. N.L.R.B. 766 F.2d 969 (C.A. 6, July 1985)

(single Ee's refusal to drive truck reported as unsafe found concerted activity, since Ee had contractual right to refuse to drive truck reported as unsafe until E demonstrated truck's safety; Ee reasonably believed he was being asked to drive truck he was not required to drive under contract in view of reports it was unsafe, large number of trucks awaiting repairs, and supervisors' lack of concern about safety, and Ee honestly believed truck was unsafe as shown by his statements)

N.L.R.B. v. Deauville Hotel 751 F.2d 1562 (C.A. 11, Feb. 1985)

(reprimanding and threatening to discharge Ee for complaints about conditions of lesser job for which he had been rehired after his lawful discharge, not violative, since complaints were not protected activity where Ee was not initiating group action but demonstrating a bad attitude and disrupting the work place with personal gripes)

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(Bd decision announcing new restrictive definition of *concerted activities* remanded to Bd for reconsideration in light of S.Ct's intervening *City Disposal* decision which held, contrary to Bd herein, that neither language nor legislative history of Sec. 7 required that term *concerted activities* be interpreted to protect most narrowly defined forms of common action by Ees and that Bd has substantial responsibility to determine scope of protection in order to promote Act's purposes)

4067-3000 Personal problems

Thrifty Nickel Want Ads of Albuquerque, Inc. JD-(SF)-179-85

[group of Ees concertedly complaining to management about the policy and procedure used in running the business, not protected activity, since Ees banded together not to improve rank-and-file working conditions but because they could not accept E's management and it is not an Ee's responsibilty to tell E how it should run its business]

Dayton Typographic Service, Inc. v. N.L.R.B. 778 F.2d 1188 (C.A. 6, Dec. 1985)

[discharge of Ee, assertedly because he presented a *personal gripe* to E concerning work w/o pay rather than engaging in group activity, violative,

4067-3000—Cont.

since Ee was engaged in a continuation of concerted activity where, prior to discharge, Ee and other Ees had complained to E about working w/o pay and other conditions of employment and Ee continued thereafter to press Ees' complaints, albeit w/o their formal authorization, but a fact which will not negate concert of action]

4067-8000 To compel unlawful conduct

Rapid Armored Truck Corp. — 281 NLRB No. 057

[E's discharge of and refusal to reinstate strikers, not unlawful, since their conduct unprotected, where strikers' objective was to compel E to recognize and bargain with U which was ineligible for certification because of its policy of admitting both guard and non-guard Ees to membership and picketing was also violative of Section 8(b)(7)(C)]

4067-9000 Employee's bad faith, knowledge of falsity, intent to harass, or similar improper motives

N.L.R.B. v. City Disposal Systems, Inc. — ———U.S.——— (U.S. S.CT, Mar. 1984)

[Ee may engage in concerted activity in such an abusive manner that he loses protection of Sec. 7]

Turner Beverage Company, Inc. — 279 NLRB No. 024

[discharge of two Ees, husband and wife, assertedly because husband was U supporter and because both Ees engaged in concerted activity of making anonymous calls to E's franchisor which put E in jeopardy of losing its franchise, not violative, since E's real reason was not Ees' U activity but was their perceived role in making anonymous calls, activity that was unprotected, where calls were simply act of retaliation, having nothing to do with working conditions but related to Ees' general discontent with management and attempt to direct philosophy of E]

Sahara Datsun, Inc. — 278 NLRB No. 148

[concerted activity loses protection of Act where it involves malicious attack on E's product or reputation, and subsequent discharge is for cause w/i meaning of Sec. 10(c)]

Sahara Datsun, Inc. — 278 NLRB No. 148

[communications by Ees to third parties do not lose protection of Act where they are related to legitimate ongoing labor dispute and do not constitute disparagement or vilification of E's product or reputation]

Sahara Datsun, Inc. — 278 NLRB No. 148

[Ee's informing bank through which E obtained financing for its customers that E was submitting falsified customer credit applications, not protected, notwithstanding accusations were arguably related to terms and conditions of employment since Ees' concern about commissions was one reason for organizing, where accusations were unsubstantiated, intended to disparage E's reputation with bank, and could have ruined longstanding business relationship based on trust and fair dealing]

Caterpillar Tractor Company — 276 NLRB No. 151

276 NLRB No. 151

(suspending U steward for drawing and disseminating cartoon containing obnoxious obscenities directed at foreman whom steward dealt with on grievances, not violative where Ee's misconduct was so egregious that it exceeded scope of whatever protection it might otherwise have been entitled, and obscenities had inevitable negative effect on foreman's supervisory status in eyes of other Ees)

Bell Halter, Inc. — 276 NLRB No. 136

(knowingly false and malicious statements made by Ee against E in connection with U activity not protected)

Technicolor Government Services, Inc. — 276 NLRB No. 041

(U steward's distribution to E's Ees of application forms for employment with another E, who was bidder in recompetition for E's service contract with air force, protected, since it was not malicious or disloyal where it was U's effort to secure employment with contractor replacing E in case E lost bid competition and not solicitation to quit working for E)

Georgia Kraft Company, Woodcraft Division — 275 NLRB No. 091

(striking Ees, who visited home of non-striking Ee and in presence of Ee's pregnant wife and young daughter stated that they would *take care of* him if he returned to work, while cursing in drunken state and refusing requests to leave, were lawfully discharged, since Act does not protect such intimidating conduct with respect to an Ee who is exercising his Sec. 7 right to refrain from striking)

United Technologies Corporation — 274 NLRB No. 163

(E's rule prohibiting distribution of *scab* literature in context of U's efforts to increase its membership, assertedly to keep Ees from fighting in violation of company rules, violative, since such conduct is protected concerted activity in the absence of face-to-face confrontations and other conduct which might be deemed threatening or harrassing, none of which was alleged in instant case)

Ozark Properties, Inc. d/b/a Holiday Inn — 274 NLRB No. 096

(Ee's pointing her finger in E's president's face and repeatedly inquiring in an agitated manner whether her fellow Ees were fired after engaging in protected strike, held conduct insufficient to remove Ee from protection of the Act)

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club — JD-(NY)-10-86

[Ee's publicizing in newspaper article E's alleged ULPs of declaring contract *null and void*, firing three Ees, ignoring seniority in scheduling work, and changing work rules, protected, notwithstanding contract was no longer applicable, and some of the complaints were inaccurate, where statements were not malicious or disparaging]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. — JD-(SF)-132-85

(discharge of Ees for authoring and sending letter to Chairman of the Board complaining about E's labor research practices and expressing concern for *the industry and our product*, not violative, since letter did not directly relate to wages, hours and working conditions but rather was an attack upon E's management and product and organizational structure of the company, thus rendering it unprotected)

Robert T. Ewing, an individual v. N.L.R.B. — 768 F.2d 51 (C.A. 2, July 1985)

(ct rejected view that presumption of concertedness based on invocation of employment-related statutory right is irrebutable and that therefore concertedness is read out of Act; E may demonstrate that Ee's presumptively concerted action was, in fact, frivolous or in bad faith and, therefore, both unprotected and lacking in group support; consequently, although Bd is not charged by Congress with responsibility of enforcing all state and federal laws, Bd may protect workers from retaliatory discharges in their collective effort to achieve statutorily guaranteed working conditions)

City Disposal Systems, Inc. v. N.L.R.B. — 766 F.2d 969 (C.A. 6, July 1985)

(Ee's refusal to drive truck as unsafe did not lose its protection where Ee's actions were not abusive)

4067-9500 Disloyalty of employees

United States Postal Service — 277 NLRB No. 156

(Ee's actions and statements in telling E that he had reported code violations to city authorities rather than bringing them to attention of E, held unprotected and inconsistent with his position as E's maintenance man and with E's interests)

Squier Distributing Company — 276 NLRB No. 133

(discharge of Ees for giving statements to sheriff in connection with his investigation of possible embezzlement of corporate funds by E, violative, as Ees were acting for their *mutual aid or protection* since they viewed -- as result of 2 after work meetings -- that their concerted cooperation with sheriff as best method of safeguarding their jobs which bears relationship to Ees' interests as Ees and is, therefore, concerted activity. Disloyalty claim rejected)

Technicolor Government Services, Inc. — 276 NLRB No. 041

(U steward's distribution to E's Ees of application forms for employment with another E, who was bidder in recompetition for E's service contract with air force, protected, since it was not malicious or disloyal where it was U's effort to secure employment with contractor replacing E in case E lost bid competition and not solicitation to quit working for E)

Crystal Linen & Uniform Service, Inc. — 274 NLRB No. 137

(Ees' accepting employment with competitor of E while on strike and affirmatively soliciting their former customers to switch their business to E's competitor held unprotected where purpose of activity was to advance individual goals and objectives, rather than any group benefit; mere fact that Ees were on strike or did not disparage service of E cannot be said to be defense to activity)

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club — JD-(NY)-10-86

[Ee's publicizing in newspaper article E's alleged ULPs of declaring contract *null and void*, firing three Ees, ignoring seniority in scheduling work, and changing work rules, protected, notwithstanding contract was no longer applicable, and some of the complaints were inaccurate, where statements were not malicious or disparaging]

4067-9700 Intolerably destructive or damaging concerted activity

N.L.R.B. v. City Disposal Systems, Inc. — ———U.S.——— (U.S. S.CT, Mar. 1984)

[Ee may engage in concerted activity in such an abusive manner that he loses protection of Sec. 7]

Springfield Hospital — 281 NLRB No. 076

[presenting ptns to management protesting their retention of a particular law firm and a management consulting firm to combat U's organizing campaign, held protected activity, as Ees perceived law firm and consulting firm as threat to their efforts to achieve better working conditions and wages through collective bargaining. Any false or malicious accusations, if any, in ptns were directed to law firm and consulting firm and did not disparage E's conduct in labor relations or in any other way injure it. Furthermore, use of

4067-9700—Cont.

terms *notorious U busters, known for trampling on workers' rights, provoking strikes* are just expression of opinion and protected]

6000 FORMS OF ACTIVITY

6030 REFUSAL TO CROSS PICKET LINE

6030-0100 Generally

Limpert Brothers, Inc. 276 NLRB No. 037

(discharge of Ees for refusing to cross lawful picket line, violative, since picketing is protected concerted activity and refusal to cross picket line is also protected concerted activity, and question of motivation on part of Ees' refusal to cross picket line is irrelevant)

6030-1700 Refusal in violation of contract

Arizona Public Company 273 NLRB No. 210

(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work*, and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

Indianapolis Power & Light Company 273 NLRB No. 211

(broad no-strike clause in bargaining agreement though not expressly mentioning sympathy strikes nevertheless held to include sympathy strikes in its proscription, unless extrinsic evidence indicates parties intended otherwise, and suspension and threat of discharge made to sympathy striker, not violative)

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) 788 F.2d 1412 (C.A. 9, May 1986)

[general no-strike clause waives Ees' statutory right to engage in sympathy strikes absent extinsic evidence that parties intended otherwise; rule is not substantive, and, rather than establishing irrebuttable presumption that broad no-strike rule bars sympathy strikes, shifts burden of proof to party making that claim and requires consideration of available evidence such as contract's other terms, negotiation of no-strike clause, and parties' bargaining history and past practices]

6050 STRIKE ACTIVITY

6050-0100 Generally

Baker et al. v. General Motors Corp. et al —— U.S. ——— (U.S. S.Ct, July 1986)

[state law denying unemployment compensation to laid-off Ees who, by paying U dues, financed strikes at other locations that led to their layoffs, not pre-empted by federal law, notwithstanding right to make such payments is protected by Sec. 7; Ees found to have voluntarily caused own unemployment, as there was meaningful connection between Ees' decision to pay dues, ensuing strikes and their own layoffs, and layoffs were untainted by any unlawful conduct by E; histories of NLRA and Title IX of SSA show that Congress intended to allow such conflict between federal law and state unemployment compensation law]

6050-1200 What constitutes strike

6050-1220 Cessation of work

N.L.R.B. v. McEver Engineering, Inc. 784 F.2d 634 (C.A. 5, Mar. 1986)

[no need for protesting Ees to confront E with *specific demand* for relief from circumstances (dangerous working conditions at lime tanks) precipitating Ees' concerted action, since E was on reasonable notice that Ees were protesting unsafe working conditions, and it was in position to make informed judgment as to how to respond]

6050-1240 Spontaneous work stoppage as walkout

Modern Iron Works, Inc. 281 NLRB No. 151

[discharge of Ees for engaging in work stoppage when they sought to get larger wage increase than they had received from E, unlawful, notwithstanding E's contention that they had quit, where work stoppage was protected concerted activity, and there was no evidence Ees voluntarily relinquished their employment with E, which was clearly evidenced by their spokesman's express disclaimer that they had quit]

Daniel Construction Company, A Division of Daniel International Corporation 277 NLRB No. 081

(Ees' spontaneous refusal to work for 1 day in protest of unique and adverse working conditions, even in face of company rule requiring permission to leave job, held protected; such single concerted walkout was presumptively protected in absence of evidence that work stoppage was part of plan or pattern of intermittent action inconsistent with genuine withholding of services or strike)

Ozark Properties, Inc. d/b/a Holiday Inn 274 NLRB No. 096

(discharge of Ees because of their participation in and support of a strike over working conditions violative, notwithstanding E's contention Ees were voluntary quits when they refused to return to work after a demand to return to work, where Ees walked off job at beginning of work day and set up picket line to protest work conditions and later that day, when striking Ees met with president of E, he demanded that Ees return to work or pick up their paycheck and normal practice of E was to give Ees a final paycheck when they were terminated)

Country Crest Creations, Ltd. JD-271-86

[walkout protesting factory temperature, protected, regardless of E's alleged inability to control temperature, where Ees in fact felt uncomfortably cold]

6050-1280 Refusal to work overtime, Sundays, or holidays

Advance Cleaning Service 274 NLRB No. 141

(single concerted refusal to work overtime, because snow had started falling, and, unless Ees rode home in the one car which was scheduled to pick them up at end of normal workday, Ees would have no way home, protected)

6050-2500 Intermittent, recurrent, or partial strike

Highlands Hospital Corporation, Inc., d/b/a Highlands Regional Medical Center 278 NLRB No. 160

[partial refusal to work constitutes unprotected activity, since Bd and cts have repeatedly condemned Ees' refusal to work on terms lawfully prescribed by E; to countenance such conduct would be to allow Ees to do what Bd would not allow any E to do, i.e., to unilaterally determine conditions of employment]

McEver Engineering, Inc. 275 NLRB No. 128

(Ees striking in protest over being required to work in what they perceived to be unsafe weather conditions held not to constitute partial strike where it was one-time event and Ees' withholding of services was of short duration and ended when weather conditions improved)

N.L.R.B. v. McEver Engineering, Inc. 784 F.2d 634 (C.A. 5, Mar. 1986)

[discharge of Ees who failed to return to work because of their perceived hazzardous conditions on job, violative. Ees were engaged in one-time strike of short duration (protected) as opposed to partial strike (unprotected). E had constructive knowledge of protected nature of activity notwithstanding when Ees told company clerk, sent by supervisor to ask Ees why they were not returning to work, they would return to work after it stopped raining, and he only reported to supervisor that the men were not ready to come back to work]

6050-5000 Effect of section 502 - abnormally dangerous condition

6050-5001 Generally

Metropolitan Edison Company 279 NLRB No. 047

[issuing written warning slips to 14 Ees who failed to cross stranger picket line to report to work in violation of no-strike clause, not unlawful, notwithstanding Ees were motivated by fear of injury to themselves or their cars, since acts of picketers did not meet objective test for *abnormally dangerous conditions* under Section 502, where there were threats and damage to Ees' vechiles but no physical assaults, and 611 of 625 Ees crossed the picket line]

6050-5050 Walkout because of abnormally dangerous conditions not strike

N.L.R.B. v. McEver Engineering, Inc. 784 F.2d 634 (C.A. 5, Mar. 1986)

[no need for protesting Ees to confront E with *specific demand* for relief from circumstances (dangerous working conditions at lime tanks) precipitating Ees' concerted action, since E was on reasonable notice that Ees were protesting unsafe working conditions, and it was in position to make informed judgment as to how to respond]

N.L.R.B. v. McEver Engineering, Inc. 784 F.2d 634 (C.A. 5, Mar. 1986)

[discharge of Ees who failed to return to work because of their perceived hazzardous conditions on job, violative. Ees were engaged in one-time strike of short duration (protected) as opposed to partial strike (unprotected). E had constructive knowledge of protected nature of activity notwithstanding when Ees told company clerk, sent by supervisor to ask Ees why they were not returning to work, they would return to work after it stopped raining, and he only reported to supervisor that the men were not ready to come back to work]

6050-5075 Refusal to perform assigned duties

Quality C.A.T.V., Inc. 278 NLRB No. 156

[discharge of two TV linemen who installed television strands on utility poles and who refused to work during and after rainstorm because they were wet, violative, since their concerted refusal to work was to protest requirement that they climb poles when wet, an employment condition. Ee's protest was protected whether Ees acted because they were concerned about their safety, their personal comfort, or their supervisor's attitude. In

6050-5075—Cont.

carrying out their protest, Ees did not exceed permissable bounds of protected activity]

Union Electric Company — 275 NLRB No. 059

(Ees' refusal to use stairway that they claimed was unsafe to go down to inspect caisson, protected since Ees were attempting to invoke contractual right under clause stating that they would be subject to discipline for refusing to perform assigned job unless question of safety was involved, and they had good-faith belief that the job was unsafe, which belief the parties had stipulated gave them the right to refuse to perform work pursuant to ALJ's conclusion in prior case involving same contractual clause)

6050-6200 Effect of no-strike agreements

Indianapolis Power & Light Company — 273 NLRB No. 211

(broad no-strike clause in bargaining agreement though not expressly mentioning sympathy strikes nevertheless held to include sympathy strikes in its proscription, unless extrinsic evidence indicates parties intended otherwise, and suspension and threat of discharge made to sympathy striker, not violative)

Indiana & Michigan Electric Company — 273 NLRB No. 193

(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd considered S.Ct's *Metropolitan Edison* decision from standpoint of U's waiver of U officials' Sec. 7 rights to extent they have affirmative duty to prevent illegal work stoppages, U's lawful bargaining away of statutory protection accorded U officials, insufficiency of general no-strike clause to constitute waiver, relevance of arbitration decisions in establishing waiver, and establishment of waiver by circumstances surrounding bargaining relationship as well as by language of agreement itself)

Indiana & Michigan Electric Company — 273 NLRB No. 193

(imposition of disparate disciplinary suspensions on U stewards for violating no-strike provision, not unlawful, where U assumed duty to prevent unlawful strikes and thereby waived steward's statutory rights; while S.Ct in *Metropolitan Edison* found affirmative action cannot be required unless such requirement is bargained for, it merely held general *no-strike* clause was not enough to constitute waiver and left open what contractual language would suffice; here, contract unequivocally imposed duty to end unlawful strike, and stewards did not fulfill their contractual obligations even under most narrow construction of contract)

Local Union 1392, Electrical Workers v. N.L.R.B. (Indiana & Michigan Electric Co.) — 786 F.2d 733 (C.A. 6, Mar. 1986)

[where E imposing more severe disciplinary suspensions on U stewards for violating no-strike provision, not unlawful where contractual language showed U intent for its officials to attempt to prevent unauthorized work stoppages, and this language constituted *clear and unmistakable waiver* of officials right to be free from selective discipline]

6050-7500 Unprotected strikes

6050-7565 Strike in support of insistence on non-mandatory subjects of bargaining

Nassau Insurance Company — 280 NLRB No. 103

[strike in support of U's insistence on non-mandatory subjects of bargaining, unprotected]

6050-7570 Strike to compel unlawful act

Rapid Armored Truck Corp. — 281 NLRB No. 057

[E's discharge of and refusal to reinstate strikers, not unlawful, since their conduct unprotected, where strikers' objective was to compel E to recognize and bargain with U which was ineligible for certification because of its policy of admitting both guard and non-guard Ees to membership and picketing was also violative of Section 8(b)(7)(C)]

6050-7580 Strike in violation of no-strike agreement

Metropolitan Edison Company — 279 NLRB No. 047

[threatening discipline, including suspension, for refusing to cross stranger picket line, not violation where broad no-strike clause waived Ee's right to honor stranger picket line, in absence of any evidence in bargaining history or past practice demonstrating that parties expressly excluded sympathy strikes from no-strike clause coverage]

Metropolitan Edison Company — 279 NLRB No. 047

[issuing written warning slips to 14 Ees who failed to cross stranger picket line to report to work in violation of no-strike clause, not unlawful, notwithstanding Ees were motivated by fear of injury to themselves or their cars, since acts of picketers did not meet objective test for *abnormally dangerous conditions* under Section 502, where there were threats and damage to Ees' vechiles but no physical assaults, and 611 of 625 Ees crossed the picket line]

Arizona Public Company — 273 NLRB No. 210

(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work*, and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

City Disposal Systems, Inc. v. N.L.R.B. — 766 F.2d 969 (C.A. 6, July 1985)

(Ee's refusal to drive trucks as unsafe not conduct violating contract, since Ee reasonably and honestly believed that he was being asked to do something he was not required to do under contract, and his refusal was not *unjustified* under the no-strike clause and therefore not unprotected)

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) — 788 F.2d 1412 (C.A. 9, May 1986)

[general no-strike clause waives Ees' statutory right to engage in sympathy strikes absent extinsic evidence that parties intended otherwise; rule is not substantive, and, rather than establishing irrebuttable presumption that broad no-strike rule bars sympathy strikes, shifts burden of proof to party making that claim and requires consideration of available evidence such as contract's other terms, negotiation of no-strike clause, and parties' bargaining history and past practices]

N.L.R.B. v. Deauville Hotel — 751 F.2d 1562 (C.A. 11, Feb. 1985)

(Bd holding that reasonable period of time must be allowed after contract is made for *air to clear* before enforcement of no strike clause unenforceable as lacking objective standard: ct applied standard of reasonable time for Ees to know that parties had agreed on contract with no-strike clause, taking into account local or national nature of preceding strike, existence of such clause in prior contract, whether incorporation of no-strike clause in new contract was controversial, extent of members' exposure to new contract during negotiations and ratification, and period of time between contract's effective date and strike)

N.L.R.B. v. Deauville Hotel — 751 F.2d 1562 (C.A. 11, Feb. 1985)

(objective standard lacking for Bd's holding allowing time to clear the air before E may enforce no-strike clause in contract agreed on after strike, since, although no-strike clauses encourage collective-bargaining and peaceful resolution of parties' disputes, Bd's rule, which has no standards or limits, means that E may take substantial risk in discharging Ees for violating the clause so that it may deem the clause of little value, and both parties may assign it little value in future negotiations)

6050-8700 Sympathy strike

Metropolitan Edison Company — 279 NLRB No. 047

[threatening discipline, including suspension, for refusing to cross stranger picket line, not violation where broad no-strike clause waived Ee's right to honor stranger picket line, in absence of any evidence in bargaining history or past practice demonstrating that parties expressly excluded sympathy strikes from no-strike clause coverage]

Arizona Public Company — 273 NLRB No. 210

(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work*, and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) — 788 F.2d 1412 (C.A. 9, May 1986)

[general no-strike clause waives Ees' statutory right to engage in sympathy strikes absent extinsic evidence that parties intended otherwise; rule is not substantive, and, rather than establishing irrebuttable presumption that broad no-strike rule bars sympathy strikes, shifts burden of proof to party making that claim and requires consideration of available evidence such as contract's other terms, negotiation of no-strike clause, and parties' bargaining history and past practices]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[parties in instant case, as well as cts that have considered issue, use term *sympathy strike* to refer to Ees' refusal, whether acting in concert or individually to cross picket lines at premises of their E's customers]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[Ees' right under Sec. 7 to observe lawful picket lines that they encounter in course of their duties may be waived by them in bargaining agreements, but waiver of right to engage in sympathy strikes, like waiver of other rights under Act, must be *clear and unmistakable*]

6050-8700—Cont.

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[ct rejected U's contention that Bd's treatment of sympathy strikes as matter of contract interpretation of no-strike clause was inconsistent with *clear and unmistakable* standard which is addressed to Ee's subjective intention to give up a statutory right rather than to objectively reasonable construction of contract that binds Ee; S.Ct has held that general no-strike clause which turns upon proper interpretation of contract, and relevant cases do not support proposition that waiver hinges upon Ee's subjective intent rather than mutual consent reflected in contract]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[rejecting U's contention that Bd's treatment of waiver of sympathy strikes as matter of contract interpretation of no-strike clause was inconsistent with *clear and unmistakable* standard addressed to Ees' subjective intent to give up statutory right, ct held federal labor policy is more threatened by interposition of artificial rules of construction upon parties' mutual intent when *waiver* of sympathy strikes is at stake, than by Bd's giving effect to clear impact of contractual language]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[Bd or ct is not prevented by Act from finding waiver of right to honor picket lines in contractual no-strike clause of sufficient breadth; in assessing whether broad no-strike clause covers sympathy strikes, however, unexpressed reservations of Ees cannot be treated as dispositive, and ct's task is simply to interpret parties' manifestation of mutual consent; and in determining meaning of general no-strike clause, ct is guided by S.Ct's holding that sympathy strike was w/i purview of general no-strike clause, which S.Ct based primarily on language of clause itself]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[where U contended that sympathy strikes are not covered by general no-strike clause because U's no-strike obligation has been held *quid pro quo* for E's agreement to arbitrate disputes, ct held that in some situations it will be apparent from agreement that its no-strike and arbitration clauses are functionally linked, but in other contexts no-strike clause may evidence parties' intent to reach *beyond* arbitral matters, such as E's promise not to engage in lockouts or other concessions; question ultimately depends on intent of contracting parties]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[U's contention that it was entitled to Bd's prior approach in *Davis-Mckee* (238 NLRB 652), that sympathy strike was not covered by no-strike clause, rejected, since at time no-strike clause was drafted Bd was willing to find that no-strike clause waived right to honor picket line; in effect U's argument was that parties, in later ratifying pre-existing contractual language, necessarily intended to incorporate changes in law *sub silentio*; even if such speculation was appropriate, *Davis-Mckee* was not *the law* in circuit where agreement was entered]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[U's contention that it was entitled to Bd's prior approach in *Davis-Mckee* (238 NLRB 652), that sympathy strike was not covered by no-strike clause, rejected; it is simply wrong to assume that *the law* to which parties refer in entering bargaining agreement's is exclusively, or even primarily, Bd law; such agreements are interpreted by arbitrators and cts as well, and cts must give broad, and virtually complete, deference to arbitrator's interpretation of agreement]

6060 STATEMENTS REGARDING EMPLOYER'S LABOR RELATIONS

6060-5000 Derogatory remark or defamatory literature in context of protected activity

6060-8000 Derogatory remark or defamatory literature in context of protected activity

Local No. 980, Automobile Workers (Local 32, Office Employees) 280 NLRB No. 161

[U, in role as E, violated Act by discharging secretary for her statements quoted in newspaper article concerning her contract dispute with U and her suspension for protected activity, where article was generally factual and any inaccuracies were not malicious]

Trover Clinic 280 NLRB No. 002

[E's statement to Ee that distribution of cartoon in Ee's possession, depicting nervous individual describing himself as undergoing abusive treatment, was possible grounds for discharge, unlawful, since distribution of cartoon would have constituted protected activity, where cartoon was related to Ee's working conditions, E's contention that cartoon was defamatory amounted to concession that it considered it to be directed at E's treatment of Ees, cartoon's message did not remove it from protection of Act, and E did not establish type of circumstances that would render cartoon unprotected]

Murray Sandblast and Paint, Inc. JD-276-85

(discharge of U adherent because he complained to his fellow Ees about having his (time) card pulled for clocking in one minute late and during this incident calling management a perjorative term, violative, since Ee's initial complaint was (protected) concerted activity w/i meaning of Act. Using obscenity did not deprive Ee of right to relief)

Murray Sandblast and Paint, Inc. JD-276-85

(for action to qualify as concerted activity where only speaker and listener involved in its inception, it must appear at very least it was engaged in with object of initiating or preparing for group action or that it had some relation to group action in interest of Ees. However, this requirement is satisfied if problems addressed by speaker had been subject of meetings between management and Ees aimed at resolving it, was currently being addressed by concerted activity among Ees not necessarily including speaker, or grew out of earlier concerted activities directed at same problem)

6060-6700 Truth of statement not proper test

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86

[Ee's publicizing in newspaper article E's alleged ULPs of declaring contract *null and void*, firing three Ees, ignoring seniority in scheduling work, and changing work rules, protected, notwithstanding contract was no longer applicable, and some of the complaints were inaccurate, where statements were not malicious or disparaging]

6070 STATEMENTS REGARDING EMPLOYER'S BUSINESS

6070-2500 Defamation of employer's product not protected

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[claim that letter sent by Ees to chairman of the board and president of E's parent company are outside of E's management and, accordingly, Ees' communication should be treated as if made to third party, rejected, as letter distinguishable from those in cases which involve disparagement of E's product to customers or public at large. Further, even if considered as appeal to third party, appeal was clearly tied to Ees' own working conditions and part of ongoing labor dispute]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

Trover Clinic 280 NLRB No. 002

[Ees' distribution of literature in E's facility during non-working time and in non-working areas constitutes protected concerted activity provided literature falls w/in scope of Sec. 7 *mutual aid or protection* clause which is to be interpreted with regard to relationship Ees' activity bears to their working conditions; if found to be protected, and subject to valid rules limiting distribution, Ee literature loses such status only in limited circumstances such as literature containing attacks on E's products or services, material so disruptive as to threaten plant discipline, and malicious falsehoods]

Sahara Datsun, Inc. 278 NLRB No. 148

[concerted activity loses protection of Act where it involves malicious attack on E's product or reputation, and subsequent discharge is for cause w/i meaning of Sec. 10(c)]

6070-2500—Cont.

Sahara Datsun, Inc. 278 NLRB No. 148

[communications by Ees to third parties do not lose protection of Act where they are related to legitimate ongoing labor dispute and do not constitute disparagement or vilvification of E's product or reputation]

6070-5000 Derogatory remark in context of protected activity protected

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer 281 NLRB No. 161

[Ee's remarking to other Ees that E's CEO was a *cheap son of a bitch*, held protected concerted activity where comment was addressed to other Ees, Ee made it while Ees were on break and statement was not accompanied by any threat; further, Ee's supervisor telling Ee sometime after this comment, that he understood Ee was unhappy and if supervisor was that unhappy he would leave, violative, since remark was implied threat of retaliation for either Ee's comment about CEO or for signing a U card, both of which constituted protected activity]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

6070-6000 Truth of statement not proper test

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86

[Ee's publicizing in newspaper article E's alleged ULPs of declaring contract *null and void*, firing three Ees, ignoring seniority in scheduling work, and changing work rules, protected, notwithstanding contract was no longer applicable, and some of the complaints were inaccurate, where statements were not malicious or disparaging]

6070-7500 Good faith in misrepresenting facts relevant

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

Sahara Datsun, Inc. 278 NLRB No. 148

[Ee's informing bank through which E obtained financing for its customers that E was submitting falsified customer credit applications, not protected, notwithstanding accusations were arguably related to terms and conditions of employment since Ees' concern about commissions was one reason for organizing, where accusations were unsubstantiated, intended to disparage E's reputation with bank, and could have ruined longstanding business relationship based on trust and fair dealing]

Radisson Muehlebach Hotel 273 NLRB No. 183

(where U supporter Ee was discharged for allegedly violating rule which prohibited *false, vicious or malicious* statements against E by asking supervisors if they had seen newspaper article stating that E had not remitted any money to U for past three months, rule itself found violative and therefore no defense to discharge, since rule prohibited not only statements that were merely false, which constitute U or concerted protected activity, as well as statements that were knowingly false and therefore malicious, which were not, and E, in attempting to rely on rule failed to show that Ee's statements were the latter)

6080 ACTIVITIES IN SUPPORT OF PROTECTED ACTIVITY

6080-0800 Enlistment of third party support or representation

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027

[hotel refusing to permit non-Ee U representatives to continue to handbill for area standards for Ees of one of hotel's suppliers on hotel's private property near its main entrance, not unlawful, since herein E's property rights outweighed U's Section 7 right to inform public regarding lack of area standards, where activity at hotel's entrance increased possibility of theft of luggage, tort liability, and congestion and litter, atmosphere expected by guests violated, hotel had no interest in economic success of E with which U had dispute, nor was there vital link to Ees located on hotel's property]

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027

[U's handbilling for area standards directed at consumers, held protected activity, notwithstanding handbilling was at location where targeted Ees not located; however, in balancing U's Sec. 7 rights against any detriment to E's property rights to determine which should prevail, if E asserts rights not to allow activity on its property, fact activity directed at narrow, inaccessible segment of public considered]

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027

[although area standards activity may incidentally have effect on improving wages of Ees of targeted E, and it has no vital link to Ees located on targeted E's proeprty, it is protected, even when not at locus of target E, essentially because U has legitimate interest in protecting wage standards of its members by competitors of targeted E; however, area standards objective does not have as high a status as organizing when considered in balancing against E's property rights]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[claim that letter by Ees to chairman concerned setting up new department and therefore did not concern terms and conditions of employment, but rather management concerns and had only attenuated relationship to Ees' own terms and conditions of employment, rejected, as clear from letter that these Ees expected to staff new department. And, proposal to create new department intertwined with Ees' request that their jobs be upgraded by, increased professionalism and remuneration]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[claim that letter sent by Ees to chairman of the board and president of E's parent company are outside of E's management and, accordingly, Ees' communication should be treated as if made to third party, rejected, as letter distinguishable from those in cases which involve disparagement of E's product to customers or public at large. Further, even if considered as appeal to third party, appeal was clearly tied to Ees' own working conditions and part of ongoing labor dispute]

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. 280 NLRB No. 023

[Ees writing letter to chairman of E's parent company, protected although couched in terms of criticism of E's operation, thrust of letter is Ees' proposal for increasing professionalism of their jobs by addressing wages, training, education, etc. Further, letter written as part of ongoing labor dispute notwithstanding letter referred to only one in itme--wages--among several items discussed at meetings with management shortly before letter written. Letter did not contain any malicious language, and even if letter contained false statements, no showing they were deliberately or maliciously false]

6085 FILING LAW SUITS AGAINST EMPLOYER

Health Enterprises of America, Inc., d/b/a Miami Health Care Center 282 NLRB No. 033

[notwithstanding U adherents violated no call/no show rule, discharges violative as real reasons were U activities, filing lawsuit against E and close proximity to election which discharges would serve as warning to other Ees]

6090 OTHER FORMS OF ACTIVITIES PROTECTED

6090-0500 Distribution of literature

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027

[in regard to right of non-Ee U agents right to access to E's property. *It is Bd's task to weigh relative strength of each party's claim. If property owner's claim is strong one, while U's Sec. 7 right at issue is clearly less compelling one, property right will prevail. If property claim is tenuous one, Sec. 7 right is clearly more compelling, then Sec. 7 right will prevail. Factors which may affect relative strengths or weaknesses of claim of Sec. 7 rights include, but are not limited to, nature of right asserted, purpose for which it is being asserted, E that is target of activity, relationship of situs to target, intended*

6090-0500—Cont.

Fairmont Hotel Company d/b/a The Fairmont Hotel **282 NLRB No. 027**

[U's handbilling for area standards directed at consumers, held protected activity, notwithstanding handbilling was at location where targeted Ees not located; however, in balancing U's Sec. 7 rights against any detriment to E's property rights to determine which should prevail, if E asserts rights not to allow activity on its property, fact activity directed at narrow, inaccessible segment of public considered]

Fairmont Hotel Company d/b/a The Fairmont Hotel **282 NLRB No. 027**

[although area standards activity may insidentally have effect on improving wages of Ees of targeted E, and it has no vital link to Ees located on targeted E's property, it is protected, even when not at locus of target E, essentially because U has legitimate interest in protecting wage standards of its members by competitors of targeted E; however, area standards objective does not have as high a status as organizing when considered in balancing against E's property rights]

Trover Clinic **280 NLRB No. 002**

[Ees' distribution of literature in E's facility during non-working time and in non-working areas constitutes protected concerted activity provided literature falls w/in scope of Sec. 7 *mutual aid or protection* clause which is to be interpreted with regard to relationship Ees' activity bears to their working conditions; if found to be protected, and subject to valid rules limiting distribution, Ee literature loses such status only in limited circumstances such as literature containing attacks on E's products or services, material so disruptive as to threaten plant discipline, and malicious falsehoods]

Programming & Systems, Inc. **275 NLRB No. 157**

(E's rule, that *no literature is allowed to be distributed of any kind in this school w/o permission*, held violative, since rule was unlawfully broad in that rule was limited neither to *working time* nor to *working hours*)

United Technologies Corporation **274 NLRB No. 163**

(E's rule prohibiting distribution of *scab* literature in context of U's efforts to increase its membership, assertedly to keep Ees from fighting in violation of company rules, violative, since such conduct is protected concerted activity in the absence of face-to-face confrontations and other conduct which might be deemed threatening or harrassing, none of which was alleged in instant case)

Borden Inc. **JD-(SF)-007-86**

[it is tendency to interfere with Ee receipt of U literature which is coercive rather than actual effect of such conduct]

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) **789 F.2d 121 (C.A. 2, Apr. 1986)**

[distribution of U leaflets held protected activity under Sec. 7 where recognized U was engaged in post recognition membership drive aimed at non-U workers]

6090-0700 Attempts by employees to change representative's attitude toward particular bargaining subject

Local 594, Auto Workers v. N.L.R.B. **776 F.2d 1310 (C.A. 6, Nov. 1985)**

[member's expressing his opposition to local U president concerning a new absenteeism program, held protected activity]

6090-1000 Implementation of contract by stewards

The Acme-Arsena Co., Inc. **276 NLRB No. 144**

(Ee's complaints to E about work jurisdiction and safety matters held protected concerted activity where Ee lodged complaints in his capacity as U steward)

6090-1200 Invocation of terms of collective bargaining agreement

Meyers Industries, Inc. **281 NLRB No. 118**

[Bd distinguished, in defining protected activity, between single Ee asserting bargaining contract right and single Ee reporting safety violation to government agency, stating that invocation of contract rights is continuation of ongoing process of Ees' concerted bargaining activity, whereas Ee's invocation of statutory right is not]

Wheeling-Pittsburgh Steel Corporation **277 NLRB No. 160**

(Ee's refusal to run equipment he believed unsafe until he implemented contractual provision permitting Ees to call for U safety inspection)

Advance Manufacturing Corp. **JD-9-86**

[discharge of U steward, unlawful, since in retaliation for U committeeman's objection to E's violation of contract and filing grievance, rather than for poor work performance for which steward had been warned, where at time of his discharge steward's personnel file contained no reprimands inasmuch as under E's reprimand system his reprimands had been removed, discharge was precipitous, and absent evidence steward's mistakes were wholly or partially responsible for cost overruns on one project cited by E, or his mistakes were as great as another E's on another project]

Advance Manufacturing Corp. **JD-9-86**

[fact that U committeeman rather than discharged steward invoked contract and filed grievance, immaterial, where steward's discharged precipitated by committeeman's actions]

6090-1600 Acting as union steward or officer

The Acme-Arsena Co., Inc. **276 NLRB No. 144**

(U steward's complaints about safety matters on job held attempts to enforce contract containing safety provision and therefore protected by Act under rationale of S.Ct's decision in *N.L.R.B. v. City Disposal System*)

Advance Manufacturing Corp. **JD-9-86**

[discharge of U steward, unlawful, since in retaliation for U committeeman's objection to E's violation of contract and filing grievance, rather than for poor work performance for which steward had been warned, where at time of his discharge steward's personnel file contained no reprimands inasmuch as under E's reprimand system his reprimands had been removed, discharge was precipitous, and absent evidence steward's mistakes were wholly or partially responsible for cost overruns on one project cited by E, or his mistakes were as great as another E's on another project]

6090-1700 Attempts by employees to change union leadership

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) **274 NLRB No. 081**

(U's failure and refusal to refer particular Ee to E, at E's request, because Ee had solicited and encouraged Ees to run for position of business manager of U and attempted to oust present U business manager from office by running himself for that office held violative, since activities of Ees designed to oust incumbent U leadership and to elect different U officers are concerted activities protected by Section 7 of Act)

6090-1800 Activities as a safety committeeman

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers **279 NLRB No. 116**

[Ee filing safety complaint with government agency constituted protected U activity since he filed complaint as member of local U's health and safety committee, and absent evidence that Ee was using position in U to pursue strictly personal matter]

6090-3200 Wearing or otherwise displaying union insignia or signs

United Technologies Corporation **279 NLRB No. 135**

[displaying U election campaign signs on a private vehicle parked on E's premises during a workday, held protected concerted activity]

United Technologies Corporation **279 NLRB No. 135**

[E's rule prohibiting *large signs or banners...so as to preclude display intended...to promote a candidacy, organization or product*, while expressly permitting display of bumper stickers, window stickers and like material, which rule had the effect of denying an Ee access to E's property to display intra-U campaign material, not violative, since rule was not complete prohibition against the display of U material, E's managerial interest outweighed Ee's Section 7 right and rule was reasonable measure to keep large billboards out of E's parking lot]

Southwestern Bell Telephone Company **276 NLRB No. 110**

(Ees' posting of *Definition of a Scab* notices on U's bulletin boards on E's premises held protected under Act)

Page Avjet Corporation **275 NLRB No. 113**

(E's implementing and enforcing new uniform policy prohibiting the wearing of any *non-company buttons or patches... on any part of the uniform including the hat*, assertedly because E was concerned with its public image, violative, since rule was overbroad and no special circumstances existed to limit Ees' right to wear U insignia, where policy applied to all unit Ees regardless of amount of contact they had with the public; further, U did not waive right to complain by giving E right to establish conditions under which uniforms were to be worn since agreement did not limit what could be worn)

Southern California Edison Company **274 NLRB No. 167**

(wearing of button with *Stick Your Retro* written on it, protected, where saying not obscene, message had little significance to outsider so public image of E not injured and message was clearly related to pending negotiations)

6090-3300 Discussion between employees about possibility of joining union in order to secure benefits

Harold Weiss; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**

[E's new rule which placed restrictions on Ees in order to prevent them from speaking to *known adherent* of U, held violative in view of absence of any justifiable business reason for deviating from past practice and putting restrictions upon Ees calculated to prevent them from conversing with *known adherent* of U even at times when it did not affect performance of work functions. Purpose was to punish U adherent and discourage Ee support for U]

6090-3400 Discussing wages

Scientific-Atlanta, Inc. 278 NLRB No. 090
[E's requesting Ees not to discuss their merit raises and disciplining them for doing so, violative]

Scientific-Atlanta, Inc. 278 NLRB No. 090
[demotion of Ee for discussing other Ees' merit raises with another Ee, on grounds Ee was disclosing confidential information and thus was not engaged in protected activity, violative, where Ee was not a *confidential Ee* so as to give her special duties and responsibilities towards Ees and E cannot lawfully prevent Ees from discussing topics as critical to Ee interests as wages]

Electronic Data Systems International Corporation 278 NLRB No. 014
[promulgation of rule that prohibited Ees from discussing salary information, unlawful, since such rule restrained Ees in exercise of their right to engage in concerted activity]

Dr. Olinda Floro JD-12-86
[Ees' discussions about being required to attend weekend seminars w/o being paid, and subsequent presentation of concerns to E, protected]

Reilly's Sunset Chevrolet, Inc. JD-(SF)-94-85
(discharge of Ee for engaging in confrontation with E over its pay policies on behalf of other Ees, violative)

Carrollton Fast Foods, Inc., d/b/a Burger King JD-(ATL)-28-85
(discussing announcement that E would not pay Ees while the power was off was protected concerted activity)

6090-3600 Use of bulletin board

Roadway Express, Inc. 279 NLRB No. 041
[posting of dissident and general U material on breakroom bulletin boards, held protected activity]

6090-4200 'Griping' to other employees about working conditions

The Zack Company 278 NLRB No. 134
[Ees were engaged in protected activity when they complained to other Ees about their grievance to collect overtime wages; however, their conduct lost protection of Act because their complaining interfered with their production; in so finding, Bd disagreed with and disavowed ALJ's statement that Ees' complaints were not made for purpose of inducing or preparing for group action]

The Zack Company 278 NLRB No. 134
[while filing of grievance by Ees is protected activity and ordinarily Ees' discussions with fellow Ees about their grievance were essential means of drumming up support for their position and were clearly designed to induce group action, Bd held that, as result of Ees' discussions with other Ees, they spent more time than normal talking about their grievances and less time working, thereby interfering with their production and, as a result, losing protection of Act]

Murray Sandblast and Paint, Inc. JD-276-85
(discharge of U adherent because he complained to his fellow Ees about having his (time) card pulled for clocking in one minute late and during this incident calling management a perjorative term, violative, since Ee's initial complaint was (protected) concerted activity w/i meaning of Act. Using obscenity did not deprive Ee of right to relief)

Murray Sandblast and Paint, Inc. JD-276-85
(for action to qualify as concerted activity where only speaker and listener involved in its inception, it must appear at very least it was engaged in with object of initiating or preparing for group action or that it had some relation to group action in interest of Ees. However, this requirement is satisfied if problems addressed by speaker had been subject of meetings between management and Ees aimed at resolving it, was currently being addressed by concerted activity among Ees not necessarily including speaker, or grew out of earlier concerted activities directed at same problem)

6090-5200 Right to resign from union

Sheet Metal Workers Local Union No. 14 (C. L. Linfoot Co.) 275 NLRB No. 153
(U constitutional provision restricting members' right to resign during strike or lockout violative of their Sec. 7 right to refrain from U membership)

Food & Commercial Workers, Local No. 506 (Facciola Meat Company, et al.) 274 NLRB No. 211
(portion of U's membership resolution which provided, inter alia, that with respect to any Ee seeking to resign, *his resignation shall be of no force and effect during any period in which economic action against Ee's current employer is imminent or actually in progress* held to be unenforceable restraint of Sec. 7 right of Ees to resign their membership in labor organization)

Graphic Communications, Local 229 (Imperial Printing Company) JD-183-85
(U's requiring, pursuant to its constitution, executive board approval, membership in good standing, and that Ee not be employed in industry w/i U's jurisdiction before U accepted members' resignations, violative of their Sec. 7 right to refrain from U membership, notwithstanding assertion that U had right to prescribe rules as to retention of membership; however, Ees' attempts to make resignations retroactive found not effective, and resignations were effective from date of U's receipt)

6090-5300 Not joining union where no contract obligation

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132
[U's establishing seniority list which placed bargaining unit Ees at E's more recently organized plant behind previously unionized Ees at another of E's facilities, violative, since U could not refuse to consider or negotiate a dovetailing system solely because Ees at E's non-U plant joined U more recently than did Ees at E's unionized plant. By favoring Ees at its unionized plant, U in effect (if not intent) penalized Ees of non-U plant for refraining from engaging in U activity]

6090-5400 Opposition to union hierarchy

Laborers', Local No. 373 (Arrow Enterprises) 282 NLRB No. 053
[dissident intra-U activity, such as filing charges against local's president, held protected, and retaliation against member for engaging in such activity, unlawful]

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)
[member's expressing his opposition to local U president concerning a new absenteeism program, held protected activity]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)
[U member's publication of newspaper to expose what he believed to be corruption in U president's administration of U held concerted activity where member acted with another U member in publishing newspaper for purpose of inciting action against U president and his U practices; and, alternatively, individual Ee engaged in concerted activity by taking action to align U membership with his own position against U representative]

6090-6300 Discussing, filing, or in any other manner assisting in grievance/arbitration or internal union proceedings

Wayne W. Sell Corporation 281 NLRB No. 082
[fact that most grievances filed by Ee as grievance chairman, and subsequent to leaving office, were dropped or resolved in E's favor did not render filing of grievances unprotected, nor did fact Ee filed many grievances render filing unprotected]

Dresser Industries, Inc. 281 NLRB No. 023
[filing grievances found concerted, protected activity]

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors 279 NLRB No. 068
[Ee's participation in U disciplinary proceeding against E's supervisor, held protected activity, notwithstanding proceeding may have violated 8(b)(1)(B) of the Act, since Ee was engaged in Sec. 7 activity of assisting U by participating in U meeting and was not a *perpetrator* of the proceeding; rather, U officials had initiated the proceeding; Congress's intent was that generally labor organizations and their agents, but not individual Ees, should be responsible for the unlawful practices of labor organizations]

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors 279 NLRB No. 068
[E's discipline of Ee for his participation in unlawful internal U disciplinary proceeding against one of E's supervisors, would be unlawful and case remanded to ALJ for further findings, since Ee was engaged in protected activity of assisting U, Ee was legitimately relying on U's recommendation that proceedings were proper and Ee was not a *perpetrator* of unlawful proceeding; E's proper remedy is to file charge against U and not take action against Ees which has *chilling* effect on Sec. 7 rights or E may lawfully require its supervisors resign U membership]

The Zack Company 278 NLRB No. 134
[while filing of grievance by Ees is protected activity and ordinarily Ees' discussions with fellow Ees about their grievance were essential means of drumming up support for their position and were clearly designed to induce group action, Bd held that, as result of Ees' discussions with other Ees, they spent more time than normal talking about their grievances and less time working, thereby interfering with their production and, as a result, losing protection of Act]

Regency Electronics, Inc. 276 NLRB No. 002
(filing of grievance by Ee protected by Act even though Ee may not have had contractual right to use grievance procedure)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(driver complaining about E's interpretation of contract provision requiring that drivers pay fee in connection with loading and unloading of their trailers at customers' premises held protected activity)

Orleans International, Inc. 274 NLRB No. 169
(telling U steward in loud voice, when he questioned allegedly discriminatory recission of reprimand to Ee for failing to perform work on Saturday, in effect not to question E's disciplinary policy, unlawful, since steward was

6090-6300—Cont.

performing his duty in justifiably questioning E excusing Ee from performing Saturday work inasmuch as presumably this required more Saturday work of other unit Ees)

Gateway Concrete Forming Services, Inc. 274 NLRB No. 032
(discharge of Ee, U steward, allegedly because of his unsatisfactory work at his laboring job, violative where E seemed to like Ee's work *fine*, and discharge occurred 4 months after Ee's employment began, but only 10 days after Ee filed grievance over his layoff. Record showed principle moving cause of discharge was Ee's filing of his grievance, a protected activity)

Oil Field Construction Company JD-(SF)-104-86
[filing of Ees' grievances held protected concerted activity since they were filed in good faith, rather than as part of *vendetta* to undermine U and harass its leadership, where events leading to filing were based upon grievants' belief that their contractual rights were being violated; while grievances, in whole or part, may have been w/o merit, they were neither frivolous, unreasonable, nor, for the most part, inaccurate; and Ees' signing of charge herein, prior to filing of any written grievances, did not establish that grievances were filed in bad faith]

Advance Manufacturing Corp. JD-9-86
[discharge of U steward, unlawful, since in retaliation for U committeeman's objection to E's violation of contract and filing grievance, rather than for poor work performance for which steward had been warned, where at time of his discharge steward's personnel file contained no reprimands inasmuch as under E's reprimand system his reprimands had been removed, discharge was precipitous, and absent evidence steward's mistakes were wholly or partially responsible for cost overruns on one project cited by E, or his mistakes were as great as another E's on another project]

Advance Manufacturing Corp. JD-9-86
[fact that U committeeman rather than discharged steward invoked contract and filed grievance, immaterial, where steward's discharged precipitated by committeeman's actions]

6090-6600 Dealing with public agencies regulating working conditions

Every Woman's Place, Inc. 282 NLRB No. 048
[Ee's telephoning Wage and Hour Division of Labor Department to ask what pay Ees were legally entitled to receive for working on holidays, concerted, protected activity, notwithstanding it was not made pursuant to express instructions of fellow Ees, where it was outgrowth of three Ees' protest to management about holidays and compensatory time]

Thompson's Gas, Inc. and Del-Ro Transports, Inc. 274 NLRB No. 092
(in finding no violation of 8(a)(1)(2), and (3) in E's termination of Ee's privilege to make personal purchases on E's charge account, Bd held that even if E's action was related to Ee's claim with state department of labor regarding wages and monies owed to him by E, it could properly be concluded that no violation should be found on such ground because it was not concerted activity)

6090-6800 Refusing to violate, or demanding compliance with federal or state statutes and regulations

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Employers 277 NLRB No. 142
(Ee's complaint to Corp. of Engineers about E's failure to comply with Davis-Bacon wage and job-classification requirements at federal military installation where E was subcontractor, protected)

Jim Miller, A Sole Proprietor, d/b/a Action Drywall JD-(SF)-136-86
[discharge of Ees, unlawful, where for their concerted activity of inquiring whether they were being compensated in manner required by Davis-Bacon Act]

6090-7000 Prosecution of FLSA claims (See also 506-6090-8000)

Every Woman's Place, Inc. 282 NLRB No. 048
[Ee's telephoning Wage and Hour Division of Labor Department to ask what pay Ees were legally entitled to receive for working on holidays, concerted, protected activity, notwithstanding it was not made pursuant to express instructions of fellow Ees, where it was outgrowth of three Ees' protest to management about holidays and compensatory time]

6090-7300 Threatening to, or filing complaint, or in any other manner assisting in prosecution of criminal action

Squier Distributing Company 276 NLRB No. 133
(discharge of Ees for giving statements to sheriff in connection with his investigation of possible embezzlement of corporate funds by E, violative, as Ees were acting for their *mutual aid or protection* since they viewed -- as result of 2 after work meetings -- that their concerted cooperation with sheriff as best method of safeguarding their jobs which bears relationship to Ees' interests as Ees and is, therefore, concerted activity. Disloyalty claim rejected)

6090-7700 Threatening to, or bringing suit, or in any other manner lending assistance in support of civil action

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)
[Bd must stay proceedings in regard to allegation of retalitory appeal of state unemployment compensation award to Ee whom ct held to have been unlawfully discharged, pending resolution of state action. *If Respondent E prevails in state ct action, it will also prevail before Bd because filing of meritorious lawsuit even for retalitory motive, is not ULP. If, however, E does not prevail in state ct action, Bd must determine whether E filed suit in retaliation for Ee's protected activity*]

6090-8000 Threatening to, filing, or in any other manner lending assistance in support of actions brought before Federal, State, or local government agencies

Every Woman's Place, Inc. 282 NLRB No. 048
[Ee's telephoning Wage and Hour Division of Labor Department to ask what pay Ees were legally entitled to receive for working on holidays, concerted, protected activity, notwithstanding it was not made pursuant to express instructions of fellow Ees, where it was outgrowth of three Ees' protest to management about holidays and compensatory time]

Meyers Industries, Inc. 281 NLRB No. 118
[on remand, Bd affirmed its *Meyers Industries*, 268 NLRB 493, definition of concerted activity which overruled *Alleluia Cushion*, 221 NLRB 999, and required some group action for conduct to be considered concerted distinguishing between *mutual aid and protection* and *concerted activities* provisions of Section 7 of Act; thus absent evidence of linkage to group activity, Ee's reporting alleged violation of safety regulation to government agency, not concerted activity]

Meyers Industries, Inc. 281 NLRB No. 118
[in connection with its refusal to find discharge for reporting safety violation to government agency unlawful, since not concerted activity, Bd stated that although it was its duty to construe labor laws so as to accomodate purposes of other federal statutes, Bd was not intended to be forum in to assist in enforcing other statutes and rectifying all injustices in workplace]

Meyers Industries, Inc. 281 NLRB No. 118
[Bd distinguished, in defining protected activity, between single Ee asserting bargaining contract right and single Ee reporting safety violation to government agency, stating that invocation of contract rights is continuation of ongoing process of Ees' concerted bargaining activity, whereas Ee's invocation of statutory right is not]

Unico Replacement Parts, Inc. 281 NLRB No. 046
[comment to Ee about closing plant, which could reasonably have been construed as indicating that complaints to OSHA about safety conditions at plant, whether made by one or by several Ees together, would result in plant closing held unlawful restraint of Ees in exercise of their right to act, in concerted manner, to report alleged plant safety violations to OSHA]

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers 279 NLRB No. 116
[Ee filing safety complaint with government agency constituted protected U activity since he filed complaint as member of local U's health and safety committee, and absent evidence that Ee was using position in U to pursue strictly personal matter]

Pete O'Dell & Sons Steel Erectors 275 NLRB No. 140
(discharge, layoff after subsequent rehire of Ee, violative, as Ee was engaged in protected concerted activity when he testified before Army Corps of Engineers during their investigation of U complaint that E was not in compliance with Davis-Bacon Act by classifying Ees as laborers thereby failing to pay Ees ironworkers wages for ironworker work performed by *laborers*, as Ee was engaged in U activity by assisting U with their complaint, and E tied other 8(a)(1) violations to Ee's U activities)

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Employers 277 NLRB No. 142
(Ee's complaint to Corp. of Engineers about E's failure to comply with Davis-Bacon wage and job-classification requirements at federal military installation where E was subcontractor, protected)

Bombay Palace of Westchester, Inc. JD-(NY)-81-85
[discharging Ee spokesman for complaining about conditions of employment and filing complaint with state department of labor, violation]

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)
(discharge of Ee, who had filed wage claim with state agency, assertedly for *skimming* and moonlighting, unlawful, where E failed to set forth reasons for firing Ee until Bd hearing, other Ee purportedly involved in skimming was transferred not discharged, and E refused to rehire other Ees who had filed wage claims against E)

6090-8100 Attending or serving as witness in hearings before government agencies (See also 506-6090-8000)

6090-8100—Cont.

Pete O'Dell & Sons Steel Erectors 275 NLRB No. 140
(discharge, layoff after subsequent rehire of Ee, violative, as Ee was engaged in protected concerted activity when he testified before Army Corps of Engineers during their investigation of U complaint that E was not in compliance with Davis-Bacon Act by classifying Ees as laborers thereby failing to pay Ees ironworkers wages for ironworker work performed by *laborers*, as Ee was engaged in U activity by assisting U with their complaint, and E tied other 8(a)(1) violations to Ee's U activities)

6090-8300 Assisting in arbitration or grievance proceeding (See also 506-6090-6300)

Oil Workers, Local Union No. 4--23 (Gulf Oil Corporation) 274 NLRB No. 063
(U expelling supervisor for testimony he gave at arbitration hearing regarding 2 poor work performance letters that he issued to grievant while then serving as temporary relief supervisor (was only Ee at time he testified and became permanent supervisor after U charges filed against him), violative, because of impact of such discipline on other members who might be restrained in exercise of their Sec. 7 rights to give testimony against grievants in contractual arbitration hearings)

Puerto Rican Association for Human Development JD-(NY)-148-84
(Ees intervening on behalf of disciplined Ee and at request of this Ee writing memos setting forth their version of incident where memos not malicious, recklessly false, nor excessively disparaging of E's reputation or services, engaged in protected activities and suspension for writing these memos, violative. Additionally, suspension of Ee over his conduct in supervisor's office during discussion of memos, violative also, since E may not rely on Ee's conduct that it has unlawfully provoked as basis for disciplining Ees)

Puerto Rican Association for Human Development JD-(NY)-148-84
(suspending secretary for typing memo that was held protected activity, violative)

6090-9300 Refusing to perform job assignment

Quality C.A.T.V., Inc. 278 NLRB No. 156
[discharge of two TV linemen who installed television strands on utility poles and who refused to work during and after rainstorm because they were wet, violative, since their concerted refusal to work was to protest requirement that they climb poles when wet, an employment condition. Ee's protest was protected whether Ees acted because they were concerned about their safety, their personal comfort, or their supervisor's attitude. In carrying out their protest, Ees did not exceed permissable bounds of protected activity]

Dr. Olinda Floro JD-12-86
[protesting requirement that Ees take and develop x-rays under unsafe conditions, and expression of possible intention to refuse to take x-rays in the future protected]

City Disposal Systems, Inc. v. N.L.R.B. 766 F.2d 969 (C.A. 6, July 1985)
(Ee's refusal to drive truck as unsafe did not lose its protection where Ee's actions were not abusive)

6095 OTHER FORMS OF ACTIVITY UNPROTECTED

6095-6000 Seeking assistance of counsel at investigatory or disciplinary interview

TCC Center Companies, Inc. 275 NLRB No. 085
(E's refusing Ee's, (U adherent) request that his attorney be present during investigatory interview which Ee reasonably believed might result in disciplining not violative, since Ee's request was not protected concerted activity. See *Sears, Roebuck & Co.* 274 NLRB No. 55 (Feb. 22, 1985) *Ees have no statutorily protected right to be represented at investigatory and/or disciplinary interviews by their private counsel from the outside....*)

6095-7500 Refusing to take polygraph test

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. 275 NLRB No. 204
(discharge of Ees at store acquired by E from former owner in whose employ Ees had filed grievances and had refused to take polygraph tests concerning mishandling of E's funds, not unlawful where, although E must have considered Ees' refusals to take tests, E possessed substantial adverse information about Ees which alone justified discretionary business judgment not to retain them; and E's discharge decision was not motivated by anti-U animus or antipathy toward Ees' use of grievance procedure nor was it based on Ees' reliance on contract rights and procedures)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. 275 NLRB No. 204
(although U contract shielded Ees from compulsory polygraph tests, it did not rule out suspicions flowing from Ees' refusals to take them, and it certainly provided no safeguard against such suspicions on part of successor E not involved in investigation of Ees for mischandling predecessor E's funds)

6095-8700 To cause or attempt to cause economic harm to employer

Turner Beverage Company, Inc. 279 NLRB No. 024
[discharge of two Ees, husband and wife, assertedly because husband was U supporter and because both Ees engaged in concerted activity of making anonymous calls to E's franchisor which put E in jeopardy of losing its franchise, not violative, since E's real reason was not Ees' U activity but was their perceived role in making anonymous calls, activity that was unprotected, where calls were simply act of retaliation, having nothing to do with working conditions but related to Ees' general discontent with management and attempt to direct philosophy of E]

Sahara Datsun, Inc. 278 NLRB No. 148
[Ee's informing bank through which E obtained financing for its customers that E was submitting falsified customer credit applications, not protected, notwithstanding accusations were arguably related to terms and conditions of employment since Ees' concern about commissions was one reason for organizing, where accusations were unsubstantiated, intended to disparage E's reputation with bank, and could have ruined longstanding business relationship based on trust and fair dealing]

Southern California Edison Company 274 NLRB No. 167
(wearing of button with *Stick Your Retro* written on it, protected, where saying not obscene, message had little significance to outsider so public image of E not injured and message was clearly related to pending negotiations)

8000 INDEPENDENT ACTIVITIES OF EMPLOYEES REPRESENTED BY RECOGNIZED UNION

8033 SANCTION OF ACTIVITY BY REPRESENTATIVE

8033-7500 Absence of sanction

AAL, Inc., d/b/a River Oaks Nursing Home 275 NLRB No. 012
(discharge of 2 (U) unit Ees because of their *walkout* over E's staffing proposals not violative, since facts establish walkout occurred w/o prior U knowledge and was not in support of policies and actions theretofore taken by U since U had decided against proffering contract proposal for specific staffing of aides, and U agent did not avail himself of opportunity at meeting to discuss walkout to join in with demands of dischargees for specific staffing of aides)

8067 OBJECTIVES OF ACTIVITIES IN RELATION TO REPRESENTATIVE'S POSITION

8067 OBJECTIVES OF ACTIVITIES IN RELATION TO REPRESENTATIVE'S POSITION

8067-5000 Inconsistent with representative's position

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)
[member's expressing his opposition to local U president concerning a new absenteeism program, held protected activity]

N.L.R.B. v. Architectural Research Corporation 748 F.2d 1121 (C.A. 6, Nov. 1984)
(discharge of two Ees for stopping work and confronting E about restoring afternoon break, not violative, since action was not protected where break had been eliminated from contract by agreement with U and the two Ees, although having been repeatedly told that it was matter to be decided by E and U and that they should file a grievance, had persisted in trying to bypass the U and deal directly with E about it)

9000 REFRAINING FROM PROTECTED ACTIVITY

9050 NOT JOINING UNION WHERE NO CONTRACT OBLIGATION

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132
[U's establishing seniority list which placed bargaining unit Ees at E's more recently organized plant behind previously unionized Ees at another of E's facilities, violative, since U could not refuse to consider or negotiate a dovetailing system solely because Ees at E's non-U plant joined U more recently than did Ees at E's unionized plant. By favoring Ees at its unionized plant, U in effect (if not intent) penalized Ees of non-U plant for refraining from engaging in U activity]

512 EMPLOYER INTERFERENCE WITH EMPLOYEE SECTION 7 RIGHTS (8(a)(1))

0100 GENERALLY

Brown, Director, Department of Law and Public Safety, State of New Jersey v. Hotel Employees Local 54 ——U.S.—— (U.S. S.CT, July 1984)

[fundamental difference exists between Ees' absolute Sec. 7 right to choose U to act as their representative and their less-absolute right to select U officials; thus, while agency shop nonmember has right to participate in selection of U, he often has no say in selecting U officials; Ees, while empowered to select U, may be unable to select official of their choice because of vote against such official but that would not constitute interference with their right to bargain through representative of their choice]

0117 SCOPE OF PROSCRIPTION

0117-0100 Generally

Esco Elevators, Inc. 276 NLRB No. 138

(on ct remand, discharge that was motivated by individual Ee's safety complaints that were found to constitute U endeavor, not mere personal undertaking, held not to establish independent 8(a)(1) violation)

0117-1200 Laid-off employees

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)

[coercion of former Ee, violation where he had been laid off unlawfully and was therefore considered Ee under the Act, which states that an *employee* includes *any individual whose work has ceased as a consequence of, or in connection with. . . any unfair labor practice*]

0125 INDIVIDUALS AFFECTED

0125-1400 Former employees

Thomas Steel Company 281 NLRB No. 060

[former Ee included in term *employee* defined under Sec. 2(3) of Act]

Thomas Steel Company 281 NLRB No. 060

[E's letter to former Ee threatening him with a lawsuit if he did not cease interfering with E's business relationships with customers and suppliers, not violation where Ee's telephone call to supplier, which prompted E's letter, was unprotected in view of Ee's misrepresentation that he was independent safety consultant hired by E, and E, at time it sent letter, did not know and could not reasonably have known of arguably concerted nature of Ee's conduct]

Certified Grocers of Illinois, Inc. 273 NLRB No. 196

(threatening to deny reemployment to discharged Ees for picketing E, not unlawful, where, although one purpose of picketing was informational, its additional purpose was to obtain direct negotiations with E over Ees' grievances which U was then pursuing through contractual grievance machinery; and such conclusion is supported by picket's statement that ees had hired their own attorney who would look after their interests because they had not been satisfied with U's action so far; accordingly, under *Emporium Capwell* picketing herein was unprotected)

The Martin Brower Company JD-(SF)-63-86

[E's warning deliveryman that further violation of E's rule against deliverymen conversing with E's Ee, not violation where rule was nondiscriminatorily applied, warning was not threat but prediction of possible consequences, and E showed no animus against deliveryman, notwithstanding deliverman had, when employed by E, filed grievance against E and ULP charge and civil suit upon being discharged]

N.L.R.B. v. J. Coty Messenger Service, Inc. ——F.2d—— (C.A. 2, May 1985)

[influencing former Ee to ignore validly served Bd subpoena, thereby infringing upon right of current Ees to have their rights vindicated by Bd, was violative]

0125-1500 Union stewards

Orleans International, Inc. 274 NLRB No. 169

(telling U steward in loud voice, when he questioned allegedly discriminatory recission of reprimand to Ee for failing to perform work on Saturday, in effect not to question E's disciplinary policy, unlawful, since steward was performing his duty in justifiably questioning E excusing Ee from performing Saturday work inasmuch as presumably this required more Saturday work of other unit Ees)

0125-1600 Employees of person other than respondent

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers 279 NLRB No. 116

[mining company reducing amount of work assigned to construction company which was performing work for it, and thus causing layoffs of construction company Ees, not unlawful act by mining company, since mining company not joint E with construction company, its motives for reducing work cannot be imputed to construction company, nor was layoff unlawful act by construction company, absent discriminatory motive on its part]

The Martin Brower Company JD-(SF)-63-86

[E's warning deliveryman that further violation of E's rule against deliverymen conversing with E's Ee, not violation where rule was nondiscriminatorily applied, warning was not threat but prediction of possible consequences, and E showed no animus against deliveryman, notwithstanding deliverman had, when employed by E, filed grievance against E and ULP charge and civil suit upon being discharged]

0125-7500 Supervisors

Best Western Motor Inn 281 NLRB No. 026

[discharging supervisors for refusing E's unlawful request to surveil and gather information about Ees' U activities, violation where alleged reasons for discharges occurred long before and were not mentioned at time, theories were inconsistent, and supervisors' wages and benefits were increased prior to their refusal]

Advertiser's Manufacturing Company 280 NLRB No. 123

[discharging supervisor solely because of U activities of her son, violation, since impact of her discharge on her son's U activities, magnified by E's other unlawful acts directed against him, compels that he be protected by finding discharge a violation and ordering his mother reinstated with backpay]

Reeves Brothers, Inc. 277 NLRB No. 153

[E's statement to group of supervisory leadmen, in accusing them of starting U campaign, that *I can assure you when this whole thing is over, the very ones that started it will be somewhere else,* not violative, notwithstanding contention that statement was intended for repetition to rank-and-file Ees, where discharge threat was not overheard by Ees nor did E instruct supervisors to carry message back to their crews; consistent with its holding in *Parker-Robb,* 262 NLRB 402, Bd did not infer harmful secondary effects on Ees' statutory rights from threats]

Reeves Brothers, Inc. 277 NLRB No. 153

[interrogating and admonishing supervisors concerning their role in securing signed U cards, not violative where interviews were conducted privately, no references were made to rank-and-file Ees and E concentrated only on its concerns about U activities of supervisors]

Hunter Douglas, Inc. 277 NLRB No. 123

(discharge of supervisor, not unlawful, since not for refusal to commit ULPs and failure to prevent unionization of Ees, where supervisor made no objections to going along with pretext for discharge of adherent)

0125-8400 One-man unit

Electrical Workers, Local Union No. 596 (Lylloth G. Woodall, an Individual) 274 NLRB No. 196

(threatening reduction of U adherent's benefits because of her involvement in U handbilling, violative, notwithstnading she was in single-Ee unit, where her involvement in handbilling was form of assistance to labor organization protected by Sec. 7)

0125-9800 Applicants for employment

Bridgeway Oldsmobile, Inc. 281 NLRB No. 165

[telling applicant for employment that E was going to be non-U, requesting that applicant withdraw from U and show withdrawal card to E and afte

0125-9800—Cont.

hiring applicant, readvising applicant that if he intended to remain with E, he had to obtain withdrawal card and show it to E, violative]

The Mower Lumber Company and/or Its Subsidiary Newera Resources Corp. **276 NLRB No. 006**

(Ees from whom E sought opinions as to skills and qualifications of prospective Ees, held not supervisory or agents of E, where there was no evidence that these opinions were the only source of information E relied on in making its hiring decisions; however, even if E relied solely on opinions of these Ees, no evidence that these Ees considered prospective Ees' U activity in formulating their recommendations or that E requested Ees to consider U activity in their recommendations)

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**

(supervisor's telling applicant for employment that he did not believe applicant could be hired because he was active on behalf of U, unlawful)

E.I. Du Pont De Nemours & Company **JD-(ATL)-96-84**

0133 ISOLATED ACTS

American Threat Company **274 NLRB No. 164**

(E asking prospective Ee who had previously worked for E if he would cross picket line in event of strike, not unlawful, where single isolated incident)

Offshore Shipbuilding, Inc. **274 NLRB No. 077**

(interrogation of single Ee as to whether he was engaged in U activity and informing Ee such activity had better cease, unlawful, since not innocous, casual remark, nor isolated, in view of E's unlawful threats to discharge Ees)

Easthampton Electrical Services, Inc. **JD-85-85**

(E's president informing small groups of Ees on a couple of ocasions that *times were slow, there was little to bid on, and he didn't know how U men would make it*, not unlawful, since such isolated off the cuff remarks by E are not enough to draw inference of knowledge of U activity, nor do they constitute violation of Section 8(a)(1) of Act)

0142 DE MINIMIS VIOLATIONS

Lucky Stores, Inc. d/b/a Gemco **279 NLRB No. 153**

[systematic questioning of suspected U supporter, to which de minimis doctrine expounded by ALJ was not passed on by Bd majority, unlawful, where Ee, called into manager's office, was subjected to series of questions which had no lawful purpose; upon being queried by E, Ee denied that he had called in U, and then upon being directly asked whether he had signed U card, Ee responded that all but one of unit Ees had done so; and, while Ee soon left E's employ, E knew by then through interrogation of Ee of U sentiments of all but one of its unit Ees]

0150 ACTS OR STATEMENTS NEUTRALIZING COERCIVE EFFECT OF PREJUDICIAL CONDUCT

0150-5000 Neutralizing effect not attained

Pilled of Mississippi, Inc. **275 NLRB No. 117**

(E did not neutralize effects of prior threats of plant closure and retaliation by giving Ees last minute *job guarantees* 1 day before election and assurances of continued employment where *guarantee* was ambiguous, statement did not specifically and unambiguously disavow E's prior conduct found unlawful and no assurances were given to Ees that in the future, E would not interfere in exercise of Ees' Section 7)

0167 ATTITUDE OR MOTIVE OF EMPLOYER

0167-3300 Neutral attitude

The Martin Brower Company **JD-(SF)-63-86**

[E's warning deliveryman that further violation of E's rule against deliverymen conversing with E's Ee, not violation where rule was nondiscriminatorily applied, warning was not threat but prediction of possible consequences, and E showed no animus against deliveryman, notwithstanding deliverman had, when employed by E, filed grievance against E and ULP charge and civil suit upon being discharged]

0167-6700 Antiunion attitude

Best Western Motor Inn **281 NLRB No. 026**

[evidenced by E's describing U supporters as *instigators* and *troublemakers*, describing Bd's letter as demand that vote be taken, and ascribing fault of U's *bothering* E to supervisors]

National Car Rental **JD-NY)-60-85**

(Bd has frequently held that use of such words as *troublemaker* or *instigator* are code words for U adherent or activist and constitute evidence of discriminatory motivation. However, where there is absence of protected activity and comments made in response to Ees' unjustified complaints, use of such words does not constitute evidence of discriminatory motivation)

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**

[inference of improper conduct on part of E *not* established where E, in instant case, withheld Christmas bonus from its Ees and such bonus was not shown to be an established practice of E. Statements made by assistant supervisor and E's comptroller regarding bonus as well as E's Chief Executive Officer's general anti-U animus and his silence concerning (year-end) bonus was insufficient evidence to show type of coercive and manipulative motivation necessary for violation of Act]

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**

[E evinced classic case of anti-U behavior where, day after first U meeting, E unlawfully promised wage benefits in return for rejection of U, E's retaliatory measures increased as U's organizing drive intensified, and E's threatening and hostile posture with respect to U was even carried over to hearing before ALJ during which E's conduct at counsel's table affected responses of witnesses]

0167-8300 Motive

Dr. Olinda Flores **JD-12-86**

[discharging Ee for concerted protected activity of protesting requirement that Ees attend seminar w/o receiving wages and unsafe x-ray procedures, violation where staleness and lack of earlier concern over Ees' alleged poor performance made allegation insufficient to overcome GC's prima facie case]

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. **801 F.2d 636 (C.A. 3, Sept. 1986)**

[Ee's concerted protected activity, rather than tardiness, shown to be motivating factor for discharge by E's statement that Ee was discharged for his attitude, not tardiness, E's comment to another Ee next day about latter's attitude, and proximity of Ee's comment about contacting U to his discharge; moreover E's warnings to Ee about tardiness ceased, and Ee was given positive performance review and offered promotion]

The Lawson Company v. N.L.R.B. **753 F.2d (C.A. 6, Jan. 1985)**

(under Section 8(a)(1) and (3) of Act, E's *motive* is critical element in determining whether grant of benefits, prior to R election by E, is violative of Act)

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company **762 F.2d 769 (C.A. 9, June 1985)**

(when Ee's discharge is motivated both by legitimate business reasons and reasons related to Ee's exercise of protected activities, ct will find ULP only if protected activity was substantial factor in decision to discharge; burden never shifts but as affirmative defense, E may show by preponderance of evidence that Ee would have been terminated even in absence of protected conduct)

0183 INDIRECT INTERFERENCE

0183-5000 Employment reference

Norris Concrete Materials, Inc. **282 NLRB No. 045**

[threatening Ee with unfavorable reference and that Ee would never work in area again, unlawful, where motivated by Ee filing ULP charges against E]

5000 FORMS OF EMPLOYER CONDUCT

5006 STATEMENTS BY EMPLOYER

5006-0100 Generally

Putnam Buick, Inc. **280 NLRB No. 101**

[in finding that E did not unlawfully attempt to deal directly with unit Ees concerning changes in terms and conditions of employment, Bd held E's communications with Ees during negotiations with U concerning its proposals to U were noncoercive and privileged under Sec. 8(c) for reasons set forth in *United Technologies Corp.* cases (274 NLRB 163 and 274 NLRB No. 87)]

Trover Clinic **280 NLRB No. 002**

[supervisor's comment to Ee with whom supervisor was on good terms that Ee *keep a low profile* and *be quiet with it*, clearly referring to Ee's U organizing activity, unlawful, since remarks reasonably tended to interfere with Ee's free exercise of her Ee rights, and supervisor's statement concerning U activities can be coercive despite friendly relationship between the individuals and well-intentioned nature of the statements]

5006-1700 Coercive character question of fact for Board

5006-1767 Must be considered in connection with surrounding circumstances

Kawasaki Motors Manufacturing Corporation, U.S.A. **280 NLRB No. 053**

[no violation where supervisor agreed with Ee's description of negotiations that parties would *bargain from scratch*. This type of statement may or may not be coercive, depending on context in which it is uttered. Here, remark occurred in context free of other ULPs and as part of Ee discussion of give and take of negotiations and supervisor did not purport to speak for E's bargaining posture in any future negotiations]

5006-1767—Cont.

Raritan Bay Medical Center a/k/a Perth Amboy General Hospital and Old Bridge Regional Hospital **279 NLRB No. 010**
[E's president's calling Ee agitator and troublemaker during U campaign in which other ULPs were committed, coercive and violative]

Southwire Company **277 NLRB No. 043**
(E's speeches and notices stating that U authorization cards might be disclosed to it and admonishing Ees not to sign cards unless they knew what it would mean to them, their families and fellow Ees, violative where speeches and notices were made against background of E's history of violating Act and in immediate *context of pervasive violations in instant case.* In T3context, E's comments are a *rather pointed hint* that it would similarly retaliate against Ees who signed cards)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(foreman's telling Ee in presence of three other Ees that there would be no more campaigning and E's owner's indicating, while pointing to Ee's U button and saying that Ee was showing his true colors, that he knew the Ee would vote for the U found coercive in view of E's repeated unlawful conduct toward Ee and discharging him shortly after the election)

Peoples Gas System, Inc. **275 NLRB No. 075**
(it is not unlawful for E to inform Ees of Sec. 7 rights in atmosphere free of coercion, intimidation, or U animus, E letters to Ees informing them of right to revoke dues-checkoff authorization and right to resign from U, not violative, where contract permitted Ees to revoke checkoff authorizations and E had been asked by several Ees about how to resign from U)

N.L.R.B. v. Nueva Engineering, Inc. **761 F.2d 961 (C.A. 4, May 1985)**
]in evaluating E's conduct under Section 8(a)(1) test is not whether language or acts were coercive in actual fact, but whether conduct in question had reasonable tendency in totality of circumstances to intimidate)

Medallion Kitchens, Inc. v. N.L.R.B. **806 F.2d 185 (C.A. 8, Nov. 1986)**

5006-3300 Coercive effect of statements

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's prediction of probable future retaliation after election, unlawful; although emanating from lowest level supervisor as mere opinion in response to Ee's question, prediction tended to coerce Ees]

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers **279 NLRB No. 116**
[irrelevant whether Ee of construction company which was performing construction work for mining company understood threat of layoff of construction company Ees would be effectuated by mining company as result of his complaint, rather than by construction company (E), since whether statement interferes with Ees' exercise of Section 7 rights is objective determination in which Ee's subjective understanding is not relevant consideration]

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers **279 NLRB No. 116**
[irrelevant whether Ee of construction company which was performing construction work for mining company understood threat of layoff of construction company Ees would be effectuated by mining company as result of his complaint, rather than by construction company (E), since whether statement interferes with Ees' exercise of Section 7 rights is objective determination in which Ee's subjective understanding is not relevant consideration]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. **279 NLRB No. 091**
[E threatening U official with bodily harm in presence of Ees, not unlawful, since threat spoken in Italian, which was not understood by any Ees]

N.L.R.B. v. Nueva Engineering, Inc. **761 F.2d 961 (C.A. 4, May 1985)**
]in evaluating E's conduct under Section 8(a)(1) test is not whether language or acts were coercive in actual fact, but whether conduct in question had reasonable tendency in totality of circumstances to intimidate)

Medallion Kitchens, Inc. v. N.L.R.B. **806 F.2d 185 (C.A. 8, Nov. 1986)**
[test for violation of Section 8(a)(1) is not whether attempt at coercion has succeeded or failed but whether E engaged in conduct which reasonably tends to interfere with, restrain, or coerce Ees in free exercise of their rights under Section 7 of Act]

5006-5000 Kinds of statements

5006-5010 Antiunion statements, generally

Dorothy Shamrock Coal Company **279 NLRB No. 174**

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(E's interrogating Ee about his intentions with respect to U, accompanied by statements that E had heard Ee was siding with U, that E considered U a cancer, and that everyone siding with it would be eliminated, unlawful, in view of E's extreme opposition to U as illustrated by his reference to it as cancer, and numerous other acts of unlawful threats and interrogation, thereby showing pervasive pattern of such acts)

Pilled of Mississippi, Inc. **275 NLRB No. 87**
(E's statements to Ees through letters and leaflets during U campaign that U would compound Ees' problems, U had propensity for strikes and violence and other unionized plants had experienced loss of jobs and Ee benefits, held not coercive and w/i bounds of permissible campaign propaganda)

5006-5015 That employer would refuse to bargain or to contract with union

The Standard Products Company, Rocky Mount Division **281 NLRB No. 013**
[E's remarks at meetings with Ees, assertedly conveying message that it would be futile for Ees to elect U because E would not bargain meaningfully, not unlawful, where E's remarks established no more than that if E had to negotiate with U, he was prepared to engage in hard bargaining for contract advantageous to E, and pointed out to Ees that one possibility of bargaining process was for Ees to end up with lower wages and benefits]

Central Broadcast Company **280 NLRB No. 086**
[radio station program director's telling announcer that E's president and counsel had no intention of bargaining with u even if it won election, violation]

Sahara Datsun, Inc. **278 NLRB No. 140**
[telling Ee that E would not bargain in good faith with U and Ees could all simply go on strike, violation]

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 126**
(telling Ees, after election, that if U had won election E would have refused to negotiate with U and forced Ees out on strike and then replaced them, unlawful)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(stating to Ee that U was not going to get into E's operation and, if it did, E would not negotiate, unlawful, despite E's purported claim that statement was one of strong opposition to U because history in E's kind of industry showed that companies of E's size could not pay cost of U's demands and tended to falter or fail if organized by U, since statement served to notify Ee that selection of U was futile)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[publishing and distributing Ee manual stating that E was a completely U-free organization and would definitely remain so, violation]

East Central Communications, Inc. **JD-116-86**
[fact that E may not have made statement that he would not sign contract with U attributed to him by supervisor in speaking to Ees did not diminish impact of supervisor's statement on Ee listeners who were under no obligation to investigate truth of his report, since bare statement that E need not sign contract had reasonable tendency to convey to Ees that their pro-U efforts were futile]

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. **JD-(NY)-24-86**
(while Act does not compel E to agree to specific proposals by U, E's statements informing Ees that it would never sign contract with U amounted to anticipatory refusal to bargain and inculcated in Ees a sense of futility about exercise of free choice in selection of bargaining representative)

Benson Associates **JD-101-86**
(supervisor's informing Ees that E would never have, and would refuse to bargain with, U, unlawful, since supervisor thereby indicated that it would be futile for Ees to select U)

M.F. Enterprises, Inc. d/b/a Gopher Restaurant **JD-417-84**
(E informing Ees it would refuse to bargain with its chosen bargaining agent, that it would file for bankruptcy, thereby endangering Ees' jobs, and that if Ees persisted in their U adherence, it would hire non-U Ees to replace them, unlawful)

5006-5020 Attacks upon union or officials, particular forms of

5006-5020-6700 Characterization as

5006-5020-6767 Corrupt

Newsday, Inc. **274 NLRB No. 019**
(telling Ees that certain U was no good for them and that its president was corrupt not violative as merely expression of opinion)

5006-5025 Disparagement of employees

United States Aviex Company **279 NLRB No. 110**
[supervisor's conduct in making statements demeaning Ee because he had signed U card, unlawful]

5006-5025—Cont.

Precision Founders, Inc. 278 NLRB No. 084
[disparaging Ee's involvement in U activities and impliedly threatening lack of future promotions due to Ee's U activities, violation]

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(denigrating Ee by saying he was behind the U organizing and thereby stabbing E in the back and giving him a raw deal, violative)

Bonanza Sirloin Pit 275 NLRB No. 56
(insulting Ees and making derogatory remarks to Ee concerning said Ee's coworkers who were attempting to organize U, violative)

Haynes Motor Lines, Inc. 273 NLRB No. 221
(no violation where supervisor held meeting with Ees and said it would be fine if Ees wanted U but they should not follow certain Ee as leader because he was organizing U out of revenge for not getting salesman's job and that this individual was *parking lot lawyer*. Supervisor's statements were legitimate expression of opinion and contained no threats of reprisal or force which would tend to coerce Ees)

National Car Rental JD-NY)-60-85
(Bd has frequently held that use of such words as *troublemaker* or *instigator* are code words for U adherent or activist and constitute evidence of discriminatory motivation. However, where there is absence of protected activity and comments made in response to Ees' unjustified complaints, use of such words does not constitute evidence of discriminatory motivation)

5006-5026 Union supporter should quit

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer 281 NLRB No. 161
[Ee's remarking to other Ees that E's CEO was a *cheap son of a bitch*, held protected concerted activity where comment was addressed to other Ees, Ee made it while Ees were on break and statement was not accompanied by any threat; further, Ee's supervisor telling Ee sometime after this comment, that he understood Ee was unhappy and if supervisor was that unhappy he would leave, violative, since remark was implied threat of retaliation for either Ee's comment about CEO or for signing a U card, both of which constituted protected activity]

Central Broadcast Company 280 NLRB No. 056
[radio station program director's telling newsman who supported U that E's reducing his hours, giving him split shift, and requiring him to play another Ee's prerecorded tapes on the air was harassment, lowering of his status, and inducement to cause him to quit found unlawful solicitation to quit]

Yashan of California, Inc. 280 NLRB No. 032
[store manager's secretary, although not supervisory, held E's agent when she told Ee, in presence of supervisor and with his concurrence and approval, that if Ee wanted to engage in U activities, she should seek employment elsewhere]

United Artists Theatre Circuit, Inc. 277 NLRB No. 015
(supervisor's stating Ee was being treated in manner designed to induce her to quit, thus indicating he was attempting to constructively discharge Ees because of U activities, violative)

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. JD-(ATL)-61-86
[supervisor's statement to Ee that Ees should seek other jobs if they were dissatisfied at E, unlawful]

N.L.R.B. v. Nueva Engineering, Inc. 761 F.2d 961 (C.A. 4, May 1985)
(supervisor informing Ee *U is not getting in here, if you don't like working for this company, and you are all for U busiess, then why don't you work somewhere else but I don't want no f—g U in here*, violative)

5006-5027 Union supporter should be segregated

T & T Machine Company, Inc. 278 NLRB No. 139
[supervisor calling Ee into his office, where in presence of three supervisors Ee was asked *how he felt about U*, and upon Ee's reply he didn't like Us, he was cautioned not to associate with U supporters, promising Ee he would have training to enhance his skill level above that of U supporters that E planned to get rid of, and informing Ee if he would report his errors directly to those supervisors, his record would be clean, but errors of U supporters would be recorded, unlawful]

5006-5030 Union adherence or other protected activity as employee disaffection or disloyalty toward employer

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer 281 NLRB No. 161
[after supervisor obtained knowledge that Ee signed U card, his remark to Ee that he was *plant* U sent to stir up trouble, violative, as Ee should not expect to incur wrath of supervisor for engaging in protected activity]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047
(supervisor asking Ee *why did you betray me? I thought you were anti-U*, unlawful, since forced Ee to disclose reasons for his U sentiments in context in which he was made to understand that supervisor was aware of his U activities and that such conduct was betrayal of supervisor)

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(denigrating Ee by saying he was behind the U organizing and thereby stabbing E in the back and giving him a raw deal, violative)

Genwal Coal Co., Inc. 275 NLRB No. 077
[*you guys stabbed me in the back* said by E referring to Ees' organizational activities shows E's animus)

Benson Associates JD-101-85
(supervisor's repeated statements that Ees had stabbed him in back by contacting U, unlawful, since statements equated U activity with Ee disloyalty)

5006-5032 Recourse to union as disloyalty to employer

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota 276 NLRB No. 106
(supervisor's telling Ees that he was personally hurt by fact Ees went to U and not to him about their grievances, violative)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186
(assertedly informing Ees, who were unlawfully discharged, that they were being discharges because they had ruined E, not unlawful, where E advised Ees that they were being discharged for unsatisfactory work, not for ruining E; subject of ruination was raised by one of the discharged Ees, and E did not equate involvement with U or protected activities with disloyalty to E; and E's remarks contained no threat nor promise of benefit)

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company JD-83-86
[violation where E chastised Ee, after learning Ee was U supporter, by stating to him that E did not believe Ee would have done such a thing because E had given second chance to Ee who had been rehired after he quit]

Northline Bus Center, Inc. JD-(ATL)-41-85
(news bulletin to Ees edited, reviewed, and printed by E, unlawful, where bulletin raised question whether Ees would be fired for attending U meeting and then clearly conveyed message to Ees that any Ee seeking assistance from U would be considered disloyal to E and implicitly threatened Ees with discharge if they engaged in U activities)

5006-5033 Opposition to enhancement of union status

Reichhold Chemicals, Inc. 277 NLRB No. 073
(supervisor's statement during period of negotiations that E would never sign contract and that Ees would lose their jobs if they went out on strike, unlawful)

Benson Associates JD-101-85
(supervisor's informing Ees that E would never have, and would refuse to bargain with, U, unlawful, since supervisor thereby indicated that it would be futile for Ees to select U)

5006-5036 Threatening to report employees to immigration authorities, IRS or other government agencies

Tamco Carburetor Company 275 NLRB No. 001
(plant manager's statement that U activity jeopardized Ees and created potential job loss because they were undocumented aliens, violative)

5006-5037 Advising employee on procedure for withdrawal from or decertification of union

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011
[supervisor unlawfully solicited striking Ees' resignations from U since his conversations with Ees went beyond providing information regarding avoiding fines by resigning and conditioned return to work on resignation from U, and where supervisor evidenced continuing interest in knowing whether or not nurses intended to resign and return to work, and in some instances offered assistance in effecting resignation that was not merely ministerial]

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011
[*E does not violate Act merely by providing ees with information on how to resign from U as long as E makes no attempt to ascertain whether Ees will avail themselves of this right nor offers any assistance or otherwise creates situation where ees would tend to feel peril in refraining from such revocation*]

Indiana Cabinet Company, Inc. 275 NLRB No. 169
(plant superintendant's statement to Ees that he had heard they were not satisfied with U, there was way they could start ptn through Bd, and E could not help them, not violative where superintendant did not attempt to learn whether Ees would sign it and specifically informed them that E could not assist them with any ptn; moreover, superintendant's mere informing Ees of procedure by which U disaffection ptn could be circulated would not create situation in which Ees would tend to feel peril if they refrained from circulating such ptn)

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Peoples Gas System, Inc. **275 NLRB No. 075**
(E's sending letters to Ees requesting that they inform E of decisions to revoke dues-checkoff authorizations and to resign from U, not violative where bargaining agreements provided for short annual *escape* period during which Ees could revoke checkoff authorizations and required that notice of revocation must be given to both E and U; further, letters assured Ees that whether they remained U members or resigned would make no difference in terms and conditions of employment; and E was actually responding to Ee inquiries in providing them with information about U resignation)

5006-5038 Telling employees to quit if they wanted union

Baddour, Inc. **281 NLRB No. 084**
[statement by E's president in preleection speech to Ees that the company was no place for Ees who wanted a U, violation]

5006-5045 Informing employee that protected activity was reason for discharge or suspension

Montgomery Elevator Company **278 NLRB No. 122**
[E's manager informing Ee who had resigned from U that Ee would have to bring himself *back in good standing with U or be terminated*, unlawful, E's contention that *getting back into good standing* referred to paying required service fee, rejected, where service fees had not been discussed at meeting between E and U]

Port East Transfer, Inc. **278 NLRB No. 125**
[statement to dischargee and his sister by son of E's owner, which was imputed to E, that Ee had been discharged for writing pro-U graffiti on E's restroom walls, unlawful, since coercive, notwithstanding in response to Ee's queries]

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[supervisors' telling Ees that Director of Ee Relations said he had fired Ee because of her U activities and that he was going to get other U supporters as well, not violative where supervisor supported U and local U representative acknowledged that supervisor was only responding to her request for such information]

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**
[E's telling another Ee that discharged driver's grievances *got him* constituted not only admission but unlawful statement that driver's grievances were the reason for his discharge]

Evans St. Clair, Inc. **278 NLRB No. 065**
[telling one Ee that another Ee would be discharged for U activity, violation]

Studio S.J.T., Limited **277 NLRB No. 126**
(telling Ees that another Ee would be discharged because she supported U, and later telling Ees that Ee had been discharged because she had supported U, violative)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(assertedly informing Ees, who were unlawfully discharged, that they were being discharges because they had ruined E, not unlawful, where E advised Ees that they were being discharged for unsatisfactory work, not for ruining E; subject of ruination was raised by one of the discharged Ees, and E did not equate involvement with U or protected activities with disloyalty to E; and E's remarks contained no threat nor promise of benefit)

B & W Machine & Welding Company **JD-(SF)-107-86**

East Central Communications, Inc. **JD-116-86**
[supervisor's affirmative nod made in agreement with Ee's statement that terminated Ee was fired because of his U activity, unlawful, since it conveyed coercive message to Ees present that discharge was for U activity]

Roadmaster Corporation **JD-(ATL)-18-86**
[telling Ee she was being discharged for giving U *confidential information*, i.e., information about an Ee who crossed picket line to return towork and caravans' starting times, violation]

Robert W. Wise, d/b/a Robert W. Wise Cabinetry **JD-(SF)-157-85**
(telling Ee that other Ees had been discharged for their U activity, violative)

Harry Rosenblatt & Sons **JD-(SF)-50-85**
(telling Ee when discharging him that E had known of his U activities for months and had had it with Ee's efforts to change E and Ees and get U in, violative)

5006-5046 Informing employees that wages or benefits could not be increased because of union campaign or objections

Trover Clinic **280 NLRB No. 002**
[informing Ee that wage freeze would not be lifted *until the U question was resolved*, unlawful, where E had no plans to lift wage freeze, and linked continuation of freeze on U, placing onus for freeze on U, and thereby undermining and discouraging Ee support of U]

The Gerkin Co. **279 NLRB No. 136**
[telling Ees that traditional wage increase was frozen during U organization campaign, violation and interference, since statement was contrary to well established rule that during preelection period E must grant or withhold benefits as if U were not in picture]

Sunnyvale Medical Clinic, Inc. **277 NLRB No. 131**
(telling Ee that U would not let E grant wage increase, violation, where E gave newly promoted Ee impression that U would not let E pay Ee in accordance with her new duties; E's truthful expression of its position, however, in answer to Ee's question as to why it had not granted wage increases earlier, that it had been informed by Bd that it could not change wages while cases were pending before Bd, not violation)

National Micronetics, Inc. **277 NLRB No. 095**
(informing Ees that wages and benefits could not be increased because of possible U objections or charges, violation and interference where E was attempting to blame U for its anticipatory refusal to improve wages or benefits)

Activ Industries, Inc. **277 NLRB No. 040**
(supervisor's statement in conversation overheard by Ee indicating that U was reason Ees were being discharge, unlawful)

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(telling Ees that U *tied his hands* on wage increases, violative)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(informing Ee who asked about a raise that until the U business was done E could not give any raises, violative where new Ees were entitled to raises on a 3-month progression program and if the statement were carried out, they would have been denied raises solely because of the U)

5006-5047 Informing employee or union that protected activity was reason for layoff

Unico Replacement Parts, Inc. **281 NLRB No. 046**
[telling Ees that layoffs were instituted as result of filing of U grievance, unlawful, since it was statement to effect that layoff would be accelerated because of U's contractual activity on behalf of Ees]

Wilco Business Forms, Inc. **280 NLRB No. 154**
[supervisor's statement to discriminatee that he *would get his job back as soon as the U business was taken care of, —as soon as (E) gets rid of the U instigators*, violative]

Uptilt, Inc. **276 NLRB No. 065**
(informing Ees that other Ees had been laid off because they had discussed U representation and put up U posters, unlawful)

Limpert Brothers, Inc. **276 NLRB No. 037**

5006-5048 Informing employee that protected activity was reason for less favorable treatment

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[telling Ees that they would not be permitted to participate in E's retirement plan because they had signed U authorization cards, unlawful]

Toyota of San Francisco **280 NLRB No. 093**
[language in brochure describing E's health plan that stated plan was available to any Ee of group who was not in occupation classification represented by U, violative of Section 8(a)(1) since it penalizes represented Ees, notwithstanding plan actually available to represented Ees]

Felbro, Inc. **274 NLRB No. 186**
(telling Ees that interdepartmental transfers were no longer permitted because Ees had started the U problem, violative)

Irving Tanning Company **JD-(ATL)-19-85**
(violation, where E distributed to its Ees summary description of retirement plan which expressly limited eligibility in plan to those Ees not included in collective bargaining unit)

Van Gas, Inc. **JD-(SF)-33-85**
(supervisor informing Ee, in reply to Ee's inquiry as to whether change in sick leave policy which had adverse impact on ees was instituted because of U organizing, that *there had been a morale problem with company and it was going to get better or there were going to be major changes and that he had interviewed prospective new Ees*, unlawful, absent evidence of legitimate objective for statement, or relationship that would remove coercive impact)

5006-5049 Informing employee that protected activity was reason for refusal to hire, reinstate or re-employ

J. D. Landscaping, Corp. **281 NLRB No. 004**
[telling predecessor's Ees that those who had engaged in U activities would not be hired, violation]

Wilco Business Forms, Inc. **280 NLRB No. 154**
[supervisor's statement to discriminatee that he *would get his job back as soon as the U business was taken care of, —as soon as (E) gets rid of the U instigators*, violative]

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American Press, Inc. **280 NLRB No. 109**
[purchaser-successor E's statements, made through its agents consisting of its general manager and co-owner of purchased company, that latter's Ees would not be hired because of their U affiliation, unlawful]

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**
[telling Ees of predecessor E that if they got a withdrawal card from U they would be guaranteed a job with successor E, violative]

United Beef Co., Inc. **277 NLRB No. 107**
(telling Ee that he would not be rehired because he had testified for U at arbitration hearing and telling another Ee that E would not rehire Ees who had testified at arbitration hearing or who were strong U men, violative)

American Model & Pattern, Inc. **277 NLRB No. 018**
(E's telling group of Ees immediately after U had filed charge against E protesting certain layoffs, that Ees and E would have to work together if they wanted to see laid off Ees reinstated and when U actions cost E money, U would cost Ees as well, violative)

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(telling new job applicant that he would not be hired until U situation was resolved, violative)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(advising Ee that E had asked another E not to hire fellow Ee until after election, unlawful, since such remark clearly lessened desirability of seeking U representation through Bd's electoral process; whether Ee whose employment prospects are interfered with by his E is or is not engaged in U activities is immaterial since Bd processes must be protected)

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's general manager informing Ee of predecessor E who had not been hired by successor E that he had told his supervisors to screen applicants carefully and select Ees so as to avoid predicament that existed at predecessor E, not unlawful, since statement on its face innocuous comment which would not reasonably tend to restrain, coerce Ees in exercise of their rights)

John's Lumber & Hardware Company **JD-199-86**
[E's president informing laid off Ee that Ee would not be recalled because Ee had *betrayed him*, referring to Ee's signing U decertification ptn, then removing his name, and signing ptn to get back into U, unlawful]

Dale Energy Corporation **JD-202-85**

5006-5050 Misleading or distorted explanation of Act

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(E's distribution of handbill stating in part that if U won election *we will be obligated by law to discuss grievances only with the Union*... and letter stating that should U get in, Ee will have voted away right to deal directly with management and Ee will have placed group of outsiders between Ee and E, not violative since such statements did not constitute misstatement of law but constituted permissible campaign conduct)

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(statement to Ee that his eligibility to vote in Bd election was dependent on his selection on ballot, violative)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(contrary to ALJ's reasoning that E did not intentionally mislead its Ees and it was not necessarily ULP for E to make innacurate, incomplete, or misleading statement concerning reinstatement rights of ULP strikers, Bd held supervisor's statement to Ees that they would be replaced and *rehired* rather than *reinstated* at end of strike, unlawful, where strikers on application were entitled to reinstatement even if they had been replaced)

County Respiratory Products, Inc. **JD-(NY)-107-85**
(E's president's telling Ee that he did not believe Ee had to honor Bd's subpoena and that he should tear it up and ignore it, violative)

5006-5051 Informing employees that protected activity was reason for transfer or denial of transfer

Eskaton Sunrise Community **279 NLRB No. 012**
[telling Ees that they would not be assigned to shifts they desired to obtain because of their U activities, unlawful]

Eskaton Sunrise Community **279 NLRB No. 012**
[telling Ees that they would not be assigned to shifts they desired to obtain because of their U activities, unlawful, notwithstanding E's contention reason for non-assignment of shifts was other Ees' higher seniority]

Coal Systems, Inc. and W. Julian Scalf Engineering & Construction Co., Inc. **JD-452-84**
(supervisor's telling Ees that their work had been assigned to another company, found alter ego to E herein, and that their seniority had been changed because Ees had filed grievances against E, violative)

5006-5053 Futile or unnecessary to join or choose union

Lo-Z-Boy **281 NLRB No. 054**
[personnel manager's statements that past benefits at E's unionized plant never exceeded those at E's non-U plant, not threat that unionization was futile]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[supervisor's telling Ee that U was *nothing but a rip-off* held not to convey impression that it would be futile to select U as representative, since supervisor was obviously expressing his own distaste for U in simple colloquialism which did not rise to level of violating Act]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[E's remarks at meetings with Ees, assertedly conveying message that it would be futile for Ees to elect U because E would not bargain meaningfully, not unlawful, where E's remarks established no more than that if E had to negotiate with U, he was prepared to engage in hard bargaining for contract advantageous to E, and pointed out to Ees that one possibility of bargaining process was for Ees to end up with lower wages and benefits]

Without Reservation **280 NLRB No. 165**
[telling Ee that E would not sign U contract, violation]

Dorothy Shamrock Coal Company **279 NLRB No. 174**

Hitachi Corp., A Subsidiary of S.C.M. Corporation **278 NLRB No. 104**
[statement that it possibly would take 2 or more years before E would be legally compelled to bargain, not unlawful, since E had colorable grounds for filing objections if it lost election, and statement simply dealt with what E was legally entitled to and not threat that selection of U would be futile; cases in which unlawful statements were made that bargaining would be delayed because E intended to contest election involved 8(a)(1) conduct, E had no colorable grounds for filing objections, and statements indicated only an intent to delay or forestall bargaining]

Clark Equipment Company **278 NLRB No. 085**
[statements not unlawful implication of futility of selecting U where they were not made in context of threat of loss of benefits and inevitability of strikes, but of accurate reflection of bargaining process and presentation of economic realities of negotiation]

Clark Equipment Company **278 NLRB No. 085**
[statements made in response to Ee's question that U could not give wages and benefits E did not want to give, that if Ees went on strike they could be replaced, and subsequent interrogation as to whether Ee thought that E needed U and if U could give Ee more benefits, violative where Ee was not active U adherent, and repeated questioning was coercive; statements were not found unlawful threats of discharge or of futility of selecting U, however]

Rood Industries, Inc. **278 NLRB No. 026**
[E's statement that he would not run U organized shop held unlawful warning that, if Ees selected U, E would not recognize it as such, thereby conveying message that it would be futile for Ees to join or support U]

Rood Industries, Inc. **278 NLRB No. 026**
[supervisor's asking leading U activist and organizer why he was not wearing U badge unlawful, where supervisor also stated that wearing of badge did not matter because supervisor and not U activist, would benefit from it, thereby conveying message that it was futile to support U since Ees would end up no better off than they would w/o representation]

Zartic, Inc. **277 NLRB No. 171**
[telling Ees that E would never have a U election at its plant, violation]

Zartic, Inc. **277 NLRB No. 171**
[telling Ees it was futile to select a U because E would never agree to dues checkoff, violation and interference]

Uniontown Hospital Association **277 NLRB No. 144**

Heck's Inc. **277 NLRB No. 098**
(E president's remarks to meeting of *department managers* in which he threatened closure if U won election, threatened discharge if Ees went on strike, and informed them E would never sign contract, unlawful, where one of the *department managers* was held not supervisor at time of meeting)

Kona 60 Minute Photo **277 NLRB No. 092**
(E's statement to Ee that E would refuse any U bargaining request held unlawful as anticipatory refusal to bargain in good faith which threatened that Ees' efforts to organize would be exercise in futility)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(telling Ee that if U got in E would not have to bargain with it and would close the plant, thus giving Ee impression that organizing would be futile, violative and objectionable)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(stating to Ee that U was not going to get into E's operation and, if it did, E would not negotiate, unlawful, despite E's purported claim that statement was one of strong opposition to U because history in E's kind of industry

5006-5053—Cont.

showed that companies of E's size could not pay cost of U's demands and tended to falter or fail if organized by U, since statement served to notify Ee that selection of U was futile)

Bell Halter, Inc. **276 NLRB No. 136**

(E's remarks that Ees, through conduct of U campaign, had captured his attention so that it was not necessary to further underscore such attention by voting for U, not unlawful, since such admission by E is neither tantamount to, nor indicative of, promise to take remedial action on Ee complaints particularly where, as here, E repeatedly disavowed any implications of promise of benefit)

Superior Container, Inc. **276 NLRB No. 055**

(E's highest executive clearly indicated to Ees futility of selecting U as their representative where, during Ee meeting, executive angrily prohibited any further mention of U after Ee had told Ees he would be available for Ees to sign U cards, stated that he would not tolerate any U talk nor any U to come into plant, and ordered Ee to get out, telling him that *not on may property you won't pass cards out*)

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**

(E's statement to U steward that U has no future and soliciting steward to spread that message, thereby creating impression among Ees that their support for U was futile, unlawful)

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**

(E's statements to U stewards telling them he was not in favor of Us and referring to value of dealing directly with Ees and company U and bringing up matter of U decertification held unlawful solicitation to abandon U and to lead Ees to believe continued support of U was futile)

Western Yarns, Inc. **274 NLRB No. 073**

(E's telling Ee that E could decrease Ee wages and take away their bonuses whether or not Ees had U representation, violative since statement carried message that U representation would be futility as concerns wages and bonuses)

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. **JD-(ATL)-61-86**

[supervisor informing Ee that if U came in Ee would probably not offer more than 50 cent per hour increase and that Ees would lose everything anyway, including holiday pay and vacations, constituted unlawful threats of loss of benefits and futility of selecting U representation]

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. **JD-(ATL)-61-86**

[E's management showing Ees blank piece of paper and informing Ees that blank paper represented what Ees would start with if U got in, and that legally E could start off bargaining with only minimum wage, that E's could lose benefits because U would give up everything to get checkoff]

East Central Communications, Inc. **JD-116-86**

[fact that E may not have made statement that he would not sign contract with U attributed to him by supervisor in speaking to Ees did not deminish impact of supervisor's statement on Ee listeners who were under no obligation to investigate truth of his report, since bare statement that E need not sign contract had reasonable tendency to convey to Ees that their pro-U efforts were futile]

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**

(while Act does not compel E to agree to specific proposals by U, E's statements informing Ees that it would never sign contract with U amounted to anticipatory refusal to bargain and inculcated in Ees a sense of futility about exercise of free choice in selection of bargaining representative)

N.L.R.B. v. E. I. DuPont De Nemours **750 F.2d 524 (C.A. 6, Dec. 1984)**

(supervisors' emphasizing futility of U organizing by stating that wages and benefits would be no better with U than w/o it, violative)

5006-5054 Informing employees that concerted activities was reason for company rules

Italo II Casa Romana Restaurant, Inc. **JD-(SF)-50-86**

[E's owner's announcing new disciplinary system and in so doing, blaming U and Ees who voted for U, violative]

Van Gas, Inc. **JD-(SF)-33-85**

(supervisor informing Ee, in reply to Ee's inquiry as to whether change in sick leave policy which had adverse impact on ees was instituted because of U organizing, that *there had been a morale problem with company and it was going to get better or there were going to be major changes and that he had interviewed prospective new Ees*, unlawful, absent evidence of legitimate objective for statement, or relationship that would remove coercive impact)

5006-5055 Employees will have to bargain from scratch if union is selected

Middletown Hospital Association **282 NLRB No. 079**

[supervisor's statement to Ee that negotiations would start from *scratch* and that there was possibility E would not want to agree with everything U asked for, not unlawful, where thrust of remarks was not that Ees would automatically lose benefits if they selected U, but rather, in context of all of supervisor's remarks, he was expressing permissible opinion which could not reasonably be interpreted as threat to deliberately extend bargaining]

La-Z-Boy **281 NLRB No. 054**

[personnel manager's statements to Ees that bargaining with U would start from scratch, not violation where he was explaining negotiating process, rather than threatening loss of wages and benefits]

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place **281 NLRB No. 008**

[informing Ees that, if U got in, bargaining *starts out fresh - you don't start with what's in handbook*, while waving Ee handbook which included among other items Ee benefits, unlawful, since conveyed impression that E would require Ees to give up existing Ee benefits, rather than merely description of realities of collective bargaining process, that U cannot compel concessions, nor guarantee retention of all present benefits]

Kawasaki Motors Manufacturing Corporation, U.S.A. **280 NLRB No. 053**

[no violation where supervisor agreed with Ee's description of negotiations that parties would *bargain from scratch*. This type of statement may or may not be coercive, depending on context in which it is uttered. Here, remark occurred in context free of other ULPs and as part of Ee discussion of give and take of negotiations and supervisor did not purport to speak for E's bargaining posture in any future negotiations]

Mississippi Chemical Corporation **280 NLRB No. 046**

[supervisor's remarks to Ees about U and bargaining from *scratch*, unlawful, since remarks carried express threat that bargaining from scratch would start only after Ees had been reduced to *minimum wage* and all their benefits taken away, thereby threatening loss of existing benefits not necessarily as result of good faith bargaining]

Hitacount Corp., A Subsidiary of S.C.M. Corporation **278 NLRB No. 104**

[statements that bargaining *can take weeks, months, or even years*, E is *legally entitled to bargain from ground zero*, and *there is no guarantee that E's existing benefits will survive bargaining*, not unlawful, where they were made in context indicating that bargaining is process in which each side makes its own proposals, that it requires mutual agreement, and existing benefits may be traded away; and statements do not relay message that E would unilaterally discontinue existing benefits if Ees selected U, but rather that benefits may be lost as result of bargaining]

Hitacount Corp., A Subsidiary of S.C.M. Corporation **278 NLRB No. 104**

[unlike cases in which *bargaining from scratch* statements were coupled with expressions by E that it intended to engage in long drawn out negotiations, E's statements here were not unlawful where they indicated that bargaining *can continue for weeks, months, or even years* and that E would bargain *in light of all of its legal rights*]

Clark Equipment Company **278 NLRB No. 085**

[E statements that bargaining means *putting everything on the table* including present benefits and that ct decision had upheld E's right to inform Ees that E need not agree to continue existing wages and benefits, found accurate reflection of obligations and possibilities of bargaining process rather than unlawful and objectionable implied threat to take away benefits or bargain regressively if U won]

Pillod of Mississippi, Inc. **275 NLRB No. 117**

(E did not violate Act by telling Ees that if U got in E did not have to give anything in negotiations, could begin bargaining at *ground zero* and Ees might lose their benefits where views reasonably communicated view that U cannot compel concessions in negotiations and cannot guarantee retention of all present benefits because such benefits are subject to negotiation and thus remarks accurately reflect the bargaining process)

Storall Manufacturing Company, Inc. **275 NLRB No. 039**

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. **JD-(ATL)-61-86**

[E's management showing Ees blank piece of paper and informing Ees that blank paper represented what Ees would start with if U got in, and that legally E could start off bargaining with only minimum wage, that E's could lose benefits because U would give up everything to get checkoff]

5006-5058 Statements concerning bargaining position

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place **281 NLRB No. 008**

[no violation, where in response to Ee's question, whether Ees would lose credit union if U voted in, E's administrator replied *there is possibility because all benefits must be negotiated*, since statement *merely explanation of what could happen as result of collective bargaining negotiations*]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**

[E's statement to Ees and U negotiators that it would retract its last contract offer and substitute less desirable one if ees rejected offer and struck was not

5006-5058—Cont.

economic forecast. Rather, it was threat of retaliation conditioned on Ees exercising their right to strike and would reasonably tend to interfere with free exercise of Ee rights]

Products Unlimited Corp. **280 NLRB No. 041**
[supervisor informing Ees that E would not agree to U wage and benefit demands, and at same time promised to try to obtain raise for Ees as inducement to not vote for U, unlawful]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[telling Ees that after bargaining their benefits might not be what they presently had, not violation where E expressed legal position that E did not have to start bargaining from present level of benefits and what Ees might expect as result w/o threatening to take away benefits]

Histacount Corp., A Subsidiary of S.C.M. Corporation. **278 NLRB No. 104**
[statements that bargaining *can take weeks, months, or even years,* E is *legally entitled to bargain from ground zero,* and *there is no guarantee that E's existing benefits will survive bargaining,* not unlawful, where they were made in context indicating that bargaining is process in which each side makes its own proposals, that it requires mutual agreement, and existing benefits may be traded away; and statements do not relay message that E would unilaterally discontinue existing benefits if Ees selected U, but rather that benefits may be lost as result of bargaining]

Histacount Corp., A Subsidiary of S.C.M. Corporation **278 NLRB No. 104**
[unlike cases in which *bargaining from scratch* statements were coupled with expressions by E that it intended to engage in long drawn out negotiations, E's statements here were not unlawful where they indicated that bargaining *can continue for weeks, months, or even years* and that E would bargain *in light of all of its legal rights*]

Histacount Corp., A Subsidiary of S.C.M. Corporation **278 NLRB No. 104**
[statement that it possibly would take 2 or more years before E would be legally compelled to bargain, not unlawful, since E had colorable grounds for filing objections if it lost election, and statement simply dealt with what E was legally entitled to and not threat that selection of U would be futile; cases in which unlawful statements were made that bargaining would be delayed because E intended to contest election involved 8(a)(1) conduct, E had no colorable grounds for filing objections, and statements indicated only an intent to delay or forestall bargaining]

Clark Equipment Company **278 NLRB No. 085**
[statements not unlawful implication of futility of selecting U where they were not made in context of threat of loss of benefits and inevitability of strikes, but of accurate reflection of bargaining process and presentation of economic realities of negotiation]

Clark Equipment Company **278 NLRB No. 085**
[statements made in response to Ee's question that U could not give wages and benefits E did not want to give, that if Ees went on strike they could be replaced, and subsequent interrogation as to whether Ee thought that E needed U and if U could give Ee more benefits, violative where Ee was not active U adherent, and repeated questioning was coercive; statements were not found unlawful threats of discharge or of futility of selecting U, however]

Kona 60 Minute Photo **277 NLRB No. 092**
(E's statement to Ee that E would refuse any U bargaining request held unlawful as anticipatory refusal to bargain in good faith which threatened that Ees' efforts to organize would be exercise in futility)

Marion Center Supply, Inc. **277 NLRB No. 026**
(statement that E would not negotiate or bargain meaningfully with U, violative)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(telling Ee that if U got in E would not have to bargain with it and would close the plant, thus giving Ee impression that organizing would be futile, violative and objectionable)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(E's addressing group of Ees and stating that if U got in, E would not have to agree to any bargain does not require either party to agree to a proposal or require making of concession)

Pillod of Mississippi, Inc. **275 NLRB No. 117**
(E did not violate Act by telling Ees that if U got in E did not have to give anything in negotiations, could begin bargaining at *ground zero* and Ees might lose their benefits where views reasonably communicated view that U cannot compel concessions in negotiations and cannot guarantee retention of all present benefits because such benefits are subject to negotiation and thus remarks accurately reflect the bargaining process)

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(telling Ee that unit Ees did not receive a retroactive pay raise because U representative failed to *settle the contract* by year-end, not violative where Ees had voted at year-end to reject E's wage offer, which included a retroactive raise, and Ees were thus well aware of reason they did not receive retroactive raise)

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(manager's statement to Ee that E would sign only the kind of contract it wanted to sign, not violative, since it was innocuous expression of E's views of its bargaining position and privileged under Sec. 8(c) rather than statement indicating that E would not sign any contract with U)

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(manager's statement that he would not sign contract with a checkoff clause protected by Sec. 8(c) where it was made after start of strike, which followed 7 months of unsuccessful bargaining)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's president stating he would not sign new contract with U since could not then compete with non-U manufacturers, and if he signed U contract result would be closing plant doors, unlawful, since comments not limited to consequences of agreeing to any particular contract or contract language, rather in context of bypassing U, he implied that any agreement with U would cause him to close business)

C. M. Carpenter, A Sole Proprietor, d/b/a Carpenter Trucking **274 NLRB No. 046**
(E's owner asking Ee if Ee knew anything about U, and if Ee had signed U card and then informing Ee he would close business before he would sign bargaining agreement, violative, notwithstanding Ees admission he singed U card)

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. **JD-(ATL)-61-86**
[supervisor informing Ee that if U came in Ee would probably not offer more than 50 cent per hour increase and that Ees would lose everything anyway, including holiday pay and vacations, constituted unlawful threats of loss of benefits and futility of selecting U representation]

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. **JD-(ATL)-61-86**
[E's management showing Ees blank piece of paper and informing Ees that blank paper represented what Ees would start with if U got in, and that legally E could start off bargaining with only minimum wage, that E's could lose benefits because U would give up everything to get checkoff]

M.F. Enterprises, Inc. d/b/a Gopher Restaurant **JD-417-86**
(E informing Ees it would refuse to bargain with its chosen bargaining agent, that it would file for bankruptcy, thereby endangering Ees' jobs, and that if Ees persisted in their U adherence, it would hire non-U Ees to replace them, unlawful)

5006-5060 No benefits from, or need for, union

The Hearst Corporation, San Antonio Light Division **281 NLRB No. 113**
[supervisor's remark to Ees, that he did not think there was a need for the local U, not violative, since remark constituted mere expression of opinion and was not coercive of Ees' Section 7 rights]

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's supervisor telling Ee that *the union probably won't get you anything more than you have now,* not violative and protected by 8(c) since statement was merely one of opinion from which no threat reasonably could be perceived]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[supervisor informing Ee that E was ready to talk with them about wages and working conditions, that Ees were foolish to continue to let U represent them, that E was ready to give Ees better deal than U was trying to get for them, unlawful]

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(telling Ees that they would make the same money working by the piece rather than by the hour and did not need a U to keep their jobs or negotiate raises, not violative in context of previous good bargaining relationship and absence of interrogation or U animosity)

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company **JD-83-86**
[telling known U adherent that E did not need U and they could be replaced, unlawful]

H. A. Satin Co., Inc. **JD-(ATL)-2-86**
[E's president informing Ees at non-unionized facility of cost of U dues, and initiation fees, stating that he saw no reason for Ees to begin working for U as they would receive same benefits as Ees at E's unionized facility w/o joining or voting in U, unlawful]

Easthampton Electrical Services, Inc. **JD-85-85**
(E's president informing Ee that E had received R ptn and did not think Ees or E needed U to represent them and telling Ee of his understanding of U's jurisdictional work rules, not unlawful, where no interrogation of Ee and reference to U's jurisdicitonal rules was legitimate expression allowed by Section 8(c))

5006-5060—Cont.

N.L.R.B. v. E. I. DuPont De Nemours 750 F.2d 524 (C.A. 6, Dec. 1984)

(supervisors' emphasizing futility of U organizing by stating that wages and benefits would be no better with U than w/o it, violative)

5006-5062 Informing employees that protected activity was reason for cancellation of plant expansion plans

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018

[E's post-election statement to Ee who had spearheaded U activity that such activity had curtailed growth of E's plant and had caused E to purchase a plant elsewhere, unlawful]

5006-5063 Advantages to be gained from not having union

Clark Equipment Company 278 NLRB No. 085

[statements that E building management team and had developed program to improve conditions found permissible reminder of existing good conditions and of improvements started before election campaign and appeal for Ees' confidence, rather than unlawful and objectionable promise of improved benefits if Ees rejected U]

Long-Airdox Company, A Division of Marmon Group, Inc. 277 NLRB No. 124

(telling Ee, after election, that pay cut would have been restored sooner if U's organizing drive had not occurred, unlawful)

5006-5064 Informing employees that protected activity was reason for loss of seniority

Coal Systems, Inc. and W. Julian Scalf Engineering & Construction Co., Inc. JD-452-84

(supervisor's telling Ees that their work had been assigned to another company, found alter ego to E herein, and that their seniority had been changed because Ees had filed grievances against E, violative)

5006-5065 Detrimental results of unionization

Middletown Hospital Association 282 NLRB No. 079

[supervisor's prediction of probable future retaliation after election, unlawful; although emanating from lowest level supervisor as mere opinion in response to Ee's question, prediction tended to coerce Ees]

Baddour, Inc. 281 NLRB No. 084

[supervisor's calling Ee who was not open, active U adherent into his office, discussing personal matters, then giving his *opinions* on U, violation where accompanied by interrogation as to why Ees wanted U and thinly veiled threats concerning consequences of unionization, such as unionized Es going out of business due to high wages]

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018

[threat to Ees that if they selected U E would relocate its plant held unlawful threat of plant closure and not prediction based on objective facts from which E could have conveyed reasonable belief to Ees as to demonstratable probable consequences of unionization]

Bay State Ambulance and Hospital Rental, Inc. 280 NLRB No. 122

[E's president telling Ees that U *would not work to your benefit but to your serious harm*, violative and not protected by 8(c) where E had also told Ees that they would have received a raise had they not attempted to organize and told an Ee if U got in E could close down, thus, under the circumstances, the *serious harm* statement is not ambiguous but had a *sinister meaning* which was in reference to the U]

Central Broadcast Company 280 NLRB No. 056

[E's telling Ees that economic impact of a strike would be disastrous, that everyone lost in a strike but U orgnizaer, that the only big airline that was not having problems was only one w/o a U, not violation where E did not predict strikes, bankruptcy, and loss of employment, but only stated that they were possible and did not threaten retaliation or promise benefit for refraining from supporting U]

Port Plastics, Inc. 279 NLRB No. 050

[E president's statement to Ees that he had been able to speak on a one-to-one basis to ees, but would no longer be able to do so if U came in, not violative, since statement simply explicates one of the changes which occur between E and Ees when a statutory representative is chosen and thus, is not coercive]

Long-Airdox Company, A Division of Marmon Group, Inc. 277 NLRB No. 124

(E's comments allegedly threatening Ees with layoffs by stating that major customer had warned E it would discontinue patronage of E if E became organized, not unlawful, since comments had factual basis and therefore were protected by 8(c), where comments were corroborated by major customer's manager who testified he had *concerns* about his company's ability to receive equipment if strike occurred and about possible interruption and efficiency of workforce in connection with product delivery)

Long-Airdox Company, A Division of Marmon Group, Inc. 277 NLRB No. 124

(E's comments to Ees that customers would refrain from sending any work to E's repair facility if E became organized and that customers had policies not to send work to *U company*, unlawful, since comments were not based on objective facts; although major customer's manager testified to his concern regarding unionization at E's plant, he failed to confirm E's comments about company policy to refrain from sending work to unionized companies altogether)

Heck's Inc. 277 NLRB No. 098

(E president's remarks to meeting of *department managers* in which he threatened closure if U won election, threatened discharge if Ees went on strike, and informed them E would never sign contract, unlawful, where one of the *department managers* was held not supervisor at time of meeting)

Walter Garson, Jr & Associates 276 NLRB No. 137

(violation, where Ee told supervisor Ees who were gathered and discussing how to get out of U, that he was worrying about his job and wished supervisor would talk with Ees, and supervisor answered *well, I understand you have kids and all*, since reply to Ee implied that in his opinion unionization of E could be of such economic impact that Ees' job would be jeopardized, especially where supervisor's relationship with management would infer opinion based on inside knowledge of E's economic position)

Walter Garson, Jr & Associates 276 NLRB No. 137

(E's statement to Ees that if Ees became unionized and if E and negotiated higher labor costs, and if E suffered loss of work, Ees might be laid off, not coercive and hence not violative, since not prediction of inevitable events under E's control, but reminder of economic facts of life i.e. negotiated wage and benefit increases sometimes have debilitating effect on ability to compete)

Walter Garson, Jr & Associates 276 NLRB No. 137

(supervisor asking Ee *what is going on as far as you and U*, and subsequently stating *if you go ahead with U then E will have to go out of business*, unlawful)

Walter Garson, Jr & Associates 276 NLRB No. 137

(supervisor asking Ee why she wanted U, requesting that Ee talk to other Ees about U, and informing Ee closure was possibility if E could not afford U, unlawful, since coercive inasmuch as *prediction of effect of unionization not carefully phrased on basis of objective fact to demonstrate probable consequences beyond E's control, but rather on implication that E would take action unrelated to economic necessities and thus it lost it status as reasonable based upon available facts, and constituted threat of retaliation based upon mere representation)*

Joan Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home 275 NLRB No. 171

(E's statements to various Ees that they could lose benefits if they chose to be represented by a U, not violative, where statements were made in context of a description of the give and take of future collective bargaining)

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152

(E's president informing Ee that if Ee did not stop rousing up Ees, that Ees would be out of jobs, and Ee should give Ees credit for having their own convictions, unlawful, in context of Ee's public opposition to E's contract proposals, and reasonably calculated to lead Ee to believe it was threat aimed at dissuading him from continuing to express his opposition to E's contract proposals)

Pillod of Mississippi, Inc. 275 NLRB No. 117

(E's statements to Ees through letters and leaflets during U campaign that U would compound Ees' problems, U had propensity for strikes and violence and other unionized plants had experienced loss of jobs and Ee benefits, held not coercive and w/i bounds of permissible campaign propaganda)

John J. Hudson, Inc. 275 NLRB No. 123

(supervisor's telling Ee who was wearing U button, *I think you guys are killing yourself (sic) over what you're trying to pull*, violative, since remark was openly hostile and linked to Ee's known efforts to unionize)

Engineered Control Systems, Inc. 274 NLRB No. 191

(E's president stating he would not sign new contract with U since could not then compete with non-U manufacturers, and if he signed U contract result would be closing plant doors, unlawful, since comments not limited to consequences of agreeing to any particular contract or contract language, rather in context of bypassing U, he implied that any agreement with U would cause him to close business)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 105

(no violation or objectionable conduct by E's distributing to its Ees a letter in which another E's Ee recounted his past personal experience with unionization; E's apprising Ees of others' experience and opinions did not predict or threaten retaliatory conduct by E and was intended to enable Ees to make informed decision)

Ausable Communications, Inc. 273 NLRB No. 166

(threatening Ees with loss of stock ownership, loss of seniority, subcontracting out work and loss of jobs if U came in, unlawful)

5006-5065—Cont.

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. JD-(ATL)-61-86
[E's management showing Ees blank piece of paper and informing Ees that blank paper represented what Ees would start with if U got in, and that legally E could start off bargaining with only minimum wage, that E's could lose benefits because U would give up everything to get checkoff]

M.F. Enterprises, Inc. d/b/a Gopher Restaurant JD-417-84
(E informing Ees it would refuse to bargain with its chosen bargaining agent, that it would file for bankruptcy, thereby endangering Ees' jobs, and that if Ees persisted in their U adherence, it would hire non-U Ees to replace them, unlawful)

N.L.R.B. v. Nueva Engineering, Inc. 761 F.2d 961 (C.A. 4, May 1985)
(supervisor informing Ee that he did not like Us, asking Ee how he felt about Us and when Ees replied that he supported U, informing Ee that if Ees voted for U representation alternative would be to convert to prototype shop-which required much less Ees-and institute big layoff, violative; additionally, interrogation and threat took place in E's vice president's office and purpose of questioning not explained)

5006-5067 Inevitability of strikes upon advent of union

Central Broadcast Company 280 NLRB No. 056
[E's telling Ees that economic impact of a strike would be disastrous, that everyone lost in a strike but U orgnizaer, that the only big airline that was not having problems was only one w/o a U, not violation where E did not predict strikes, bankruptcy, and loss of employment, but only stated that they were possible and did not threaten retaliation or promise benefit for refraining from supporting U]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[threats of strikes, violation and interference]

Sahara Datsun, Inc. 278 NLRB No. 148
[telling Ee that E would not bargain in good faith with U and Ees could all simply go on strike, violation]

Clark Equipment Company 278 NLRB No. 085
[E's statements found lawful and unobjectionable presentation of economic realities of unionization rather than unlawful threat of inevitability of strikes where they pointed out possibility of strikes and fact U could only try to force certain conditions by striking]

Marion Center Supply, Inc. 277 NLRB No. 026
(threat to force a strike and replace the strikers)

Sierra Hospital Foundation 274 NLRB No. 056
(E unlawfully threatened to refuse to bargain in good faith when supervisor stated that hospital administrator would not agree to anything U asked for in negotiations, and that there would be a strike)

5006-5070 Announcement of open-shop or non-union shop policy

Great Plains Furniture Industries, Inc. JD-14-85
(president of purchaser of company informing Ees of seller that if they wanted to stay on at same wages they should report to work next morning, announcing benefits and stating working for purchaser *was non-U job*, not unlawful expression of futility of U membership, since statement made in context of announcement of initial terms of employment)

5006-5073 Informing employees that there would be reprisals if employees involved supervisor in their protected activities

Uptilt, Inc. 276 NLRB No. 065
(supervisor informing Ees that he *would come down on them hard if they mentioned his name in connection with their discussions of U organizational activities, not unlawful, notwithstanding statement made in context of conversation which contained other statements violative of Act, including unlawful threats, since statement itself did not interfere with legitimate U activities, but was rather clearly limited to those activities where they attempted to involve him in their U activities*)

5006-5077 Informing employees that employer would not comply with bargaining agreement

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(E's statement to U representatives and Ees that *he would stick the contract up their asses* and that good faith was *out the window* held unlawful threat not to administer contract in good faith; E's lawful statement that he *was going to live up to the strict letter of the contract cannot be viewed as synonymous with threatening statement in question; and in light of E's remark that good faith was out the window*, E's statement cannot amount to intent to enforce its contract rights in accordance with Act's requirements)

Dale Energy Corporation JD-202-85
(E's threat to have bargaining agreement set aside if Ees did not cease filing grievances)

5006-5080 Statement of opposition to union or collective bargaining

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018
[telling Ee that E would do everything in its power to keep U out, standing alone, held not to constitute unlawful threat since statement itself was somewhat vague and subject to interpretation by listener]

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018
[E's remarks at meetings with Ees, assertedly conveying message that it would be futile for Ees to elect U because E would not bargain meaningfully, not unlawful, where E's remarks established no more than that if E had to negotiate with U, he was prepared to engage in hard bargaining for contract advantageous to E, and pointed out to Ees that one possibility of bargaining process was for Ees to end up with lower wages and benefits]

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center 280 NLRB No. 130
[E's telling supervisor, and through supervisor as its agent, telling Ees that E would not let U get in, unlawful]

Dorothy Shamrock Coal Company 279 NLRB No. 174

Sierra Hospital Foundation 274 NLRB No. 056
(E unlawfully threatened to refuse to bargain in good faith when supervisor stated that hospital administrator would not agree to anything U asked for in negotiations, and that there would be a strike)

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86
[telling unlawfully locked out U adherents that E did not want U, and offering to revoke 10% pay cut, to look into pension plan, and to give raises to some lower paid Ees, unlawful]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86
[telling unlawfully locked out U adherents that U would never get into company and that Ees would never get back to work, unlawful]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[E's statement made to unlawfully discharged chief U organizer when E offered to reinstate her after she informed E why Ees decided to organize U, that Ee need not think she was going to return and regroup, or organize Ees because that will not happen, unlawful]

5006-5090 Preference for or opposition to one of competing unions or preference for another union

Hydro-Air Equipment, Inc. d/b/a Lanco 277 NLRB No. 012
(threatening Ees with discharge if Ees did not sign U authorization cards for U, unlawful)

5006-5091 Membership in favored union required

Harte & Company, Inc. 278 NLRB No. 128
[no violation of Section 8(a)(1) where U representative made statements that newly hired Ees at E's newly purchased facility would lose their jobs if they did not join U, notwithstanding statements made on E's premises obviously with E's permission, since extension of bargaining agreement to new facility was legal, and U representative's presence on E's premises authorized]

Hydro-Air Equipment, Inc. d/b/a Lanco 277 NLRB No. 012
(informing Ees that E had signed contract with U and that Ees would be required to join U pursuant to security clause or be replaced, unlawful, since contract was signed with minority U in violationof Section 8(a)(2))

5006-5092 Disclosure of card signers' or of card solicitors' identity to employer

Adco Metals, Inc. 281 NLRB No. 172
[E informing Ees in writing that they could expect to be subpoenaed as witnesses in Federal proceeding if they signed U authorization cards, unlawful, since deemed coercive as was threat that identity of signers would be disclosed, and absent any issues likely to be litigated concerning signing of U cards; neither U animus nor falsity of statement not prerequisite for finding of violation]

Eastern Maine Medical Center 277 NLRB No. 151
(E's letter to Ees instructing them to report to it instances in which they were *pressured* to sign U card held overly broad and unlawful, since letter's statement had potential dual effect on Ees by encouraging them to report to E any U card solicitor who approached them in manner subjectively offensive to solicited Ee and by correspondingly discouraging U solicitors in their protected organizational activities)

Southwire Company 277 NLRB No. 043
(E's speeches and notices stating that U authorization cards might be disclosed to it and admonishing Ees not to sign cards unless they knew what it would mean to them, their families and fellow Ees, violative where speeches

5006-5092—Cont.

and notices were made against background of E's history of violating Act and in immediate *context of pervasive violations in instant case.* In T3context, E's comments are a *rather pointed hint* that it would similarly retaliate against Ees who signed cards)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(threatening to obtain U cards signed by Ees even if E had to pay for them and to fire signers, violative and objectionable)

5006-5095 Inhibiting utilization of grievance machinery

The Zack Company **278 NLRB No. 134**
[E unlawfully discharged Ees for requesting U to file grievance to collect overtime wages, where Ees were not as unproductive as E claimed, and E did not consistently discipline Ees for insufficient production; moreover, there was no ambiguity in superintendant's admission to steward that Ees were discharged because they were *trying to collect money for something they didn't work for,* thereby obviously referring to Ees' grievance that they would have worked overtime had it not been for E's improper transfer of Ees to different work areas]

Garland Coal & Mining Co. **276 NLRB No. 102**
(layoff of Ee on 2 occasions, allegedly for his activity in presenting grievances, not unlawful, where layoff was motivated by valid business reasons; Ee was properly selected for layoff as one who was least senior Ee on seniority list; after first layoff, Ee was given fair test, which he failed, of his ability to operate certain equipment; record did not show that following first layoff, Ee would have been recalled earlier but for his activity in presenting grievances; and procedures applied to him were no different than those applied to other Ees)

5006-5099 Other

Government Employees (Office Employees, Local No. 2) **278 NLRB No. 055**
[U-E's vice-president's instruction to Ee that she should not appeal to other Ee to join strike, violative]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(assertedly informing Ees, who were unlawfully discharged, that they were being discharges because they had ruined E, not unlawful, where E advised Ees that they were being discharged for unsatisfactory work, not for ruining E; subject of ruination was raised by one of the discharged Ees, and E did not equate involvement with U or protected activities with disloyalty to E; and E's remarks contained no threat nor promise of benefit)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(advising Ee that E had asked another E not to hire fellow Ee until after election, unlawful, since such remark clearly lessened desirability of seeking U representation through Bd's electoral process; whether Ee whose employment prospects are interfered with by his E is or is not engaged in U activities is immaterial since Bd processes must be protected)

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(plant manager's telling Ee that a vacation money advance could not be given because of possible imminent strike activity, violative)

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(telling Ee that unit Ees did not receive a retroactive pay raise because U representative failed to *settle the contract* by year-end, not violative where Ees had voted at year-end to reject E's wage offer, which included a retroactive raise, and Ees were thus well aware of reason they did not receive retroactive raise)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(announcement that E was going nonU and would not sign U contract, violative)

Safety-Kleen Corp. **JD-117-85**
(E's stating that it was denying U activist a raise because NLRB would think it was trying to buy a vote, lawful both as statement and as action, since statement was legitimate expression of E's concern that it not appear to interfere with Ees' Sec. 7 rights)

5006-6700 Method employed in making statement

5006-6710 Using supervisor's office

T & T Machine Company, Inc. **278 NLRB No. 139**
[supervisor calling Ee into his office, where in presence of three supervisors Ee was asked *how he felt about U,* and upon Ee's reply he didn't like Us, he was cautioned not to associate with U supporters, promising Ee he would have training to enhance his skill level above that of U supporters that E planned to get rid of, and informing Ee if he would report his errors directly to those supervisors, his record would be clean, but errors of U supporters would be recorded, unlawful]

Lassen Community Hospital, A Division of Eskaton Health Corporation, Division of Eskaton **278 NLRB No. 053**
[E's telling applicant for employment that she supposed applicant knew about E's problems (meaning U's organizational drive) and asking her how she felt about U, violative, where coercive nature of interrogation was shown from fact interviewer was Director of Nursing and interview took place in Director's office]

5006-6720 Using individuals as conduits

Rockin Brothers, Inc. **274 NLRB No. 083**
(Ee's comments to other Ees who were U supporters that, *we know what's going on and we're going to fix that,* violative, notwithstanding fact Ee was not a supervisor, since Ee was placed by management in strategic position where Ees could reasonably believe he spoke on its behalf where Ee was used by E to relay messages and instructions to Ees and was correctly perceived as management's *right-hand man* who spoke for management in its absence)

5006-6767 Pamphlets, circulars, and printed material

5006-6767-8300 **Motion pictures**

Offshore Shipbuilding, Inc. **274 NLRB No. 077**
(setting aside of election not warranted where E showed Ees documentary film *Strike Town USA,* with question and answer period following film, and personnel manager stated no one wanted strike situation, since unlawful prediction made and Ees free choice not negated where film depicted anatomy of labor dispute which depiction was privileged under Section 8(c))

5006-6783 Conversation among supervisors

Air Express International USA, Inc. **281 NLRB No. 127**
[threat by supervisor of closure of facility and loss of jobs if U came in, made in presence of statutory supervisor, not unlawful, since remarks directed at another supervisor and outside presence of any statutory Ee]

United States Steel Corporation **279 NLRB No. 004**
[E's refusal to hire Ee laid off from one of its facilities to work at another of its facilities, unlawful, since for his activities as U grievance chairman where his supervisor's reference to grievance chairman as *troublemaker* when speaking to foreman at facility to which he had applied for transfer connotated his activity of filing grievances, and this characterization was relied upon in rejecting Ees request for transfer. Use of word alone, not violative, but must look at context in which used]

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(head supervisor's statements to subordinate supervisor that anyone passing out U cards or talking to U organizer would be terminated, while evidence with regard to E's motive in discharging Ee herein, held not unlawful, where there was no indication that any Ee heard supervisor's remarks or that they were repeated to any Ee)

Steffer Brothers **JD-269-86**
[statement by company official, overheard by Ee, that any person who brought U in was going to be eliminated, unlawful, even absent evidence that official intended statement to be overheard by Ees, since statement's necessary effect was to discourage Ee from engaging in U activities at risk of losing his job]

5006-8300 Noncoerce statements

5006-8333 Absence of discrimination or threat rebuts coercion

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's supervisor telling Ee that *the union probably won't get you anything more than you have now,* not violative and protected by 8(c) since statement was merely one of opinion from which no threat reasonably could be perceived]

5006-8367 Noncoercive circumstances

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[supervisor's statement to Ee, day after U meeting was held in Ee's home, *be careful; they know,* not unlawful, since statement contained no threat to discharge Ees because of their U activities and did not create unlawful impression of surveillance; supervisor, friendly with Ees, and low-level supervisor, was merely stating well-known information; and management knew about Ees' attempt to unionize]

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[supervisor's statements to Ees that they should remove U buttons, that they would be discharged if E learned they supported U, that E had retaliated against Ee's because of U support, and that E knew of a planned U meeting, not violative, where supervisors were known U supporters and did not act on behalf of management but acted as informers for U and to protect Ees from retaliation]

BASF Wyandotte Corporation **276 NLRB No. 175**
(E's foreman's discussing merits of salaried versus hourly benefits with Ee, not violative where discussions were essentially factual and foreman did not make any promises to Ee about benefits or suggest that Ee disavow U)

Pillod of Mississippi, Inc. **275 NLRB No. 117**
(telling Ees that U was responsible for causing safety inspection which resulted in requirement that Ees wear safety shoes, not violative where statement neither expressly nor impliedly threatened Ees for U activity and circumstances were neither coercive nor disparaging of U)

5006-8367—Cont.

Genwal Coal Co., Inc. 275 NLRB No. 077
(statements made in *joking manner* where persons who were present at that time laughed)

5009 CIVIL SUIT OR CRIMINAL COURT ACTION AGAINST EMPLOYEES OR THREATS THEREOF

5009 CIVIL SUIT OR CRIMINAL COURT ACTION AGAINST EMPLOYEES OR THREATS THEREOF

5009-0100 Generally

United States Postal Service 275 NLRB No. 057
(threat by low-level supervisor to file lawsuit against U on grounds of blocking goals of supervisor and personal harassment, not violative since E *not* accountable for temporary supervisor's remarks while acting as temporary *low-level* supervisor; remarks concerned filing civil suit on supervisor's own personal behalf and did not involve any threatened retaliation by E who had no knowledge of remarks and were not attributable to E or w/i supervisor's responsibilities)

5009-1500 Threat to sue

Thomas Steel Company 281 NLRB No. 060
[E's letter to former Ee threatening him with a lawsuit if he did not cease interfering with E's business relationships with customers and suppliers, not violation where Ee's telephone call to supplier, which prompted E's letter, was unprotected in view of Ee's misrepresentation that he was independent safety consultant hired by E. and E, at time it sent letter, did not know and could not reasonably have known of arguably concerted nature of Ee's conduct]

Southern Maryland Hospital Center 276 NLRB No. 153
(E's president telling two Ees who were known to support U, that he was going to sue *these people for slander for writing these lies*, in reference to a U newsletter lying on a conference table, not violative, where there was no evidence that either Ee was mentioned anywhere in the newsletter and fact that E mentioned *these people* demonstrates that threat was not directed at the Ees, but instead at U officials responsible for newsletter)

Safeway Stores, Inc. JD-(SF)-119-86
[supervisor's threat to file charges or initiate lawsuit against Ee because Ee filed ULP charges against E involving supervisor's son, unlawful]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[president's telling manager, in Ee's presence, to telephone E's attorney to investigate possible libel, slander and defamation of character lawsuit against Ee for publicizing E's alleged ULPs in newspaper article, violation]

5009-3300 Suit meritorious

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. 766 F.2d 812 (C.A. 3, July 1985)
(E's filing suit against numerous strikers who had filed worker's compensation claims on the same day, alleging conspiracy, abuse of process and fraud, not violative, since such mass filing of claims by Ees could be perceived by E as harassment by U, and lawsuit had reasonable basis)

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)
[Bd must stay proceedings in regard to allegation of retalitory appeal of state unemployment compensation award to Ee whom ct held to have been unlawfully discharged, pending resolution of state action. *If Respondent E prevails in state ct action, it will also prevail before Bd because filing of meritorious lawsuit even for retaliatory motive, is not ULP. If, however, E does not prevail in state ct action, Bd must determine whether E filed suit in retaliation for Ee's protected activity*]

5009-6700 Suit non-meritorious and brought in retaliation for exercise of Section 7 rights

5009-6767 Retaliatory motive

Safeway Stores, Inc. JD-(SF)-119-86
[supervisor's threat to file charges or initiate lawsuit against Ee because Ee filed ULP charges against E involving supervisor's son, unlawful]

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. 766 F.2d 812 (C.A. 3, July 1985)

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)
[Bd must stay proceedings in regard to allegation of retalitory appeal of state unemployment compensation award to Ee whom ct held to have been unlawfully discharged, pending resolution of state action. *If Respondent E prevails in state ct action, it will also prevail before Bd because filing of meritorious lawsuit even for retaliatory motive, is not ULP. If, however, E does not prevail in state ct action, Bd must determine whether E filed suit in retaliation for Ee's protected activity*]

5012 COMPANY RULES PROHIBITING OR LIMITING UNION OR OTHER CONCERTED ACTIVITIES

5012-0100 Generally

Turnbull Cone Baking Company of Tennesser v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)
[E violates Act by implementing rule to inhibit Ees' U activities or by imposing rule to restrict discussion of U matters]

5012-0133 Balancing of interests required

5012-0133-2200 Purpose of employer in establishing and applying rules and prohibitions controlling

5012-0133-2250 Antiunion purpose renders rules and prohibitions illegal

Harold Weiss; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013
[E's new rule which placed restrictions on Ees in order to prevent them from speaking to *known adherent* of U, held violative in view of absence of any justifiable business reason for deviating from past practice and putting restrictions upon Ees calculated to prevent them from conversing with *known adherent* of U even at times when it did not affect performance of work functions. Purpose was to punish U adherent and discourage Ee support for U]

St. Paul's Church Home, Inc. 275 NLRB No. 170
(promulgating and/or enforcing rule restricting posting of U-related literature to Ees' break room and requiring written authorization by E for posting at E's facility, unlawful; even assuming E could require authorization prior to posting of notices in specified work areas, such limitation cannot be extended to nonwork area such as Ee lounge; and even assuming restriction antedated organizing campaign and rule was applied uniformly following commencement of campaign, rule was rendered unlawful because motivated by unlawful consideration of thwarting lawful organizational activity)

5012-0133-2275 Application of prohibition not necessary to finding of violation

High Key Distributing, A Division of House of Kitchens, Ltd. JD-287-86
[maintenance of rule against discussion of wages or hours of employment, violative, despite no evidence that E attempted to enforce rule]

5012-0133-4400 Reasonableness of rule for maintaining order and discipline legalizing factor

Consolidated Edison Co. of New York, Inc. 280 NLRB No. 039
[questioning Ee, who was known participant in dissident U group, concerning his requesting fellow Ees to sign ptn and affidavit contesting U voting procedures, not violative, since Ee was a known participant in dissident U group who solicited his fellow Ees to sign U material while they were on their work (as apposed to break) time. As E is entitled to have its Ees perform their work w/o interruptions, E has right to investigate apparent interferences with its Ees carrying out their duties]

United Technologies Corporation 279 NLRB No. 135
[E's rule prohibiting *large signs or banners...so as to preclude displays intended...to promote a candidacy, organization or product*, while expressly permitting display of bumper stickers, window stickers and like material, which rule had the effect of denying an Ee access to E's property to display intra-U campaign material, not violative, since rule was not complete prohibition against the display of U material, E's managerial interest outweighed Ee's Section 7 right and rule was reasonable measure to keep large billboards out of E's parking lot]

5012-0133-5000 Ambiguity in rule construed against promulgator

Baddour, Inc. 281 NLRB No. 084
[no-solicitation no-distribution rule violation where ambiguous rule and its clarification could be construed as overall prohibition on distribution of any kind]

5012-0133-7700 Union not entitled to use every possible means of communication

United Technologies Corporation 279 NLRB No. 135
[E's rule prohibiting *large signs or banners...so as to preclude displays intended...to promote a candidacy, organization or product*, while expressly permitting display of bumper stickers, window stickers and like material, which rule had the effect of denying an Ee access to E's property to display intra-U campaign material, not violative, since rule was not complete prohibition against the display of U material, E's managerial interest outweighed

5012-0133-7700—Cont.

Ee's Section 7 right and rule was reasonable measure to keep large billboards out of E's parking lot]

5012-0167 Validity of prohibition presumed where limited to working time

Hunter Douglas, Inc. 277 NLRB No. 123
(E's promulgation of rule prohibiting solicitation of an Ee while either Ee doing soliciting or person being solicited is on *working time* during U campaign, unlawful, since rule promulgated at time of intense U activity, in view of E's U animus which rebutted presumption of validity and E did not show rule was required to maintain production or discipline)

Adams Super Markets Corp. 274 NLRB No. 194
(supermarkets' promulgation of facially valid no solicitation rule prohibiting solicitation or distribution of literature of any kind *by any Ee during actual working time of Ee soliciting or Ee being solicited and prohibiting solicitation or distribution on E's property by non-Ees at any time*, in new Ee handbook distributed during U campaign, not unlawful, since no solicitation rule published in handbook not new but amplification and clarification of already posted rule and Ee handbook customary place to include no-solicitation rule)

University of Richmond 274 NLRB No. 182
(supervisor's telling Ees that she did not want excessive discussion by them while at work, especially about the U, which they could discuss during their breaks, not rule discriminatorily applied against discussion of U, as alleged, since it did not prohibit discussion of U during breaks and only attempted to stop excessive conversation on all subjects while Ees were at their work stations serving customers)

Bruderer, Inc. JD-(SF)-57-86
[supervisor's stating to Ee that he had been told by *little bird* that Ee was soliciting for U, not unlawful, since statement was not intended to be interrogation of Ee about his U sentiments but was introductory remark to conversation whose purpose was to advise Ee of fellow Ee's complaint to E about being harassed while working by Ee's U solicitation, and to inform Ee that he should not sell wares or U on company time; and prohibitions on solicitation during working time are presumptively lawful]

Safety-Kleen Corp. JD-117-85
(warning U activist not to talk U to other Ees, lawful where other Ees had complained about it, it was interfering with their work, and E limited his warning to working time, saying that he could talk U on his own time; moreover activist was never disciplined although he continued to talk U on work time after being warned)

5012-1700 **Extension of prohibition against union activities to employees' own time on premises**

5012-1725 Prohibition of distribution of literature during employees' own time on company premises

Baddour, Inc. 281 NLRB No. 084
[no-solicitation no-distribution rule violation where ambiguous rule and its clarification could be construed as overall prohibition on distribution of any kind]

5012-1725-1100 **Plant premises**

Benmit Division, U.S. Tubular, Inc. 280 NLRB No. 063
[instructing Ee that he was not allowed to have U handbills on premises and ordering him to clock out and remove them, violation]

Angelica Corporation 276 NLRB No. 038
(maintaining and enforcing rules prohibiting unauthorized distribution of literature, solicitation or circulation of ptns at any time on company premises, violative where rules constituted complete ban on unauthorized communication at any time or place at E's facility)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86
[rule prohibiting solicitation or collecting signatures or contributions or distributing material for any purpose during working hours or on company premises w/o manager's prior permission, violation]

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)
[E's rulebook's listing of *soliciting or distributing of literature or . . . posting of notice on company property as grounds for dismissal, not violation where rulebook explained two pages later under SOLICITATION AND LITERATURE DISTRIBUTION* that nothing would interfere with Ees' concerted protected activities regarding solicitation or distribution of literature during Ees' non-work time, since amplification of rule was only two pages away from discharge rule, and there was no evidence that any Ees believed they were prohibited from distributing literature]

N.L.R.B. v. Vought Corporation - MLRS Systems Division 788 F.2d 1378 (C.A. 8, Apr. 1986)
[E's no distribution rule which prohibited *reproducing, posting or passing out typed or printed material other than company business w/o permission* unlawfully broad even if never enforced, in view of rule's chilling effect]

5012-1725-1133 Working areas

Hunter Douglas, Inc. 277 NLRB No. 123
(E's promulgation of rule prohibiting distribution of advertising material, handbills, or other literature *in working areas of plant at any time* unlawful, since rule promulgated action of intense U activity, in view of Es U animus which rebutted presumption of validity and E did not show rule required to maintain production or discipline)

Westinghouse Electric Corporation 277 NLRB No. 016
(no violation, where supervisor in reply to Ees inquiry as to E's policy regarding distribution of cards or ptns, *that they could not be passed out, according to company policy, during working time, in work place, in work areas, notwithstanding GC contention violation where no clarification by supervisor as to whether Ees could legitimately solicity or distribute while on their way to and from vending machines, since Es not required to iterate, expressly all lawfully required exceptions underlying presumptively legitimate rule banning distribution on working time*)

5012-1725-1167 Nonworking area

Vista Hill Foundation d/b/a Mesa Vista Hospital 280 NLRB No. 027
[supervisor's instructing Ee not to distribute U material in cafeteria during Ees' lunch hour, violation; instructions not disparate enforcement of E's existing distribution rule, however, notwithstanding two incidents of non-U solicitation and distribution in cafeteria during nonworking time, absent evidence E was aware of these incidents]

The Gerkin Co. 279 NLRB No. 136
[describing solicitation and distribution of literature in handbook as *areas of behavior* which require special attention, violation and interference, notwithstanding absence of stated penalties in handbook, where E indicated that it considered Ees doing either one anywhere on its premises to be misconduct]

Clark Equipment Company 278 NLRB No. 085
[interfering with distribution of literature in non-work areas during nonwork time, violative and objectionable where Ees were told they could not distribute literature at plant entrance but would have to go to plant gate, and two Ees were threatened with arrest and escorted by security guards to plant gate]

Electronic Data Systems International Corporation 278 NLRB No. 014
[E's maintenance of rule prohibiting unauthorized distribution of any printed or written literature w/i its premises, unlawful, since rule over broad and facially invalid inasmuch as prohibition not limited to working time or working areas, and absent legitimate business reason for rule's broadness]

Alamo Cement company 277 NLRB No. 108

Coeburn Garment Company (Division of DK Management Corp.) 276 NLRB No. 168
(E's selectively and disparately restricting Ees from distributing U literature in non-working area during non-working time, violative)

The Meadows East Inc. 275 NLRB No. 181
(rule prohibiting soliciation of any kind or distribution of materials other than those specifically approved by E's administrator, violative)

Valley Presbyterian Hospital JD-(SF)-57-86
[prohibiting solicitation and distribution of U literature in acute-care hospital's discharge area, not violation, notwithstanding it was not patenti-care and work area due to use as entrance and exit by Ees and others, where solicitation and distribution could potentially disrupt care of patients brought there in emergency or dispatch of emergency teams, and E provided alternative locations for solicitation and distribution]

HCA Health Services of Mid-West, Inc. d/b/a Doctor's Hospital JD-(ATL)-29-85
(security guard's stopping Ee from distributing U handbills in parking deck and removing hadbills from parked cars constituted unlawfully selective and disparate application of no-distribution rule where Ees distributed notices of pot-luck dinners and other parties and other literature in lounges and other non-working areas)

5012-1725-1183 Public Areas

Baddour, Inc. 281 NLRB No. 084
[insisting that Ee, who was handbilling outside E's gate, leave even though Ee had takenvacation leave that day, violation]

Uniontown Hospital Association 277 NLRB No. 144
(no-solicitation no-distribution policy, violation and interference where it applied to hospital's main lobby, cafeteria and gift shop, since solicitation and distribution there would not have interfered with patient care, but was not found violation or interference as to corridors, since solicitation or distribution there might have disrupted patient care)

5012-1725-1700 Working time

Foodland, Inc., d/b/a Super-H Discount **281 NLRB No. 109**
[supervisor's asking and telling an Ee, who was overheard talking on the phone during working time and whom the supervisor suspected was talking about the U, if she was talking about the U and then telling her not to talk U on the clock, not violative, since there was no evidence the prohibition was ever communicated to other Ees and Ees continued to talk about the U thereafter; such remarks were a *single, isolated and innocuous* exchange and does not rise to the level of a violation particularly in the absence of U animus]

Page Avjet, Incorporated **278 NLRB No. 063**
[violation, where E promulgated rule prohibiting solicitation and distribution during *normal working hours*, since rule unlawful under *Our Way Inc.*, 268 NLRB 394]

Reeves Brothers, Inc. **277 NLRB No. 153**
[promulgation and enforcement of rule in response to U campaign and for purpose of inhibiting U activity, violative]

Hunter Douglas, Inc. **277 NLRB No. 123**
(E's promulgation of rule prohibiting distribution of advertising material, handbills, or other literature *in working areas of plant at any time* unlawful, since rule promulgated action of intense U activity, in view of Es U animus which rebutted presumption of validity and E did not show rule required to maintain production or discipline)

Westinghouse Electric Corporation **277 NLRB No. 016**
(rule which banned solicitation on *working time* valid notwithstanding E did not have formal break period but left it up to supervisors when breaks were to be taken, as absence of formal break period did not render term *working time* ambiguous and E did not discipline any Ee for soliciting during his break period)

Westinghouse Electric Corporation **277 NLRB No. 016**
(no violation, where supervisor in reply to Ees inquiry as to E's policy regarding distribution of cards or ptns, *that they could not be passed out, according to company policy, during working time, in work place, in work areas, notwithstanding GC contention violation where no clarification by supervisor as to whether Ees could legitimately solicity or distribute while on their way to and from vending machines, since Es not required to iterate, expressly all lawfully required exceptions underlying presumptively legitimate rule banning distribution on working time*)

Angelica Corporation **276 NLRB No. 038**
(maintaining and enforcing rules prohibiting unauthorized distribution of literature, solicitation or circulation of ptns at any time on company premises, violative where rules constituted complete ban on unauthorized communication at any time or place at E's facility)

The Meadows East Inc. **275 NLRB No. 181**
(rule prohibiting solicitation or circulating literature of any nature on E's property during working hours w/o approval of E's administrator, violative)

5012-1725-1900 Mixed working and nonworking time

N.L.R.B. v. Chicago Metallic Corporation **794 F.2d 527 (C.A. 9, July 1986)**
[threats of discharge and warnings for campaigning on company time, violative, notwithstanding threats were directed at Ee who was perceived by other Ees as supervisor, where he was not supervisor for purposes of 8(a)(1) claim]

5012-1725-2000 Nonworking time

Vista Hill Foundation d/b/a Mesa Vista Hospital **280 NLRB No. 027**
[supervisor's instructing Ee not to distribute U material in cafeteria during Ees' lunch hour, violation; instructions not disparate enforcement of E's existing distribution rule, however, notwithstanding two incidents of non-U solicitation and distribution in cafeteria during nonworking time, absent evidence E was aware of these incidents]

The Gerkin Co. **279 NLRB No. 136**
[describing solicitation and distribution of literature in handbook as *areas of behavior* which require special attention, violation and interference, notwithstanding absence of stated penalties in handbook, where E indicated that it considered Ees doing either one anywhere on its premises to be misconduct]

Raritan Bay Medical Center a/k/a Perth Amboy General Hospital and Old Bridge Regional Hospital **279 NLRB No. 010**
[E's administrator's telling Ee that she was not permitted to distribute U literature between time she punched in and beginning of her shift, violative where such time is nonworking time and under E's no-distribution rule distribution on nonworking time is not prohibited]

Clark Equipment Company **278 NLRB No. 085**
[interfering with distribution of literature in non-work areas during nonwork time, violative and objectionable where Ees were told they could not distribute literature at plant entrance but would have to go to plant gate, and two Ees were threatened with arrest and escorted by security guards to plant gate]

Electronic Data Systems International Corporation **278 NLRB No. 014**
[E's maintenance of rule prohibiting unauthorized distribution of any printed or written literature w/i its premises, unlawful, since rule over broad and facially invalid inasmuch as prohibition not limited to working time or working areas, and absent legitimate business reason for rule's broadness]

Hunter Douglas, Inc. **277 NLRB No. 123**
(E's promulgation of rule prohibiting distribution of advertising material, handbills, or other literature *in working areas of plant at any time* unlawful, since rule promulgated action of intense U activity, in view of Es U animus which rebutted presumption of validity and E did not show rule required to maintain production or discipline)

Alamo Cement company **277 NLRB No. 108**

Ballou Brick Co. **277 NLRB No. 009**
(where E had printed two rules in Ee handbook, one of which flatly forbids any solicitation or distribution at any time and the other which allowed solicitation or distribution on *non-work time*, Bd held that first rule was clearly unlawful and was not saved by second rule since Ees were never told that second rule was E's real rule and further, any ambiguity in two rules was solely the responsibility of E and therefore, E bears the risk that ambiguity will be held against it)

Coeburn Garment Company (Division of DK Management Corp.) **276 NLRB No. 168**
(E's selectively and disparately restricting Ees from distributing U literature in non-working area during non-working time, violative)

The Meadows East Inc. **275 NLRB No. 181**
(rule prohibiting soliciation of any kind or distribution of materials other than those specifically approved by E's administrator, violative)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[rule prohibiting solicitation or collecting signatures or contributions or distributing material for any purpose during working hours or on company premises w/o manager's prior permission, violation]

5012-1725-2200 Parking lots

N.L.R.B. v. Vought Corporation - MLRS Systems Division **788 F.2d 1378 (C.A. 8, Apr. 1986)**
[E's plant security officer informing Ee that he would not be allowed to distribute U literature in plant parking lot, unlawful, notwithstanding supervisors overrode security officer, allowed the distribution and no discipline to Ee, since substantial evidence that statements tended to interfere with Ee's right to distribute U literature in nonworking area on nonworking time, and that there were no special circumstances to justify e's attempted enforcement of overly broad rule]

5012-1725-7100 Alternative means of communication

Valley Presbyterian Hospital **JD-(SF)-57-86**
[prohibiting solicitation and distribution of U literature in acute-care hospital's discharge area, not violation, notwithstanding it was not patenti-care and work area due to use as entrance and exit by Ees and others, where solicitation and distribution could potentially disrupt care of patients brought there in emergency or dispatch of emergency teams, and E provided alternative locations for solicitation and distribution]

5012-1737 Prohibiting solicitation during employee's own time on employer's premises

5012-1737-0100 Generally

5012-1737-0170 Rule, not applicable to union or other protected solicitation, valid

United Technologies Corporation **279 NLRB No. 135**
[E's rule prohibiting *large signs or banners...so as to preclude displays intended...to promote a candidacy, organization or product,* while expressly permitting display of bumper stickers, window stickers and like material, which rule had the effect of denying an Ee access to E's property to display intra-U campaign material, not violative, since rule was not complete prohibition against the display of U material, E's managerial interest outweighed Ee's Section 7 right and rule was reasonable measure to keep large billboards out of E's parking lot]

5012-1737-2000 Solicitation on plant premises

The Gerkin Co. **279 NLRB No. 136**
[describing solicitation and distribution of literature in handbook as *areas of behavior* which require special attention, violation and interference, notwithstanding absence of stated penalties in handbook, where E indicated that it considered Ees doing either one anywhere on its premises to be misconduct]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[telling Ees they could not discuss U on their own time on E's property, violation and interference]

Ballou Brick Co. **277 NLRB No. 009**
(E's posting of rule which asked Ees to report any Ees who interfered or coerced them into signing a U card, violative, since such rule has dual purpose of encouraging Ees to report identity of card solicitors and of discouraging card solicitors in protected activity)

5012-1737-2000—Cont.

C.O.W. Industries, Inc., Division of Central Ohio Welding Co. **276 NLRB No. 101**
(rule in E's handbook which directed Ees to report anyone who causes them trouble or puts them under any pressure to join a U, violative, since rule has potential dual effect of encouraging Ees to report identity of U solicitors and of correspondingly discouraging U solicitors in their protected organizational activities)

C.O.W. Industries, Inc., Division of Central Ohio Welding Co. **276 NLRB No. 101**
(rule which stated *No person will be allowed to solicit or carry on union organizing activities on the job,* violative, since rule is directed solely against U solicitation)

Angelica Corporation **276 NLRB No. 038**
(maintaining and enforcing rules prohibiting unauthorized distribution of literature, solicitation or circulation of ptns at any time on company premises, violative where rules constituted complete ban on unauthorized communication at any time or place at E's facility)

The Meadows East Inc. **275 NLRB No. 181**
(rule prohibiting soliciation of any kind or distribution of materials other than those specifically approved by E's administrator, violative)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[rule prohibiting solicitation or collecting signatures or contributions or distributing material for any purpose during working hours or on company premises w/o manager's prior permission, violation]

N.L.R.B. v. E. I. DuPont De Nemours **750 F.2d 524 (C.A. 6, Dec. 1984)**
(telling Ee who was soliciting in break zone on nonworking time that solicitation was prohibited on E's property, violative)

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[E's rulebook's listing of *soliciting or distributing of literature or . . . posting of notice on company property as grounds for dismissal, not violation where rulebook explained two pages later under SOLICITATION AND LITERATURE DISTRIBUTION* that nothing would interfere with Ees' concerted protected activities regarding solicitation or distribution of literature during Ees' non-work time, since amplification of rule was only two pages away from discharge rule, and there was no evidence that any Ees believed they were prohibited from distributing literature]

5012-1737-3300 Working areas

Springfield Hospital **281 NLRB No. 076**
[no-solicitation rule that prohibited solicitation *in working areas w/o prior written approval of administrator* constituted unreasonably broad restriction to extent it prohibited solicitation in work areas not devoted to patient care]

Bell & Howell/Columbia Pictures Video Services **JD-(SF)-8-86**
[E promulgating rule *Ees are permitted to solicit other Ees only in non-working areas on non-working time,* unlawful, notwithstanding contentions Ees had time and space to solicit on non-working time in lunch room, and also rule not invalid since rules against loitering in work areas and going into other departments in effect for reasons of security and safety, as non work related conversations and non-U related solicitations had been permitted, no loitering rule could not be equated with no solicitation rule, nor was rule clarified to convey intent to permit solicitation on Ees' own time, and absent business justification]

5012-1737-4000 Working time

Reeves Brothers, Inc. **277 NLRB No. 153**
[promulgation and enforcement of rule in response to U campaign and for purpose of inhibiting U activity, violative]

Hunter Douglas, Inc. **277 NLRB No. 123**
(E's promulgation of rule prohibiting solicitation of an Ee while either Ee doing soliciting or person being solicited is on *working time* during U campaign, unlawful, since rule promulgated at time of intense U activity, in view of E's U animus which rebutted presumption of validity and E did not show rule was required to maintain production or discipline)

Westinghouse Electric Corporation **277 NLRB No. 016**
(rule which banned solicitation on *working time* valid notwithstanding E did not have formal break period but left it up to supervisors when breaks were to be taken, as absence of formal break period did not render term *working time* ambiguous and E did not discipline any Ee for soliciting during his break period)

Westinghouse Electric Corporation **277 NLRB No. 016**
(no violation, where supervisor in reply to Ees inquiry as to E's policy regarding distribution of cards or ptns, *that they could not be passed out, according to company policy, during working time, in work place, in work areas, notwithstanding GC contention violation where no clarification by supervisor as to whether Ees could legitimately solicity or distribute while on their way to and from vending machines, since Es not required to iterate, expressly all lawfully required exceptions underlying presumptively legitimate rule banning distribution on working time*)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(telling Ee that he should stop talking about U during worktime or he was going to have trouble with E held unlawful threat, in view of E's disparate enforcement of its no-solicitation rule)

Adams Super Markets Corp. **274 NLRB No. 194**
(supermarkets' promulgation of facially valid no solicitation rule prohibiting solicitation or distribution of literature of any kind *by any Ee during actual working time of Ee soliciting or Ee being solicited and prohibiting solicitation or distribution on E's property by non-Ees at any time,* in new Ee handbook distributed during U campaign, not unlawful, since no solicitation rule published in handbook not new but amplification and clarification of alreadsy posted rule and Ee handbook customary place to include no-solicitation rule)

Sierra Hospital Foundation **274 NLRB No. 056**
(while supervisor may have considered all of Ee's U activities were disruptive, her remark to Ee that she was disruptive influence and to cease disrupting staff during *working hours,* not violative, as comments were clearly directed only to Ee's on-duty conversations with other Ees)

Safety-Kleen Corp. **JD-117-85**
(warning U activist not to talk U to other Ees, lawful where other Ees had complained about it, it was interfering with their work, and E limited his warning to working time, saying that he could talk U on his own time; moreover activist was never disciplined although he continued to talk U on work time after being warned)

5012-1737-5000 Working hours, work time or company time

Premier Maintenance, Inc. **282 NLRB No. 003**
[promulgation of rule prohibiting Ees from soliciting U authorization cards during *working time* not independent violation of Section 8(a)(1), in view of *Our Way,* 268 NLRB 394, which held rules which prohibit solicitation during *working time,* as opposed to working hours, presumptively valid; however, rule was violative of Section 8(a)(3)]

Page Avjet, Incorporated **278 NLRB No. 063**
[violation, where E promulgated rule prohibiting solicitation and distribution during *normal working hours,* since rule unlawful under *Our Way Inc.,* 268 NLRB 394]

Rood Industries, Inc. **278 NLRB No. 026**
[no-solicitation rule permitting solicitation at plant during break periods not unlawful; intent to limit no-soliciation policy to working time was demonstrated by referral to *company time* in warning slip issued to Ee for soliciting; thereafter, Ee and other Ees freely engaged in solicitation for U during break periods, and there was no showing that E permitted Ee solicitation during work time for purposes other than U organizing such as sales or charitable contributions]

Reeves Brothers, Inc. **277 NLRB No. 153**
[promulgation and enforcement of rule in response to U campaign and for purpose of inhibiting U activity, violative]

Hunter Douglas, Inc. **277 NLRB No. 123**
(E's promulgation of rule prohibiting solicitation of an Ee while either Ee doing soliciting or person being solicited is on *working time* during U campaign, unlawful, since rule promulgated at time of intense U activity, in view of E's U animus which rebutted presumption of validity and E did not show rule was required to maintain production or discipline)

Angelica Corporation **276 NLRB No. 038**
(maintaining and enforcing rules prohibiting unauthorized distribution of literature, solicitation or circulation of ptns at any time on company premises, violative where rules constituted complete ban on unauthorized communication at any time or place at E's facility)

Webb Furniture Enterprises, Inc. **275 NLRB No. 180**
(E maintaining and enforcing no-solicitation rule which stated *There must be no solicitation of Ees during work hours, for collections, donations, or sales unless prior arrangement has been made and permission granted by superintendent,* unlawful, since it prohibits solicitation during *work hours* w/o E permission; thus, overly broad in not informing Ees that solicitations are not allowed during break periods, mealtimes, and other times when they are not working)

The Meadows East Inc. **275 NLRB No. 181**
(rule prohibiting solicitation or circulating literature of any nature on E's property during working hours w/o approval of E's administrator, violative)

Programming & Systems, Inc. **275 NLRB No. 157**
(E's rule, that *no literature is allowed to be distributed of any kind in this school w/o permission,* held violative, since rule was unlawfully broad in that rule was limited neither to *working time* nor to *working hours*)

Cerock Wire & Cable Group, Inc. **274 NLRB No. 111**
(E's orally promulgating and enforcing new no-solicitation rule prohibiting Ees from talking about U on company property or company time, violative)

5012-1737-5000—Cont.

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(informing Ees they were not to distribute U authorization cards *on company time,* not unlawful)

Gorham Bronze Textron JD-(ATL)-63-86
[maintaining and enforcing written rule prohibiting both U solicitation during working hours and/or distribution of printed U material on E's premises w/o authorization, violation]

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86
[rule prohibiting solicitation or collecting signatures or contributions or distributing material for any purpose during working hours or on company premises w/o manager's prior permission, violation]

Bell & Howell/Columbia Pictures Video Services JD-(SF)-8-86
[E promulgating rule *Ees are permitted to solicit other Ees only in non-working areas on non-working time,* unlawful, notwithstanding contentions Ees had time and space to solicit on non-working time in lunch room, and also rule not invalid since rules against loitering in work areas and going into other departments in effect for reasons of security and safety, as non work related conversations and non-U related solicitations had been permitted, no loitering rule could not be equated with no solicitation rule, nor was rule clarified to convey intent to permit solicitation on Ees' own time, and absent business justification]

5012-1737-6700 **Nonworking areas**

St. Paul's Church Home, Inc. 275 NLRB No. 170
(promulgating and/or enforcing rule restricting posting of U-related literature to Ees' break room and requiring written authorization by E for posting at E's facility, unlawful; even assuming E could require authorization prior to posting of notices in specified work areas, such limitation cannot be extended to nonwork area such as Ee lounge; and even assuming restriction antedated organizing campaign and rule was applied uniformly following commencement of campaign, rule was rendered unlawful because motivated by unlawful consideration of thwarting lawful organizational activity)

The Meadows East Inc. 275 NLRB No. 181
(rule prohibiting soliciation of any kind or distribution of materials other than those specifically approved by E's administrator, violative)

Valley Presbyterian Hospital JD-(SF)-57-86
[prohibiting solicitation and distribution of U literature in acute-care hospital's discharge area, not violation, notwithstanding it was not patenti-care and work area due to use as entrance and exit by Ees and others, where solicitation and distribution could potentially disrupt care of patients brought there in emergency or dispatch of emergency teams, and E provided alternative locations for solicitation and distribution]

N.L.R.B. v. E. I. DuPont De Nemours 750 F.2d 524 (C.A. 6, Dec. 1984)
(telling Ee who was soliciting in break zone on nonworking time that solicitation was prohibited on E's property, violstive)

5012-1737-6900 **Nonworking time**

The Gerkin Co. 279 NLRB No. 136
[describing solicitation and distribution of literature in handbook as *areas of behavior* which require special attention, violation and interference, notwithstanding absence of stated penalties in handbook, where E indicated that it considered Ees doing either one anywhere on its premises to be misconduct]

National Micrometics, Inc. 277 NLRB No. 095
(telling Ee she could not talk U on breaks, violation and interference)

Alamo Cement company 277 NLRB No. 108

Ballou Brick Co. 277 NLRB No. 009
(where E had printed two rules in ee handbook, one of which flatly forbids any solicitationor distribution at any time and the other which allowed solicitation or distribution on *non-work time,* Bd held that first rule was clearly unlawful and was not saved by second rule since Ees were never told that second rule was E's real rule and further, any ambiguity in two rules was solely the responsibility of E and therefore, E bears the risk that ambiguity will be held against it)

The Meadows East Inc. 275 NLRB No. 181
(rule prohibiting soliciation of any kind or distribution of materials other than those specifically approved by E's administrator, violative)

Stovall Manufacturing Company, Inc. 275 NLRB No. 039
(supervisor's prohibiting solicitation of U authorization cards during break period, violative)

Chicago Metallic Corporation 273 NLRB No. 207
(threatening to discharge Ee if he continued to campaign for U, violative whether or not E added the words, *on company time,* since rule was overly broad in absence of evidence that Ee was told that he was permitted to campaign during non-working periods or that prohibition was needed to maintain discipline or production)

N.L.R.B. v. E. I. DuPont De Nemours 750 F.2d 524 (C.A. 6, Dec. 1984)
(telling Ee who was soliciting in break zone on nonworking time that solicitation was prohibited on E's property, violative)

5012-1737-7300 **Public Areas**

Uniontown Hospital Association 277 NLRB No. 144
(no-solicitation no-distribution policy, violation and interference where it applied to hospital's main lobby, cafeteria and gift shop, since solicitation and distribution there would not have interfered with patient care, but was not found violation or interference as to corridors, since solicitation or distribution there might have disrupted patient care)

Valley Presbyterian Hospital JD-(SF)-57-86
[prohibiting solicitation and distribution of U literature in acute-care hospital's discharge area, not violation, notwithstanding it was not patenti-care and work area due to use as entrance and exit by Ees and others, where solicitation and distribution could potentially disrupt care of patients brought there in emergency or dispatch of emergency teams, and E provided alternative locations for solicitation and distribution]

Hughes Properties, Inc., d/b/a Harolds Club v. N.L.R.B. 758 F.2d 1320 (C.A. 9, Apr. 1985)
(E enforced and maintained overly broad no-solicitation rule which barred (1) any solicitation of Ees during working hours and (2) distribution of literature by Ees during working hours or at any time in areas open to public; when E interrupted discussion of U by off duty Ee with other off duty Ees in public bar adjacent to E's gambling area as bar area held analogous to restaurant in retail store where solicitation of off duty Ees allowed so long as solicitation comports with normal use of facility and is not disruption)

5012-1750 Rest periods not working time

National Micrometics, Inc. 277 NLRB No. 095
(telling Ee she could not talk U on breaks, violation and interference)

5012-1775 Valid where necessary in interest of safety and efficiency

Safety-Kleen Corp. JD-117-85
(warning U activist not to talk U to other Ees, lawful where other Ees had complained about it, it was interfering with their work, and E limited his warning to working time, saying that he could talk U on his own time; moreover activist was never disciplined although he continued to talk U on work time after being warned)

5012-2500 **Discriminatory promulgation of rule**

T & T Machine Company, Inc. 278 NLRB No. 139
[instituting no-soliciation rule prohibiting any kind of solicitation or distribution of literature during actual working time, unlawful, since rule established for purpose of deterring and impeding Ee efforts to generate U support, in view of timing at onset of organizing campaign, and after issuance of unlawful warning to in-house organizing committee member, and in absence of any business justification for rule]

Harry M. Stevens, Inc., A/K/A Harry M. Stevens Services, Inc. 277 NLRB No. 031
(E's promulgation of otherwise valid no-solicitation/no-distribution rule violative, since rule was promulgated to interfere with Ees' right to self organization rather than to maintain production where rule was promulgated during U's organizational campaign and E did not have valid rule in effect at time it discharged Ee for soliciting on behalf of U)

C.O.W. Industries, Inc., Division of Central Ohio Welding Co. 276 NLRB No. 101
(rule which stated *No person will be allowed to solicit or carry on union organizing activities on the job,* violative, since rule is directed solely against U solicitation)

Bell Halter, Inc. 276 NLRB No. 136
(managerial and supervisory personnel held not to have orally engaged in independently promulgating overly broad no-distribution rule but to have simply enforced long standing rule by prohibiting Ees from distributing U literature and by confiscating it)

5012-3300 **Limitation of prohibition to union activities**

5012-3317 Nonunion solicitation and distribution permitted

Lamar Industrial Plastics Co. 281 NLRB No. 080

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center 280 NLRB No. 005
[notwithstanding E's no solicitation rule, rule not applied disparately by allowing decertification ptn to circulate as E also allowed solicitations among Ees for charitable and private business purposes. Further, ptn not tainted either as E did not assist in formulation and circulation of ptn]

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5012-3317—Cont.

Orval Kent Food Company, Inc. **278 NLRB No. 057**
[promulgating, maintaining, and enforcing rule forbidding Ees from discussing unionization when they were working while permitting Ees to discuss other subjects unrelated to work, violative]

Bruderer, Inc. **JD-(SF)-57-86**
[E did not disparately enforce rule by prohibiting Ee's U solicitation, notwithstanding contention rule was discriminatorily enforced because other Ees sold articles in plant with E's knowledge, where, prior to U activity, Ee was told to stop such sales when he was supposed to be working; fellow Ee complained to E about Ee's pestering him at work station with U solicitation; enforcement of rule was follow up of previous warnings to Ee about soliciting on company time; and Ee was not prohibited from soliciting for U or anything else on breaks or at lunch time]

Bell & Howell/Columbia Pictures Video Services **JD-(SF)-8-86**
[E promulgating rule *Ees are permitted to solicit other Ees only in non-working areas on non-working time*, unlawful, notwithstanding contentions Ees had time and space to solicit on non-working time in lunch room, and also rule not invalid since rules against loitering in work areas and going into other departments in effect for reasons of security and safety, as non work related conversations and non-U related solicitations had been permitted, no loitering rule could not be equated with no solicitation rule, nor was rule clarified to convey intent to permit solicitation on Ees' own time, and absent business justification]

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**
[discipline for violation of E's (Hospital's) no solicitation rule *not an ULP*, where E undisputedly showed (1) violation of rule, (2) failed attempt to resolve dispute and possibly, withdraw discipline, and (3) final disciplinary actions in proportion to conduct involved, even though E had allowed some innocuous activity, such as sale of some raffle tickets, Girl Scout cookies and cosmetics by Ees w/o reprisal under E's rule]

5012-3322 Use of bulletin board

Products Unlimited Corp. **280 NLRB No. 041**
[E's refusal to permit display of pro-U posters, while permitting display of anti-U posters, unlawful]

Consolidated Edison Co. of New York, Inc. **280 NLRB No. 039**
[contracted language barring Ees' use of E's bulletin boards for *political or controversial* materials, violative *per se* since proviso in contract appears to bar posting of any dissident (U) literature while allowing specified U literature, *One man's political actions are another man's protected concerted activities.*]

Roadway Express, Inc. **279 NLRB No. 041**
[E's removal of bulletin boards, assertedly because they were being used to publish disparaging and threatening remarks about E's management, violative, since real reason was because Ees used them to post dissident U material where E told one Ee posting strike notices that bulletin boards were for company business only (contrary to 6 years of past practice), told Ee bulletin boards were not to be used for posting strike notices and E eventually removed all bulletin boards after Ees continued posting U material]

Webb Furniture Enterprises, Inc. **275 NLRB No. 180**
(foreman and superintendant asking Ee if he had posted U leaflet, and after Ee had replied affirmatively instructing him to remove leaflet because E did not permit soliciting on company property, unlawful, since E permitted non-U related postings)

5012-3333 Use of meeting place discriminatorily denied union

Saint Joseph Medical Center **276 NLRB No. 053**
(E's promulgation of rule revoking permission to conduct meetings in OR lounge by Operating Room Ees Association, violative, where change in rule occurred following increased concerted activity by Ees and organizing attempts by outside U; rule was applied in disparate manner by E allowing parties to be held in lounge after change in rule and E had tolerated meetings by group in lounge for some 15 months w/o complaint by E or complaints about group meetings)

5012-3367 Limited to prounion activities

Springfield Hospital **281 NLRB No. 076**
[E instituting new non-access rule for off-duty Ees just for date of R election, violative, where rule not disseminated, limited to election day, U animus, and departure from normal policy showed that purpose of rule was to thwart U activity of off-duty Ees]

Products Unlimited Corp. **280 NLRB No. 041**
[E's refusal to permit display of pro-U' posters, while permitting display of anti-U posters, unlawful]

The Cincinnati Enquirer, Inc., A Division of Gannet, Inc. **279 NLRB No. 149**
[prohibiting U from using company-owned Ee mailboxes to distribute its literature to Ees, violation where E allowed Ees, *accredited* organizations, and prior U access to the mailboxes]

Specialty Steel Treating, Inc. **279 NLRB No. 067**
[violation where valid no-solicitation no-distribution rule was enforced only as to U activities]

Robert Olnick and Lester Fisher, A Co-Partnership Doing Business Under The Trade Name and Style of Fifth Roc Jersey Associates, d/b/a Headquarters Plaza Hotel **276 NLRB No. 096**
(rule in Ee handbook that invites Ees to report about *any* organizing efforts which you know about, violative)

Woodcliff Lake Manor Nursing Home, Inc. **276 NLRB No. 084**
(promulgating and maintaining no-solicitation rule in bargaining contract which provided *No Ee shall engage in any U activity including distribution of literature which could interfere with performance of work during his working time or in working areas of E's facility at any time*, unlawful, since although working time is for work, rule is unlawful as it applied only to U activity)

Uptilt, Inc. **276 NLRB No. 065**
(violation, where E removed pro-U signs, in view of absence of E rules against posting of signs, and fact that posting of notices regarding non-U matters was permitted)

University of Richmond **274 NLRB No. 182**
(supervisor's telling Ees that she did not want excessive discussion by them while at work, especially about the U, which they could discuss during their breaks, not rule discriminatorily applied against discussion of U, as alleged, since it did not prohibit discussion of U during breaks and only attempted to stop excessive conversation on all subjects while Ees were at their work stations serving customers)

Supermarkets General Corporation d/b/a Hovland-Steinbach-Hochschilds **JD-(NY)-59-86**
[E warning Ee and threatening to discharge Ee for next offense, unlawful, since motivated by E's belief that Ee had engaged in protected activity of soliciting Ee to sign U authorization card and called another Ee *chicken shit* for not signing authorization card, notwithstanding Ee did not solicit other Ee to sign card, where warning not pursuant to lawful no solicitation rule in view of fact solicitation allowed for non U purposes, nor did Ee's comments to other Ee remove him from protection of Act inasmuch as it neither amounted to threat nor was it coercive]

5012-5000 Prohibition against union activities enforced discriminatorily

Bruderer, Inc. **JD-(SF)-57-86**
[E did not disparately enforce rule by prohibiting Ee's U solicitation, notwithstanding contention rule was discriminatorily enforced because other Ees sold articles in plant with E's knowledge, where, prior to U activity, Ee was told to stop such sales when he was supposed to be working; fellow Ee complained to E about Ee's pestering him at work station with U solicitation; enforcement of rule was follow up of previous warnings to Ee about soliciting on company time; and Ee was not prohibited from soliciting for U or anything else on breaks or at lunch time]

Hughes Helicopters, Inc. **JD-(SF)-29-86**
[imposing disciplinary warning on U adherent, assertedly for infringing presumptively valid no-solicitation rule, violative where E's supervisors overlooked commercial activities among Ees and supervisors during working time]

Restaurant Corporation of America v. N.L.R.B. **801 F.2d 1390 (C.A. D.C., Sept. 1986)**
[discharge of Ees held not unlawful enforcement of valid no-solicitation rule, notwithstanding Bd's finding of instances of non-U solicitation that occurred during work time, where Bd's and ALJ's observations of non-U solicitations could not substitute for requisite finding that U and non-U solicitations had substantially equivalent potentials for disruption of work]

Restaurant Corporation of America v. N.L.R.B. **801 F.2d 1390 (C.A. D.C., Sept. 1986)**
[non-U solicitations involving intra-Ee generosity designed to express appreciation of fellow Ees on occasions such as birthdays or departures held not substantially equivalent to U solicitation; therefore, E's failure to treat non-U solicitation and U solicitation alike did not constitute *discrimination* w/i meaning of 8(a)]

5012-5017 Employer antiunion campaign not also limited

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[E's disparate application of no-solicitation rule, including warning to pro-U Ee that he would be fired if he interrupted Ees' work by talking about U, unlawful, where E discriminated in enforcement of rule between U proponents and U opponents by merely reminding Ee soliciting revocation of U authorization cards of no-solicitation rule w/o imposing any kind of discipline, while failing to answer requests of Ees for equal time to solicit in favor of U]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[written warning for attempting to get two Ees to sign U authorization cards while at their work stations, not violation where no-solicitation rule was

5012-5017—Cont.

uniformly enforced, notwithstanding E's use of supervisors to pass out anti-U campaign literature, since no-solicitation rule does not encompass E's situation]

N.L.R.B. v. Vought Corporation - MLRS Systems Division 788 F.2d 1378 (C.A. 8, Apr. 1986)

[warning Ee against passing out U information and harassing Ees during working hours, unlawful, where no evidence Ee's solicitation had adverse impact on production, and in view of fact E allowed anti-U committee to solicit on company time]

5012-5039 Advising employees concerning cancellation of check-off authorization

Peoples Gas System, Inc. 275 NLRB No. 075

(E's sending letters to Ees requesting that they inform E of decisions to revoke dues-checkoff authorizations and to resign from U, not violative where bargaining agreements provided for short annual *escape* period during which Ees could revoke checkoff authorizations and required that notice of revocation must be given to both E and U; further, letters assured Ees that whether they remained U members or resigned would make no difference in terms and conditions of employment; and E was actually responding to Ee inquiries in providing them with information about U resignation)

5012-5800 Bargaining agreement provisions limiting union activities

Indiana Cabinet Company, Inc. 275 NLRB No. 169

(plant superintendant's telling U chief steward to not solicit union membership on his job not violative since bargaining agreement provided that U agreed not to solicit membership during working time and contract provision was not being challenged as violative of 8(a)(1))

5012-6700 Types of employee activities involved

5012-6712 Distribution of union literature

5012-6712-0100 Generally

Middletown Hospital Association 282 NLRB No. 079

[requiring pre-distribution clearance by E of U literature, unlawful]

Tower Clinic 280 NLRB No. 002

[Ees' distribution of literature in E's facility during non-working time and in non-working areas constitutes protected concerted activity provided literature falls w/in scope of Sec. 7 *mutual aid or protection* clause which is to be interpreted with regard to relationship Ees' activity bears to their working conditions; if found to be protected, and subject to valid rules limiting distribution, Ee literature loses such status only in limited circumstances such as literature containing attacks on E's products or services, material so disruptive as to threaten plant discipline, and malicious falsehoods]

5012-6712-3300 By employees

Mississippi Chemical Corporation 280 NLRB No. 046

[supervisor's conduct assertedly in enforcing no distribution rule by confiscating from Ee break room single leaflet announcing U meeting, unlawful, where E had no written policies or established practice prohibiting nonwork related material in plant and, instead, tolerated such material; accordingly, in view of other 8(a)(1) conduct found herein, supervisor confiscated notice because it concerned U matter; moreover, Ees seeing its removal could reasonably perceive that U notices were not allowed in area; and, unlike removal of one notice from stack of notices, removal of single notice interfered with its intended purpose]

Gorham Bronze Textron JD-(ATL)-63-86

[maintaining and enforcing written rule prohibiting both U solicitation during working hours and/or distribution of printed U material on E's premises w/o authorization, violation]

5012-6718 Talking about union activities

Orval Kent Food Company, Inc. 278 NLRB No. 057

[promulgating, maintaining, and enforcing rule forbidding Ees from discussing unionization when they were working while permitting Ees to discuss other subjects unrelated to work, violative]

Carol Wire & Cable Group, Inc. 274 NLRB No. 111

(E's orally promulgating and enforcing new no-solicitation rule prohibiting Ees from taling about U on company property or company time, violative)

5012-6722 Making statements disparaging employer's business

Radisson Muehlebach Hotel 273 NLRB No. 183

(maintenance of rule proscribing the making of false, vicious or malicious statements about E or its business operations, violative, since merely false utterances and writings of that nature constitute U or protected concerted activity and are unprotected only if shown to be knowingly false and therefore malicious)

5012-6729 Posting notices on bulletin boards or other company property

Roadway Express, Inc. 279 NLRB No. 041

[E's removal of bulletin boards, assertedly because they were being used to publish disparaging and threatening remarks about E's management, violative, since real reason was because Ees used them to post dissident U material where E told one Ee posting strike notices that bulletin boards were for company business only (contrary to 6 years of past practice), told Ee bulletin boards were not to be used for posting strike notices and E eventually removed all bulletin boards after Ees continued posting U material]

Dresser Industries, Inc. 278 NLRB No. 116

[E's prohibition of posting of intro-U dissident literature on E bulletin boards and other posting surfaces violation, where E permitted numerous forms of personal and commercial notices, as well as notices of official U business]

Lassen Community Hospital, A Division of Eskaton Health Corporation, Division of Eskaton 278 NLRB No. 053

[E's requiring Ees to obtain approval before posting notices on bulletin boards concerning U activity, violative, since E enforced rule in discriminatory manner and had no legitimate reason for rule where E allowed personal notices to be posted by Ees w/o approval and told one Ee there would be no problem posting U notices and then threw them away; further, threat to discharge Ee for failure to get prior approval, violative]

Raytheon Missile Systems Division, Raytheon Company 277 NLRB No. 188

[E's refusal to permit posting of flyer regarding party to be sponsored by U and U organizing committee, giving permission to post only 3x5 card, unlawful where, notwithstanding some attempts by E to control use of bulletin boards, actual practice had been to condone general use of bulletin boards, and there were no set restrictions as to size and duration of posting]

Raytheon Missile Systems Division, Raytheon Company 277 NLRB No. 188

[*There is, of course, no statutory right for Ees to use E's bulletin boards. But if use of bulletin boards is subject to no set restrictions, and has generally been open to all to post material unrestricted as to size and duration of posting in question, then company may not use either a claim that its policy properly forbids posting in question, nor may it require its permission before posting; to justify finding that property interests of Company are paramont over organizational rights of Ees*]

Webb Furniture Enterprises, Inc. 275 NLRB No. 180

(foreman and superintendant asking Ee if he had posted U leaflet, and after Ee had replied affirmatively instructing him to remove leaflet because E did not permit soliciting on company property, unlawful, since E permitted non-U related postings)

St. Paul's Church Home, Inc. 275 NLRB No. 170

(promulgating and/or enforcing rule restricting posting of U-related literature to Ees' break room and requiring written authorization by E for posting at E's facility, unlawful; even assuming E could require authorization prior to posting of notices in specified work areas, such limitation cannot be extended to nonwork area such as Ee lounge; and even assuming restriction antedated organizing campaign and rule was applied uniformly following commencement of campaign, rule was rendered unlawful because motivated by unlawful consideration of thwarting lawful organizational activity)

Roadway Express, Inc. JD-5-86

[E's removal from plant bulletin board of Ee's posted literature detailing negative comments made by ALJ concerning E's involvement in another Bd proceeding, unlawful, where E's enforcement of contractual provision pertaining to posting on bulletin boards was arbitrary]

5012-6735 Prohibition of solicitation and/or distribution of literature during employees' own time on company premises

The Gerkin Co. 279 NLRB No. 136

[describing solicitation and distribution of literature in handbook as *areas of behavior* which require special attention, violation and interference, notwithstanding absence of stated penalties in handbook, where E indicated that it considered Ees doing either one anywhere on its premises to be misconduct]

Page Avjet, Incorporated 278 NLRB No. 063

[supervisor gathering up U literature from break area at conclusion of break, not unlawful as he was just cleaning up clutter in break area]

5012-6737 Dissemination of information as to names, addresses, wages and phone numbers of employees

American Lebanese Syrian Associated Charities, Inc. d/b/a A.L.S.A.C. 277 NLRB No. 189

[rule prohibiting Ees from discussing salaries amongst themselves, violative]

Certified Grocers of Illinois, Inc. 276 NLRB No. 019

(E announcing rules against disclosure of Ees' names, addresses, and pay and also threatening Ees with discipline for violating these rules, unlawful, since rules are overly broad as this information which was openly available could

5012-6737—Cont.

be useful in organizing campaign and its disclosure would be protected in such event unless information obtained surreptitiously)

5012-6762 Meetings or discussions of employees

Southern Maryland Hospital Center 276 NLRB No. 153
(E's president telling two Ees and U organizers in cafeteria, that there was not enough room in cafeteria for them or their *damn union meetings*, violative)

Saint Joseph Medical Center 276 NLRB No. 053
(E's promulgation of rule revoking permission to conduct meetings in OR lounge by Operating Room Ees Association, violative, where change in rule occurred following increased concerted activity by Ees and organizing attempts by outside U; rule was applied in disparate manner by E allowing parties to be held in lounge after change in rule and E had tolerated meetings by group in lounge for some 15 months w/o complaint by E or complaints about group meetings)

The Meadows East Inc. 275 NLRB No. 181
(rule prohibiting Ees from discussing their paychecks, violative as it unduly restricted Ees' rights to collectively consider and deliberate on common working conditions)

5012-6775 Membership solicitation

United Technologies Corporation 274 NLRB No. 163
(E's rule prohibiting distribution of *scab* literature in context of U's efforts to increase its membership, assertedly to keep Ees from fighting in violation of company rules, violative, since such conduct is protected concerted activity in the absence of face-to-face confrontations and other conduct which might be deemed threatening or harrassing, none of which was alleged in instant case)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)
[E's prohibiting distribution and posting of scab literature violative where there was no proof demonstrating labor unrest, and scab terminology had been previously accepted and was not shown to implicate safety concerns]

5012-6781 Opposition to incumbent union

Dresser Industries, Inc. 278 NLRB No. 116
[E's prohibition of posting of intro-U dissident literature on E bulletin boards and other posting surfaces violation, where E permitted numerous forms of personal and commercial notices, as well as notices of official U business]

5012-6787 Wearing or otherwise displaying union insignia or signs

Vista Hill Foundation d/b/a Mesa Vista Hospital 280 NLRB No. 027
[suspending Ee for violating rule against wearing insignia, unlawful where rule was overly broad as to location and time]

Government Employees (Office Employees, Local No. 2) 278 NLRB No. 055
[prohibition against wearing *Hostage/Striker* armbands, violative]

Southern California Edison Company 274 NLRB No. 167
(wearing of button with *Stick Your Retro* written on it, protected, where saying not obscene, message had little significance to outsider so public image of E not injured and message was clearly related to pending negotiations)

5012-6787-3300 May not be prohibited absent special circumstances

Middletown Hospital Association 282 NLRB No. 079
[no-solicitation rule discouraging wearing of U insignia, unlawful, in absence of some valid showing of special circumstances, since rule impermissibly required prior approval of E before wearing U buttons, and was accompanied by broad proscription which fairly encompassed U buttons]

Vista Hill Foundation d/b/a Mesa Vista Hospital 280 NLRB No. 027
[rule against wearing insignia in *working or patient care areas*, i.e., all areas of hospital except Ee lounges, parking areas, and cafeteria during scheduled meal hours and when no patients were present, violation as to location and time, since there was no demonstration of potential adverse impact absent showing of Ee-patient contact in all but immediate patient-care areas or of *special circumstances* where ban was for all working time even for Ees w/o patient contact during much of time]

United Technologies Corporation 279 NLRB No. 135
[E's rule prohibiting *large signs or banners...so as to preclude displays intended...to promote a candidacy, organization or product*, while expressly permitting display of bumper stickers, window stickers and like material, which rule had the effect of denying an Ee access to E's property to display intra-U campaign material, not violative, since rule was not complete prohibition against the display of U material, E's managerial interest outweighed Ee's Section 7 right and rule was reasonable measure to keep large billboards out of E's parking lot]

Page Avjet Corporation 275 NLRB No. 113
(E's implementing and enforcing new uniform policy prohibiting the wearing of any *non-company buttons or patches... on any part of the uniform including the hat*, assertedly because E was concerned with its public image, violative, since rule was overbroad and no special circumstances existed to limit Ees' right to wear U insignia, where policy applied to all unit Ees regardless of amount of contact they had with the public; further, U did not waive right to complain by giving E right to establish conditions under which uniforms were to be worn since agreement did not limit what could be worn)

5012-6787-8300 Disparate treatment in display of insignia

United Technologies Corporation 279 NLRB No. 135
[E's rule prohibiting *large signs or banners...so as to preclude displays intended...to promote a candidacy, organization or product*, while expressly permitting display of bumper stickers, window stickers and like material, which rule had the effect of denying an Ee access to E's property to display intra-U campaign material, not violative, since rule was not complete prohibition against the display of U material, E's managerial interest outweighed Ee's Section 7 right and rule was reasonable measure to keep large billboards out of E's parking lot]

Ona Corporation, A Division of Onan Corporation JD-(ATL)-11-86
(suspension and discharge of Ee for refusing to comply with E's demand that he remove T-shirt with U insignia and other U paraphenalia from his work place, violative, since Ee's action was not insubordinate or proper basis for discipline in view of discrimination inherent in E's demand)

5012-8300 Access of nonemployee union agents denied or limited

5012-8301 Generally

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027
[hotel refusing to permit non-Ee U representatives to continue to handbill for area standards for Ees of one of hotel's suppliers on hotel's private property near its main entrance, not unlawful, since herein E's property rights outweighed U's Section 7 right to inform public regarding lack of area standards, where activity at hotel's entrance increased possibility of theft of luggage, tort liability, and congestion and litter, atmosphere expected by guests violated, hotel had no interest in economic success of E with which U had dispute, nor was there vital link to Ees located on hotel's property]

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027
[in regard to non-Ee U agents right of access to E's property. *It is Bd's task to weigh relative strength of each party's claim. If property owner's claim strong one, while U's Sec. 7 right at issue clearly less compelling, property right will prevail. If property claim is tenuous one, and Sec. 7 right clearly more compelling, Sec. 7 right will prevail. Factors which may affect relative strengths or weaknesses of claim of Sec. 7 rights include, but are not limited to, nature of right asserted, purpose for which asserted, relationship of situs to target, intended audience of activity, and manner in which right asserted*]

Adams Super Markets Corp. 274 NLRB No. 194
(supermarkets' promulgation of facially valid no solicitation rule prohibiting solicitation or distribution of literature of any kind *by any Ee during actual working time of Ee soliciting or Ee being solicited and prohibiting solicitation or distribution on E's property by non-Ees at any time*, in new Ee handbook distributed during U campaign, not unlawful, since no solicitation rule published in handbook not new but amplification and clarification of already posted rule and Ee handbook customary place to include no-solicitation rule)

5012-8320 Distribution of literature or solicitation on company property may be prohibited where employees can reasonably be reached through other channels

5012-8320-5000 Adequacy of other channels of access

5012-8320-5001 Generally

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027
[where non-Ee U representative handbilling E's hotel for area standards for Ees of owner of hotel's suppliers on hotel's private property near its main entrance, since E's property rights and U's Sec. 7 rights not relatively equal, it was not necessary to inquire into whether Us had reasonable alternative means of communication]

5012-8320-5033 Mail communication

The Union National Bank of Pittsburgh 276 NLRB No. 013
(E forwarding letters from U addressed to Ees at work at E's branches to E's main office instead of distributing them to Ees, unlawful implementation of discriminatory no distribution rule, where Ees frequently received personal mail at office; E's contentions that by its use of *E's Internal Distribution Code* on letters, U made E its delivery service and use of E's resources for delivery would violate Sec. 8(a)(2), rejected, since no exposure to liability for one time distribution especially where letters sent directly to branch offices and not sorted in mail room, E's directory not confidential)

5012-8320-5088 Organizational group meetings

Southern Maryland Hospital Center **276 NLRB No. 153**
(E's president telling two Ees and U organizers in cafeteria, that there was not enough room in cafeteria for them or their *damn union meetings*, violative)

5012-8380 Solicitation or distribution in public areas

5012-8380-5000 Health care facilities

Middletown Hospital Association **282 NLRB No. 079**
[rule imposing blanket ban on solicitation and distribution *throughout the hospital*, unlawful, since it was plainly overbroad and unduly restrictive, absent any showing it was reasonably necessary in interests of patient care; failure to define areas of permissible U solicitation understandable to Ees had reasonable tendency to cause Ees to refrain from such activity]

Springfield Hospital **281 NLRB No. 076**
[no violation where E sought to arrest U organizer for holding meeting in E's parking lot as there was no showing that E had uniformly permitted non-Ees to congregate for any purpose in its parking lot and had singled out U organizer and his organizing effort for police action. Fact E tolerated U organizer's presence along outer periphery of lot did not entitle him to freely pursue his organizing activity freely on premises]

Uniontown Hospital Association **277 NLRB No. 144**
(no-solicitation no-distribution policy, violation and interference where it applied to hospital's main lobby, cafeteria and gift shop, since solicitation and distribution there would not have interfered with patient care, but was not found violation or interference as to corridors, since solicitation or distribution there might have disrupted patient care)

5012-8380-6700 Supermarkets

Adams Super Markets Corp. **274 NLRB No. 194**
(supermarkets' promulgation of facially valid no solicitation rule prohibiting solicitation or distribution of literature of any kind *by any Ee during actual working time of Ee soliciting or Ee being solicited and prohibiting solicitation or distribution on E's property by non-Ees at any time*, in new Ee handbook distributed during U campaign, not unlawful, since no solicitation rule published in handbook not new but amplification and clarification of already posted rule and Ee handbook customary place to include no-solicitation rule)

5012-8380-8300 Restaurants - motels

Hughes Properties, Inc., d/b/a Harolds Club v. N.L.R.B. **758 F.2d 1320 (C.A. 9, Apr. 1985)**
(E enforced and maintained overly broad no-solicitation rule which barred (1) any solicitation of Ees during working hours and (2) distribution of literature by Ees during working hours or at any time in areas open to public; when E interrupted discussion of U by off duty Ee with other off duty Ees in public bar adjacent to E's gambling area as bar area held analogous to restaurant in retail store where solicitation of off duty Ees allowed so long as solicitation comports with normal use of facility and is not disruption)

5012-8700 Access to plant while off-duty

Springfield Hospital **281 NLRB No. 076**
[E instituting new non-access rule for off-duty Ees just for date of R election, violative, where rule not disseminated, limited to election day, U animus, and departure from normal policy showed that purpose of rule was to thwart U activity of off-duty Ees]

Springfield Hospital **281 NLRB No. 076**
[employment of off-duty deputy sheriffs, in full uniform, to be present at hospital on day before, and day of election for purpose of denying access on election day to off-duty Ees unless coming to vote, to non-Ees other than deliverymen, and to persons visiting patients, not violative, as no showing that deputies interfered with Ees rights. Deputies did not question any individuals about U activities or sentiments, or interfere with their right to vote, or create coercive atmosphere]

N.L.R.B. v. E. I. DuPont De Nemours **750 F.2d 524 (C.A. 6, Dec. 1984)**
(denying access to plant to vacationing Ee who sought access to plant cafeteria, a non-working area, so as to solicit for U and eat lunch with co-workers, violative where E had no rule prohibiting access to off-duty Ees and, until this incident had routinely granted requests for access under rule it did have)

5012-8300 Other rules

Uniontown Hospital Association **277 NLRB No. 144**
(ordering Ees to remove U buttons as violation of dress code, violation and interference where E allowed Ees to wear other insignia, such as Christmas and Easter pins and football insignia)

Volt Information Sciences, Inc. **274 NLRB No. 047**
(rule requiring E's permission for posting of any material on a certain conspicuous bulletin board, not violative where rule resulted from posting of obscene material on that bulletin board and was promulgated prior to E's knowledge of U organizing; also, U materials were allowed to be and were posted on E's other bulletin boards)

High Key Distributing, A Division of House of Kitchens, Ltd. **JD-287-86**
[maintenance of rule against discussion of wages or hours of employment, violative, despite no evidence that E attempted to enforce rule]

The Martin Brower Company **JD-(SF)-63-86**
[E's warning deliveryman that further violation of E's rule against deliverymen conversing with E's Ee, not violation where rule was nondiscriminatorily applied, warning was not threat but prediction of possible consequences, and E showed no animus against deliveryman, notwithstanding deliverman had, when employed by E, filed grievance against E and ULP charge and civil suit upon being discharged]

5018 PERMISSION TO USE COMPANY TIME AND PREMISES OR FACILITIES

5018-2500 Use by employee group

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[E granting Ees paid time off to attend meeting arranged by anti-U Ees at which E's attorney spoke about decertification and other options open to anti-U Ees, not unlawful, since E had customarily accorded same treatment to Ees attending U meetings]

Southern Maryland Hospital Center **276 NLRB No. 153**
(E's president telling two Ees and U organizers in cafeteria, that there was not enough room in cafeteria for them or their *damn union meetings*, violative)

Saint Joseph Medical Center **276 NLRB No. 053**
(E's promulgation of rule revoking permission to conduct meetings in OR lounge by Operating Room Ees Association, violative, where change in rule occurred following increased concerted activity by Ees and organizing attempts by outside U; rule was applied in disparate manner by E allowing parties to be held in lounge after change in rule and E had tolerated meetings by group in lounge for some 15 months w/o complaint by E or complaints about group meetings)

5018-3300 Discriminatory denial of use

Lassen Community Hospital, A Division of Eskaton Health Corporation, Division of Eskaton **278 NLRB No. 053**
[E's requiring Ees to obtain approval before posting notices on bulletin boards concerning U activity, violative, since E enforced rule in discriminatory manner and had no legitimate reason for rule where E allowed personal notices to be posted by Ees w/o approval and told one Ee there would be no problem posting U notices and then threw them away; further, threat to discharge Ee for failure to get prior approval, violative]

Raytheon Missile Systems Division, Raytheon Company **277 NLRB No. 188**
[E's refusal to permit posting of flyer regarding party to be sponsored by U and U organizing committee, giving permission to post only 3x5 card, unlawful where, notwithstanding some attempts by E to control use of bulletin boards, actual practice had been to condone general use of bulletin boards, and there were no set restrictions as to size and duration of posting]

Raytheon Missile Systems Division, Raytheon Company **277 NLRB No. 188**
[There is, of course, no statutory right for Ees to use E's bulletin boards. But if use of bulletin boards is subject to no set restrictions, and has generally been open to all to post material unrestricted as to size and duration of posting in question, then company may not use either a claim that its policy properly forbids posting in question, nor may it require its permission before posting; to justify finding that property interests of Company are paramount over organizational rights of Ees]

5018-6700 Solicitation, collection, circulation, etc., on company time and premises

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[notwithstanding E's no solicitation rule, rule not applied disparately by allowing decertification ptn to circulate as E also allowed solicitations among Ees for charitable and private business purposes. Further, ptn not tainted either as E did not assist in formulation and circulation of ptn]

5018-8300 Wages not deducted for time spent by employees

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[E granting Ees paid time off to attend meeting arranged by anti-U Ees at which E's attorney spoke about decertification and other options open to anti-U Ees, not unlawful, since E had customarily accorded same treatment to Ees attending U meetings]

5024 SURVEILLANCE

5024-0100 Generally

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[E's observing that which is plain to see while going about his usual business or activity w/o having deliberately and unobtrusively placed himself in

5024-0100—Cont.

position to spy on his Ees' U activities, not unlawful surveillance or creation of impression of surveillance, nor is it unlawful when it is w/i his business premises during Ees' paid worktime while they should be working]

Superior Container, Inc. **276 NLRB No. 055**
(supervisor's surveillance of Ees' U meeting; even if motivated by his own curiosity, unlawful)

Borden Inc. **JD-(SF)-007-86**
[it is tendency to interfere with Ee receipt of U literature which is coercive rather than actual effect of such conduct]

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. **778 F.2d 8 (C.A. 6, Dec. 1985)**
[it is well settled that maintaining surveillance of Ees' U activities is unlawful]

5024-0150 Coercive per se

N.L.R.B. v. Nueva Engineering, Inc. **761 F.2d 961 (C.A. 4, May 1985)**
(supervisor's going to place of U meeting for purpose of surveilling meeting and when no meeting occured there, following Ees to home of Ee, violative, notwithstanding contention that since U meeting cancelled Ees not engaged in protected activity, inasmuch as E believed Ees engaged in protected activity and coercive tendency exists whether or not E actually sees U activity. So long as E watches Ecs believed to be engaged in U activities, interference with statutory rights will follow)

5024-1200 Confiscating union cards

Tomco Carburetor Company **275 NLRB No. 001**
(directing Ees to turn in their U authorization cards to their foremen, stating they would lose their jobs if they did not do so, violative)

5024-1600 Following employees or organizers

Springfield Hospital **281 NLRB No. 076**
[security guard following off-duty Ees around premises or closely observing off-duty Ees meeting with U organizers in parking lot and taking notes not unlawful, as his observing Ees and taking notes to report to superiors w/i scope of his duties, and since Ees insisted on holding meeting on E's premises, management and its representatives could lawfully station themselves nearby and observe meeting]

Adams Super Markets Corp. **274 NLRB No. 194**
(observation of U organizers with Ee in E's public snackbar and following them outside, not unlawful, since alleged surveillance resulted from Ee openly meeting in E's store with outside U organizers; *U representatives and Ees who choose to engage in U activities at E's premises should have no cause to complain that management observes them*)

N.L.R.B. v. Nueva Engineering, Inc. **761 F.2d 961 (C.A. 4, May 1985)**
(supervisor's going to place of U meeting for purpose of surveilling meeting and when no meeting occured there, following Ees to home of Ee, violative, notwithstanding contention that since U meeting cancelled Ees not engaged in protected activity, inasmuch as E believed Ees engaged in protected activity and coercive tendency exists whether or not E actually sees U activity. So long as E watches Ees believed to be engaged in U activities, interference with statutory rights will follow)

5024-2000 Searching employees, their work stations or lockers

Clark Equipment Company **278 NLRB No. 085**
[supervisor's opening toolbox, which was Ee's personal property, and leafing through U papers inside, violation where there was no reasonable alternative to inferring that supervisor was looking for evidence of Ee's U activity]

5024-2500 Urging employees to inform

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[supervisor's instructing Ee to inform him if anyone approached her about signing U card, unlawful]

Without Reservation **280 NLRB No. 165**

Soulnectro Corporation **280 NLRB No. 015**
[asking anti-U Ee to keep eye on Ees who were U organizers, make sure they were at their machines and report and straying, unlawful]

Delta Data Systems Corp. **279 NLRB No. 169**
[E request that Ee attend U meeting and give E list of Ees attending, violation and election interference]

Woodcliff Lake Hilton Inn, Inc. **279 NLRB No. 146**
[E's assistant manager asking Ee to let him know if anyone approached Ees about U, violative]

United States Aviex Company **279 NLRB No. 110**
[E official's asking Ee to attend U meeting, to find out all he could, and to report to official concerning meeting, not unlawful, where Ee did not inform other Ees of official's request before E disavowed official's conduct in clear and unmistakable terms by telling Ee that E had not gotten to point that it needed spies]

T & T Machine Company, Inc. **278 NLRB No. 139**
[asking Ee *who had called U?* and offering to meet Ee *anywhere at anytime to receive information about U organizing drive*, adding that such information would enable Ee to keep his job, unlawful]

Larry Chapman, A Sole Proprietor, d/b/a Farm Boy Food Mart **278 NLRB No. 058**
[instructing Ees to report other Ees' efforts to coerce them into signing U authorization cards, violation]

Electronic Data Systems International Corporation **278 NLRB No. 014**
[supervisor soliciting Ee to conduct surveillance of U activities by joining U supporters and finding out who U leader was so that supervisor could *cut his head* unlawful]

Eastern Maine Medical Center **277 NLRB No. 151**
(E's letter to Ees instructing them to report to it instances in which they were *pressured* to sign U card held overly broad and unlawful, since letter's statement had potential dual effect on Ees by encouraging them to report to E any U card solicitor who approached them in manner subjectively offensive to solicited Ee and by correspondingly discouraging U solicitors in their protected organizational activities)

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(soliciting Ee to attend U meetings and report on Ec activities, violative)

Ballou Brick Co. **277 NLRB No. 009**
(E's posting of rule which asked Ees to report any Ees who interfered or coerced them into signing a U card, violative, since such rule has dual purpose of encouraging Ees to report identity of card solicitors and of discouraging card solicitors in protected activity)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(urging Ees to inform on who was behind U organizing, violative)

Robert Olnick and Lester Fisher, A Co-Partnership Doing Business Under The Trade Name and Style of Fifth Roc Jersey Associates, d/b/a Headquarters Plaza Hotel **276 NLRB No. 096**
(rule in Ee handbook that invites Ees to report about *any* organizing efforts which you know about, violative)

C.O.W. Industries, Inc., Division of Central Ohio Welding Co. **276 NLRB No. 101**
(rule in E's handbook which directed Ees to report anyone who causes them trouble or puts them under any pressure to join a U, violative, since rule has potential dual effect of encouraging Ees to report identity of U solicitors and of correspondingly discouraging U solicitors in their protected organizational activities)

So-Cal Products, Inc. d/b/a Eagle Headers **273 NLRB No. 185**
(soliciting Ee to inform supervisor regarding other Ees' U activities, violative)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[asking Ees to furnish E with names of Ees who were trying to organize U or were its supporters, unlawful]

The Limited, Inc. **JD-264-85**
(E's posting notice and giving speeches to Ees telling them that they should inform E if they are put under pressure to join U and inviting or encouraging Ees to report identity of U supporters, violative)

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[provision in handbook stating that Ees had right to join or not join U and requesting that they report any attempt to coerce them into signing U authorization cards, not violation where provision was modified to omit request, and there was no evidence of coercion by original rule or Ee ignorance of modification]

5024-3300 Photographing employees

15th Avenue Iron Works, Inc., and Ahlat Builders and Management Corp. **279 NLRB No. 091**
[E taking picture of U official in presence of Ees, and pointing camera at Ees, unlawful, even if no pictures taken of Ees as coercive effect of ostensible picture taking is still present]

Tyler Distribution Centers, Inc. **JD-(NY)-21-86**
[E's photographing pickets, violative, where E gave no justification for doing so]

Baker Manufacturing Company v. N.L.R.B. **759 F.2d 1219 (C.A. 5, May 1985)**
(photographing U adherents on day after they began wearing U badges in response to E's termination of two prominent U supporters and following Ees meeting with general manager at which, having been informed of their organizing efforts, he had told them that, if they didn't like the way he ran the company, the door was big enough for them all to go through, violative, notwithstanding E's contention that photographs were for company promotional purposes)

5024-3500 Televising or videotaping employees

Bozzuto's, Inc. **277 NLRB No. 100**
(videotaping pickets, not violation, since E had legitimate reason to do so because recent strikes had involved violence to E's property and Ees)

The Limited, Inc. **JD-264-85**
(videotaping U's handbilling activities, assertedly in order to protect property and to gather evidence for inj against what reasonably could have been secondary activity, violative where E failed to show any background situation that would warrant videotaping)

General Electric Company **JD-(ATL)-34-85**
(E's observance of parking lot and its video taping portion of that surveillance, not violative even if Ees had been engaging in U activities in parking lot at time they were video taped, where E established that it had legitimate purpose for having security cameras at its facilities, cameras were installed long before advent of U, and supervisor who observed lot did so on occasion in question at request of Ee who feared she would be harassed as she left company property)

5024-3700 Creating impression of surveillance

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[since E has right to determine when Ees report back to work from break periods, informing Ees that E is doing so is therefore not unlawful; however, informing Ees not only that E was determining time when Ees returned with intent to fire Ees who came back late, but also that E was doing so *because of U,* held unlawful threat to discharge Ees because of U activities but not to constitute act of creating unlawful impression of surveillance]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[supervisor's statement to Ee, day after U meeting was held in Ee's home, *be careful; they know,* not unlawful, since statement contained no threat to discharge Ees because of their U activities and did not create unlawful impression of surveillance; supervisor, friendly with Ees, and low-level supervisor, was merely stating well-known information; and management knew about Ees' attempt to unionize]

A/Z Electric, Inc. **282 NLRB No. 057**
[E's president's statements to Ees that he had heard from someone that there was talk of E *going union,* violative]

Premier Maintenance, Inc. **282 NLRB No. 003**
[supervisor informing Ee that there would be someone soliciting signatures on U solicitation cards, and that Ee should not sign because U had nothing to offer did not unlawfully create impression of surveillance, where Ee was only Ee spoken to and person soliciting not identified, since *such generalized statements to Ees which are not directed to any Ee's organizing activities are not sufficient to create impression of surveillance;* further, Ee addressed had already signed U card and R ptns had been filed]

Premier Maintenance, Inc. **282 NLRB No. 003**
[impression not created where supervisor informed Ee that he could not give her a raise because of U activity, since such generalizations with reference to ongoing U activity does not create impression of surveillance]

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[E's announcement of rule prohibiting Ees from gathering in groups only 2 weeks after U's demand for recognition, violative; even though E proferred that rule was imposed because customers were being neglected and one Ee did testify that such a thing *could happen,* timing of rule and E's unremitting opposition to U justify finding Ees' U activities were under surveillance]

Inner City Broadcasting Corporation **281 NLRB No. 162**
[E unlawfully created impression of surveillance by telling Ee that his spies informed him that Ee and 2 other Ees had not signed Ee ptn seeking ouster of U]

Link Manufacturing Co. **281 NLRB No. 028**
[E unlawfully created impression of surveillance by calling Ee into his office, asking him how U meeting had gone previous day, and telling him that E knew some 36 Ees had signed U cards]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[supervisor's dubbing of one Ee as *U president* and another as *shop steward* held not to have created impression of surveillance where Ees engaged in open and active support for U, and supervisor referred to them in such manner as a joke]

Wilco Business Forms, Inc. **280 NLRB No. 154**
[supervisor's statements to Ee that *the Company knows who the ringleaders of the U are* and that *the Company knows that they are the senior people on the third-shift* held violative, since those statements created impression that organizational activities of Ees were under surveillance by E]

Without Reservation **280 NLRB No. 165**
[telling Ee that E would find out about U activity, that E knew which Ees were U supporters, and showing Ee a list of names with check marks designating which Ees E believed were for U, violation]

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor's assertion to Ee that he had received information of Ee's distribution of U literature from *reliable* but unidentified source held unlawful since it left clear impression that Ee's U activities were under surveillance, where there was no evidence that Ee handbilled openly or that he ever dealt with handbills in presence of any supervisor or agent]

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor in relating to Ee that supervisor had received reports about Ees, which might have included Ee herein, driving toward U meeting held to have unlawfully created impression of surveillance]

Consolidated Edison Co. of New York, Inc. **280 NLRB No. 039**
[supervisor's questioning Ee about soliciting his fellow Ees and supervisor's remark that his boss wanted to know what he (Ee) was doing, not violative, and did not create impression of surveillance, since questioned Ee was *known* supporter of dissident U group, there was no impression of surveillance to create]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[E's observing that which is plain to see while going about his usual business or activity w/o having deliberately and unobtrusively placed himself in position to spy on his Ees' U activities, not unlawful surveillance or creation of impression of surveillance, nor is it unlawful when it is w/i his business premises during Ees' paid worktime while they should be working]

Springs, Inc. d/b/a Springs Motel **280 NLRB No. 033**
[supervisor's declaring to Ee that there was not enough U cards signed for E to be subject to U representation, and giving estimates of card signing in various departments created unlawful impression of surveillance inasmuch as demonstrated to Ee that E was keeping tabs on U sentiment among Ees in various departments and Ees could thus reasonably assume their U activities were under surveillance]

Lucky Stores, Inc. d/b/a Gemco **279 NLRB No. 153**
[no unlawful impression of surveillance was created where Ee met with U representative in open area outside pickup area on E's premises in front of security desk, and Ee testified that he knew that security guard had observed his conversation with U representative; therefore, it would be unreasonable for Ee to assume that E learned about his meeting with U representative through surveillance]

Gull, Inc. **279 NLRB No. 127**
[although interference restraint and coercion under 8(a)(1) do not depend upon motive or whether supervisor was on friendly or unfriendly terms with Ee, no violation found where putative supervisor's warning to Ee engaged in U activities allegedly creating impression of surveillance that E knew about U and U activities and that E watch himself was anything other than friendly suggestion not reasonably tending to interfere with Ee's free exercise of his statutory rights]

La Reina, Inc. **279 NLRB No. 103**
[telling Ee that E's officials knew who started U activity and informants had told them what happened at U meetings, violation]

La Reina, Inc. **279 NLRB No. 103**
[telling Ees at meeting that E was aware of in-plant U activity, not violation]

Stop N' Go Inc. **279 NLRB No. 052**
[store manager's telling Ee of U's approach to Ee's daughter and other Ees and of one Ee's joining U, violation]

Raytheon Missile System Division, Raytheon Company **279 NLRB No. 035**
[E's statement to U adherent that *We heard who started this Union thing* not violative where there were no circumstances present which made statement more than mere acknowledgement of Ee's activities]

United Electrical & Mechanical, Inc. **279 NLRB No. 034**
[supervisor's telling Ees that he knew who *union guys* were and leading each Ee to whom he was speaking to believe not only that he knew who organizers were but even their activities were known to him, violative]

Eskaton Sunrise Community **279 NLRB No. 012**
[supervisor's stating to Ee that she knew who had signed U cards held unlawful creation of impression of surveillance]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[supervisors' telling certain Ees respectively that E knew they were organizing or supported U or believed they were attempting to organize because of prior service as U president, and knew Ee was U member because he hung around with U leaders, not violation where supervisors merely told Ees that they had observed certain conduct and associations occurring openly at workplace, and Ees involved openly advocated U and wore U insignia at work]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[telling Ee that E knew he was one of U leaders, violation and interference, notwithstanding Ee wore U insignia, where many Ees did so, and wearing U insignia did not designate Ee as leader of U organizing]

Olympic Limousine Service, Inc. **278 NLRB No. 133**
[security guard telling U supporter that he was hired to watch Ee work, violative]

5024-3700—Cont.

Roseburg Lumber Company **278 NLRB No. 124**
[supervisor's statement that he heard Ee went to U meeting violation, notwithstanding Ee was open U supporter, where meeting was away from E premises and unrelated to Ee's U activities at work]

Clark Equipment Company **278 NLRB No. 085**
[no unlawful or objectionable impression of surveillance created by foreman's statement that he had heard U meetings were not well attended and that U had collected 500 cards or by supervisor's remarking on Ee's open distribution of leaflets and commenting that he was disappointed in Ee]

Page Avjet, Incorporated **278 NLRB No. 063**
[supervisor informing Ee that he had heard Ee was passing out U authorization cards did not constitute surveillance nor create impression of surveillance, where supervisor had received report that Ee had been soliciting authorization cards during work time and informed Ee of this report when inquiring about solicitation of cards]

Quality Aluminum Products, Inc. **278 NLRB No. 049**

Decasper Corporation **278 NLRB No. 022**
[impression created where E's president informed Ees he might attend U meeting and warranted setting aside of election]

Rood Industries, Inc. **278 NLRB No. 026**
[test in determining whether E created impression of surveillance is whether Ees would reasonably assume from E's statement in that regard that their U activities have been placed under surveillance]

Rood Industries, Inc. **278 NLRB No. 026**
[E's remark to U activist that E had heard Ee was a *cord carrier* held not to cause Ee to believe E had placed his U activities under surveillance; while E's remark reflected strong suspicion that Ee was U activist, evidence showed that E might have received word of Ee's U activity from information supplied by Ees or supervisors, w/o resort to surveillance of Ee's U activity]

Rood Industries, Inc. **278 NLRB No. 026**
[supervisor's questioning pro-U Ee how U meetings were going at his home and then, in response to Ee's denial of such meetings, stating that supervisor knew that such was the case held to give Ee impression that his U activity was under surveillance; fact that supervisor and Ee had social relationship did not reduce coercive effect of his remarks where they were not accompanied by levity or evidence of friendship]

Uniontown Hospital Association **277 NLRB No. 144**
(telling Ees that coordinators had been instructed to watch for anyone who was soliciting or was involved with the U, violation and interference)

Studio S.J.T., Limited **277 NLRB No. 126**
(E's giving impression that someone was reporting Ees' conduct to it and, in fact, giving impression that reports were dangerously inaccurate in that Ees were being seen as saboteurs rather than as U organizers, violative and indepdently coercive)

Tasty Frozen Products of Kansas, Inc. **277 NLRB No. 094**
(impression not created by E vice president's statement that he knew U advocate had been over to house where other Ees lived, and inference was reasonable that somebody had just reported that fact to vice president)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(impression of surveillance created by E's owner asking Ees who were on coffee break *what they were doing* and stating U adherent was *making mess of job* and was working for U's business manager rather than for E and that U's business manager *gave him fucking again*, unlawful)

Marion Center Supply, Inc. **277 NLRB No. 026**

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(supervisor's conspicuously staring at U buttons worn by Ees not violative where U activity was open and ongoing at work site; subjective feelings of Ees were not sufficient to sustain such allegation)

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(violation, where supervisor, in front of group of Ees, expressed interest in receiving information about U meetings and then joined Ee in his office)

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(supervisor's telling Ee *I understand you guys are trying to form U*, violative since Ee then stood revealed as U activist; statement implied surveillance as source of information and thus created impression)

Grancs, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(supervisor's truthful statement to Ee that another Ee had reported he was going to U meeting held, w/o more, no basis for conclusion that E thereby attempted to or did create impression of surveillance)

McLean Roofing Company **276 NLRB No. 093**
(E's president's indicating to Ee that he had meant of finding out who was behind U activity, asking Ee about U meeting next day, and presence near U hall, created unlawful impression of surveillance)

Brocal Corp. d/b/a Alert Medical Transport **276 NLRB No. 066**
]—*people told me exactly—what was going on down there.* (U meeting) when said by supervisor to U adherent, violative)

Brocal Corp. d/b/a Alert Medical Transport **276 NLRB No. 066**
(not created by U adherent's fellow E posting notice of U meeting on E's bulletin board)

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(supervisor's statement to Ee that owner of hotel and casino operation knew that someone in kitchen by specified first name was passing out U cards, that someone upstairs thought Ee was involved in U activities, and that E could obtain knowledge of people who signed cards unlawfully created impression of surveillance of U activity)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**

Superior Container, Inc. **276 NLRB No. 055**
(E unlawfully created impression of surveillance by asking Ee if he had gone to U meeting the night before and, upon Ee's denial, signifying approval of Ee's conduct)

Budget Rent A Car of Washington, Inc. **276 NLRB No. 032**
(E's remarking to Ee that it was aware of Ees' U activities, not violative where stray remark came in course of noncoercive talk with Ee indicating E's awareness of that which was plain to see and evident to all)

The Union National Bank of Pittsburgh **276 NLRB No. 013**
(supervisor answering telephone call from one Ee to another Ee at work and asking Ee calling if call was about U activities, and if there was big turnout at party given by U, constituted unlawful interrogation and created impression of surveillance, where Ee questioned was not open and active U supporter; further, questioning occured against background of Ee concern that E would learn who supported U, and Ee's concern her own supervisor would learn of her U adherence, conversation not initiated by Ee, and absent any legitimate reason for questioning or assurance against reprisal)

The Union National Bank of Pittsburgh **276 NLRB No. 013**
(impression of surveillance created and Ee unlawfully threatened with unspecified reprisal, where E's assistant vice-president informed Ee that he heard U had held party, that Ees' U activities were causing ruckus, and that she had better watch herself)

PYA/Monarch, Inc. **275 NLRB No. 167**
(no impression of surveillance created where manager informed Ee that he knew Ee was for U, where Ee's U activities were open and well known)

PYA/Monarch, Inc. **275 NLRB No. 167**
(operations manager informing Ee that he knew Ee was against U created impressin of surveillance, where Ee's U sentiments were not well known)

Genwal Coal Co., Inc. **275 NLRB No. 077**
(none created where no overt (anti-U) threat was made and reference made by supervisor as to where he heard about Ees' organizing activities was to particular restaurant, which is a *public place*)

Bonanza Sirloin Pit **275 NLRB No. 54**
(E's telling Ees that he had planted 2 or 3 spies at U meeting, violative)

Tomco Carburetor Company **275 NLRB No. 001**
(showing Ee a list of Ees who had *enlisted in the union* while keeping source of information secret created unlawful impression of surveillance)

Sierra Hospital Foundation **274 NLRB No. 056**
(created when supervisor told Ee that their had been U meeting attended by 25 nurses from various units in hospital, and again when supervisor told same Ee names of nurses active in organizing campaign)

Sierra Hospital Foundation **274 NLRB No. 056**
(while supervisor's remark to Ee that she knew that certain other Ees were involved in organizing created impression of surveillance, it was not unlawful interrogation as no evidence to support conclusion that remark made to elicit response from Ee to confirm supervisor's suspicions about other Ees as organizing was openly taking place)

Roskin Brothers, Inc. **274 NLRB No. 053**
(Ee's comments to other Ees who were U supporters that, *we know what's going on and we're going to fix that*, violative, notwithstanding fact Ee was not a supervisor, since Ee was placed by management in strategic position where Ees could reasonably believe he spoke on its behalf where Ee was used by E to relay messages and instructions to Ees and was correctly perceived as management's *right-hand man* who spoke for management in its absence)

C. M. Carpenter, A Sole Proprietor, d/b/a Carpenter Trucking **274 NLRB No. 046**
(impression created where E posted seniority list soon after U meeting at which Ees had discussed possible use of seniority system, notwithstanding Ees drew no connection between posting of list and discussion at U meeting)

Haynes Motor Lines, Inc. **273 NLRB No. 221**
(impression created when E told Ees it knew which Ees were responsible for initiating U organizing campaign and aware of which Ees pushing U)

So-Cal Products, Inc. d/b/a Eagle Headers **273 NLRB No. 185**
(creating impression of surveillance by telling Ee supervisor knew where U meeting was held, violative)

5024-3700—Cont.

Ausable Communications, Inc. 273 NLRB No. 166
(impression created by supervisor telling Ees that E was aware of U activity going on because Ee who attended U meeting turned in 4 page report describing what went on)

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. JD-(ATL)-61-86
[supervisor informing Ee that he had given E list of Ees at U meeting in order to save his job after E found out about his involvement with U, unlawful, since created impression of surveillance]

Ben Susan Restaurant Corp. d/b/a The Blue Note JD-(NY)-92-86
[E's statement, *I know which girls are doing what in the club,* violative]

B & W Machine & Welding Company JD-(SF)-107-86
[E unlawfully created impression of surveillance by declaring in conversation with Ee that he had influence with U which led to his ascertaining identity of U supporters who were terminated]

Art Bridges Pontiac JD-(SF)-118-86
[no unlawful impression of surveillance created by supervisor writing down names of Ees who, according to Ee, had signed U cards, where supervisor didn't state what he was going to do with list of names, and absent evidence individuals named were subjected to unlawful treatment or of U animus on part of E]

Cassidy Cleaning, Inc. JD-239-86
[E unlawfully created impression of surveillance by stating to Ees at meeting that U representatives had informed E who had signed authorization cards and that E knew who was going to vote for U, and by identifying Ee who had attended U meeting]

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods JD-(SF)-101-86
[E held to have unlawfully created impression of surveillance by telling Ee names of Ees who attended U meeting and identifying location where meeting was held]

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86
[informing Ees that E knew which Ees had distributed U authorization cards and who had engaged in U activities and telling supervisor in Ee's presence that E knew identity of all U supporters, violation]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[impression of unlawful surveillance created by E's statements that it knew Ee was for U, who U ringleaders were, where U meetings were held, and that it would be able to learn how Ees voted in upcoming election; also, by identifying Ees by name in connection with U, intimating to Ees that it had means of identifying U activity of Ees because it would find out who started U, telling Ee it knew of her specific U activity, and telling Ee and others how it would learn of their U activities]

The Evening News Association JD-24-86
[impression not created here supervisor informed Ee others thought she was behind U organizing drive, where Ee had previously voluntarily revealed her U sympathies]

Mobile Concrete, Inc. JD-453-84
(plant superintendent's telling Ee that he knew exactly how many U authorization cards were signed, who had signed them, and that he hoped they would be taken care of, violative)

N.L.R.B. v. Norbar, Inc. 752 F.2d 235 (C.A. 6, Jan. 1985)
(manager's telling Ees that he knew who organizers of the U were and who had started *the g.d. union,* violative)

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)
[plant superintendent's asking one Ee about another Ee's U activities, requesting information about them, and saying *we'll take care of* second Ee's activities, insufficient, in isolation, to support finding of threat of discipline or discharge, but substantially supportive of finding of request to engage in surveillance, especially where manager asked another Ee what he had heard about U activity and requested that he *keep his ears open*]

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)
[supervisor's asking Ee if he had gone to U meeting at tavern and saying he had driven by to see who was there by looking at the cars, naming some of Ees present, and asking Ee who else was there, violation]

5024-3900 Surveillance of union organizers

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[E taking picture of U official in presence of Ees, and pointing camera at Ees, unlawful, even if no pictures taken of Ees as coercive effect of ostensible picture taking is still present]

Indiana Desk Company, Inc. 276 NLRB No. 165
(guards hired by E stationing themselves near motel where U representatives were staying during strike so that they could observe parking lot where representatives parked their cars, and where they could observe hotel rooms occupied by representatives engaged in unlawful surveillance)

Rockne L. Alexander, Rockne Alexander, II, Debrah Nelson, Douglas Nelson and Tami DeGeorgis, d/b/a Alexander Packaging Co. JD-(SF)-5-86
[E's general partners' intruding themselves at place where Ees were having meeting after work with their U representative, w/o justifying their presence with explanation, and at time senior partner was known to be just outside building, violative]

5024-4100 Surveillance of union handbilling or picketing

Hoschton Garment Company, A Subsidiary of Spencer Industries, Inc. 279 NLRB No. 081
[monitoring U handbilling on E's property and attempting to evict trespassing U representatives, no violation, since E's attempts to evict were exercise of legitimate proprietory prerogative and E representatives' presence at handbilling was part and parcel of permissible effort to evict]

Hoschton Garment Company, A Subsidiary of Spencer Industries, Inc. 279 NLRB No. 081
[watching U handbilling on public property advacent to E's plant and attempting to restrict U representatives from handbilling, unlawful]

Southwire Company 277 NLRB No. 043
(Director of E's corporate Labor Relations observing Ees as they passed out U literature at plant gate, not violative, since Ees were conducting their (U) activities in open and on or near company premises)

Mars Super Markets, Inc. JD-19-86
[E security guards sitting in vehicle near company parking lot gate where organizers were handbilling, not violation where handbilling was in full view of permanent guard post near gate, guards routinely patrolled parking lot, guards' presence on this occasion was legitimate and unrelated to handbilling, and there was no evidence of anti-U animus on part of E]

5024-4133 Photographing

15th Avenue Iron Works, Inc. JD-(NY)-141-84
(photographing U official alone and meeting with Ees, violative; E's contentions that it photographed only the U agent did not minimize intimidating effect on Ees of having camera pointed at them, and E did not prove, as contended, that it had legitimate purpose in photographing U agent)

5024-4150 Note taking

Springfield Hospital 281 NLRB No. 076
[security guard following off-duty Ees around premises or closely observing off-duty Ees meeting with U organizers in parking lot and taking notes not unlawful, as his observing Ees and taking notes to report to superiors w/i scope of his duties, and since Ees insisted on holding meeting on E's premises, management and its representatives could lawfully station themselves nearby and observe meeting]

Baddour, Inc. 281 NLRB No. 084
[E's security-guards' recording automobile license numbers of Ees who accepted U literature being distributed and who had U bumper stickers on their cars, violation]

Programming & Systems, Inc. 275 NLRB No. 157
(E engaged in proscribed surveillance where, in plain view of a unit Ee, faculty director of E watched from school window as students protested discharge of 2 teachers for U activity, wrote down names of teachers observing protesters and delivered written list unfolded to E's president; no suggestion that E routinely kept notes of teachers activities; no cause shown for taking such notes)

5024-4167 Observation by supervisors

Baddour, Inc. 281 NLRB No. 084
[E's security guards' observation of Ees' handbilling at gate to E's premises neither violative nor objectionable where area was open to public]

Consolidated Edison Co. of New York, Inc. 280 NLRB No. 039
[supervisor's questioning Ee about soliciting his fellow Ees and supervisor's remark that his boss wanted to know what he (Ee) was doing, not violative, and did not create impression of surveillance, since questioned Ee was *known* supporter of dissident U group, there was no impression of surveillance to create]

Harry M. Stevens, Inc., A/K/A Harry M. Stevens Services, Inc. 277 NLRB No. 031
(E's supervisors did not engage in unlawful surveillance of Ees' U activities by approaching Ee who had just received U card, taking the card from him and returning it to Ee who had solicited cards in public area, since it was common for supervisors to be in public areas and fact that Ee distributed cards in *full public view* gives him no right to complain that E has observed him)

5024-4167—Cont.

Programming & Systems, Inc. 275 NLRB No. 157
(E engaged in proscribed surveillance where, in plain view of a unit Ee, faculty director of E watched from school window as students protested discharge of 2 teachers for U activity, wrote down names of teachers observing protesters and delivered written list unfolded to E's president; no suggestion that E routinely kept notes of teachers activities; no cause shown for taking such notes)

5024-5000 Professional espionage

5024-5050 Agency employed *(Industrial Espionage)*

Indiana Desk Company, Inc. 276 NLRB No. 165
(guards hired by E stationing themselves near motel where U representatives were staying during strike so that they could observe parking lot where representatives parked their cars, and where they could observe hotel rooms occupied by representatives engaged in unlawful surveillance)

5024-5400 Surveillance of employees at work

Bridgeway Oldsmobile, Inc. 281 NLRB No. 165
[E's announcement of rule prohibiting Ees from gathering in groups only 2 weeks after U's demand for recognition, violative; even though E proferred that rule was imposed because customers were being neglected and one Ee did testify that such a thing *could happen*, timing of rule and E's unremitting opposition to U justify finding Ees' U activities were under surveillance]

Baddour, Inc. 281 NLRB No. 084
[supervisor's surveilling leading U adherent *to get enough to fire him*, and first shift supervisors' surveilling third shift Ees where there were suspected U adherents and activities, violations]

Harry M. Stevens, Inc., A/K/A Harry M. Stevens Services, Inc. 277 NLRB No. 031
(E's supervisors did not engage in unlawful surveillance of Ees' U activities by approaching Ee who had just received U card, taking the card from him and returning it to Ee who had solicited cards in public area, since it was common for supervisors to be in public areas and fact that Ee distributed cards in *full public view* gives him no right to complain that E has observed him)

5024-5700 Surveillance of employees in break area

Choctawhatchee Electric Cooperative, Inc. 274 NLRB No. 084
(presence of supervisor in breakroom in morning while decertification ptn was being circulated among Ees, not violative where supervisors frequently used breakroom in morning to give out assignments and supervisor had work assignments to give out)

5024-5800 Supervisors instructed to observe and report union activity or membership

Best Western Motor Inn 281 NLRB No. 026
[asking supervisors to find out who *troublemakers* or instigators of U campaign were found unlawful request for supervisors to surveil and gather information about Ees' U activities but insufficient to support finding of unlawful request to interrogate Ees]

Resistance Technology, Inc. 280 NLRB No. 117
[E's ordering supervisor to conduct unlawful interrogation not independent violation, although disclosure to Ees of the instruction is violation; overrules *Cannon Electric Co.*, 151 NLRB 1465 (1965)]

5024-6000 Attendance at union meeting

United States Aviex Company 279 NLRB No. 110
[E official's asking Ee to attend U meeting, to find out all he could, and to report to official concerning meeting, not unlawful, where Ee did not inform other Ees of official's request before E disavowed official's conduct in clear and unmistakable terms by telling Ee that E had not gotten to point that it needed spies]

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 166
(asking Ee about level of attendance at U meeting, unlawful, since it was clear signal to Ee that E had U activities under surveillance)

Superior Container, Inc. 276 NLRB No. 055
(supervisor's surveillance of Ees' U meeting; even if motivated by his own curiosity, unlawful)

Morning Star International, Inc. JD-209-86
[E's defense to alleged surveillance of U meeting on ground that, even if individual involved was agent of E, she was invited to meeting by Ee-organizer, rejected; while invitations to attend U meetings have defeated allegations of surveillance, individual did not *attend* meeting at all but stayed outside surveilling Ees as they gathered at U's meeting place and such conduct was not w/i scope of invitation as Ees assuredly knew]

Morning Star International, Inc. JD-209-86
[E held responsible for Ee's surveillance of U meeting where, during 6-week period, Ee had substituted daily for absent supervisor in such manner that Ees would necessarily conclude that Ee was in position to act on behalf of management, and context in which Ee's surveillance occurred would lead Ees to believe she had hostile purpose of spying and informing on behalf of E, which conclusion was correct; and E did nothing to disavow or repudiate Ee's conduct]

Rockne L. Alexander, Rockne Alexander, II, Debrah Nelson, Douglas Nelson and Tami DeGeorgis, d/b/a Alexander Packaging Co. JD-(SF)-5-86
[E's general partners' intruding themselves at place where Ees were having meeting after work with their U representative, w/o justifying their presence with explanation, and at time senior partner was known to be just outside building, violative]

5024-6300 Surveillance away from work

Indiana Desk Company, Inc. 276 NLRB No. 165
(guard hired by E violated Act by keeping striker's residence under surveillance)

Indiana Desk Company, Inc. 276 NLRB No. 165
(guards hired by E engaged in unlawful surveillance when in restaurant with strikers, guards would motion and watch strikers and talk on their radios)

5024-6600 Observation or ascertainment of employees' meeting or place of meetings

Dandridge Textile, Inc., Ronald W. Woods, Individually and As Officer and Managing Agent 279 NLRB No. 015
[surveillance of U meeting, violative, notwithstanding Ees attending meeting were not immediately aware of surveillance]

Western Yarns, Inc. 274 NLRB No. 073
(E's personnel director's placing himself in position to observe U meeting, violative)

N.L.R.B. v. Nueva Engineering, Inc. 761 F.2d 961 (C.A. 4, May 1985)
(supervisor's going to place of U meeting for purpose of surveilling meeting and when no meeting occured there, following Ees to home of Ee, violative, notwithstanding contention that since U meeting cancelled Ees not engaged in protected activity, inasmuch as E believed Ees engaged in protected activity and coercive tendency exists whether or not E actually sees U activity. So long as E watches Ees believed to be engaged in U activities, interference with statutory rights will follow)

5024-7100 Observation of employees meeting with union representatives

Springfield Hospital 281 NLRB No. 076
[security guard following off-duty Ees around premises or closely observing off-duty Ees meeting with U organizers in parking lot and taking notes not unlawful, as his observing Ees and taking notes to report to superiors w/i scope of his duties, and since Ees insisted on holding meeting on E's premises, management and its representatives could lawfully station themselves nearby and observe meeting]

Adams Super Markets Corp. 274 NLRB No. 194
(observation of U organizers with Ee in E's public snackbar and following them outside, not unlawful, since alleged surveillance resulted from Ee openly meeting in E's store with outside U organizers; *U representatives and Ees who choose to engage in U activities at E's premises should have no cause to complain that management observes them*)

5024-7300 Compiling lists of union activists and sympathizers

Art Bridges Pontiac JD-(SF)-118-86
[no unlawful impression of surveillance created by supervisor writing down names of Ees who, according to Ee, had signed U cards, where supervisor didn't state what he was going to do with list of names, and absent evidence individuals named were subjected to unlawful treatment or of U animus on part of E]

5024-7500 Warning employees that union activities were being spied on

Page Avjet, Incorporated 278 NLRB No. 063
[supervisor informing Ee that he had heard Ee was passing out U authorization cards did not constitute surveillance nor create impression of surveillance, where supervisor had received report that Ee had been soliciting authorization cards during work time and informed Ee of this report when inquiring about solicitation of cards]

5024-9900 Other

Bonanza Sirloin Pit 275 NLRB No. 54
(maintaining list of E's Ees who appeared to vote in Bd-conducted R election, violative)

5030 INTERROGATION CONCERNING UNION ATTITUDE, MEMBERSHIP, OR ACTIVITIES (See also 512- 5048)

5030-0100 Generally

3030-0100—Cont.

Bo-Ed Inc. d/b/a Golden Fan Inn **281 NLRB No. 035**
[in evaluating whether interrogations violate the Act, Bd will inquire whether under all the circumstances the interrogation reasonably tends to restrain, coerce or interfere with Ees' rights guaranteed by the Act; Bd will not apply *per se* approach but rather, will make a case-by-case analysis which takes into account the circumstances surrounding an alleged interrogation and does not ignore the reality of the workplace]

Reistance Technology, Inc. **280 NLRB No. 117**
[E's ordering supervisor to conduct unlawful interrogation not independent violation, although disclosure to Ees of the instruction is violation; overrules *Cannon Electric Co.*, 151 NLRB 1465 (1965)]

3030-0125 Coercive circumstances

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's calling Ee into his office and making comments about U reasonably claculated to elicit response from Ee held unlawful interrogation; fact that Ees casually intered and left supervisor's office did not diminish coercive impact of Ee's being called in to office and confronted with supervisor's displeasure with U activities, which was readily apparent to Ee]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[supervisor's asking Ee what he thought about U and, in response to Ee's comment that something needed to be done to improve working conditions, handing Ee state publication indicating Ees could not collect unemployment benefits while on strike, not unlawful, where encounter occurred on shop floor, involved low-level supervisor, and contained no threatening language]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[conversations during which supervisor asked Ee why she had not been invited to U meeting and on another occasion asking if Ee was going to U meeting, not unlawful, where supervisor and Ee were good friends, supervisor's comments did not contain any threats, and he attempted to assuage Ee's fears that she would lose her job if she attended U meeting]

Premier Maintenance, Inc. **282 NLRB No. 003**
[supervisor asking Ee if he knew anything about U, to which Ee replied *No*, but subsequently admitted that he was paid U organizer after E assured him he could keep his job, unlawful, since circumstances coercive where following Ee's admission he was paid U organizer, supervisor informed Ee he *would get him for this*]

Link Manufacturing Co. **281 NLRB No. 028**
[plant manager's questioning Ee about how he felt about U unlawful, where manager did not state any lawful purpose for interrogations and gave no assurances against reprisal but, instead, stated that E would not *tolerate* U and that forming U would be *mistake*]

Link Manufacturing Co. **281 NLRB No. 028**
[plant manager's asking Ee if he had signed U card, to which Ee gave noncommital answer even though he had done so, unlawful, where there was no lawful purpose for question and no assurances against reprisal given by manager, nor was there any evidence that conversation was friendly exchange; and manager, high management official, initiated conversation]

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**

Bennit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[asking Ee about U's organizational campaign, violation where accompanied by threat of job loss if Ee did not take it easy with his U activities]

J & B Smith Company, Inc. **280 NLRB No. 057**
[asking Ee who was passing out U cards why he wanted U and which Ees were assisting him, violation where, when Ee replied only he was distributing cards, E *reamed him out* and threatened to lock him up]

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor's assertion to Ee that supervisor was questioning everybody whether they had been approached by U, required response from Ee which, if truthful, could reveal Ee's U contacts or possibly U sympathy, and therefore assertion, though not in form of question, constituted unlawful interrogation, particularly when coupled with supervisor's request that Ee report U contacts that Ee considered *bothersome*, which supervisor did not limit to *workplace* nor to *threatening and intimidating* solicitations, thereby invoking standard so vague as to invite reports of legitimate albeit perhaps insistent solicitations]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[supervisor's asking Ees who had not openly declared support of U which Ees had participated in U activity which had signed U cards, and whether they had spoken to U organizer accompanied by warning not to sign U card and repetition of owner's threat to discharge all U activists, violation]

Trover Clinic **280 NLRB No. 002**
[supervisor's questioning why U button, not unlawful, where question was clearly rhetorical in nature, rather than one intended to elicit information; question was posed in Ee's office amidst Ee banter, and it elicited honest response; and there was no indication that incident had coercive impact on Ee or anyone else]

Lucky Stores, Inc. d/b/a Gemco **279 NLRB No. 153**
[manager's interrogation of Ee concerning his U activities, unlawful, notwithstnading claimed social or friendly relationship between the two, since mere existence of such relationship, of itself, does not automatically nullify coercive effect of otherwise unlawful remarks; discussion, conducted in manager's office principally to issue warning notices to Ee, was business-oriented, rather than social, and demonstrated manager's economic power over Ee who received no assurance of no reprisals and became apprehensive as result of manager's remarks; and claimed personal relationship was not established]

Continental Industries, Inc. **279 NLRB No. 130**
[interrogation' of Ee who was active and open U adherent, having handed out U cards and literature and been seen doing so by management, regarding his feelings about U and what he thought U could do for Ees, not violative under *Rossmore House* 269 NLRB 1176, inasmuch as questioning of open and active U supporters about their U sentiments not coercive absent threats or promises of benefits]

United States Steel Corporation **279 NLRB No. 004**
[supervisor asking Ee who had been subpoened to testify at hearing on alleged unlawful refusal to transfer grievance chairman, to refresh his recollection as to conversation they had had regarding grievance chairman's request for transfer, and when Ee's recollection differed from his, reiterating own version w/o assurances against reprisal, unlawful, since in these circumstances supervisor's remarks were coercive]

United Cloth Company, Inc. **278 NLRB No. 088**
[interrogation of Ee concerning her feelings about U, not coercive or unlawful, where Ee was open and active U adherent, and interrogation was not accompanied by threats]

Precision Founders, Inc. **278 NLRB No. 084**
[supervisor's remark not violation, notwithstanding it was designed to elicit response about U campaign, where it was conversational gambit, rather than direct inquiry of particular Ee in formal interview]

Clark Equipment Company **278 NLRB No. 085**
[asking Ee day before election why he supported U and whether it could give raises, not violation where Ee was open and active U adherent, who wore U button and passed out U leaflets and cards on E's premises, and surrounding circumstances were not coercive]

Clark Equipment Company **278 NLRB No. 085**
[interrogating found violative, notwithstanding it was of U supporter, where it was done in context of coercive statements of E's readiness to hire replacements in event of strike and of unlawful threat to make examples of Ees at this plant]

Clark Equipment Company **278 NLRB No. 085**
[asking Ee how he was going to vote, whether voting for U was right thing, and whether Ee knew that, if U won, he could lose his benefits, violation, notwithstanding Ee was known active U supporter]

Clark Equipment Company **278 NLRB No. 085**
'statements made in response to Ee's question that U could not give wages and benefits E did not want to give, that if Ees went on strike they could be replaced, and subsequent interrogation as to whether Ee thought that E needed U and if U could give Ee more benefits, violative where Ee was not active U adherent, and repeated questioning was coercive; statements were not found unlawful threats of discharge or of futility of selecting U, however]

Page Avjet, Incorporated **278 NLRB No. 063**
[supervisor asking Ee whether Ee was involved with U *again*, not unlawful, since inquiry not accompanied by coercive statmeents]

Lassen Community Hospital, A Division of Eskaton Health Corporation, Division of Eskaton **278 NLRB No. 053**
[E's telling applicant for employment that she supposed applicant knew about E's problems (meaning U's organizational drive) and asking her how she felt about U, violative, where coercive nature of interrogation was shown from fact interviewer was Director of Nursing and interview took place in Director's office]

Decasper Corporation **278 NLRB No. 022**
[interrogation unlawful where questioning occurred after E had manifested its displeasure with U's organizational campaign and during period inwhich E committed other ULPs, and interrogation not directed at open U supporters]

Road Industries, Inc. **278 NLRB No. 026**
[questioning of leading U activist and organizer by E's president how U's organizing drive was going, unlawful, where U activist, after 2-1/2 years' employment by E found himself, for first time alone, in president's office, and activits had recently experienced coercive interrogation by supervisor]

Hunter Douglas, Inc. **277 NLRB No. 123**
(plant manager asking Ee who had entered manager's office to get bandaid if true *Ee trying to get U back into place*, and on another occasion asking Ee if *Ees were trying to get U back in*, unlawful, where Ee not open U supporter

5030-0125—Cont.

and interrogation served no legitimate purpose and was designed to determine extent of involvement in U activities)

Sunnyvale Medical Clinic, Inc. **277 NLRB No. 131**
(ALJ's application of totality of circumstances test of *Blue Flash Express,* 109 NLRB 591 (1954) to interrogation, proper notwithstanding Ee was not *open and active union supporter* as in *Rossmore House,* 269 NLRB 1176 (1985), affd 760 F.2d 1006 (9th Cir 1985), since *Blue Flash,* which the Bd relied on in *Rossmore House* in rejecting a per se approach to interrogation in general, did not involve interrogation of *open and active union supporters,* but unit members whose sympathies were unknown to E)

Sunnyvale Medical Clinic, Inc. **277 NLRB No. 131**
(personnel director's asking Ee who had given him U authorization and dues checkoff cards directly, rather than through U, why she had joined U held lawful, casual questioning to be expected between supervisors and Ees working closely together in view of Ee's implied willingness to openly show U support; absence of history of E's hostility, discrimination or adverse action as to U; general, nonthreatening questions not for purpose of antiU action, director's friendly relationship with Ee, and casual, amicable conversation)

Kona 60 Minute Photo **277 NLRB No. 092**
(in finding E's interrogation of Ees whether they and other Ees supported U unlawful, Bd considered relevant fact interrogation was conducted by E's comanager and questioning took place at Ees' work stations rather than in less formal setting)

Bell Halter, Inc. **276 NLRB No. 136**
(supervisor's asking Ee what he thought about U, to which Ee responded that he could see why U was needed, unlawful, where Ee's response was insincere and somewhat equivocal suggesting recognition of some pressure in exchange with supervisor; no friendly relationship existed between supervisor and Ee which might have softened impact of supervisor's question; and while no threat accompanied interrogation, supervisor's manner left no doubt regarding his extreme displeasure with prospect of U organization which, coupled with statement that Ee was mistaken concerning U, lent coercive tone to situation)

Moe Warehouse & Accessory **275 NLRB No. 165**
(factors which may be considered in determining whether interrogation is coercive (1) backgound; (2) nature of information sought; (3) identity of questioner; and (4) place and method of interrogation. However, factors are not to be applied mechanically. Rather, they represent some areas of inquiry that may be considered in applying *Blue Flash* test of whether under all circumstances interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed under Act)

Moe Warehouse & Accessory **275 NLRB No. 165**
(interrogation as to whether he signed card of Ee at work by owner of E, in context of promise of consideration of Ee for management position, against backgound of recent signing of authorization cards, and E's other ULPs, unlawful)

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**
(manager's introduction, during discussion with Ee in manager's office about Ee morale, subject of U's decertification to explain how it could be done and what the effects would be, unlawful, since E had no prior knowledge of any decertification activity going on, it was not stuff of innocuous conversation but rather, in light of parties, context, subject matter, and text of conversation, conveyed implication that E was using his leverage to influence Ee on question of U representation, and thereby constituted both unlawful interrogation and solicitation)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(E's interrogation of Ees before the strike found violative because of coercive context where Ees were interrogated by E's highest officer in context of threats, abuse, and vulgarity)

Robins Federal Credit Union **273 NLRB No. 165**
(violation found where supervisor asked Ee engaged in U organizing activities how it *was coming along on that* and supervisor *kind of laughed* when Ee inquired whether he meant the U and then informed supervisor that U was *coming along, but these things take time;* such interrogation was inherently coercive since it went beyond casual question and was pointed effort to discover U's progress in campaign)

B & W Machine & Welding Company **JD-(SF)-107-86**
[asking Ee why he supported U, unlawful, in view of all the circumstances, where Ee was repeatedly questioned at his work station by co-owner of business who could clearly hire and fire Ees; interrogation was not isolated but was accompanied by threats of plant closure and of discharge of U supporters; and questioning occurred one-on-one with no indication that Ee's retention of employment was secure regardless of his replies]

Art Bridges Pontiac **JD-(SF)-118-86**
[supervisor asking Ee how many Ees had signed U cards, not unlawful, since devoid of elements of coercion necessary for finding of violation, where Ee had approached supervisor about U organizing efforts and was willing to make E aware of his involvement]

Southland Frozen Foods, Inc. **JD-(NY)-78-86**
[survey of Ees conducted for E by outside consulting firm and having primary purpose of soliciting Ee grievances not construed as interrogation and Bd's usual protective requirements not applicable, where there was no question in survey which sought to ascertain Ees' U sentiment; at any rate, in view of procedure in conducting survey and absence of other ULPs, survey was not coercive]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[asking Ee, after unlawfully interrogating her about U and stating to her that E knew she was active in U, in she liked her job, unlawful and, unlike in *Rossmore House,* not permissible and protected free speak]

Northline Bus Center, Inc. **JD-(ATL)-41-85**
(coercive tendency of questioning Ee about his feelings toward U and what Ees had approached him about U held demonstrated by fact that interrogation took place in office of one of E's highest management officials in presence of very top official of E, and no assurances against reprisals were given to Ee, and no valid purpose for interrogation was communicated to Ee)

Beverly Enterprises d/b/a Tifton Nursing Home **JD-(ATL)-33-85**
(supervisor asking Ee what he was doing out of his work area and why Ees wanted U, not unlawful, since not coercive where unaccompanied by any threats or specific promises of benefits, location of interrogation reasonably tend to create fear, and absent evidence of U animus or that information sought was to be used as basis for reprisals against Ees)

Benson Associates **JD-101-85**
(series of interrogations of Ees' U activities by sole day-to-day supervisor, unlawful, where supervisor expressed E's U animus, information was sought in order to take action against Ees, Ees were called into supervisor's office or taken aside by him, numerous Ees indicated their fear by replying untruthfully, no purpose was served by interrogation, and Ees were not told why they were being questioned nor assured that no reprisals would be taken against them)

Burlington Industries, Inc. **JD-(ATL)-13-85**
(E's question to U advocate concerning U cards, not violative where question was jokingly delivered, was not taken seriously, was not accompanied by any threat of reprisal or promise of benefit, and did not occur in context of any other ULP by E which would lend coercive impact to question)

Van Gas, Inc. **JD-(SF)-33-85**
(immediate supervisor asking newly employed Ee if she had seen notice regarding coming election, asking her how she felt about U, and urging her to vote against U, unlawful, since Ee was not informed of purpose of interrogation, nor given assurances against reprisal)

N.L.R.B. v. Nueva Engineering, Inc. **761 F.2d 961 (C.A. 4, May 1985)**
]questioning or interrogating of Ees about their U sentiments is not per se unlawful provided that such questioning is not coercive. Ct has applied totality of circumstances test to interrogation, considering variety of factors including history of E hostility to U, nature of information sought, identity of questioner, and place and method of questioning)

Landmark International Trucks, Inc. v. N.L.R.B. **775 F.2d 148 (C.A. 6, Oct. 1985)**
[E's otherwise noncoercive letter not rendered coercive by inclusion of E's request that it be notified of Ees' resignation from U, notwithstanding Bd's finding that E's request served no legitimate purpose]

5030-0150 Coercive in light of other unfair labor practice

Kokomo Tube Company **280 NLRB No. 035**
[supervisor asking Ee what Ee's opinion of U was, why he and other Ees couldn't communicate with management w/o outside interference, and when Ee was noncommittal, asking Ee *if* it didn't work out between U and E did not Ee *think it was possible E could close its doors* constituted unlawful interrogation, rather than lawful expression of opinion as to possible effects unionization permitted by Section 8(c), notwithstanding this particular Ee and supervisor were longtime acquaintances and use of word *if,* in view of E's persistent and unwarranted questioning of Ees accompanied by threats of closing]

Roseburg Lumber Company **278 NLRB No. 124**
[interrogation of known U supporter violation, where in same conversation supervisor created impression that E was engaging in surveillance of all U supporters and threatened to discipline and discharge Ee and close plant]

United States Postal Service **277 NLRB No. 156**
(asking Ee if he had signed ptn for U being circulated by U activist before his discharge and warning Ee that he had better not have signed it, violation where E's anti-U massage was clear notwithstanding pretense at joking atmosphere)

Moe Warehouse & Accessory **275 NLRB No. 165**
(interrogation as to whether he signed card of Ee at work by owner of E, in context of promise of consideration of Ee for management position, against backgound of recent signing of authorization cards, and E's other ULPs, unlawful)

5030-0150—Cont.

Sierra Hospital Foundation 274 NLRB No. 056
(supervisor asking Ee, why she felt so strongly about having U in hospital, where inquiry was not isolated but occurred in context of other unlawfully coercive statements, thereby conveying message that E was displeased with Ee's U sympathies)

Benson Associates JD-101-85
(series of interrogations of Ees' U activities by supervisor, unlawful, in view of coercive circumstances under which interrogation was carried out, including totality of E's other ULPs)

5030-0175 Not coercive per se

Bo-Ed Inc. d/b/a Golden Fan Inn 281 NLRB No. 035
[in evaluating whether interrogations violate the Act, Bd will inquire whether under all the circumstances the interrogation reasonably tends to restrain, coerce or interfere with Ees' rights guaranteed by the Act; Bd will not apply *per se* approach but rather, will make a case-by-case analysis which takes into account the circumstances surrounding an alleged interrogation and does not ignore the reality of the workplace]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle 280 NLRB No. 043
[w/o deciding whether engaging in picketing was sufficient to make Ee open and active U adherent w/i meaning of *Rossmore House*, 269 NLRB 1176, Bd held E's asking Ees, following commencement of picketing, why they wanted U, unlawful, where of 4 Ees interrogated by E only 2 engaged in picketing, and there was no evidence that remaining 2 Ees were open U adherents; and, unlike in *Rossmore House*, questioning here occurred in context of other E ULPs]

Paintsville Hospital Company, Inc. 278 NLRB No. 107
[U-related inquiries to Ees by supervisors, not violative where supervisors supported U and Ees knew of their support]

Paintsville Hospital Company, Inc. 278 NLRB No. 107
[financial manager's asking open U supporter how many Ees she had signed up for U, not violative, where inquiry sought only number of Ees she had signed up, not names of those Ees]

Paintsville Hospital Company, Inc. 278 NLRB No. 107
[E's director of Ee relations responding to discharged U advocate's complaints about her discharge and working conditions by stating that he would listen if she wanted to volunteer information but that he could not threaten, interrogate, promise, or surveil, not violative]

Precision Founders, Inc. 278 NLRB No. 084
[supervisor's remark not violation, notwithstanding it was designed to elicit response about U campaign, where it was conversational gambit, rather than direct inquiry of particular Ee in formal interview]

Sunnyvale Medical Clinic, Inc. 277 NLRB No. 131
(ALJ's application of totality of circumstances test of *Blue Flash Express*, 109 NLRB 591 (1954) to interrogation, proper notwithstanding Ee was not *open and active union supporter* as in *Rossmore House*, 269 NLRB 1176 (1985), affd 760 F.2d 1006 (9th Cir 1985), since *Blue Flash*, which the Bd relied on in *Rossmore House* in rejecting a per se approach to interrogation in general, did not involve interrogation of *open and active union supporters*, but unit members whose sympathies were unknown to E)

Sunnyvale Medical Clinic, Inc. 277 NLRB No. 131
(supervisor's telling U steward that he was disappointed in her for filing charge with Bd, not violation, since, even if designed as interrogation to elicit response, statement was directed to open and active U supporter and contained no threat or promise)

Crest Industries, Corp. 276 NLRB No. 067
(upon demand for recognition, and U's assertion that majority of Ees signed cards, E's president's asking *is this what you want*, not violative where U's representatives were present when poll was conducted, U agent had authorization cards in his hand and immediately offered to show them to E's president to confirm Ees' affirmative response to poll, and U agent's purpose in having Ees accompany him when he made demand for bargaining was to enable Ees to answer any questions E might have)

SCA Services of Georgia, Inc. 275 NLRB No. 120
(asking Ee if he would be able to pay his U dues if E did not deduct them, not coercive in context of casual easy-going conversation w/o threats or promises, showing of E's displeasure with remittance of U dues or tendency to interfere with Ee's right to engage in U activity)

Sears, Roebuck and Co. 274 NLRB No. 002
(no violation under *Rossmore House* rule where, after observing Ee who was known to be active in organizing campaign of one local at store where he worked distribute literature for sister local at another of E's stores, E's Ee relations representative remarked that he was wondering if Ee was on the international U's payroll, since Ee was breaking over jurisdictional lines by working for one local at one store and another local at another store; statement containing no unlawful threats or promises was made to open, active U supporter in noncoercive circumstances)

Commercial Property Services, Inc. JD-(NY)-80-86
[E's consultant's asking Ee during week of election what she felt were advantages of U, what U could provide, and what E was not providing, not unlawful nor interference with election, where there was absences of U hostility, questions were general and non threatening, and E had told Ee that her job would not be jeopardized if she voted for U]

Safety-Kleen Corp. JD-117-85
(E's asking U activist what was going on about U and why he had signed U card and, on another occasion, asking him how he was going to get U in now that fellow U activist was gone, lawful in absence of coercive circumstances)

Medallion Kitchens, Inc. v. N.L.R.B. 806 F.2d 185 (C.A. 8, Nov. 1986)
[test for violation of Section 8(a)(1) is not whether attempt at coercion has succeeded or failed but whether E engaged in conduct which reasonably tends to interfere with, restrain, or coerce Ees in free exercise of their rights under Section 7 of Act]

Hotel & Restaurant Employees, Local 11 v. N.L.R.B. (Rossmore House Hotel) 760 F.2d 1006 (C.A. 9, May 1985)
(ct held Bd acted w/i its province in returning to flexible all-the-circumstances test which recognizes that E's questioning of Ee's U views is not necessarily coercive and may arise during casual conversation; standard is realistic approach to enforcement of 8(a)(1) and is consistent with Act because Bd and ALJs can determine, on case-by-case basis, whether all facts demonstrate coercive behavior)

Hotel & Restaurant Employees, Local 11 v. N.L.R.B. (Rossmore House Hotel) 760 F.2d 1006 (C.A. 9, May 1985)
(Bd correctly applied all-the-circumstances test to facts of case; inquiry was not coercive where Ee openly declared support for U and under circumstances E's questioning was not unlawful)

5030-2000 Questioning of applicants for employment

American Threat Company 274 NLRB No. 164
(E asking prospective Ee who had previously worked for E if he would cross picket line in event of strike, not unlawful, where single isolated incident)

5030-2033 Instructing supervisor to question applicants concerning union membership

Resistance Technology, Inc. 280 NLRB No. 117
[E's ordering supervisor to conduct unlawful interrogation not independent violation, although disclosure to Ees of the instruction is violation; overrules *Cannon Electric Co.*, 151 NLRB 1465 (1965)]

5030-2050 Questioning applicants as to their union membership, adherence, or activities

Best Western Motor Inn 281 NLRB No. 026
[asking supervisors to find out who *troublemakers* or instigators of U campaign were found unlawful request for supervisors to surveil and gather information about Ees' U activities but insufficient to support finding of unlawful request to interrogate Ees]

Lassen Community Hospital, A Division of Eskaton Health Corporation, Division of Eskaton 278 NLRB No. 053
[E's telling applicant for employment that she supposed applicant knew about E's problems (meaning U's organizational drive) and asking her how she felt about U, violative, where coercive nature of interrogation was shown from fact interviewer was Director of Nursing and interview took place in Director's office]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047
(asking applicant for employment about his feelings on unionization at initial interview, informing applicant there was U organizing drive going on but not to pay any attention to solicitors, and subsequently asking applicant how he would vote in election to determine whether there would be U representation, and upon his reply that he would vote *No*, informing applicant he was hired, violative)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(grilling job applicant in context of job interview with respect to his U inclinations, unlawful)

E.I. Du Pont De Nemours & Company JD-(ATL)-96-84
(E's routine questioning of all applicants concerning their feelings about working in non-U shop, violative)

5030-4000 Questioning of employees

Unico Replacement Parts, Inc. 281 NLRB No. 046
[supervisor's questioning of Ee involved essentially personal concerns and was not unlawful, where supervisor sought to ascertain from Ee why Ee had informed U representative of supervisor's derogatory remarks about representative; focus of inquiry centered not on any U activities Ee may have been engaged in, but rather on U representative's complaint to E and to supervisor that latter had *badmouthed* him]

5030-4000—Cont.

Club Monte Carlo Corporation **280 NLRB No. 030**
[E's vice-president's asking waitresses, who called to discuss reinstatement, who had conceived idea of concerted activity for which they had been suspended, unlawful, as interrogation part of investigation into Ees concerted activity to determine leader's specific identity. Further, interrogation made by high management officials when their employment status was uncertain because of their concerted activity]

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(in finding bargaining order warranted, Bd relied on E's extensive interrogation about Ees' U activities and threats of reprisal, conducted by management from top to bottom, and directed at almost all Ees, both individually and in groups, with some Ees subject of repeated interrogations and threats)

Robins Federal Credit Union **273 NLRB No. 165**
(violation found where supervisor asked Ee engaged in U organizing activities how it *was coming along on that* and supervisor *kind of laughed* when Ee inquired whether he meant the U and then informed supervisor that U was *coming along, but these things take time;* such interrogation was inherently coercive since it went beyond casual question and was pointed effort to discover U's progress in campaign)

5030-4015 Concerning employee's opinion of union or of its actions

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's asking if Ee had any questions, after Ee had read Bd decision concerning statements by Es and some newspaper articles on strikes that supervisor had given Ee, not unlawful, where query was accompanied by supervisor's statements that Ee was under no compulsion to express her views and that no inference that Ee supported U would be drawn if Ee declined to share her opinion]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[supervisor's asking Ee what he thought about U and, in response to Ee's comment that something needed to be done to improve working conditions, handing Ee state publication indicating Ees could not collect unemployment benefits while on strike, not unlawful, where encounter occurred on shop floor, involved low-level supervisor, and contained no threatening language]

Central Broadcast Company **280 NLRB No. 056**
[supervisor asking Ee how tough U was in context of conversation involving E's intent to use automation as pretext for unlawful layoff of U supporters and asking Ee when U would file injunction against E, an impermissible inquiry into U affairs and strategy, in coercive setting of recent unlawful layoff of U supporters, violations]

Precision Founders, Inc. **278 NLRB No. 084**
[supervisor's remark not violation, notwithstanding it was designed to elicit response about U campaign, where it was conversational gambit, rather than direct inquiry of particular Ee in formal interview]

Crest Industries Corp. **276 NLRB No. 067**
(upon demand for recognition, and U's assertion that majority of Ees signed cards, E's president's asking *is this what you want,* not violative where U's represeniatives were present when poll was conducted, U agent had authorization cards in his hand and immediately offered to show them to E's president to confirm Ees' affirmative response to poll, and U agent's purpose in having Ees accompany him when he made demand for bargaining was to enable Ees to answer any questions E might have)

Kohler Company **273 NLRB No. 195**
(coercively interrogating Ees about their support for U's bargaining position, violative)

5030-4020 Concerning own union membership adherence or activities

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's asking Ee if money was one of the problems, unlawful, where inquiry related to Ee's reasons for supporting U]

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's inquiry into Ees' reasons for wanting U, unlawful, since inquiry conveyed E's displeasure with Ees' U activity; Bd noted that *Rossmore House* 269 NLRB 1176, overruled *PPG Industries,* 251 NLRB 1146, cited by ALJ, with respect to questioning of open and active U supporters]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[supervisor's asking why Ee had signed U cards, unlawful]

Premier Maintenance, Inc. **282 NLRB No. 083**
[supervisor asking Ee if he knew anything about U, to which Ee replied *No,* but subsequently admitted that he was paid U organizer after E assured him he could keep his job, unlawful, since circumstances coercive where following Ee's admission he was paid U organizer, supervisor informed Ee he *would get him for this*]

Springfield Hospital **281 NLRB No. 076**
[supervisor questioning Ee as to why she was U supporter, not coercive, since conversation took place out in open and Ee was known U supporter]

American National Insurance Company **281 NLRB No. 108**
[E's poll of Ees to determine whether they desired representation by U violative, where poll was not conducted by secret ballot]

Foodland, Inc., d/b/a Super-H Discount **281 NLRB No. 109**
[supervisor's asking and telling an Ee, who was overheard talking on the phone during working time and whom the supervisor suspected was talking about the U, if she was talking about the U and then telling her not to talk U on the clock, not violative, since there was no evidence the prohibition was ever communicated to other Ees and Ees continued to talk about the U thereafter; such remarks were a *single, isolated and innocuous* exchange and does not rise to the level of a violation particularly in the absence of U animus]

Inner City Broadcasting Corporation **281 NLRB No. 162**
[interrogating Ee as to why she refused tosign ptn seeking ouster of U, unlawful]

Boddour, Inc. **281 NLRB No. 004**
[supervisor's offer of assistance to Ee, not violation, notwithstanding supervisor's unlawful interrogation of Ee about his feelings about U, where offer was made following inquiry as to how Ee's daughter was doing and appeared in that context to have been offer of personal assistance rather than solicitation of work-related grievances]

Link Manufacturing Co. **281 NLRB No. 028**
[plant manager's questioning Ee about how he felt about U unlawful, where manager did not state any lawful purpose for interrogations and gave no assurances against reprisal but, instead, stated that E would not *tolerate* U and that forming U would be *mistake*]

Link Manufacturing Co. **281 NLRB No. 028**
[plant manager's asking Ee if he had signed U card, to which Ee gave noncommital answer even though he had done so, unlawful, where there was no lawful purpose for question and no assurances against reprisal given by manager, nor was there any evidence that conversation was friendly exchange; and manager, high management official, initiated conversation]

Bo-Ed Inc. d/b/a Golden Fan Inn **281 NLRB No. 035**
[E's questioning of Ee as whether she had received anything in the mail and asking her if she was *one of the girls,* not violative, since statements could not reasonably tend to coerce Ee where Ee and E were friends engaging in a casual conversation in Ees' work area, E's reference to a mailing and E's reference to *one of the girls* was ambiguous]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[Ee's questioning of fellow Ee, in presence of supervisor, whether he was for U, not unlawful, even though supervisor did nothing to deter Ee from interrogating fellow Ee since there was insufficient evidence from which to conclude that Ee was acting as agent of E]

Airport Distributors, Inc. **280 NLRB No. 091**
[questioning Ees whether they had signed U authorization cards, unlawful, where questioning was persistent, vitriolic, personal, and private, and no justification nor any assurance against reprisal was offered for such questioning]

Airport Distributors, Inc. **280 NLRB No. 091**
[asking Ee what it *would take* to discourage his support for U, whether he desired raise of $1 per hour, and would Ee go out on strike with U, accompanied by denigration of Ee with obscenity when Ee indicated he probably would go out on strike held not only act of coercive interrogation but also unlawful promise of wage increase for purpose of dissuading Ee from supporting U]

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**
[asking Ee whether Ee had signed authorization card for the U of two competing Us with which E least preferred to deal, unlawful, since questioning had tendency to coerce where Ee was questioned alone in supervisor's office, was not open U supporter, in view of fact Ee had previously been threatened with discharge if she signed card for any U, and also if she did not sign card for U favored by E]

Kokomo Tube Company **280 NLRB No. 035**
[supervisor asking Ee what Ee's opinion of U was, why he and other Ees couldn't communicate with management w/o outside interference, and when Ee was noncommittal, asking Ee *if* it didn't work out between U and E did not Ee *think it was possible E could close its doors* constituted unlawful interrogation, rather than lawful expression of opinion as to possible effects unionization permitted by Section 8(c), notwithstanding this particular Ee and supervisor were longtime acquaintances and use of word *if,* in view of E's persistent and unwarranted questioning of Ees accompanied by threats of closing]

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor's asking Ee engaged in U activities if he had put out *union papers* held unlawful, in context of accompanying anti-U remarks]

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La Salle Investment Co., Ltd., d/b/a Cafe La Salle **280 NLRB No. 043**
-[w/o deciding whether engaging in picketing was sufficient to make Ee open and active U adherent w/i meaning of *Rossmore House*, 269 NLRB 1176, Bd held E's asking Ees, following commencement of picketing, why they wanted U, unlawful, where of 4 Ees interrogated by E only 2 engaged in picketing, and there was no evidence that remaining 2 Ees were open U adherents; and, unlike in *Rossmore House*, questioning here occurred in context of other E ULPs]

Terraillon Corp. **280 NLRB No. 037**
[E's vice-president asking Ees why they wanted U not coercive, not unlawful, where U's agents, during visit to E's plant, had invited vice-president to question Ees as to their U support]

Consolidated Edison Co. of New York, Inc. **280 NLRB No. 039**
[questioning Ee, who was known participant in dissident U group, concerning his requesting fellow Ees to sign ptn and affidavit contesting U voting procedures, not violative, since Ee was a known participant in dissident U group who solicited his fellow Ees to sign U material while they were on their work (as apposed to break) time. As E is entitled to have its Ees perform their work w/o interruptions, E has right to investigate apparent interferences with its Ees carrying out their duties]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[supervisor's asking Ees who had not openly declared support of U which Ees had participated in U activity which had signed U cards, and whether they had spoken to U organizer accompanied by warning not to sign U card and repetition of owner's threat to discharge all U activists, violation]

Springs, Inc. d/b/a Springs Motel **280 NLRB No. 033**
[supervisor asking Ees how anti-U meeting went at which attendance was required by E, unlawful, where Ees questioned were not known U adherents, notwithstanding contention questioning was no more than harmless curiosity, that questions were not phrased to elicit information regarding Ees' U membership or sympathies, and Ees answered candidly]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[where supervisor informed Ee that if Ees would sign U decertification ptn things would return to normal, and his subsequent asking Ee if Ee was going to sign decertification ptn which was being circulated, unlawful, since in those circumstances interrogation was coercive]

Soulsoctro Corporation **280 NLRB No. 015**
[supervisor asking Ee if he had attended U meeting previous night and how he felt about meeting, unlawful, since not merely casual questioning, but coercive, where supervisor was new and there was no ongoing relationship, and Ee was not self proclaimed U adherent]

Soulsoctro Corporation **280 NLRB No. 015**
[supervisor asking Ee if he had attended U meeting previous night and how he felt about meeting, unlawful, since not merely casual questioning, but coercive, where supervisor was new and there was no ongoing relationship, and Ee was not self proclaimed U adherent]

Soulsoctro Corporation **280 NLRB No. 015**
[supervisor asking Ee if Ee had signed U card, and when ee said he had, asking Ee if he wanted card back, and when Ee replied *yes*, having Ee sign paper, then informing Ee when U campaign was over Ee organizers would not be there anymore, unlawful]

Armon Company **279 NLRB No. 158**
[asking Ee from whom he had received a telephone call and, when told it was from the U, asking which local, and asking another Ee whether the *guys* got together and had a meeting or the U came to them, and asking if Ee knew anything about local and its apparent head, violations]

Trover Clinic **280 NLRB No. 002**
[supervisor's questioning why U button, not unlawful, where question was clearly rhetorical in nature, rather than one intended to elicit information; question was posed in Ee's office amidst Ee banter, and it elicited honest response; and there was no indication that incident had coercive impact on Ee or anyone else]

Lucky Stores, Inc. d/b/a Gemco **279 NLRB No. 153**
[systematic questioning of suspected U supporter, to which de minimis doctrine expounded by ALJ was not passed on by Bd majority, unlawful, where Ee, called into manager's office, was subjected to series of questions which had no lawful purpose; upon being queried by E, Ee denied that he had called in U, and then upon being directly asked whether he had signed U card, Ee responded that all but one of unit Ees had done so; and, while Ee soon left E's employ, E knew by then through interrogation of Ee of U sentiments of all but one of its unit Ees]

Lucky Stores, Inc. d/b/a Gemco **279 NLRB No. 153**
[manager's interrogation of Ee concerning his U activities, unlawful, notwithstnading claimed social or friendly relationship between the two, since mere existence of such relationship, of itself, does not automatically nullify coercive effect of otherwise unlawful remarks; discussion, conducted in manager's office principally to issue warning notices to Ee, was business-oriented, rather than social, and demonstrated manager's economic power over Ee who received no assurance of no reprisals and became apprehensive as result of manager's remarks; and claimed personal relationship was not established]

The Gerkin Co. **279 NLRB No. 136**
[E's highest officer's singling out one Ee at Ee meeting and asking him if it was correct that U had made promise of certain wages and bonus to Ees, asking Ee exactly what business representative had said, and asking, *you were there, weren't you?* violation and interference]

The Tribune Company **279 NLRB No. 138**
[no violation where Ees questioned publicly supported U, legitimate basis existed for U, and there was no objective evidence that interrogations had coercive effect]

Continental Industries, Inc. **279 NLRB No. 130**
[interrogation of Ee who was active and open U adherent, having handed out U cards and literature and been seen doing so by management, regarding his feelings about U and what he thought U could do for Ees, not violative under *Rossmore House* 269 NLRB 1176, inasmuch as questioning of open and active U supporters about their U sentiments not coercive absent threats or promises of benefits]

Raytheon Missile System Division, Raytheon Company **279 NLRB No. 035**
[supervisor warning U adherent against having any U stuff on his desk during company time, not violative where E was simply utilizing housekeeping rule that was created prior to U's advent in non-discriminatory manner]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[supervisor asking Ee how negotiations were going, unlawful, since supervisor was impliedly asking Ee if Ee agreed with U's actions in negotiations, and thus about Ee's U sympathies; further, if supervisor was interested in what had actually transpired in negotiations he would have asked E's representatives]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[supervisor asking Ee how she felt about communications between herself and U, speaking of E's side regarding U representation and referring to circulation of anti-U ptn, unlawful]

T & T Machine Company, Inc. **278 NLRB No. 139**
[supervisor calling Ee into his office, where in presence of three supervisors Ee was asked *how he felt about U*, and upon Ee's reply he didn't like Us, he was cautioned not to associate with U supporters, promising Ee he would have training to enhance his skill level above that of U supporters that E planned to get rid of, and informing Ee if he would report his errors directly to those supervisors, his record would be clean, but errors of U supporters would be recorded, unlawful]

Roseburg Lumber Company **278 NLRB No. 124**
[interrogation of known U supporter violation, where in same conversation supervisor created impression that E was engaging in surveillance of all U supporters and threatened to discipline and discharge Ee and close plant]

United Cloth Company, Inc. **278 NLRB No. 088**
[interrogation of Ee concerning her feelings about U, not coercive or unlawful, where Ee was open and active U adherent, and interrogation was not accompanied by threats]

Clark Equipment Company **278 NLRB No. 085**
[asking Ee how he was going to vote, whether voting for U was right thing, and whether Ee knew that, if U won, he could lose his benefits, violation, notwithstanding Ee was known active U supporter]

Clark Equipment Company **278 NLRB No. 085**
[statements made in response to Ee's question that U could not give wages and benefits E did not want to give, that if Ees went on strike they could be replaced, and subsequent interrogation as to whether Ee thought that E needed U and if U could give Ee more benefits, violative where Ee was not active U adherent, and repeated questioning was coercive; statements were not found unlawful threats of discharge or of futility of selecting U, however]

Page Avjet, Incorporated **278 NLRB No. 063**
[supervisor asking Ee whether Ee was involved with U *again*, not unlawful, since inquiry not accompanied by coercive statmeents]

Hunter Douglas, Inc. **277 NLRB No. 123**
(plant manager asking Ee who had entered manager's office to get bandaid if true *Ee trying to get U back into place*, and on another occasion asking Ee if *Ees were trying to get U back in*, unlawful, where Ee not open U supporter and interrogation served no legitimate purpose and was designed to determine extent of involvement in U activities)

Sunnyvale Medical Clinic, Inc. **277 NLRB No. 131**
(personnel director's asking Ee who had given him U authorization and dues checkoff cards directly, rather than through U, why she had joined U held lawful, casual questioning to be expected between supervisors and Ees working closely together in view of Ee's implied willingness to openly show U support; absence of history of E's hostility, discrimination or adverse action

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as to U; general, nonthreatening questions not for purpose of antiU action, director's friendly relationship with Ee, and casual, amicable conversation)

Long-Airdox Company, A Division of Marmon Group, Inc. 277 NLRB No. 124
(E's interrogation of Ees of how they planned to vote in election held unlawful and interference with election)

Heck's Inc. 277 NLRB No. 098
(interrogation of Ee concerning her own and others' U sympathies, unlawful, since Ee not leading and open U adherent w/i *Rossmore House* 269 NLRB 1176)

Kona 60 Minute Photo 277 NLRB No. 092
(interrogation of Ees, immediately after receiving U's recognition request, whether Ees were going to form U, who had signed for U, and whether Ee was for U, unlawful, where Ees had not openly declared themselves to be U supporters; E's exchanges with Ees were not casual conversations seeking information of general nature but were requests for specific information whether Ees supported U and identity of others who did; and interrogation was conducted by E's comanager and questioning took place at Ees' work stations rather than in less formal setting)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047
(supervisor asking Ee *why did you betray me? I thought you were anti-U,* unlawful, since forced Ee to disclose reasons for his U sentiments in context in which he was made to understand that supervisor was aware of his U activities and that such conduct was betrayal of supervisor)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(E's interrogating Ee about his intentions with respect to U, accompanied by statements that E had heard Ee was siding with U, that E considered U a cancer, and that everyone siding with it would be eliminated, unlawful, in view of E's extreme opposition to U as illustrated by his reference to it as cancer, and numerous other acts of unlawful threats and interrogation, thereby showing pervasive pattern of such acts)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(asking Ee if he had signed U card, unlawful, where inquiry was made w/o any valid reason and was coercive by very fact that it emanated from store manager)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(asking Ee if he remembered date he signed U card and promising Ee a dinner if Ee found out date he signed card, unlawful)

Walter Garson, Jr & Associates. 276 NLRB No. 137
(asking Ee what she thought about U after announcing Ee's pay raise, not violative, since questioning took place after granting of raise, Ee was not only Ee granted raise at time, and Ees were open regarding U adherence)

Bell Halter, Inc. 276 NLRB No. 136
(leaderman's asking Ee how did U get started and if Ee, who admitted to contacting U, knew what he was doing, not unlawful, where at the time leaderman's supervisory status had not been resolved and it was not clear Ee considered leaderman's question to be emanating from supervisor; Ee's own testimony showed Ee did not consider question coercive but one to which he was freely willing to respond honestly *as a friend,* and leaderman's question was not accompanied by threat of reprisal or promise of benefit)

Bell Halter, Inc. 276 NLRB No. 136
(supervisor's asking Ee what he thought about U, to which Ee responded that he could see why U was needed, unlawful, where Ee's response was insincere and somewhat equivocal suggesting recognition of some pressure in exchange with supervisor; no friendly relationship existed between supervisor and Ee which might have softened impact of supervisor's question; and while no threat accompanied interrogation, supervisor's manner left no doubt regarding his extreme displeasure with prospect of U organization which, coupled with statement that Ee was mistaken concerning U, lent coercive tone to situation)

Bell Halter, Inc. 276 NLRB No. 136
(supervisor's questioning Ee whether he had signed U card, not unlawful, in view of familiar relationship of supervisor as uncle to Ee, who made it clear to Ee that he was speaking as such and not as supervisor, and there was no evidence that Ee perceived question as coercive)

Naval Color Corporation 276 NLRB No. 061
(questioning Ee at work station about whether Ee would support U in upcoming election, violative, where E had no prior knowledge as to Ee's position on election and no lawful purpose for questioning)

Cutliff Business Products, Inc. and RBD Service Corporation 276 NLRB No. 067

Webb Furniture Enterprises, Inc. 275 NLRB No. 180
(unlawful interrogation, where E asked Ee if Ee had posted U leaflet, since question placed Ee in position of revealing his U sympathies, question served no legitimate business purpose, having been asked pursuant to disparate application of unlawful no-solicitation rule, and no assurances against reprisal given)

PYA/Monarch, Inc. 275 NLRB No. 107
(no unlawful interrogation, where operations manager asked Ee *What do you think about what is going on here?* since question was not inherently coercive, and Ee was open U supporter, nor were circumstances coercive where question asked during casual conversation)

Mor Warehouse & Accessory 275 NLRB No. 148
(interrogation as to whether he signed card of Ee at work by owner of E, in context of promise of consideration of Ee for management position, against backgound of recent signing of authorization cards, and E's other ULPs, unlawful)

C & L Warehouse & Distributing Corp. 275 NLRB No. 148
(E's summoning Ee to his office after Ee returned to work during strike and asking Ee if he had signed U card, not violative where questioning was unaccompanied by threats or promises of benefits, and Ee, by complaining about strikers' threats to him during strike, had opened door to questions about his relationship to strikers)

Okun Brothers Shoe Store, Inc. 275 NLRB No. 145
(supervisor's asking Ee how many Ees had signed up for U, coercive and objectionable in view of E's active opposition to U, lack of reason for supervisor's question, and fact it was oblique inquiry as to how active Ee was in organizing drive)

Comfort & Company, Inc. 275 NLRB No. 083
(E's asking Ee, who had history of ill health and personal grief on whom the Bd hearings appeared to have taken a toll, how in the hell he had ever gotten involved in this, violative where it showed E's displeasure with his involvement, and, even if E's statements were prompted by his concern about Ee's health, there was no evidence that E conveyed his concern to Ee, and E's subjective reasons were irrelevant in considering in impact of his statements on Ee)

Marko Contractors, Inc. 275 NLRB No. 63
(supervisor's asking Ee, *You signed a card, didn't you?* violative where made following Ee's unsuccessful inquiry about being recalled)

Tomco Carburetor Company 275 NLRB No. 081
(interrogating Ees about location of their U authorization cards, violative)

Aluminum Technical Extrusions, Inc. 274 NLRB No. 199
(E's questioning Ees about whether they attended a U meeting or signed U ptn violative, where Ees were not overt U partisans nor did they openly present their pro-U views to management; further, fact that Ees denied any U involvement, when such was not in fact the case, demonstrates the coercive nature of the interrogation)

Sierra Hospital Foundation 274 NLRB No. 056
(supervisor asking Ee, why she felt so strongly about having U in hospital, where inquiry was not isolated but occurred in context of other unlawfully coercive statements, thereby conveying message that E was displeased with Ee's U sympathies)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 185
(E's consultant's asking for show of hands of those of E's Ees who were formerly U members in regard to question of U's providing job security, not unlawful interrogation; it was attempt to show that U representation provided no guarantee of job security, not to determine number of U supporters, and would have had no coercive effect)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 185
(E's consultant's asking Ees if they had received copies of U's constitution and bylaws, not unlawful interrogation, but rhetorical question to show that Ees might not have been getting complete picture and all facts from U necessary for making informed decision)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 185
(E's president's calling Ee into his office and asking if U representatives had been to her house and why she had not refused to speak to them, violative and objectionable conduct)

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(interrogation of single Ee as to whether he was engaged in U activity and informing Ee such activity had better cease, unlawful, since not innocous, casual remark, nor isolated, in view of E's unlawful threats to discharge Ees)

C. M. Carpenter, A Sole Proprietor, d/b/a Carpenter Trucking 274 NLRB No. 046
(E's owner asking Ee if Ee knew anything about U, and if Ee had signed U card and then informing Ee he would close business before he would sign bargaining agreement, violative, notwithstanding Ees admission he singed U card)

Ausable Communications, Inc. 273 NLRB No. 166
(where supervisor asked Ees *who is going to be your shop steward*)

Ultrapower Services, Inc. JD-(SF)-123-86
[supervisor asking Ee how Ee felt about upcoming U election, not unlawful, where Ee had openly expressed his U support, notwithstanding supervisor did not convey legitimate purpose for interrogation to Ee, or give him

5030-4020—Cont.

assurances against reprisal, since interrogation not accompanied by threats or promises of benefits]

Tennessee Cold & Dry Storage, A Division of Consgra, Inc. JD-(ATL)-61-86

[supervisor asking Ee if Ee had signed U card, not unlawful, where Ee had previously made his support for U clear by signing letter to E demanding recognition of U]

B & W Machine & Welding Company JD-(SF)-107-86

[asking Ee why he supported U, unlawful, in view of all the circumstances, where Ee was repeatedly questioned at his work station by co-owner of business who could clearly hire and fire Ees; interrogation was not isolated but was accompanied by threats of plant closure and of discharge of U supporters; and questioning occurred one-on-one with no indication that Ee's retention of employment was secure regardless of his replies]

Bruderer, Inc. JD-(SF)-57-86

[supervisor's stating to Ee that he had been told by *little bird* that Ee was soliciting for U, not unlawful, since statement was not intended to be interrogation of Ee about his U sentiments but was introductory remark to conversation whose purpose was to advise Ee of fellow Ee's complaint to E about being harassed while working by Ee's U solicitation, and to inform Ee that he should not sell wares or U on company time; and prohibitions on solicitation during working time are presumptively lawful]

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods JD-(SF)-101-86

[polygraph examination of Ee, unlawful, where questions directed to Ee concerning known U supporter's activity were obviously directed at finding out examined Ee's knowledge of U activity]

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company JD-83-86

[interrogation of Ee concerning his sentiments regarding U, which Ee admitted he favored, by representative of consulting firm hired by E during election campaign assertedly for purpose of giving Ees pros and cons on U, unlawful, since inference was that information obtained by consultant was subsequently conveyed to E]

Best Cast, Inc. JD-(NY)-1-86

[E's interrogating Ees about their U activities and vote in E's poll, violation notwithstanding Ees initiated conversations, where E made gave no assurance against reprisals]

Robert W. Wise, d/b/a Robert W. Wise Cabinetry JD-(SF)-157-85

(E's asking Ee why he had signed U authorization card coercive when considered in context of other ULPs)

Northline Bus Center, Inc. JD-(ATL)-41-85

(coercive tendency of questioning Ee about his feelings toward U and what Ees had approached him about U held demonstrated by fact that interrogation took place in office of one of E's highest management officials in presence of very top official of E, and no assurances against reprisals were given to Ee, and no valid purpose for interrogation was communicated to Ee)

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. JD-(NY)-24-85

(E's asking Ee how he thought election was going to go, not unlawful, since it is not unlawful for E to ask Ee for his opinion as to probable outcome of election, as long as Ee is not also questioned about his personal feelings or intentions with regard to election)

Safety-Kleen Corp. JD-117-85

(E's asking U activist if he had signed U card, if so, why, and why he had taken his problem to the U and not come to E first, lawful in noncoercive context where questions were followed by E's assurances amounting to statement of disappointment but assurance that Ee's job was safe)

Benson Associates JD-101-85

(series of interrogations of Ees' U activities by sole day-to-day supervisor, unlawful, where supervisor expressed E's U animus, information was sought in order to take action against Ees, Ees were called into supervisor's office or taken aside by him, numerous Ees indicated their fear by replying untruthfully, no purpose was served by interrogation, and Ees were not told why they were being questioned nor assured that no reprisals would be taken against them)

N.L.R.B. v. Nueva Engineering, Inc. 761 F.2d 961 (C.A. 4, May 1985)

(supervisor informing Ee that he did not like Us, asking Ee how he felt about Us and when Ees replied that he supported U, informing Ee that if Ees voted for U representation alternative would be to convert to prototype shop-which required much less Ees-and institute big layoff, violative; additionally, interrogation and threat took place in E's vice president's office and purpose of questioning not explained)

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

N.L.R.B. v. Oberle-Jordre Company, Division of The Bishopric Products Company 777 F.2d 1119 (C.A. 6, Nov. 1985)

[interrogation of Ee regarding his withdrawal from U, unlawful, where it took place w/i scenario of prior interrogations, occurring outside 10(b) period, but shedding light on matters w/i limitation period, that were accompanied by explicit promises of continued employment conditioned on Ee's responses to interrogation]

Landmark International Trucks, Inc. v. N.L.R.B. 775 F.2d 148 (C.A. 6, Oct. 1985)

[E's otherwise noncoercive letter not rendered coercive by inclusion of E's request that it be notified of Ees' resignation from U, notwithstanding Bd's finding that E's request served no legitimate purpose]

N.L.R.B. v. Norbar, Inc. 752 F.2d 235 (C.A. 6, Jan. 1985)

(interrogating Ees as to how they felt about the U, violative)

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[asking Ees, during termination interview, about their status with U and, when they admitted to membership, telling them that they no longer had jobs, unlawful]

Hotel & Restaurant Employees, Local 11 v. N.L.R.B. (Rossmore House Hotel) 760 F.2d 1006 (C.A. 9, May 1985)

(Bd correctly applied all-the-circumstances test to facts of case; inquiry was not coercive where Ee openly declared support for U and under circumstances E's questioning was not unlawful)

5030-4030 Solicitation of grievances

Baddour, Inc. 281 NLRB No. 084

[supervisor's offer of assistance to Ee, not violation, notwithstanding supervisor's unlawful interrogation of Ee about his feelings about U, where offer was made following inquiry as to how Ee's daughter was doing and appeared in that context to have been offer of personal assistance rather than solicitation of work-related grievances]

Benmit Division, U.S. Tubular, Inc. 280 NLRB No. 083

[telling Ees that E wanted to know what their complaints were, violation where it was done in context of discussing U activity]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle 280 NLRB No. 043

[E's asking Ees what their grievances were after telling them that they could come to E with their problems, not unlawful, where E had past practice of asking Ees to submit grievances and suggested remedies; no exceptions]

Terraillon Corp. 280 NLRB No. 037

[E's vice-president asking Ees why they wanted U not coercive, not unlawful, where U's agents, during visit to E's plant, had invited vice-president to question Ees as to their U support]

Gull, Inc. 279 NLRB No. 127

[E's institution of open-door policy constituting major change from prior policy of scheduled meetings with small group of Ees chosen by E, accompanied by requests for questions from Ees and by statements telling them of extra few dollars in their paychecks in lieu of dental plan, and possibility of additional equipment, as well as sending managers to classes to improve their communication with Ees held unlawful grant of benefits designed to undermine Ee support for U, rather than solicitation of grievances; in that respect, policy was in effect implied promise that further grievances would be remedied w/o U representation]

Fiber Glass Systems, Inc. 278 NLRB No. 154

[solicitation of grievances, violation and interference]

Clark Equipment Company 278 NLRB No. 085

[distributing survey questionnaire to Ees, not unlawful interrogation, notwithstanding Ees' answer to survey questions could disclose their U sentiments, since there was no basis for inferring that Ees would associate survey with their U activities or view it as inquiry into them where survey was made eleven months after election when there was no special U activity]

Larry Chapman, A Sole Proprietor, d/b/a Farm Boy Food Mart 278 NLRB No. 058

[soliciting Ees' complaints about benefits and impliedly promising to resolve them during U organization drive, violation]

Hunter Douglas, Inc. 277 NLRB No. 123

(E's use of Ee committee formed and dominated by E for purpose of soliciting grievances, and correction of grievances pursuant to suggestions received, unlawful)

The Royal Sonesta, Inc. d/b/a Royal Laundry 277 NLRB No. 085

(E's soliciting complaints and grievances, promising to rectify them and thereafter implementing such improvements, violative)

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Walter Garson, Jr & Associates **276 NLRB No. 137**
(no unlawful solicitation of grievances, where E unlawfully encouraged formation of grievance committee, absent evidence E solicited or encouraged Ees to bring their complaints to it through mechanism of grievance committee)

PYA/Monarch, Inc. **275 NLRB No. 167**
(no violation, where during U campaign vice-president asked Ees if they *had any problems impeding production*, and in response Ees expressed need for various new supplies and equipment, and E subsequently supplied equipment a month before schedule as purchases of equipment underway before U campaign started)

PYA/Monarch, Inc. **275 NLRB No. 167**
(no unlawful solicitation of grievances where vice-president informed Ees that E's door was always open, since open door policy was in effect prior to onset of U activity; merely to remind Ees of existing policy, not unlawful, if no implication that response to grievances will change)

Anchorage Times Publishing Company **JD-(SF)-86-86**
[E's soliciting and promising to remedy its Ees' grievances to influence Ee votes at election, violative and interference]

Brunal Electric, Inc. **JD-(NY)-21-84**
[violation, where E after receiving U's demand for recognition and bargaining, asked Ees *what they wanted*, solicited grievances, promised Ees substantial improvements in working conditions, including wage increases and insurance, if they would withdraw support from U, then threatened to close rather than deal with U]

Northline Bus Center, Inc. **JD-(ATL)-41-85**
(E's urging Ees to bring their and other Ees' problems to him, unlawful, since complaint or grievance solicitation in midst of U campaign was implied promise to remedy Ees' grievances; and E's actions amounted to more than implied promise to take such remedial steps, since E took action on at least 1 of Ees' problems and announced that it had done so)

Van Gas, Inc. **JD-(SF)-33-85**
(immediate supervisor asking newly employed Ee if she had seen notice regarding coming election, asking her how she felt about U, and urging her to vote against U, unlawful, since Ee was not informed of purpose of interrogation, nor given assurances against reprisal)

5030-4040 Concerning union membership, adherence or activities of others

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. **281 NLRB No. 068**
[asking Ee if she knew what a U is, and if she recognized representatives, who appeared at plant to request recognition, as representatives from *her* U, unlawful]

J & B Smith Company, Inc. **280 NLRB No. 057**
[asking Ee who was passing out U cards why he wanted U and which Ees were assisting him, violation where, when Ee replied only he was distributing cards, E *reamed him out* and threatened to lock him up]

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor's assertion to Ee that supervisor was questioning everybody whether they had been approached by U, required response from Ee which, if truthful, could reveal Ee's U contacts or possibly U sympathy, and therefore assertion, though not in form of question, constituted unlawful interrogation, particularly when coupled with supervisor's request that Ee report U contacts that Ee considered *bothersome*, which supervisor did not limit to *workplace* nor to *threatening and intimidating* solicitations, thereby invoking standard so vague as to invite reports of legitimate albeit perhaps insistent solicitations]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[supervisor's asking Ees who had not openly declared support of U which Ees had participated in U activity which had signed U cards, and whether they had spoken to U organizer accompanied by warning not to sign U card and repetition of owner's threat to discharge all U activists, violation]

Saaloctro Corporation **280 NLRB No. 015**
[asking Ees how many people had been at U meeting, who was there, and what had transpired, unlawful]

Armon Company **279 NLRB No. 158**
[soliciting Ee to ascertain U inclinations of two other Ees, violation]

Raytheon Missile System Division, Raytheon Company **279 NLRB No. 035**
[manager's interrogation of Ees, violative notwithstanding presence of ameliorative factors where manager's probing attempts to find out about specific U activities of particular Ees who had not yet disclosed their attitudes towards U had reasonable tendency to interfere with, restrain, and coerce Ees]

United Electrical & Mechanical, Inc. **279 NLRB No. 034**
[asking Ees to question other Ees regarding their U sentiments, violative]

T & T Machine Company, Inc. **278 NLRB No. 139**
[asking Ee *who had called U?* and offering to meet Ee *anywhere at anytime to receive information about U organizing drive*, adding that such information would enable Ee to keep his job, unlawful]

Electronic Data Systems International Corporation **278 NLRB No. 014**
[supervisor soliciting Ee to conduct surveillance of U activities by joining U supporters and finding out who U leader was so that supervisor could *cut his head* unlawful]

Rood Industries, Inc. **278 NLRB No. 026**
[applying Bd's *Rossmore* policy in determinig whether E's interrogation of Ees regarding U activity is unlawful, ALJ held foreman's attempt to learn from Ee identity of Ees who were *talking U* carried with it suggestion that E had some punishment in mind for them; and information sought was likely to instill fear of reprisal in listener notwithstanding that first level supervisor was asking question in familiar surroundings of work place]

Rood Industries, Inc. **278 NLRB No. 026**
[questioning of leading U activist and organizer by E's president how U's organizing drive was going, unlawful, where U activist, after 2-1/2 years' employment by E found himself, for first time alone, in president's office, and activits had recently experienced coercive interrogation by supervisor]

Hunter Douglas, Inc. **277 NLRB No. 123**
(plant manager asking Ee who had entered manager's office to get bandaid if true *Ee trying to get U back into place*, and on another occasion asking Ee if *Ees were trying to get U back in*, unlawful, where Ee not open U supporter and interrogation served no legitimate purpose and was designed to determine extent of involvement in U activities)

Kona 60 Minute Photo **277 NLRB No. 092**
(interrogation of Ees, immediately after receiving U's recognition request, whether Ees were going to form U, who had signed for U, and whether Ee was for U, unlawful, where Ees had not openly declared themselves to be U supporters; E's exchanges with Ees were not casual conversations seeking information of general nature but were requests for specific information whether Ees supported U and identity of others who did; and interrogation was conducted by E's comanager and questioning took place at Ees' work stations rather than in less formal setting)

Kona 60 Minute Photo **277 NLRB No. 092**
(questioning Ee why Ees desired U representation, unlawful since, although questioning may not have specifically solicited identity of U supporters, E posed question in conjunction with threat to discharge any Ee he found involved with U, and he repeatedly questioned Ee despite Ee's clear attempts to avoid discussing subject; moreover, Ee had not openly declared himself to be U supporter)

Mid-State Distributing Co., Inc. **276 NLRB No. 172**
(E's interrogation of Ee as to who was talking about U in response to Ee's comments that if pay deficiencies did not stop there would be a U in E's plant, unlawful, since broad nature of E's inquiry tended to interfere with Ees' rights to begin initial discussions on Ee interest in forming, joining, or supporting U to redress perceived grievances w/o E's foreknowledge or inquisitive interference)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**

Superior Container, Inc. **276 NLRB No. 055**
(chief executive's questioning Ee as to how many Ees had attended U meeting, occurring at plant during height of U campaign, unlawful, in light of all surrounding circumstances, including time, place, and personnel involved)

Superior Container, Inc. **276 NLRB No. 055**
(interrogation of Ee slated for layoff concerning instigators of U, unlawful since E, aware that Ee needed his job, used the occasion to press for the most sensitive information)

Okun Brothers Shoe Store, Inc. **275 NLRB No. 145**
(supervisor's asking Ee how many Ees had signed up for U, coercive and objectionable in view of E's active opposition to U, lack of reason for supervisor's question, and fact it was oblique inquiry as to how active Ee was in organizing drive)

Comfort & Company, Inc. **275 NLRB No. 082**
(E's calling together Ees' association's executive committee, asking them if they knew about the U's activities in the plant in attempting to represent one department, demanding that they support E in fighting U's election campaign by hiring a labor lawyer and assessing members, and, when one committeeman protested that they could not act w/o a meeting of Ees, telling him to get out, that E would get someone who could do what he demanded, violative)

Sierra Hospital Foundation **274 NLRB No. 054**
(while supervisor's remark to Ee that she knew that certain other Ees were involved in organizing created impression of surveillance, it was not unlawful interrogation as no evidence to support conclusion that remark made to elicit response from Ee to confirm supervisor's suspicions about other Ees as organizing was openly taking place)

5030-4040—Cont.

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 105
(E's president's calling various Ees into his office singly and asking them how they thought other Ees felt about the U, if a certain Ee had anything to do with the U campaign, and if they knew who was *starting it* found violation and objectionable conduct)

Robins Federal Credit Union 273 NLRB No. 165
(violation found where supervisor asked Ee engaged in U organizing activities how many cards had been signed and how many were required, to which Ee responded that she did not know as U kept track, and that number of cards required depended on who would vote in election; such interrogation was inherently coercive since it went beyond casual question and was pointed effort to discover U's progress in campaign)

Ultrapower Services, Inc. JD-(SF)-122-86
[supervisor asking Ee how Ee felt about upcoming U election, not unlawful, where Ee had openly expressed his U support, notwithstanding supervisor did not convey legitimate purpose for interrogation to Ee, or give him assurances against reprisal since interrogation not accompanied by threats or promises of benefits]

Art Bridges Pontiac JD-(SF)-118-86
[supervisor asking Ee how many Ees had signed U cards, not unlawful, since devoid of elements of coercion necessary for finding of violation, where Ee had approached supervisor about U organizing efforts and was willing to make E aware of his involvement]

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods JD-(SF)-101-86
[polygraph examination of Ee, unlawful, where questions directed to Ee concerning known U supporter's activity were obviously directed at finding out examined Ee's knowledge of U activity]

Bell & Howell/Columbia Pictures Video Services JD-(SF)-8-86
[E's vice-president asking Ees in *coffee chat* meeting whether Ees' dissatisfaction was bad enough to attract U, and if there were to be vote regarding U representation, how would it go, not unlawful]

Northline Bus Center, Inc. JD-(ATL)-41-85
(coercive tendency of questioning Ee about his feelings toward U and what Ees had approached him about U held demonstrated by fact that interrogation took place in office of one of E's highest management officials in presence of very top official of E, and no assurances against reprisals were given to Ee, and no valid purpose for interrogation was communicated to Ee)

Burlington Industries, Inc. JD-(ATL)-13-85
(E's question to U advocate concerning U cards, not violative where question was jokingly delivered, was not taken seriously, was not accompanied by any threat of reprisal or promise of benefit, and did not occur in context of any other ULP by E which would lend coercive impact to question)

Harry Rosenblatt & Sons JD-(SF)-50-85
(asking Ees a week after U activist's discharge if he had been going to start a U, violative where Ees were not openly active U supporters and question implanted notion that U activities were reason for discharge)

N.L.R.B. v. J. Coty Messenger Service, Inc. ———F.2d——— (C.A. 2, May 1985)
[asking Ee whether he had signed U card and whether he was for it, violation]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)
[asking Ee which Ees were in U and why they needed U, unlawful]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)
[asking Ee if he was involved in U and, upon Ee's denial, telling him that if he were involved, E would suspend him for 3 days just as E had suspended fellow Ee]

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)
[plant superintendent's asking one Ee about another Ee's U activities, requesting information about them, and saying *we'll take care of* second Ee's activities, insufficient, in isolation, to support finding of threat of discipline or discharge, but substantially supportive of finding of request to engage in surveillance, especially where manager asked another Ee what he had heard about U activity and requested that he *keep his ears open*]

5030-4050 Concerning union benefits

The Gerkin Co. 279 NLRB No. 136
[E's highest officer's singling out one Ee at Ee meeting and asking him if it was correct that U had made promise of certain wages and bonus to Ees, asking Ee exactly what business representative had said, and asking, *you were there, weren't you?* violation and interference]

Commercial Property Services, Inc. JD-(NY)-80-86
[E's consultant's asking Ee during week of election what she felt were advantages of U, what U could provide, and what E was not providing, not unlawful nor interference with election, where there was absences of U hostility, questions were general and non threatening, and E had told Ee that her job would not be jeopardized if she voted for U]

5030-4060 Concerning union meetings

Cartridge Actuated Devices, Inc. 282 NLRB No. 066
[conversations during which supervisor asked Ee why she had not been invited to U meeting and on another occasion asking if Ee was going to U meeting, not unlawful, where supervisor and Ee were good friends, supervisor's comments did not contain any threats, and he attempted to assuage Ee's fears that she would lose her job if she attended U meeting]

Mississippi Chemical Corporation 280 NLRB No. 046
[supervisor's questioning Ee regarding Ee meeting held to set up Ee bargaining group, unlawful, even though Ee had earlier told supervisor of his intent to attend meeting, where supervisor's questions sought to ascertain what happened at meeting, and thus sought to ascertain details of Ee collective activity]

Sealectro Corporation 280 NLRB No. 015
[asking Ees how many people had been at U meeting, who was there, and what had transpired, unlawful]

The Gerkin Co. 279 NLRB No. 136
[E's highest officer's singling out one Ee at Ee meeting and asking him if it was correct that U had made promise of certain wages and bonus to Ees, asking Ee exactly what business representative had said, and asking, *you were there, weren't you?* violation and interference]

Rood Industries, Inc. 278 NLRB No. 026
[supervisor's questioning pro-U Ee how U meetings were going at his home and then, in response to Ee's denial of such meetings, stating that supervisor knew that such was the case held to give Ee impression that his U activity was under surveillance; fact that supervisor and Ee had social relationship did not reduce coercive effect of his remarks where they were not accompanied by levity or evidence of friendship]

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(asking Ee about level of attendance at U meeting, unlawful, since it was clear signal to Ee that E had U activities under surveillance)

Gatliff Business Products, Inc. and RBD Service Corporation 276 NLRB No. 060

Superior Container, Inc. 276 NLRB No. 055
(chief executive's questioning Ee whether she had attended U meeting and signed U cards, occuring at plant during height of U campaign, unlawful in light of all surrounding circumstances, including time, place, and personnel involved)

Superior Container, Inc. 276 NLRB No. 055
(chief executive's questioning Ee as to how many Ees had attended U meeting, occurring at plant during height of U campaign, unlawful, in light of all surrounding circumstances, including time, place, and personnel involved)

Superior Container, Inc. 276 NLRB No. 055
(chief executive's interrogation of Ee concerning U meeting and his threat, in no uncertain terms, that anybody signing U card would be fired, unlawful, since such statements, emanating from chief executive during U campaign on plant premises, have clear and restraining effect upon Ees)

The Union National Bank of Pittsburgh 276 NLRB No. 013
(supervisor answering telephone call from one Ee to another Ee at work and asking Ee calling if call was about U activities, and if there was big turnout at party given by U, constituted unlawful interrogation and created impression of surveillance, where Ee questioned was not open and active U supporter; further, questioning occured against background of Ee concern that E would learn who supported U, and Ee's concern her own supervisor would learn of her U adherence, conversation not initiated by Ee, and absent any legitimate reason for questioning or assurance against reprisal)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(E's asking Ee if he was going to U's contract ratification meeting and if he knew U was asking time and a half for Ee's overtime work, not unlawful, where E's questions were simply preliminary to his lawful statement of position that E will hire more Ees rather than pay overtime)

East Central Communications, Inc. JD-116-86
[supervisor's questioning Ee about his attendance at U meeting, not unlawful, where Ee's leading role in U organizing activities was known to supervisor whose inquiry was natural expression of personal interest having no reasonable tendency to constitute prohibited interference, restraint or coercion]

East Central Communications, Inc. JD-116-86
[supervisor's questioning Ee about identity of Ees attending U meeting, while not part of orchestrated effort to secure names of U adherents for unlawful purposes, held unlawful, where supervisor had no valid reason for making such inquiry]

5030-4070 Concerning employee group meetings

Springs, Inc. d/b/a Springs Motel **280 NLRB No. 033**
[supervisor asking Ees how anti-U meeting went at which attendance was required by E, unlawful, where Ees questioned were not known U adherents, notwithstanding contention questioning was no more than harmless curiosity, that questions were not phrased to elicit information regarding Ees' U membership or sympathies, and Ees answered candidly]

The Loft (Showcase, Inc.) **277 NLRB No. 170**
[supervisor calling Ee after work during Ee meeting held at another Ee's house to discuss E's wage policy, and asking Ee who was at meeting and why they were there, unlawful]

5030-4080 Concerning other union activities

Airport Distributors, Inc. **280 NLRB No. 091**
[questioning Ees to disclose *what was going on* regarding U and to disclose knowledge of U attempts to organize Ees, unlawful, where sequence of such repeated interrogations was executed w/o proffering any explanations and assurances against reprisals]

Airport Distributors, Inc. **280 NLRB No. 091**
[questioning Ee whether he knew anything about U, coupled with threat of loss of employment and expression of antipathy toward U, unlawful]

Benmit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[asking Ee about U's organizational campaign, violation where accompanied by threat of job loss if Ee did not take it easy with his U activities]

Central Broadcast Company **280 NLRB No. 056**
[supervisor asking Ee how tough U was in context of conversation involving E's intent to use automation as pretext for unlawful layoff of U supporters and asking Ee when U would file injunction against E, an impermissible inquiry into U affairs and strategy, in coercive setting of recent unlawful layoff of U supporters, violations]

Westinghouse Electric Corporation **277 NLRB No. 016**
(supervisor asking Ee *if U had come by*, and upon Ee's reply he had, asked U representative to return at more convenient time, indicating if Ee wished, Ee could report what U representative said, and that then supervisor would refute U's assertion with truth, violative as no legitimate purpose shown for inquiry nor assurance against reprisal given)

Westinghouse Electric Corporation **277 NLRB No. 016**
(supervisor asking Ee if she had been contacted by any U people constituted unlawful interrogation, but did not unlawfully create impression of surveillance absent evidence supervisor said anything that was neither matter of common knowledge, nor subject of interpretation of Ee's response to supervisor's inquiry)

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**
[E's threatening Ee with visit from policy if he failed to cooperate, unlawful, where E was concurrently insisting that Ee tell the truth and that, if Ee knew anything about U, it would be well worth his while to tell E about it]

5030-4080-5000 **Whether employees will cross picket line in event of strike**

American Threat Company **274 NLRB No. 164**
(E asking prospective Ee who had previously worked for E if he would cross picket line in event of strike, not unlawful, where single isolated incident)

5030-4080-5020 Accompanied by threats, promises or other coercive conduct

Superior Container, Inc. **276 NLRB No. 055**
(chief executive's interrogation of Ee concerning U meeting and his threat, in no uncertain terms, that anybody signing U card would be fired, unlawful, since such statements, emanating from chief executive during U campaign on plant premises, have clear and restraining effect upon Ees)

Cassidy Cleaning, Inc. **JD-239-86**
[supervisor's reiterating to Ee E's remarks about loss of contract and loss of jobs if U came in and inquiring further about Ee's acceptance of such statement, unlawful]

5030-4090 Concerning protected activities

The Long Island College Hospital **274 NLRB No. 098**
(E's questioning Ee about article in newspaper of organization opposed to incumbent U indicating tension between Ee and her supervisor, not violative, since questions did not reasonably tend to coerce Ee where question was asked during interview which had been initiated by Ee's request for transfer, and article about which she was questioned had been publicly disseminatee; in addition, E clearly explained limited nature of inquiry and legitimate reasons therefor)

Wackenhut Corporation **JD-288-86**
[supervisor's interrogating and threatening 3 Ees about their meeting with official of agency with which E had contract, not violation, despite supervisor's knowledge that Ees acted concertedly, where evidence failed to show that supervisor knew that subject discussed at meeting was protected]

Latrant Manufacturing, Inc. **JD-(NY)-57-85**
(E's casual questioning of Ees made in atmosphere devoid of U animus, not violative; *Rossmore House* applied)

Puerto Rican Association for Human Development **JD-(NY)-148-86**
(interrogating Ee during interview in which discipline meted out as to why he had intervened on behalf of disciplined Ee by writing memo at his request, held coercive)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-86**
(E's inquiry of Ee as to why Ee had not completed repairs coupled with question as to what *harassment* she was referring in ULP charge she had filed, followed by attack on Ee for filing charge, unlawful)

5030-6000 **Verification of union representation status claims**

American National Insurance Company **281 NLRB No. 105**
[E's poll of Ees to determine whether they desired representation by U violative, where poll was not conducted by secret ballot]

5030-7000 **Interrogation concerning employee or others involvement in Board's processes**

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**
[asking Ee *what went on at and who was at* Bd hearing concerning claims by two Us to represent unit of E's Ees, unlawful, in view of prior threat to discharge Ees if they did they not sign authorization cards for U with which E preferred to deal]

Sea-Land Service, Inc. (Sea Operations) **280 NLRB No. 004**
[ship's captain, responsible for transmitting all communications from ship, interrogating and discharging radio officer about message he sent at sea requesting local Bd's phone number, violative, notwithstanding legitimacy of captain's inquiry in asking whether radio was used in unauthorized manner, repeated inquiries as–to *why* dischargee asked for Bd's phone number were not relevant to captain's responsibilities regarding communication equipment. Basis for discharge did not distinguish between specific questions asked so that lawful and unlawful motives cannot be separated]

Sunnyvale Medical Clinic, Inc. **277 NLRB No. 131**
(supervisor's telling U steward that he was disappointed in her for filing charge with Bd, not violation, since, even if designed as interrogation to elicit response, statement was directed to open and active U supporter and contained no threat or promise)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[E's attorney's telephoning an Ee and coercively interrogating him about his participation in GC's investigation of ULP case involving E, violation]

Dayton Typographic Service, Inc. v. N.L.R.B. **778 F.2d 1188 (C.A. 6, Dec. 1985)**
[E's attorney questioning Ee concerning upcoming ULP trial, asking him if he had given statement to Bd and asking for a copy of his Bd affidavit, not violative, notwithstanding E did not give *Johnnie's Poultry* assurances, since E did not coerce Ee where Ee implicitly wanted to cooperate with E, there was no evidence that Ee's affidavit would disclose matters outside scope of C, i.e., Ee's U or lack of U activity, and E made no threats to Ee]

5030-8000 **Permissible to elicit information necessary in preparation of trial or hearing**

Superior Container, Inc. **276 NLRB No. 055**
(E's prior unlawful conduct did not create coercive atmosphere rendering unlawful E's attorney's interviews with Ees in preparation for instant hearing, where Ees were interviewed privately and received appropriate assurances, and E's ULPs occurred some 4 months prior to interviews)

Superior Container, Inc. **276 NLRB No. 055**
(E's attorney's interviews with Ees in preparation for instant hearing were not rendered unlawful by attorney's questioning Ees whether they could vote freely in a future election, since question did not probe Ees' views concerning U)

Dayton Typographic Service, Inc. v. N.L.R.B. **778 F.2d 1188 (C.A. 6, Dec. 1985)**
[E's attorney questioning Ee concerning upcoming ULP trial, asking him if he had given statement to Bd and asking for a copy of his Bd affidavit, not violative, notwithstanding E did not give *Johnnie's Poultry* assurances, since E did not coerce Ee where Ee implicitly wanted to cooperate with E, there was no evidence that Ee's affidavit would disclose matters outside scope of C, i.e., Ee's U or lack of U activity, and E made no threats to Ee]

5030-8001 Generally

Marion Center Supply, Inc. **277 NLRB No. 026**
(interrogating Ee as to testimony he might give in instant proceeding with implication that he would be discharged if he gave adverse testimony, violative)

5030-8025 Employees must be apprised of purpose

Interchecks Incorporated, A Subsidiary of United Graphics, Inc. JD-(SF)-23-85
(E's attorney's interrogating Ee to obtain information about incidents involving dischargee who had filed charges with Bd against E, not violative where attorney stated reason for interview, told Ee that his response was on a voluntary basis and that there would be no reprisal for failure to respond, interview was noncoercive and free of E hostility toward U, and questions did not exceed those necessary to accomplish purpose of interview)

5030-8050 Need for disclosure must be balanced against risk of coercion

Glover Bottled Gas Corp. 275 NLRB No. 096
(E counsels' asking Ees about testimony they were going to give at Bd hearing w/o observing *Johnnie's Poultry* safeguards of informing Ees that their appearance for questioning was voluntary and that there would be no reprisals, violative)

5030-8075 Sufficient probative value of information must be shown

Maritz Communications Company, A Wholly Owned Subsidiary of Maritz, Inc. 274 NLRB No. 016
(interrogation of Charging Party by Respondent's attorney during deposition in connection with age discrimination suit which Charging Party had also filed against Respondent, not unlawful, since questions asked fell w/i scope of relevance permitted by Rule 26(b)(1) of Fderal Rules of Civil Procedure inasmuch as discovery not limited to pleadings, but may encompass any matter that bears on or could bear on or rreasonably lead to other matter that could bear on any issue in case, notwithstanding not admissible at trial)

Maritz Communications Company, A Wholly Owned Subsidiary of Maritz, Inc. 274 NLRB No. 016
(questioning of Charging Party concerning his U activities by Respondent's attorney during deposition in connection with age discrimination suit which Charging Party had also filed against Respondent lawful inasmuch as Charging Party's claim in ULP case that decision not to hire him motivated by U membership may have been inconsistent with claim in civil action that decision was due to age, questioning concerning his U activity relevant to whether age was reason for refusal to hire)

Interchecks Incorporated, A Subsidiary of United Graphics, Inc. JD-(SF)-23-85
(E's attorney's interrogating Ee to obtain information about incidents involving dischargee who had filed charges with Bd against E, not violative where attorney stated reason for interview, told Ee that his response was on a voluntary basis and that there would be no reprisal for failure to respond, interview was noncoercive and free of E hostility toward U, and questions did not exceed those necessary to accomplish purpose of interview)

5030-8080 Advice that employees' participation is voluntary

Dresser Industries, Inc. 281 NLRB No. 023
[industrial relations manager's interrogating Ee about ULP charge he filed, violation absent assurances that Ee did not have to answer his questions and would not be disciplined for what he did or did not say]

Joseph A. Perry d/b/a Holiday Inn-Glendale 277 NLRB No. 145
(telling Ee during meeting for purposes of trial preparation, that her participation was voluntary, no type of reprisal would be taken and she was free to leave or stay or talk, held appropriate safeguards and not violative)

5030-8090 Assurances against reprisal

Dresser Industries, Inc. 281 NLRB No. 023
[industrial relations manager's interrogating Ee about ULP charge he filed, violation absent assurances that Ee did not have to answer his questions and would not be disciplined for what he did or did not say]

United States Steel Corporation 279 NLRB No. 004
[supervisor asking Ee who had been subpoened to testify at hearing on alleged unlawful refusal to transfer grievance chairman, to refresh his recollection as to conversation they had had regarding grievance chairman's request for transfer, and when Ee's recollection differed from his, reiterating own version w/o assurances against reprisal, unlawful, since in these circumstances supervisor's remarks were coercive]

Joseph A. Perry d/b/a Holiday Inn-Glendale 277 NLRB No. 145
(telling Ee during meeting for purposes of trial preparation, that her participation was voluntary, no type of reprisal would be taken and she was free to leave or stay or talk, held appropriate safeguards and not violative)

Superior Container, Inc. 276 NLRB No. 055
(E's attorney's interviews with Ees in preparation for instant hearing not unlawful, where attorney's statement to Ees that no threat was involved and that anything said would not be relayed clearly assured Ees that no reprisals would take place; attorney's statement could only have been made clearer by use of word *reprisal*, but *magic words* are not required when E's assurances to Ees clearly convey message that no harm will befall them if they choose not to answer or not to answer favorably to E, as here)

5033 HARASSMENT OF UNION ADHERENTS OR OTHER EMPLOYEES

5033-5000 By supervisors

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer 281 NLRB No. 161
[after supervisor obtained knowledge that Ee signed U card, his remark to Ee that he was *plant* U sent to stir up trouble, violative, as Ee should not expect to incur wrath of supervisor for engaging in protected activity]

5033-8300 By employer

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86
[threatening to reduce work hours of U supporters to harass them into quitting, violation]

5036 CHANGES IN CONDITIONS OF EMPLOYMENT OR THREATS THEREOF

5036-0100 Generally

5036-0117 Violation where action motivated in part by protected activity

The Lawson Company v. N.L.R.B. 753 F.2d (C.A. 6, Jan. 1985)
(under Section 8(a)(1) and (3) of Act, E's *motive* is critical element in determining whether grant of benefits, prior to R election by E, is violative of Act)

5036-0800 Timing

5036-0825 During critical pre-election period

Bay State Ambulance and Hospital Rental, Inc. 280 NLRB No. 122
[telling Ees around time that RD directed election that there was nothing stopping E from reducing work week from 60 to 40 hours and if U got in work week would be reduced, violative]

Times Wire & Cable Company 280 NLRB No. 003
[the critical period for second election commences as of the date of the first election]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017
[E's announcement immediately after ptn was filed, that E's policy on lateness was changed *from now on* if Ees were late at all, violative]

Electronic Data Systems International Corporation 278 NLRB No. 014
[granting Ees, during U campaign, payment for maternity and funeral leave benefits which had been denied them when they actually took such leaves, unlawful]

5036-0850 After election while union objections or challenges are pending

Southland Frozen Foods, Inc. JD-(NY)-78-86
[E's conduct, at time when qcr was pending because of unresolved objections to election, in improving its restroom and cafeteria facilities held not to constitute unlawful granting of benefits, since they were not granted to influence Ee sentiment concerning U representation, in view of absence of active U campaign for considerable period and of any ULP, indefinite period of time before objections to election could be finally adjudicated, and relatively insubstantial nature of benefit]

5036-3300 Employer's knowledge of concerted nature of activity

Consumers Power Company 282 NLRB No. 034
[supervisor held to have known that Ee and coworker were acting in concert when they approached him together to discuss coworker's involvement, while making service call, with customer exhibiting violent attitude toward coworker; E was well aware of Ee's and other Ees concerted safety complaints made at E's weekly meetings and that Ee's complaint to supervisor was continuation of such activity; and since Ee acted for Ees' mutual aid or protection, his actions in approaching supervisor about lack of police protection for coworker while on service call, was protected]

5036-5000 Employer's knowledge of protected activity

Woodline Motor Freight, Inc. 278 NLRB No. 153
[knowledge of Ee's U activities by a supervisor not imputed to E where supervisor denied informing any other of E's officials and he played no role in Ee's discharge]

Wackenhut Corporation JD-288-86
[supervisor's interrogating and threatening 3 Ees about their meeting with official of agency with which E had contract, not violation, despite supervisor's knowledge that Ees acted concertedly, where evidence failed to show that supervisor knew that subject discussed at meeting was protected]

5036-5000—Cont.

Supermarkets General Corporation d/b/a Howland-Steinbach-Hochschilds **JD-(NY)-50-86**
[*it is well established that if E takes discriminatory action against Ee on belief, well founded or not, that Ee was engaged in protected activity, E no less violates Act than if Ee had in fact engaged in such conduct*]

Easthampton Electrical Services, Inc. **JD-85-85**
(discharges of Ees not unlawful, notwithstanding discharges took place one month after Ees had returned to 40 hour week, previously in slow times hours of all Ees had been cut rather than some Ees discharged, E had had profitable year, and two weeks prior to discharges had granted unit wide salary increase, absent evidence of E knowledge of U organizing activity, and since E offered plausible business and economic reasons for discharges, including fact total hours worked by Ees in dischargees' classification down)

5036-6700 Forms of changes in conditions of employment

5036-6704 Wage or bonus withheld

Felbro, Inc. **274 NLRB No. 186**
(E's telling Ees, who were demanding an explanation for layoff of Ee, that if they did not return to work they would be sent home, and then clocking them out and refusing to pay them for the remainder of the day, not violative, since Ees repeatedly refused to go back to work and E took no disciplinary action against Ees but simply refused to pay them for the remainder of the day they refused to work)

Easthampton Electrical Services, Inc. **JD-85-85**
(E's discontinuance of gifts of turkeys at Thanksgiving and substitution of cash for *fixings*, not unlawful, since discontinuance of gifts of turkeys or hams for holidays, not unlawful, as they were merely gifts, and decision to make cash gift made well before E's knowledge of U's organizing campaign)

5036-6708 Denial of promotion

United States Postal Service **275 NLRB No. 041**
(E's failure to promote Ee who had been given unlawfully motivated negative evaluation, not unlawful, notwithstanding unlawful evaluation was considered in decision not to promote, since E established Ee would not have been promoted even if evaluated fairly, where Ee selected had superior qualifications)

5036-6710 Reduction or withdrawal of benefits

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer **281 NLRB No. 161**
[E's announcement prior to election, that it could no longer consider changing medical insurance carriers because of pending *R* ptn, violative; E's subsequent announced change in insurance carriers, not violative, since E was simply righting the wrong of withholding a change and to hold otherwise would place employers in the untenable position of being barred from any corrective action once a wrong step was taken during pendency of a *R* case matter]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant **279 NLRB No. 017**
[E's announcement immediately after election, that Ees were no longer permitted to drink free wine or beer with their meals, violative, where timing showed rule was in response to U campaign and Ees had consumed free wine or beer for one year prior to election w/o any question from E]

Tecom, Inc. **277 NLRB No. 038**
(discharge of Ee, unlawful, since for protected concerted activity of raising questions and complaining to E about group health insurance proposed by E, where discharge was w/i days of Ee's delivery of letter complaining about confused handling of insurance by E)

5036-6712 Denial of wage increase

Premier Maintenance, Inc. **282 NLRB No. 003**
[E's refusal to grant Ees wage increases which they would have normally received pursuant to company policy, because of impending election, unlawful]

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[telling Ees that it was stupid to try and organize U and were it not for that, Ees would have received raise, violative]

Times Wire & Cable Company **280 NLRB No. 003**
[E's failure to grant an annual wage increase during pendency of U election, violative, where E had established policy for at least 3 years prior to election of granting annual wage increases; further, E's contention that it had no choice but to withhold wage increase because of upcoming election, rejected, where evidence clearly showed E had attempted to place the onus for withholding on the U rather than attempting to comply with the law]

Trover Clinic **280 NLRB No. 002**
[informing Ee that wage freeze would not be lifted *until the U question was resolved*, unlawful, where E had no plans to lift wage freeze, and linked continuation of freeze on U, placing onus for freeze on U, and thereby undermining and discouraging Ee support of U]

The Gerkin Co. **279 NLRB No. 136**
[E's statement that anyone who thought that E would grant wage increase while contract negotiations were pending was *crazy*, not violation where it may have referred to discretionary wage increase, about whose implementation E was obligated to negotiate, and, even if parties agreed on wage increase during negotiations, E could lawfully refuse to implement increase pending resolution of all issues and execution of agreement]

Safety-Kleen Corp. **JD-117-85**
(E's stating that it was denying U activist a raise because NLRB would think it was trying to buy a vote, lawful both as statement and as action, since statement was legitimate expression of E's concern that it not appear to interfere with Ees' Sec. 7 rights)

Bowling Green-Warren County Community Hospital Corporation, d/b/a The Medical Center At Bowling Green, Kentucky v. N.L.R.B. **756 F.2d 41 (C.A. 6, Mar. 1985)**
(neither 8(a)(1) nor 8(a)(3) violated by E's denial of wage increase to petitioned-for Ee unit while granting it to non-U Ees w/o explanation for such action, since in this type of case, in which either granting or withholding of increase could be found violative, all relevant circumstances should be considered to determine whether E intended to discourage U activity; and here GC stipulated that only reason for disparate treatment was advice of counsel, and there was no evidence contradicting such stipulation)

5036-6713 Withholding of expected wage increase or benefit

The Gerkin Co. **279 NLRB No. 136**
[telling Ees that traditional wage increase was frozen during U organization campaign, violation and interference, since statement was contrary to well established rule that during preelection period E must grant or withhold benefits as if U were not in picture]

United Electrical & Mechanical, Inc. **279 NLRB No. 034**
[withholding wage increases which should have been routinely granted in order to influence outcome of election, violative]

Kona 60 Minute Photo **277 NLRB No. 092**
(posted notice cancelling pay raises announced before E received U's letters requesting recognition, unlawful, since cancellation was threat to Ees for engaging in U activities, where U's letter, containing boiler-plate request that E *maintain the status quo* with respect to Ees, cannot reasonably be read as requesting E to cancel pay raise promised before E had notice of U activities; cancellation was not based on any uncertainty whether Act compels or forbids increase during critical election period, nor was E concerned that raise might be construed as unlawful attempt to influence election outcome)

5036-6714 Issuance of, or change in, absenteeism rule

United Technologies Corporation **274 NLRB No. 163**
(telling Ees they would be subject to discipline if they failed to call in on a daily basis to explain their absence from work in the event of a strike, violative)

Brenal Electric, Inc. **JD-(NY)-21-84**
[E instituting rule that any Ees late on three occasions would be subject to discharge, unlawful, since rule established in retaliation for Ees' U activities]

Fun-Sy Productions, Inc. **JD-(NY)-49-85**
(E's promulgation of more severe lateness policy in response to Ees' U activity, violative)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) **789 F.2d 121 (C.A. 2, Apr. 1986)**
[telling Ees that they would have to call in every day that they missed work and provide reason for their absence during period that strike appeared likely and further telling them that failure to follow these procedures would warrant dismissal, violative since advising Ees that *call-in* was required interfered with their right to strike and threatening discharge for failing to obey edicts might have discouraged some Ees from striking]

5036-6715 Change in policy regarding observance of hours of work

Middletown Hospital Association **282 NLRB No. 079**
[announcing and implementing every other weekend off policy, unlawful, where E's prior position for not giving weekends off because of insufficient staffing suddenly changed w/o any increase in staffing; such change came about through E's programs unlawfully soliciting and remedying E complaints and grievances; and benefit was granted during election campaign with no adequate showing of business justification]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant **279 NLRB No. 017**
[E's announcement immediately after ptn was filed, that E's policy on lateness was changed *from now on* if Ees were late at all, violative]

5036-6715—Cont.

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017
[E's requiring Ees (waiters) to work lunches, violative, where new rule was announced one day after election and E had always accomodated Ees' various schedules before election]

Cassidy Cleaning, Inc. JD-239-86
[E's shortening of grace period allowed for reporting to work, having economic impact on Ees by imposing loss of half hour's pay for failing to comply with grace period, held violative of 8(a)(1) as well as 8(a)(3), in view of timing of E's action w/i month of U's overwhelming U election victory, coupled with animus displayed on other occasions; patent falsity of E's proffered excuse; and E's prior statement about tightening up on tardiness and attendance in event of U victory]

5036-6716 Denial of leave

Springfield Hospital 281 NLRB No. 076
[threat to withdraw liberal leave policy in cases of emergency if U won election, violative]

5036-6718 Discipline or warnings thereof

Metropolitan Edison Company 279 NLRB No. 047
[issuing written warning slips to 14 Ees who failed to cross stranger picket line to report to work in violation of no-strike clause, not unlawful, notwithstanding Ees were motivated by fear of injury to themselves or their cars, since acts of picketers did not meet objective test for *abnormally dangerous conditions* under Section 502, where there were threats and damage to Ees' vechiles but no physical assaults, and 611 of 625 Ees crossed the picket line]

United Artists Theatre Circuit, Inc. 277 NLRB No. 015
(supervisor's newly imposed warning system and promise of new furnishings, not violative where supervisor was recently hired and such suggestions could well come from such new supervisor and be implemented)

Hughes Helicopters, Inc. JD-(SF)-29-86
[imposing disciplinary warning on U adherent, assertedly for infringing presumptively valid no-solicitation rule, violative where E's supervisors overlooked commercial activities among Ees and supervisors during working time]

N.L.R.B. v. Vought Corporation - MLRS Systems Division 788 F.2d 1378 (C.A. 8, Apr. 1986)
[E's warning Ee that his work was slipping in that there were supply shortages on Ee's work line, unlawful, since warning motivated by Ee's U activities, where E had instituted time consuming procedures, assigned Ee additional duties, and refused to allow him overtime as it had prior to U campaign, in order to cause him to fall behind in his work and thus give E reason to fire him]

N.L.R.B. v. Deauville Hotel 751 F.2d 1562 (C.A. 11, Feb. 1985)
(reprimanding and threatening to discharge Ee for complaints about conditions of lesser job for which he had been rehired after his lawful discharge, not violative, since complaints were not protected activity where Ee was not initiating group action but demonstrating a bad attitude and discrupting the work place with personal gripes)

5036-6719 Restriction to work area

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018
[restricting Ee movement w/i plant upon advent of U organizing activity, unlawful, since it was done in order to demonstrate how unpleasant life could be made if Ees continued their support for U and in order to limit opportunities Ees might have to muster support for U]

5036-6720 Discharge

Business Services By Manpower, Inc. v. N.L.R.B. 784 F.2d 442 (C.A. 2, Feb. 1986)
[E employment agency's discharge of 2 Ees for failing to make timely reports of their unavailability to work, not violative where, Ees refused to pass pickets who were giving information about strike at different plant and pickets had not even asked them to do this, w/o any regard for interests of E and w/o notice sufficient to permit their replacement]

N.L.R.B. v. CER Inc. 762 F.2d 482 (C.A. 5, June 1985)
(Ee choosing to quit job rather than change manner in which he protested E's violations of bargaining agreement, which E viewed as prohibited since Ee was leaving his work station to correct violations, held constructive discharge rather than voluntary quit and violative, since Ee was faced with choice of discontinuing protected U activity or being terminated)

5036-6720-3700 For refusal to cross primary picket line at own employer's premises

Limpert Brothers, Inc. 276 NLRB No. 037
(discharge of Ees for refusing to cross lawful picket line, violative, since picketing is protected concerted activity and refusal to cross picket line is also protected concerted activity, and question of motivation on part of Ees' refusal to cross picket line is irrelevant)

5036-6720-4300 Constructive discharge

South Nassau Communities Hospital 274 NLRB No. 179
[there are two elements necessary to establish constructive discharge: (1) burdens imposed on Ee must cause change in working conditions so difficult or unpleasant as to force him to resign, and (2) it must be shown that those burdens were imposed because of Ee's U activities)

5036-6720-5000 Strikers

Dublin Town Ltd. 282 NLRB No. 046
[Ees held to have been unlawfully discharged for engaging in strike since, under *Ridgeway* test (243 NLRB 1048) for determining whether E's statements constituted unlawful discharge, E's stating that if Ees did not return to work he would have to suspend operations gave Ees reasonable basis for believing that they had been discharged; moreover, to extent ambiguity existed, E, upon being faced with Ees' picketing, should have advised them that they had not been discharged]

Dublin Town Ltd. 282 NLRB No. 046
[Ee held not ULP striker but unlawfully discharged for engaging in strike with other Ees; although told by E he could return to work if he wanted, Ee could reasonably believe he was discharged when he told E he would not return to work w/o other Ees; such belief was reinforced by E's subsequent conduct and statements consistent with discharge; and when Ees' picketing gave Ee clear signal that Ees believed they had been discharged, E failed to clear up any ambiguity by advising Ees they were mistaken]

Summa Corporation d/b/a Desert Inn Country Club & Spa 275 NLRB No. 116
(discharge of striking Ee assertedly for picket line misconduct consisting of repeatedly striking with his picket sign automobile entering struck E's premises, unlawful, where E reasonably and honestly believed that E engaged in conduct in question based upon fabrications of driver of automobile, but such conduct, in fact never occurred; *NLRB v. Burnup & Simms*, 379 U.S. 21, followed)

Atlantic Interstate Messengers, Inc. 274 NLRB No. 171
(discharging drivers by telling them to turn in their keys in order to collect their last paychecks because of their economic strike, violative)

Raygio Corporation d/b/a The Dirt Digger, Inc. 274 NLRB No. 157
(discharge of Ees when they returned ready to work next day after picketing to protest changes in working conditions, including change of basis of payment from time to feet of cable laid, unlawful. E's contentions that picketers quit or that discharges lawful because picketers refused to accept lawful new pay plan, rejected, since rather than quit Ees abandoned strike and offered to return to work, and lawful economic strikers may not be discharged)

Ozark Properties, Inc. d/b/a Holiday Inn 274 NLRB No. 096
(discharge of Ees because of their participation in and support of a strike over working conditions violative, notwithstanding E's contention Ees were voluntary quits when they refused to return to work after a demand to return to work, where Ees walked off job at beginning of work day and set up picket line to protest work conditions and later that day, when striking Ees met with president of E, he demanded that Ees return to work or pick up their paycheck and normal practice of E was to give Ees a final paycheck when they were terminated)

5036-6720-5600 For engaging in intermittent, recurrent or partial strike

Daniel Construction Company, A Division of Daniel International Corporation 277 NLRB No. 081
(E's terminating Ees for spontaneous refusal to work for 1 day in protest of unique and adverse working conditions, even in face of companyrule requiring permission to leave job, violative, since such single concerted walkoout was presumptively protected, absent evidence that work stoppage was part of plan or pattern of intermittent action inconsistent with genuine withholding of services or strike)

5036-6720-6300 Of supervisor if discharge directly interferes with employees' Section 7 rights

Advertiser's Manufacturing Company 280 NLRB No. 128
[discharging supervisor solely because of U activities of her son, violation, since impact of her discharge on her son's U activities, magnified by E's other unlawful acts directed against him, compels that he be protected by finding discharge a violation and ordering his mother reinstated with backpay]

5036-6720-6700 For supervisor's refusal to engage in illegal activities

Best Western Motor Inn 281 NLRB No. 026
[discharging supervisors for refusing E's unlawful request to surveil and gather information about Ees' U activities, violation where alleged reasons for discharges occurred long before and were not mentioned at time, theories were inconsistent, and supervisors' wages and benefits were increased prior to their refusal]

5036-6720-6700—Cont.

Hunter Douglas, Inc. **277 NLRB No. 123**
(discharge of supervisor, not unlawful, since not for refusal to commit ULPs and failure to prevent unionization of Ees, where supervisor made no objections to going along with pretext for discharge of adherent)

5036-6720-7000 Mass discharge

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**
[while in typical *Wright Line* case GC must demonstate E's awareness of pro-U acts or sentiments of individual Ees, GC can proceed on theory that E ordered general layoffs for purpose of discouraging U activity even if not all pro-U Ees are directly effected; E's general retaliation against workforce can discourage exercise of Sec. 7 rights just as effectively as adverse action taken against only known U supporters]

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**
[pre-election mass discharge of Ees assertedly because of economic necessity held violative of 8(a)(1) as well as 8(a)(3) where E, in face of warnings to reduce costs, hired additional Ees and incurred other avoidable business expenses; only logical reason for discharges was to impose chilling effect on Ees about to vote for U representation; such chilling effect was implemented by E's other unlawful conduct; and asserted economic basis for discharges was not credited in view of E's business expenditures]

5036-6720-7300 Protesting unsafe conditions

Meyers Industries, Inc. **281 NLRB No. 118**
[discharge of Ee for refusing to drive unsafe truck and reporting vehicle to authorities, not unlawful, since Ee's actions did not constitute concerted activity, absent any linkage to group action]

Mush Transportation, Inc. **281 NLRB No. 071**
[discharge of drivers because they refused to drive unsafe vehicle after complaining to management of vehicle's unsafe condition and were ordered by E to do so]

Quality C.A.T.V., Inc. **278 NLRB No. 156**
[discharge of two TV linemen who installed television strands on utility poles and who refused to work during and after rainstorm because they were wet, violative, since their concerted refusal to work was to protest requirement that they climb poles when wet, an employment condition. Ee's protest was protected whether Ees acted because they were concerned about their safety, their personal comfort, or their supervisor's attitude. In carrying out their protest, Ees did not exceed permissable bounds of protected activity]

Bechtel Power Corporation **277 NLRB No. 088**
(discharge of ee, assertedly for violating E's hardhat rules, violative, since real reason was Ee's complaints about breathing exhaust fumes in working area which complaints were protected concerted activity under *City Disposal*, where Ee's complaints were embodied in contract which had clause providing that all workmen and E's were to see that *safe working conditions are maintained on all jobs*. Ee complained to E-official who admitted receiving similar complaints from other Ees, Ee was longtime U member and told official he wanted to talk to steward and other Ees were not similarly discharged for similar hardhat violations)

Enco Elevators, Inc. **276 NLRB No. 138**
(on ct remand, discharge that was motivated by individual Ee's safety complaints that were found to constitute U endeavor, not mere personal undertaking, held not to establish independent 8(a)(1) violation)

Dr. Olinda Flore **JD-12-86**
[discharging Ee for concerted protected activity of protesting requirement that Ees attend seminar w/o receiving wages and unsafe x-ray procedures, violation where staleness and lack of earlier concern over Ees' alleged poor performance made allegation insufficient to overcome GC's prima facie case]

N.L.R.B. v. McEwer Engineering, Inc. **784 F.2d 634 (C.A. 5, Mar. 1986)**
[discharge of Ees who failed to return to work because of their perceived hazzardous conditions on job, violative. Ees were engaged in one-time strike of short duration (protected) as opposed to partial strike (unprotected). E had constructive knowledge of protected nature of activity notwithstanding when Ees told company clerk, sent by supervisor to ask Ees why they were not returning to work, they would return to work after it stopped raining, and he only reported to supervisor that the men were not ready to come back to work]

City Disposal Systems, Inc. v. N.L.R.B. **766 F.2d 969 (C.A. 6, July 1985)**
(discharging Ee for refusing to drive truck believed to be unsafe, violative, since it was concerted assertion of contractual right and protected where it was justified and not abusive)

Kenneth P. Prill v. N.L.R.B. **755 F.2d 941 (C.A.D.C., Feb. 1984)**
(in remanding Bd decision announcing new restrictive test for *concerted activities* for reconsideration because of law, ct held facts herein highlighted Bd's failure to give considered judgment on issues involved where Bd upheld discharge of Ee for refusing to drive vehicle determined to be unsafe despite fact Ee and E were under legal obligation not to operate vehicle; and Bd's decision produced anomaly that U worker in same situation under bargaining contract, unlike unorganized Ee herein, is protected under *Interfoto* and *City Disposal* 104 S.Ct 1055)

5036-6720-7500 For engaging in protected activity

Chelsea Laboratories, Inc. **282 NLRB No. 074**
[discharging Ee for concerted, protected activity of protesting E's apparent failure to discuss recognizing U with Ee committee before making decision as promised, violation]

Waggener-Walker Newspapers, Inc. **282 NLRB No. 070**
[summary discharge of 11 Ees who presented group complaint concerning air conditioning and supervisor's behavior, violation, notwithstanding E's contention that Ees had voluntarily quit]

Every Woman's Place, Inc. **282 NLRB No. 048**
[discharging Ee for concerted, protected activity of telephoning Wage and Hour Division of Labor Department to ask what pay Ees were entitled to receive for working on holidays, violation, notwithstanding E's valid claim of need to reduce staff due to budget cuts, where Ee was replaced by less qualified Ee at higher pay rate]

Dublin Town Ltd. **282 NLRB No. 046**
[Ees held to have been unlawfully discharged for engaging in strike since, under *Ridgeway* test (243 NLRB 1048) for determining whether E's statements constituted unlawful discharge, E's stating that if Ees did not return to work he would have to suspend operations gave Ees reasonable basis for believing that they had been discharged; moreover, to extent ambiguity existed, E, upon being faced with Ees' picketing, should have advised them that they had not been discharged]

Dublin Town Ltd. **282 NLRB No. 046**
[Ee held not ULP striker but unlawfully discharged for engaging in strike with other Ees; although told by E he could return to work if he wanted, Ee could reasonably believe he was discharged when he told E he would not return to work w/o other Ees; such belief was reinforced by E's subsequent conduct and statements consistent with discharge; and when Ees' picketing gave Ee clear signal that Ees believed they had been discharged, E failed to clear up any ambiguity by advising Ees they were mistaken]

Modern Iron Works, Inc. **281 NLRB No. 131**
[discharge of Ees for engaging in work stoppage when they sought to get larger wage increase than they had received from E, unlawful, notwithstanding E's contention that they had quit, where work stoppage was protected concerted activity, and there was no evidence Ees voluntarily relinquished their employment with E, which was clearly evidenced by their spokesman's express disclaimer that they had quit]

B & P Trucking, Inc. **279 NLRB No. 092**
[discharging Ee spokesman for expressing Ees' complaints about pay and work assignments and threatening to get Ees together and go to U for help in resolving their complaints, violation]

Dandridge Textile, Inc., Ronald W. Woods, Individually and As Officer and Managing Agent **279 NLRB No. 015**
[discharge of 2 Ees for remarks made to E's owner in meeting concerning wage increases, violative notwithstanding owner may have found Ees' remarks unpleasant or distressing, where Ees' statements were not so vulgar or defamatory as to render them unfit for further service]

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[discharge of driver violative of Sec. 8(a)(1) where for requesting installation of airconditioning in E's trucks, since request concerted inasmuch as driver had spoken to several other Ees about matter, notwithstanding he discussed airconditioning with E's president w/o going through chain of command thus violating rule, where E's president himself did not attempt to enforce rule, and discharge memo did not spedifically mention violation of rule as reason for discharge; however, discharge not violative of Sec. 8(a)(3) in view of lack of knowledge of Ee's U activities by E's officials who discharged him]

The Zack Company **278 NLRB No. 134**
[E unlawfully discharged Ees for requesting U to file grievance to collect overtime wages, where Ees were not as unproductive as E claimed, and E did not consistently discipline Ees for insufficient production; moreover, there was no ambiguity in superintendant's admission to steward that Ees were discharged because they were *trying to collect money for something they didn't work for*, thereby obviously referring to Ees' grievance that they would have worked overtime had it not been for E's improper transfer of Ees to different work areas]

American Mirror Company, Inc. **277 NLRB No. 179**
[threatening Ee with discharge for protesting E-conducted poll of Ee support for U, violation, notwithstanding that poll was lawful, since Ee's remarks constituted protected activity]

5036-6720-7500—Cont.

American Lebanese Syrian Associated Charities, Inc. d/b/a A.L.S.A.C. **277 NLRB No. 189**
[discharge of Ees because of their p[illegible]ssion and dissemination of allegedly confidential list showing Ees' [illegible] pay raises, in violation of E's rules, violative, where E's claim that list confidential seriously undercut by fact that list was left at copy machine used by all Ees, E had known for months that Ees possessed list yet did nothing and Ees were discharged for violation of unlawful rule prohibiting talking about salaries]

Zartic, Inc. **277 NLRB No. 171**
[maintaining and enforcing policy of terminating Ees who entered into workers' compensation settlements, not violation, since an Ee's pursuit of worker's compensation claim does not constitute concerted activity]

The Loft (Showcase, Inc.) **277 NLRB No. 170**
[discharge of Ee, unlawful, where for protected concerted activity of complaining to E about tip pool policy, and subsequently discussing problem with other Ees, rather than for calling E's owner obscene names]

Pete O'Dell & Sons Steel Erectors **275 NLRB No. 140**
(discharge, layoff after subsequent rehire of Ee, violative, as Ee was engaged in protected concerted activity when he testified before Army Corps of Engineers during their investigation of U complaint that E was not in compliance with Davis-Bacon Act by classifying Ees as laborers thereby failing to pay Ees ironworkers wages for ironworker work performed by *laborers*, as Ee was engaged in U activity by assisting U with their complaint, and E tied other 8(a)(1) violations to Ee's U activities)

Wheeling-Pittsburgh Steel Corporation **277 NLRB No. 160**
(discharge of Ee for refusing to operate equipment until he had implemented contractual provision permitting Ees to call for inspection by U safety representative, unlawful)

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Emp[illegible]yers **277 NLRB No. 142**
(discharging Ees for complaining to Corps of Engineers about E's failure to comply with Davis-Bacon wage and job-classification requirements at federal military installation, violation)

D & D Distribution Company, A Division of D & D Sewing Company **277 NLRB No. 097**
(discharge of Ee assertedly for excessive tardiness and absenteeism, unlawful, notwithstanding that Ee's record of tardiness was substantially worse than that of any other Ee in the year before his discharge, and that E had no past record of ULPs, where E failed to show that Ee would have been terminated for tardiness and absenteeism even in absence of his concerted activity)

D & D Distribution Company, A Division of D & D Sewing Company **277 NLRB No. 097**
(discharge of Ee assertedly for excessive tardiness and absenteeism, unlawful, where inference was warranted that E had knowledge of Ee's protected concerted activities; for months-long period prior to discharge Ee was neither docked for, nor warned about his attendance but, instead, was praised for his work; and immediately after discharge E told Ee that real reason for discharge was not lateness but Ee's attitude toward E, thereby supporting inference that Ee's concerted activities caused his termination)

Daniel Construction Company, A Division of Daniel International Corporation **277 NLRB No. 081**
(E's terminating Ees for spontaneous refusal to work for 1 day in protest of unique and adverse working conditions, even in face of companyrule requiring permission to leave job, violative, since such single concerted walkoout was presumptively protected, absent evidence that work stoppage was part of plan or pattern of intermittent action inconsistent with genuine withholding of services or strike)

Alamo Cement Company **277 NLRB No. 034**
(E's telling two individuals whose job title E had changed from operator to supervisor that if they wanted to become part of the bargaining unit, E could arrange it, not violative, notwithstanding individuals were found to be Ees, not supervisors, where statement was too ambiguous to constitute threat to demote or discharge them as alleged)

Tecom, Inc. **277 NLRB No. 038**
(discharge of Ee, unlawful, since for protected concerted activity of raising questions and complaining to E about group health insurance proposed by E, where discharge was w/i days of Ee's delivery of letter complaining about confused handling of insurance by E)

Airlines Transportation Company **277 NLRB No. 037**
(discharge for honest and reasonable invocation of collectively bargained right to half-hour lunch period, violative)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(in finding bargaining order warranted, Bd held threats of closure of E's operation and discharge of leading U activists were particular violations which were likely to have lasting inhibitive effect on substantial percentage of work force)

Squier Distributing Company **276 NLRB No. 133**
(discharge of Ees for giving statements to sheriff in connection with his investigation of possible embezzlement of corporate funds by E, violative, as Ees were acting for their *mutual aid or protection* since they viewed -- as result of 2 after work meetings -- that their concerted cooperation with sheriff as best method of safeguarding their jobs which bears relationship to Ees' interests as Ees and is, therefore, concerted activity. Disloyalty claim rejected)

A. N. Electric Corp. **276 NLRB No. 092**
(Ee's confronting supervisor demanding to know whether job was federally funded in presence of Ee's son, a fellow Ee, discussing supervisor's responses with son, and pressing supervisor for higher wages for Ee and others held concerted activity which was aimed at attaining higher wages and thus protected under Sec. 7; E's discharge of these two Ees, motivated by their concerted activity, violative)

A. N. Electric Corp. **276 NLRB No. 092**
(three Ees agreeing among themselves to contact Labor Department investigator to pursue possibility of their cooperating in wage investigation to secure higher wages and giving statements to investigator together with fourth Ee's subsequent statement which was result of another meeting with investigator, held protected concerted activity; E's discharge of four Ees, violative where E knew of concerted nature of activities and was motivated by activities in discharging them)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(discharge of Ee motivated by his protected concerted activity in criticizing E for its alleged discriminatory treatment against Hispanics held unlawful and interference where E stated he discharged Ee *because he called me prejudiced. I considered it an insult*, thereby admitting Ee's remarks motivated his discharge)

Technicolor Government Services, Inc. **276 NLRB No. 041**
(discharging U steward for distributing to E's Ees application forms for employment with another E, who was bidder in competition for E's position as service contractor found unlawful where activity was concerted, protected U activity that was not disruptive and did not breach any existing rule of E)

Center Ridge Co. **276 NLRB No. 015**
(discharge of security officer after he complained to news media about alleged conflict between county licensing requirements and new work procedures announced by E, not violative where Ee's concern about conflict between its procedures and county's licensing requirements for security guards was not shared by any of his fellow Ees)

McEver Engineering, Inc. **275 NLRB No. 128**
(discharge of Ees for engaging in protected concerted activity involving their refusal to return to work in unsafe, rainy, wet conditions, violative)

Georgia Kraft Company, Woodcraft Division **275 NLRB No. 091**
(on remand, Bd held that, in light of decision in *Clear Pine Mouldings*, E's discharge of two strikers, who visited home of non-striking Ee and in presence of Ee's pregnant wife and young daughter stated, while cursing in drunken state, that they would *take care of* Ee if he returned to work was not unlawful, since strikers' remark constituted threat and circumstances were obviously coercive and intimidating)

Herrick & Smith **275 NLRB No. 062**
(where reason for poor evaluation and subsequent discharge (poor work performance and attitude) by supervisor found pretextual, and that evaluation based on only 1 week's work permits inference to be drawn that supervisor was trying to build case for Ee'sdischarge in retaliation for Ee organizing meeting with managing partner and other Ees in which complaints against supervisor were aired)

Storall Manufacturing Company, Inc. **275 NLRB No. 039**
(discharge for complaining about working condictions, including supervisor's on-the-job conduct, possible changes in work rules, and job security, violative)

Spartan Business Equipment, Inc. **274 NLRB No. 216**
(discharge of Ee for participating in joint protest of E's failure to reimburse other Ee for expenses he incurred from using his own car to perform services for E, violative, particularly where E angrily accused Ee of attempting to *unionize* other Ee immediately prior to discharging him)

Advance Cleaning Service **274 NLRB No. 141**
(violation by discharging Ees for concerted refusal to work overtime because snow had started falling and the one car which took them home was scheduled to pick them up at 4:00 p.m., where refusal was single occurrence, rather than intermittent or partial strike, and thus protected)

Volt Information Sciences, Inc. **274 NLRB No. 047**
(discharge, allegedly because of Ee's complaints, not violative, where it was because of Ee's substandard work performance, which, after E's warning that it must improve, deteriorated instead)

Country Crest Creations, Ltd. **JD-271-86**
[discharging Ees for walking out because factory was too cold to work in, violation]

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Oil Field Construction Company **JD-(SF)-104-86**
[failing to assign any work, and substantially reducing amount of work assigned, to Ees held unlawful since E's action was due to Ees' grievance-filing activity, in view of timing of E's conduct in relationship to Ees' filing of grievances, E's statements indicating that E's action was taken because of Ees' grievance activity, E's hostility toward Ee for same reason, E's failure to assure Ee of no discrimination for filing grievance, and fact that counter-vailing factors were insufficient to undermine GC's prima facie case]

Heck's, Inc. **JD159-86**
[discharging Ee for enlisting Ees to press claims of sexual harassment by supervisor, violation]

Seven-Up Bottling Company, Inc. **JD-160-86**
[discharge of Ee for making statements referring to negotiations between E and U that E considered detrimental to negotiations, violative]

Locks Industries, Inc. **JD-150-86**
[discharge of Ee for making threats to E's plant manager in course of discussion about other Ees, not unlawful, where Ee's actions were neither concerted nor protected]

Bombay Palace of Westchester, Inc. **JD-(NY)-81-85**
[discharging Ee spokesman for complaining about conditions of employment and filing complaint with state department of labor, violation]

Paint America Co. **JD-17-86**
[discharge of Ees allegedly for concertedly complaining to E regarding wages, hours, and working conditions, not unlawful, where Ees were discharged for flagrant violation of most basic of industrial rules regarding privacy of confidential documents; there was no connection between Ees purported complaints and their discharge; rather, they were discharged for handling and looking through documents of their supervisor, which conduct Ees knew was wrong]

Dr. Olinda Flora **JD-12-86**
[discharging Ee for concerted protected activity of protesting requirement that Ees attend seminar w/o receiving wages and unsafe x-ray procedures, violation where staleness and lack of earlier concern over Ees' alleged poor performance made allegation insufficient to overcome GC's prima facie case]

The Fred B. Debra Company **JD-337-85**
(discharge of Ee who spoke to supervisor about performing unit work under U contract, unlawful)

Murray Sandblast and Paint, Inc. **JD-276-85**
(discharge of U adherent because he complained to his fellow Ees about having his (time) card pulled for clocking in one minute late and during this incident calling management a perjorative term, violative, since Ee's initial complaint was (protected) concerted activity w/i meaning of Act. Using obscenity did not deprive Ee of right to relief)

Exxon Shipping Company **JD-(NY)-96-85**
(allegation in complaint that discharge of Ee who had been unlawfully interviewed w/o requested U representation, dismissed, since under *Taracorp. Industries*, 273 NLRB No. 54, no make whole remedy will be ordered for *Weingarten* violations, where E was discharged for violation of rule against possession of drugs on E's property rather than for asserting his right to U representation)

Cordura Publications, Inc., d/b/a Mitchell Manuals, Inc. **JD-(SF)-132-85**
(discharge of Ees for authoring and sending letter to Chairman of the Board complaining about E's labor research practices and expressing concern for *the industry and our product*, not violative, since letter did not directly relate to wages, hours and working conditions but rather was an attack upon E's management and product and organizational structure of the company, thus rendering it unprotected)

Signal Delivery Service, Inc. **JD-231-85**
(discharging driver Ees, violative notwithstanding E's contention that they had voluntarily quit, where discharge of Ees was made because Ees had complained to E about dispatch procedure and withheld their services because they were unable to satisfactorily resolve matter with E)

Reilly's Sunset Chevrolet, Inc. **JD-(SF)-94-85**
(discharge of Ee for engaging in confrontation with E over its pay policies on behalf of other Ees, violative)

Onan Corporation, A Division of Onan Corporation **JD-(ATL)-11-85**
(suspension and discharge of Ee for refusing to comply with E's demand that he remove T-shirt with U insignia and other U paraphenalia from his work place, violative, since Ee's action was not insubordinate or proper basis for discipline in view of discrimination inherent in E's demand)

Hyde Park Community Hospital **JD-62-85**
(discharging Ee in retaliation for his filing grievance, through U, for overtime, violative)

Electrical Individual Contractor **JD-6-85**
(discharges violative where they were for drivers' concerted protected complaint about not being paid for time spent driving Es' trucks to jobsite 30 miles away and consequent lack of workmen's compensation insurance coverage while doing so rather than for refusal to drive Es' trucks, as contended)

GG Dewitt, Inc., d/b/a Sterling Car Care **JD-38-85**
(discharge of Ees who were gas station attendants for complaining about working conditions: work schedules, cleanup duties, threatened layoffs, and especially problem of recurrent cash shortages on their shift, unlawful, where discharges came at time when Ees were complaining about matters about which under law they had right to complain, and absent any action during conversation about these matters which would strip them of protection of law)

Herrick & Smith v. N.L.R.B. **802 F.2d 565 (C.A. 1, Sept. 1986)**
[enforcement denied where Bd affirmed ALJ's decision that real reason for Ee's discharge was concerted activity involving airing of Ee complaints at E-Ee meeting, since Bd did not meet its burden that Ee's protected conduct was substantial or motivating factor for discharge, where ALJ based finding of violation on mildest form of E-Ee meeting suggested by E which was conducted agreeably and was followed by no unpleasant acts or words; and ALJ misstated evidence, reasoned illogically, and reached unsupported and unsupportable decision]

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. **801 F.2d 636 (C.A. 3, Sept. 1986)**
[discharge for repeated lateness of Ee who had discussed wages with other Ees and suggested that they contact U if next wage increase was unsatisfactory, violation where lateness was sanctioned by E, rule was *elastic term*, conditions for discharge were not rigid, and Ee received no recent warnings, was not docked any pay, and received positive evaluation and offer of promotion]

Dayton Typographic Service, Inc. v. N.L.R.B. **778 F.2d 1188 (C.A. 6, Dec. 1985)**
[discharge of Ee, assertedly because he presented a *personal gripe* to E concerning work w/o pay rather than engaging in group activity, violative, since Ee was engaged in a continuation of concerted activity where, prior to discharge, Ee and other Ees had complained to E about working w/o pay and other conditions of employment and Ee continued thereafter to press Ees' complaints, albeit w/o their formal authorization, but a fact which will not negate concert of action]

John Morrison, et al. (Carriage Ford, Inc.) v. N.L.R.B. **772 F.2d 283 (C.A. 6, Sept. 1985)**
[Bd properly found that Ees had voluntarily quit and were not unlawfully discharged for engaging in protected activity of protesting change in work hours, where it was conceded by all parties that E had right to set working hours and, contrary to Ees claim that they were given no opportunity to discuss new hours and were summarily discharged. Bd found that E announced new hours and gave all Ees, and not just Ees herein, option of continuing to work new hours or leaving their employment]

City Disposal Systems, Inc. v. N.L.R.B. **766 F.2d 969 (C.A. 6, July 1985)**
(discharging Ee for refusing to drive truck believed to be unsafe, violative, since it was concerted assertion of contractual right and protected where it was justified and not abusive)

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company **762 F.2d 769 (C.A. 9, June 1985)**
(discharge of Ee, who had filed wage claim with state agency, assertedly for *skimming* and moonlighting, unlawful, where E failed to set forth reasons for firing Ee until Bd hearing, other Ee purportedly involved in skimming was transferred not discharged, and E refused to rehire other Ees who had filed wage claims against E)

N.L.R.B. v. Technicolor Government Services, Inc. **795 F.2d 916 (C.A. 11, Aug. 1986)**
[discharging U steward for distributing to E's Ees application forms for employment with another E, who was bidder in competition for E's position as service contractor, violative since activity was concerted and protected]

5036-6720-9000 Preventing employees from engaging in protected activity

Coca Cola Bottling Company of Buffalo, Inc. **274 NLRB No. 195**
(discharge of Ee, assertedly to maintain supposedly uniform disciplinary system, violative where real reason for discharge was to discourage him and other Ees from offering testimony which would exonerate other Ee and thereby demonstrate that E had erred in accusing other E of strike misconduct)

5036-6723 Requiring Ees to present identification in order to obtain paychecks

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**
[posting notice, 2 days after U notified E of its organizational effort, that Ees were required to present 2 forms of identification to obtain their paychecks,

5036-6723—Cont.

unlawful, where E had never taken such action before and it was never repeated afterwards]

5036-6724 Food or merchandise policy to employees

Benmit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[disconnecting telephones and vending machines on day after anti-U speech and not replacing them for a month to show Ees what U shop was like, violation]

Terraillon Corp. **280 NLRB No. 037**
[E's discontinuance for two months during pendency of R case of its long standing practice of providing free lunches for office clericals upon arrival of merchandise by container trucks for unloading, not unlawful, absent evidence E sought to punish clericals for their U activities, where lunches continued to be furnished for warehouse Ees notwithstanding election also pending in unit of warehouse Ees, in view of considerable time lapse after E learned of activity until suspension of lunches, and fact failure to furnish free lunches involved only three or four occasions]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant **279 NLRB No. 017**
[E's announcement immediately after election, that Ees were no longer permitted to drink free wine or beer with their meals, violative, where timing showed rule was in response to U campaign and Ees had consumed free wine or beer for one year prior to election w/o any question from E]

M.B.K., Inc. d/b/a Scotch & Sirloin Restaurant **JD-(SF)-311-82**
(changing policy after start of U activity by denying Ees free aftershift drink and use of salad bar, violative)

5036-6725 Downgrading or demotion

Scientific-Atlanta, Inc. **278 NLRB No. 090**
[demotion of Ee for discussing other Ees' merit raises with another Ee, on grounds Ee was disclosing confidential information and thus was not engaged in protected activity, violative, where Ee was not a *confidential* Ee so as to give her special duties and responsibilities towards Ees and E cannot lawfully prevent Ees from discussing topics as critical to Ee interests as wages]

Alamo Cement Company **277 NLRB No. 034**
(E's telling two individuals whose job title E had changed from operator to supervisor that if they wanted to become part of the bargaining unit, E could arrange it, not violative, notwithstanding individuals were found to be Ees, not supervisors, where statement was too ambiguous to constitute threat to demote or discharge them as alleged)

5036-6726 Evaluation of work

Herrick & Smith **275 NLRB No. 062**
(where reason for poor evaluation and subsequent discharge (poor work performance and attitude) by supervisor found pretextual, and that evaluation based on only 1 week's work permits inference to be drawn that supervisor was trying to build case for Ee'sdischarge in retaliation for Ee organizing meeting with managing partner and other Ees in which complaints against supervisor were aired)

United States Postal Service **275 NLRB No. 041**
(supervisor giving Ee negative evaluation, violative, since motivated by Ee's protected concerted activity of filing and presenting grievances as U steward against supervisor)

5036-6728 Denial of sick pay or change in sick leave policy

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(requiring U ahderent to bring in doctor's slip when absent for illness, unlawful, where such documentation had not been required prior to U activity)

Texaco, Inc. **273 NLRB No. 164**
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

5036-6733 Illegal conditions on reinstatement

5036-6733-3300 Of strikers

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. **277 NLRB No. 078**
(conditioning reinstatement of economic strikers upon their resignation of U membership, violation)

5036-6733-6700 Of other employees

Paintsville Hospital Company, Inc. **278 NLRB No. 107**
[discharged U activist's statement that if director of Ee relations could get her reinstated, she could stop U campaign, followed by director's response that he was in no position to do so and that he could not do anything that would constitute ULP, not violative, even if director made concluding remark that he would see what he could do for her; in light of his prior statements, she could not have perceived such remark as unlawful inducement]

5036-6735 Prohibiting solicitation and/or distribution of literature during employees own time on employer's premises

Clark Equipment Company **278 NLRB No. 085**
[interfering with distribution of literature in non-work areas during non-work time, violative and objectionable where Ees were told they could not distribute literature at plant entrance but would have to go to plant gate, and two Ees were threatened with arrest and escorted by security guards to plant gate]

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**
[E's Chief Executive Officer's confiscating U campaign materials being distributed by Ee at cafeteria entrance not violative where Official distributed to Ees most of materials he took and no Ee was intimidated by the incident. Conduct in this case was at most a minimal intrusion on Ee rights and not violative]

5036-6737 Layoff

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers **279 NLRB No. 116**
[mining company reducing amount of work assigned to construction company which was performing work for it, and thus causing layoffs of construction company Ees, not unlawful act by mining company, since mining company not joint E with construction company, its motives for reducing work cannot be imputed to construction company, nor was layoff unlawful act by construction company, absent discriminatory motive on its part]

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Employers **277 NLRB No. 142**
(layoffs allegedly because of slack work, Ees' substandard performance, drinking on job, and extended lunch breaks, violation where they were due to Ees' complaining to Corps of Engineers about E's failure to comply with Davis-Bacon wage and job-classification requirements at federal military installation)

Garland Coal & Mining Co. **276 NLRB No. 102**
(layoff of Ee on 2 occasions, allegedly for his activity in presenting grievances, not unlawful, where layoff was motivated by valid business reasons; Ee was properly selected for layoff as one who was least senior Ee on seniority list; after first layoff, Ee was given fair test, which he failed, of his ability to operate certain equipment; record did not show that following first layoff, Ee would have been recalled earlier but for his activity in presenting grievances; and procedures applied to him were no different than those applied to other Ees)

John H. Cooney, Inc. **275 NLRB No. 088**
(layoff of two Ees, (who did not *kick-back* to their E their backpay, to which State Department of Labor determined they were entitled) because project upon which they were working was suspended, not violative, since their work project was suspended; no additional work was available for them; and that two Ees did not *kick back* to E not supported by record; two Ees would have been laid off regardless of any protected activity w/i which they may have engaged)

Fermont, A Division of Dynamics Corporation of America **274 NLRB No. 131**
(layoff of Ee for having continued to press safety complaints, violative)

Trans Tech Electric, Inc. **274 NLRB No. 089**
(violation where E laid Ee off for concerted activity of complaining that certain work should be done by members of his and his fellow Ees' U and for putting pressure on E by getting the U involved in the matter)

5036-6741 Less favorable treatment

Benmit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[disconnecting telephones and vending machines on day after anti-U speech and not replacing them for a month to show Ees what U shop was like, violation]

Page Avjet, Incorporated **278 NLRB No. 063**
[E's refusal to allow U adherent to perform light work while Ee was injured, not unlawful, since E's policy was that injured Ees must perform light duty w/i their usual work functions, and Ee could not thus perform while on crutches, Ee did not inform E when he discontinued use of crutches, and when he reported to work w/o crutches, he was returned to work]

5036-6741—Cont.

Mobile Concrete, Inc. **JD-453-84**
(E's ban on use of personal radios by Ees in their trucks, assertedly in response to Ees' U organizing activities, not violative where ban was due to transmitting of music from drivers' radios over two-way frequency which interfered with E's dispatching of trucks and also triggered official complaint to Federal Communications Commission from another concern sharing same frequency with E)

5036-6743 Harsher working conditions or rules

Wabash Alloys, Inc. **282 NLRB No. 059**
[assigning Ee to more arduous work as result of his safety complaint, violative]

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor's implementation of more onerous terms and conditions of employment relating to break time, use of telephones, and movement w/i E's facility, unlawful since, even accepting Ee's explanation of abuse of phone usage, other restrictions were not fully explained or justified by E and, in view of failure to explain timing of restrictions during U organizational effort, conclusion was that restrictions were retaliatory to such effort and was response to Ee's threat to take matter involving supervisor to Bd]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(E's denial of helper to Ee who was handling very heavy pipe, unlawful, since denial because of Ee's U activities where previously more than one Ee had been assigned to jobs which involved such heavy pipe, and E had threatened to punish U activists)

Morning Star International, Inc. **JD-209-86**
[E's conduct, in anticipation of U demand for recognition, in converting attendance checking procedure into unprecedented production reviews held unlawful threat to Ees' employment, since Ees knew that E was using his powers of appraisal to demonstrate dramatically dangerous position in which their tenure of employment lay]

Morning Star International, Inc. **JD-209-86**
[E's *policy letter* announcing work rules which increased old penalties and instituted new ones for infraction of rules, unlawful, where E advanced no legitimate reason for promulgation of rules, and timing at height of organizing drive and tenor of rules made it clear E's action was taken in retribution]

H. A. Satin Co., Inc. **JD-(ATL)-2-86**
[promulgation of new and more stringent productivity rule, and issuing warnings pursuant thereto, unlawful, since actions taken to discourage Ees from supporting U, where E had never previously issued large number of warnings in single day for low production until w/i 1 month of U campaign, and in view of concurrent unlawful promise of benefits, notwithstanding asserted reason of financial difficulties, where financial problems had been on going for several years]

Health Care Service-California d/b/a Valley Oaks Health Care Center **JD-(SF)-198-85**
[E's enforcement of rule limiting Ees' use of breakroom during nonworking time only against U supporters, violative; further, giving Ees written warnings for allegedly breaking rule, violative]

David Clements Co., Inc. **JD-388-85**
[E's institution of rules regarding punching in and out, safety glasses, progressive discipline for absence or tardiness, smoking, leaving work areas and production standards unlawful, since in retaliation for Ees' U activity where instituted day after E received U's ptn and in view of unlawful statement of E's owner prior to announcement of rule *if Ees wanted E to be run like a big company, E would be run like a big company*]

Murray Sandblast and Paint, Inc. **JD-276-85**
(supervisor's announcing to Ees that E was going to implement stricter sanctions for Ee absenteeism and tardiness, not violative where GC did not show that U's (R) ptn was factor in announcement of absence/tardiness crackdown and it was shown crackdown was for more efficient production and less customer complaints)

5036-6744 Closer supervision

Woodcliff Lake Hilton Inn, Inc. **279 NLRB No. 146**
[case name and numbers]

Sierra Hospital Foundation **274 NLRB No. 056**
(requiring U activist to report to nursing office at start of shift, not violative, as this was in accord with past practice, and neither was requirement that this Ee record her breaks on timecard as E had legitimate business interest-prevention of abuse-in requesting such record be kept, and requirement did not inhibit Ee's U activities)

Kenner Printing Company, Inc. **JD-(NY)-32-85**
(E's conversion of oral warning system to written one following notification of U's intent to organize E's Ees not inherently destructive of Ees' rights, as alleged, where E's purpose was to document instances of Ee misconduct, and campaign was free of ULPs by E)

5036-6745 Lockouts

Union Boiler Company **281 NLRB No. 148**
[E's insistence that U allow it to work Ees 10 hours a day w/o overtime as was contractually mandated, and refusing to employ Ees when they refused to work under those conditions, violative and such conduct was an illegal lockout of Ees]

5036-6751 *Open door* or *direct dealing* policy

Springfield Hospital **281 NLRB No. 076**
[supervisor telling Ees that if U won election, the intercession of steward would be necessary before Ees could have one-on-one meeting with him to discuss personal problems in contrast to present open-door policy, not violative, as statement was explanation that Ees' relationship with management would change so that they would have to deal with management indirectly]

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**
(E's statements to U stewards telling them he was not in favor of Us and referring to value of dealing directly with Ees and company U and bringing up matter of U decertification held unlawful solicitation to abandon U and to lead Ees to believe continued support of U was futile)

5036-6754 Refusal to employ or reemploy

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[telling applicant for employment that E was going to be non-U, requesting that applicant withdraw from U and show withdrawal card to E and after hiring applicant, readvising applicant that if he intended to remain with E, he had to obtain withdrawal card and show it to E, violative]

Oil Field Construction Company **JD-(SF)-104-86**
[failing to assign any work, and substantially reducing amount of work assigned, to Ees held unlawful since E's action was due to Ees' grievance-filing activity, in view of timing of E's conduct in relationship to Ees' filing of grievances, E's statements indicating that E's action was taken because of Ees' grievance activity, E's hostility toward Ee for same reason, E's failure to assure Ee of no discrimination for filing grievance, and fact that countervailing factors were insufficient to undermine GC's prima facie case]

5036-6762 Refusal to reinstate strikers

Rayglo Corporation d/b/a The Dirt Digger, Inc. **274 NLRB No. 157**
(discharge of Ees when they returned ready to work next day after picketing to protest changes in working conditions, including change of basis of payment from time to feet of cable laid, unlawful. E's contentions that picketers quit or that discharges lawful because picketers refused to accept lawful new pay plan, rejected, since rather than quit Ees abandoned strike and offered to return to work, and lawful economic strikers may not be discharged)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(requirement that strikers make out new job applications, and obscene orders and abuse of strikers as part of respondents' harassment of them, violative)

5036-6763 Isolating employees

Harold Weinz; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**
[E's new rule which placed restrictions on Ees in order to prevent them from speaking to *known adherent* of U, held violative in view of absence of any justifiable business reason for deviating from past practice and putting restrictions upon Ees calculated to prevent them from conversing with *known adherent* of U even at times when it did not affect performance of work functions. Purpose was to punish U adherent and discourage Ee support for U]

PYA/Monarch, Inc. **275 NLRB No. 167**
(operations manager unlawfully restricted pro-U Ees from communicating with other Ees about U, when he directed one Ee to remain away from other workers until starting time, and not talk to other Ees when he came into work, and asked another Ee not to talk to Ees on other shift)

5036-6770 Closure of department, facility or business

Cherokee Heating and Air Conditioning Co. **280 NLRB No. 044**
[shutdown of sales service department resulting in discharge of sales service representative, unlawful discharge where it was due to representative's complaint about E's manner of paying sales commissions, rather than department's lack of profitability, as shown by timing of shutdown at time when it might prove most productive, profitable, and likely to ensure recoupment of prior costs]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(foreman for company having known business relationship with E, who visited Ee at home and told Ee he had been sent by E held agent of E who was liable for foreman's unlawful threat of plant closure; definition of agency as stated in Sec. 2(13) of Act, and not common law definition, held applicable)

5036-6772 Alteration of work assignments

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017
[E's requiring Ees (waiters) to work lunches, violative, where new rule was announced one day after election and E had always accomodated Ees' various schedules before election]

5036-6777 Suspension

Vista Hill Foundation d/b/a Mesa Vista Hospital 280 NLRB No. 027
[suspending Ee for violating rule against wearing insignia, unlawful where rule was overly broad as to location and time]

Union Electric Company 275 NLRB No. 059
(suspending Ees for concerted, protected refusal to perform job assignment which they reasonably and in good-faith believed was unsafe, violative)

Fermont, A Division of Dynamics Corporation of America 274 NLRB No. 131
(suspension of Ee violative, where imposed on basis of disciplinary notice which contained errors entered knowingly and intentionally by E, and also in view of animus exhibited by E's unlawful threat to Ee, timing of suspension relative to that threat and obviously pretextual basis given by E for suspending Ee)

Volt Information Sciences, Inc. 274 NLRB No. 047
(no violation where Ee was suspended for one night not because he complained about working conditions, as alleged, but because he did so the first time in an insolent manner and the second time in a belligerent, insubordinate, and disruptive manner that caused the entire department to stop working until a guard took him out)

5036-6781 Loss of overtime work or pay

Bay State Ambulance and Hospital Rental, Inc. 280 NLRB No. 122
[telling Ees around time that RD directed election that there was nothing stopping E from reducing work week from 60 to 40 hours and if U got in work week would be reduced, violative]

M. W. Kellogg Constructors, Inc. 273 NLRB No. 134
(informing Ees that travelers would not be assigned overtime, telling travelers that they could not work overtime because of U's instructions and that it could not assign travelers any overtime, violative)

5036-6782 Rescheduling of hours

Bemmit Division, U.S. Tubular, Inc. 280 NLRB No. 083
[rescheduling shift times to separate departure time of first shift from arrival time of second shift, therby interfering with contacts or mutual organizational activities of both shifts, violation]

Central Broadcast Company 280 NLRB No. 056
[radio station program director's telling newsman who supported U that E's reducing his hours, giving him split shift, and requiring him to play another Ee's prerecorded tapes on the air was harassment, lowering of his status, and inducement to cause him to quit found unlawful solicitation to quit]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017
[E's requiring Ees (waiters) to work lunches, violative, where new rule was announced one day after election and E had always accomodated Ees' various schedules before election]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant 279 NLRB No. 017
[discharge of Ee, assertedly because she did not show up for scheduled work, violative, since real reason was Ee's open and active U support where Ee's work schedule was changed in such a way so as to make it impossible for her to go to school, a schedule E had accomodated before her U activity, and E threatened to fire Ee if she couldn't work the new schedule regardless of the U]

5036-6785 Transfer to another job, shift or plant

Eskaton Sunrise Community 279 NLRB No. 012
[offering Ees choice of transfer to another facility of Ee or termination, unlawful, where result of E's move was to demolish u's organizational campaign and to punish Ees for their concerted protected activities as evidenced by terms and conditions of offer, timing of offer few days after notice of U's R ptn, and E's inconsistent and shifting explanations for its action]

Fermont, A Division of Dynamics Corporation of America 274 NLRB No. 131
(E's issuing notice that Ee would no longer be performing his regular job duties upon his return to work from his suspension, found unlawful herein, violative where in fact his duties were not changed and notice tended to discourage Ees from continuing to engage in protected activities)

The University of Chicago 274 NLRB No. 061
(E's transferring guidance counselor from lower school to its high school not violative, notwithstanding counselor had been engaging in protected concerted activities involving her continued protest of various matters, where E showed that it would have transferred her even in absence of her participation in protected activities inasmuch as she seriously impeded E's effort to implement child study group concept and by time E decided to transfer her it was clear that group would not function effectively as long as she was member of it)

Eastman Machine Company and its wholly owned subsidiary, Cutting Room Appliances Corp. JD-(NY)-42-85
(violation by attempting to induce Ees to transfer to other jobs out of department that they worked in because of U organizational activity taking place in department)

5036-6788 Denial of paid vacation

Harold Weinz, et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013
[E's posting notice after election but before certification that *until further notice, there will be no vacation pay* not violative where GC did not establish notice was phrased as alleged in C or worked to suggest to Ees that they were being penalized for selecting U as bargaining agent, as E had valid economic reasons for posting notice. However, implementation of new policy, violative]

SCA Services of Georgia, Inc. 275 NLRB No. 120
(plant manager's telling Ee that a vacation money advance could not be given because of possible imminent strike activity, violative)

5036-6789 Reduction in work or hours

Bay State Ambulance and Hospital Rental, Inc. 280 NLRB No. 122
[telling Ees around time that RD directed election that there was nothing stopping E from reducing work week from 60 to 40 hours and if U got in work week would be reduced, violative]

5036-6793 Change in work rules

Morning Star International, Inc. JD-209-86
[E's *policy letter* announcing work rules which increased old penalties and instituted new ones for infraction of rules, unlawful, where E advanced no legitimate reason for promulgation of rules, and timing at height of organizing drive and tenor of rules made it clear E's action was taken in retribution]

5036-6795 Medical, hospitalization and related benefits

The Gerkin Co. 279 NLRB No. 136
[telling Ees that E could not carry out its intent to improve health insurance coverage until after election, violation and interference]

Texaco, Inc. 273 NLRB No. 164
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

5036-6798 Change in lunch and/or break period practices

Mississippi Chemical Corporation 280 NLRB No. 046
[supervisor's implementation of more onerous terms and conditions of employment relating to break time, use of telephones, and movement w/i E's facility, unlawful since, even accepting Ee's explanation of abuse of phone usage, other restrictions were not fully explained or justified by E and, in view of failure to explain timing of restrictions during U organizational effort, conclusion was that restrictions were retaliatory to such effort and was response to Ee's threat to take matter involving supervisor to Bd]

Terrailon Corp. 280 NLRB No. 037
[E's discontinuance for two months during pendency of R case of its long standing practice of providing free lunches for office clericals upon arrival of merchandise by container trucks for unloading, not unlawful, absent evidence E sought to punish clericals for their U activities, where lunches continued to be furnished for warehouse Ees notwithstanding election also pending in unit of warehouse Ees, in view of considerable time lapse after E learned of activity until suspension of lunches, and fact failure to furnish free lunches involved only three or four occasions]

Sierra Hospital Foundation 274 NLRB No. 056
(requiring U activist to report to nursing office at start of shift, not violative, as this was in accord with past practice, and neither was requirement that this Ee record her breaks on timecard as E had legitimate business interest-prevention of abuse-in requesting such record be kept, and requirement did not inhibit Ee's U activities)

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(promulgating rule prohibiting Ees from returning to their cars during lunch, not unlawful, where rule issued because Ees were getting drunk and cars were being damaged, rather than because of U activity)

Cone Mills Corporation-White Oak Plant 273 NLRB No. 188
(E's more strict enforcement of new strict enforcement of new break schedule, unlawful, where schedule was instituted in order to discourage U and/

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or protected activity of U steward who should have been given permission to process grievance concerning schedule)

5036-6799 Other

Ozark Properties, Inc. d/b/a Holiday Inn **274 NLRB No. 096**
(Ee's entering notations on Ees' attendance records that Ees had been terminated as they had been *In (a) walkout*, violative, since walkout was protected strike)

5036-7500 Affirmative defenses to charges of changes in conditions of employment

5036-7525 Business management considerations

Springfield Hospital **281 NLRB No. 076**
[hiring additional receptionists at higher than normal starting pay and adjusting pay of all receptionists upward after new receptionists completed probationary period which was 6 weeks before election, not violative, since pay raises was part and parcel of legitimate business decision to hire additional Ees and to commensurately upgrade rate of pay in existing job classification to bring it in line with other receptionist classifications at E, and these decisions made month before R ptn filed]

John H. Cooney, Inc. **275 NLRB No. 088**
(layoff of two Ees, (who did not *kick-back* to their E their backpay, to which State Department of Labor determined they were entitled) because project upon which they were working was suspended, not violative, since their work project was suspended; no additional work was available for them; and that two Ees did not *kick back* to E not supported by record; two Ees would have been laid off regardless of any protected activity w/i which they may have engaged)

5036-7550 Good-faith belief that employee misconduct justified change

5036-7550-3300 May be defense

Felbro, Inc. **274 NLRB No. 186**
(E's telling Ees, who were demanding an explanation for layoff of Ee, that if they did not return to work they would be sent home, and then clocking them out and refusing to pay them for the remainder of the day, not violative, since Ees repeatedly refused to go back to work and E took no disciplinary action against Ees but simply refused to pay them for the remainder of the day they refused to work)

5036-7550-5000 No defense if activity protected

Consumers Power Company **282 NLRB No. 034**
[upon finding discharge of Ee, assertedly for assaulting his supervisor, part of res gestae of Ee's protected concerted activity and not unlawful, Bd rejected E's contention that its disciplinary policy *mandates* discharging Ee, since Ee was not discharged for similar conduct on prior occasion nor initially discharged herein, thereby indicating E had discretion in choosing disciplinary action against Ee; at any rate, E's disciplinary policy cannot lawfully *mandate* that Ee be discharged in violation of 8(a)(1)]

Quality C.A.T.V., Inc. **278 NLRB No. 156**
[discharge of two TV linemen who installed television strands on utility poles and who refused to work during and after rainstorm because they were wet, violative, since their concerted refusal to work was to protest requirement that they climb poles when wet, an employment condition. Ee's protest was protected whether Ees acted because they were concerned about their safety, their personal comfort, or their supervisor's attitude. In carrying out their protest, Ees did not exceed permissable bounds of protected activity]

Herrick & Smith **275 NLRB No. 062**
(where reason for poor evaluation and subsequent discharge (poor work performance and attitude) by supervisor found pretextual, and that evaluation based on only 1 week's work permits inference to be drawn that supervisor was trying to build case for Ee'sdischarge in retaliation for Ee organizing meeting with managing partner and other Ees in which complaints against supervisor were aired)

N.L.R.B. v. CER Inc. **762 F.2d 482 (C.A. 5, June 1985)**
(Ee choosing to quit job rather than change manner in which he protested E's violations of bargaining agreement, which E viewed as prohibited since Ee was leaving his work station to correct violations, held constructive discharge rather than voluntary quit and violative, since Ee was faced with choice of discontinuing protected U activity or being terminated)

5036-7550-6700 No defense if conduct did not in fact occur

Coca Cola Bottling Company of Buffalo, Inc. **274 NLRB No. 198**
(discharge of Ee for allegedly making bomb threat, violative where he did not engage in such misconduct)

5036-8300 Threats of changes in conditions of employment

Grasso, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(in finding bargaining order warranted, Bd relied on E's extensive interrogation about Ees' U activities and threats of reprisal, conducted by management from top to bottom, and directed at almost all Ees, both individually and in groups, with some Ees subject of repeated interrogations and threats)

Lemon Drop Inn, Inc. v. N.L.R.B. **752 F.2d 323 (C.A. 8, Jan. 1985)**
(E restaurant manager's threat to waitress that if he heard further talk of Ee organization, he would close restaurant and fire Ees, violative)

5036-8301 Generally

National Micronetics, Inc. **277 NLRB No. 086**
(distributing accurate copies of Bd decision with portions highlighted and characterized as *true*, not violative threat or interference, especially where E was rebutting U's misstatements of law on these points; *Glassmaster Plastics Co.*; 203 NLRB 944 (1973) overruled to extent it is inconsistent with this deicision)

5036-8302 Nonspecific threat of reprisal

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's statement to Ees at meeting, which, taken literally, appeared to say that when bargaining starts Ees would cease working and E would cease paying Ees or providing benefits to them held not unlawful threat of loss of work and benefits if Ees selected U, since Ees reasonably could not have taken such nonsensical statement literally, and statement was too unclear to support finding of threat]

Springfield Hospital **281 NLRB No. 076**
[supervisor's threat to get even with Ee because he had engaged in protected concerted activity by signing petitions, violative]

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer **281 NLRB No. 161**
[after supervisor obtained knowledge that Ee signed U card, his remark to Ee that he was *plant* U sent to stir up trouble, violative, as Ee should not expect to incur wrath of supervisor for engaging in protected activity]

Wayne W. Sell Corporation **281 NLRB No. 082**
[E's vice-president's statement to Ee during grievance meeting that grievances had better stop constituted unlawful threat of unspecified reprisals]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[telling Ee that E would do everything in its power to keep U out, standing alone, held not to constitute unlawful threat since statement itself was somewhat vague and subject to interpretation by listener]

Benmit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[threatening to find out who signed U authorization cards, violation]

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor's statement to Ee engaged in U activities that supervisor would not brook this *union stuff*, coupled with remark that things were about to *get nasty*, held not so thinly veiled threat of unspecified reprisals for U activities]

Independent Stave Company, Inc. **278 NLRB No. 089**
[threatening unspecified reprisals for filing Bd charge, violation]

Bozzuto's, Inc. **277 NLRB No. 100**
(threatening to retaliate against Ees for wearing U hats, violation)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(E's owner informing Ee he was going to lower Ee complement, but would do it legally by seniority, and stated he *didn't know what we all are going to get out of this i.e., U campaign, but that if we wanted to play hard ball he was going to play hard ball*, unlawful, inasmuch as *hard ball* belies earlier reference to doing everything legally, and Ee could reasonably conclude that conditions would be harsher)

Westinghouse Electric Corporation **277 NLRB No. 016**
(supervisor stating, after asking Ee if she had attended U meeting protesting following discharge of Ee, and comments by other Ees present as to whether Ee had spoken at meeting, that it did not make any difference if she said anything or not, she *can go down tube with rest of them*, unlawful)

Westinghouse Electric Corporation **277 NLRB No. 016**
(supervisor informing Ee who had given speech supporting Ee who had been discharged that she *had better be careful, she was being perceived as U trouble-maker*, unlawful)

Westinghouse Electric Corporation **277 NLRB No. 016**
(supervisor stating that Ees who had been protesting discharge of Ee *didn't know all the facts*, not unlawful threat of unspecified reprisal)

John J. Hudson, Inc. **275 NLRB No. 123**
(supervisor's telling Ee who was wearing U button, *I think you guys are killing yourself (sic) over what you're trying to pull*, violative, since remark was openly hostile and linked to Ee's known efforts to unionize)

Stovall Manufacturing Company, Inc. **275 NLRB No. 039**
(contrary to ALJ, Bd found that E did not threaten Ees with declining orders because of U campaign; E's alleged statement that, since U campaign began work orders had declined and warehouses were getting stockpiled, if made, was statement of fact, not threat of reprisal, and Ees' other alleged version of statement, that U stuff was slowing things down so that E could

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not get things out, described an incidental effect of campaign, not a threat, and was too obscure and vague to be a threat)

Rankin Brothers, Inc. 274 NLRB No. 053
(Ee's comments to other Ees who were U supporters that, *we know what's going on and we're going to fix that,* violative, notwithstanding fact Ee was not a supervisor, since Ee was placed by management in strategic position where Ees could reasonably believe he spoke on its behalf where Ee was used by E to relay messages and instructions to Ees and was correctly perceived as management's *right-hand man* who spoke for management in its absence)

Vdi Information Sciences, Inc. 274 NLRB No. 047
(comment of supervisor seated behind two Ees discussing benefits of unionization, *Boy, you really are trying to commit suicide,* not violative, as it was not coercive and was too ambiguous to constitute threat of unspecified reprisal, as alleged)

Wackenhut Corporation JD-288-86
[supervisor's interrogating and threatening 3 Ees about their meeting with official of agency with which E had contract, not violation, despite supervisor's knowledge that Ees acted concertedly, where evidence failed to show that supervisor knew that subject discussed at meeting was protected]

Safeway Stores, Inc. JD-(SF)-119-86
[supervisor's general warning to Ees on picket line, made in anger over ULP charges filed by one of the Ees, to remember that they had to return to work one day held unlawful unspecified threat to retaliate against all Ees for one Ee's filing of charges]

Quality Rolls, Inc. JD-189-86
[supervisor's pre-election statements to Ee that *you'll be hanging yourself for U* held not unlawful threat of unspecified reprisal, since comments were part of light-hearted ongoing dialogue with supervisor occurring in aura of levity to which Ee contributed; moreover, comment was too ambiguous to arouse fear of reprisal]

N.L.R.B. v. Norbar, Inc. 752 F.2d 235 (C.A. 6, Jan. 1985)
(telling Ees that it was not a goood idea to file for unemployment compensation benefits and that he should withdraw his claim, violative)

5036-8303 Discipline or warnings thereof

Metropolitan Edison Company 279 NLRB No. 047
[threatening discipline, including suspension, for refusing to cross stranger picket line, not violation where broad no-strike clause waived Ee's right to honor stranger picket line, in absence of any evidence in bargaining history or past practice demonstrating that parties expressly excluded sympathy strikes from no-strike clause coverage]

Uniontown Hospital Association 277 NLRB No. 144
(threats of disciplinary action for violationof unlawfully broad no-solicitation policy and of discriminatorily enforced dress code, violations and interference)

Buzzuto's, Inc. 277 NLRB No. 100
(threatening Ees with discipline for failing to attend E's voluntary meetings regarding contract negotiations, violation)

PIA/Monarch, Inc. 275 NLRB No. 167
(supervisor advising Ee who had confessed he had lied concerning not being able to get into work because of car trouble, that Ee would *do well to avoid such situations in future,* not unlawful threat)

Crystal Linen & Uniform Service, Inc. 274 NLRB No. 137
(E's threatening Ees with discipline and discharge not violative, where Ees who, while on strike, accepted employment with E's competitor and affirmatively solicited their former customers to switch their business to E's competitor; although Ees were on strike and did not disparage service of E, their activity was not concerted and Ees who compete with their E and who solicit E's customers to switch to competitor are disloyal and may properly be disciplined or threatened with discipline)

Roadway Express, Inc. 274 NLRB No. 052
(supervisor's threatening U steward with discipline because steward said he would file grievance over supervisor's performance of unit work, unlawful)

Radisson Muehlebach Hotel 273 NLRB No. 183
(E's letter to U stating that it would consider it misconduct for U steward to misrepresent E's practices by telling Ees in need of hospitalization to get card for U's hospital insurance program from E, violative notwithstanding steward was not disciplined therefor, since disciplining steward for assertions about matters pertaining to work is unlawful even if assertions are incorrect, and letter would have chilling effect on her future performance as steward)

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)
[plant superintendent's asking one Ee about another Ee's U activities, requesting information about them, and saying *we'll take care of* second Ee's activities, insufficient, in isolation, to support finding of threat of discipline or discharge, but substantially supportive of finding of request to engage in surveillance, especially where manager asked another Ee what he had heard about U activity and requested that he *keep his ears open*]

N.L.R.B. v. Chicago Metallic Corporation 794 F.2d 527 (C.A. 9, July 1986)
[threats of discharge and warnings for campaigning on company time, violative, notwithstanding threats were directed at Ee who was perceived by other Ees as supervisor, where he was not supervisor for purposes of 8(a)(1) claim]

5036-8305 Withdraw recognition of abrogate bargaining agreement

5036-8305 Withdraw recognition or abrogate bargaining agreement

Dale Energy Corporation JD-202-85
(E's threat to have bargaining agreement set aside if Ees did not cease filing grievances)

5036-8308 Blacklist

Norris Concrete Materials, Inc. 282 NLRB No. 045
[threatening Ee with unfavorable reference and that Ee would never work in area again, unlawful, where motivated by Ee filing ULP charges against E]

Sahara Datsun, Inc. 278 NLRB No. 148

Westinghouse Electric Corporation 277 NLRB No. 016
(supervisor implying Ees might be blacklisted in regard to applications for employment elsewhere were they to sign ptn protesting discharge of Ee by citing example that he had been informed when applying for job in past that had he signed ptn supporting discharge of principal at school where he had previously been employed he would had been refused job. Statement not protected under Section 8(c) as mere prediction of likely economic consequences of unionization, since any blacklisting would require E to inform prospective E about Ee's concerted activities)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(threatening Ee that it would be hard for him to get rid of U label and that Ee's tracks were wide and deep, violative)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(threatening Ee that he would be prohibited from working in northeast part of state, violative)

Reyglo Corporation d/b/a The Dirt Digger, Inc. 274 NLRB No. 157

Morning Star International, Inc. JD-209-86
[E's threat in speech to Ees about contacting Es in area and cause them to discriminate against pro-U Ees, unlawful]

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86
[threatening that U members would have difficulty finding jobs, violation]

Educational Broadcasting Corporation d/b/a WNET/Thirteen JD-(NY)-125-85
[violation, where E threatened to discharge and blacklist Ee because she filed and pursued grievance]

5036-8310 Denial of reemployment or reinstatement

Stop N' Go Inc. 279 NLRB No. 052
[supervisor's telling Ees that, if U came in, store would close for 30 days, and U card signers would not be rehired, violation]

American Model & Pattern, Inc. 277 NLRB No. 018
(E's telling group of Ees immediately after U had filed charge against E protesting certain layoffs, that Ees and E would have to work together if they wanted to see laid off Ees reinstated and when U actions cost E money, U would cost Ees as well, violative)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(contrary to ALJ's reasoning that E did not intentionally mislead its Ees and it was not necessarily ULP for E to make innacurate, incomplete, or misleading statement concerning reinstatement rights of ULP strikers, Bd held supervisor's statement to Ees that they would be replaced and *rehired* rather than *reinstated* at end of strike, unlawful, where strikers on application were entitled to reinstatement even if they had been replaced)

Gasa Pumps, Inc. 274 NLRB No. 076
(no violation by E informing Ees that in event of strike they may be permanently replaced w/o at same time informing them of their preferential reinstatement rights unless statement may be fairly understood as threat of reprisal or is explicitly coupled with such threats)

Certified Grocers of Illinois, Inc. 273 NLRB No. 196
(threatening to deny reemployment to discharged Ees for picketing E, not unlawful, where, although one purpose of picketing was informational, its additional purpose was to obtain direct negotiations with E over Ees' grievances which U was then pursuing through contractual grievance machinery; and such conclusion is supported by picket's statement that ees had hired their own attorney who would look after their interests because they had

5036-8310—Cont.

not been satisfied with U's action so far; accordingly, under *Emporium Capwell* picketing herein was unprotected)

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. **JD-(NY)-34-86**

[telling unlawfully locked out U adherents that U would never get into company and that Ees would never get back to work, unlawful]

5036-8311 Suspension

Marion Steel Company, Inc. **278 NLRB No. 127**

[threatening U leader with being sent home if supervisor caught him with U cards, violation]

Caterpillar Tractor Company **276 NLRB No. 151**

276 NLRB No. 151

(suspending U steward for drawing and disseminating cartoon containing obnoxious obscenities directed at foreman whom steward dealt with on grievances, not violative where Ee's misconduct was so egregious that it exceeded scope of whatever protection it might otherwise have been entitled, and obscenities had inevitable negative effect on foreman's supervisory status in eyes of other Ees)

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**

[asking Ee if he was involved in U and, upon Ee's denial, telling him that if he were involved, E would suspend him for 3 days just as E had suspended fellow Ee]

5036-8312 Discharge or layoff

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**

[supervisor's statement to Ee that *plant will never have a U, they will close this plant first, you'll all be out of jobs* held single violation rather than separate violations of threat of plant closure and threat of discharge, since supervisor's reference to Ees being out of jobs, in context, was clearly reference to what situation would be if E closed plant]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**

[since E has right to determine when Ees report back to work from break periods, informing Ees that E is doing so is therefore not unlawful; however, informing Ees not only that E was determining time when Ees returned with intent to fire Ees who came back late, but also that E was doing so *because of U,* held unlawful threat to discharge Ees because of U activities but not to constitute act of creating unlawful impression of surveillance]

Inner City Broadcasting Corporation **281 NLRB No. 162**

[threatening Ee with discharge if she did not support Ee ptn seeking ouster of U, unlawful]

Baddour, Inc. **281 NLRB No. 084**

[supervisor's comments to Ee about E's not being able to afford the U and Ee's lateness, violation where accompanied by threat to discharge Ee if he did not stop *talking union up*]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**

[supervisor's threat to Ee, in presence of other Ees, that if Ee worked for supervisor, he would fire him because of his support for U, unlawful, notwithstanding asserted disclaimer by supervisor that E can't do anything about Ees speaking out for U, since supervisor's statement constituted clear threat, not only to Ee but to other Ees present, that if he could find a way he would fire those who supported U]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**

[E's statement to Ee that fellow Ees, who were known by everyone as leading U adherents, would be fired if they did not *shape up,* unlawful]

Local No. 980, Automobile Workers (Local 32, Office Employees) **280 NLRB No. 161**

[E's advising Ee that in order to continue her employment she would be required to obtain U representation, violative]

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**

[E's telling supervisor and, through supervisor as its agent, telling Ees that E would make difficulties for Ees voting for U to point of discharging them, unlawful]

Airport Distributors, Inc. **280 NLRB No. 091**

[questioning Ee whether he knew anything about U, coupled with threat of loss of employment and expression of antipathy toward U, unlawful]

Toyota of San Francisco **280 NLRB No. 093**

[manager of auto dealership offering job to one of his Ee's girl friends, who was also automobile salesperson, unlawful, since offer made as unlawful threat to discharge Ee for engaging in strike, where strike was pending and manager knew Ee and his girl friend had agreement not to work on same sales floor; further, in strike situations, Es have right to hire strike replacements, but there is fine line between statement of *legal rights, and threat to discharge,* and ambiguity in manager's statement must be construed against him]

Central Broadcast Company **280 NLRB No. 056**

[radio station program director's telling announcer that sales manager had recommended firing all announcers, violation]

Central Broadcast Company **280 NLRB No. 056**

[radio station program director's quoting to announcer E's statement that he would show the city how to handle Us and did not care if U won election, since there wouldn't be any Ees left or anything to negotiate about]

Springs, Inc. d/b/a Springs Motel **280 NLRB No. 033**

[supervisor urging Ee to get into fight with another ee who was prominent U proponent so that supervisor could discharge both of them, and hire back Ee, constituted unlawful threat to discharge U proponent]

Yaohan of California, Inc. **280 NLRB No. 032**

[allegation that supervisor threatened Ee that, if Ee and her co-workers wanted U, they had best seek employment elsewhere, dismissed where, even crediting Ee's version of conversation, no unlawful threat was made, since nothing contained in conversation either specifically or implicitly referred to U, and supervisor did not reprimand, discipline, or take action against Ee because of conversation]

Yaohan of California, Inc. **280 NLRB No. 032**

[inviting Ee to look elsewhere for work, after unlawfully interrogating concerning her U activity, not unlawful, where E did not discharge nor threaten to discharge Ee and stated that Ee could not, or would not, be fired w/o warning slips as precedent; and, according to Ee's testimony, E specifically negated any threat to discharge her because of U activity]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**

[supervisor asking nurses aide if she intended to strike not coercive and unlawful, since necessary to adequately staff facility during strike, but supervisor following question by suggesting to nurses aide that she would be discharged if she went out on strike, especially in view of her probationary status, unlawful]

Trover Clinic **280 NLRB No. 002**

[E's statement to Ee that distribution of cartoon in Ee's possession, depicting nervous individual describing himself as undergoing abusive treatment, was possible grounds for discharge, unlawful, since distribution of cartoon would have constituted protected activity, where cartoon was related to Ee's working conditions, E's contention that cartoon was defamatory amounted to concession that it considered it to be directed at E's treatment of Ees, cartoon's message did not remove it from protection of Act, and E did not establish type of circumstances that would render cartoon unprotected]

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers **279 NLRB No. 116**

[E that was performing construction work for mining company informing its Ee, member of U's safety committee, who had made safety complaint to mine safety and health administration, that mining company would cause construction company Ees to be laid off, unlawful, since Ee's filing was protected, concerted activity]

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers **279 NLRB No. 116**

[irrelevant whether Ee of construction company which was performing construction work for mining company understood threat of layoff of construction company Ees would be effectuated by mining company as result of his complaint, rather than by construction company (E), since whether statement interferes with Ees' exercise of Section 7 rights is objective determination in which Ee's subjective understanding is not relevant consideration]

Stop N' Go Inc. **279 NLRB No. 052**

[supervisor's telling Ees that, if U came in, store would close for 30 days, and U card signers would not be rehired, violation]

Eskaton Sunrise Community **279 NLRB No. 012**

[threatening Ees with loss of employment if they supported U or wore U button, unlawful]

Fiber Glass Systems, Inc. **278 NLRB No. 154**

[threat of layoffs and discharges, violative and interference]

The Zack Company **278 NLRB No. 134**

[no violation, where foreman's allegedly coercive remarks regarding prospect of layoff of Ees for filing grievance were not imputable to E, since foreman was neither supervisor nor agent of E for disciplinary actions, and his remarks were nothing more than speculation or his personal opinion]

Montgomery Elevator Company **278 NLRB No. 122**

[E's superintendent informing nonmember Ee that U had met with officials of E and that U was challenging right to work law and specifically challenging Ee's job and that Ee getting out of U would cost Ee his job, unlawful]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**

[threatening discharge if Ee persisted in supporting U, violation]

Independent Stave Company, Inc. **278 NLRB No. 089**

[telling Ee he could be fired for filing Bd charges, violation]

5036-8312—Cont.

Dayton Auto Electric, Inc. **278 NLRB No. 080**
[E sending mailgram to ULP strikers that stated that if strikers did not report to work by certain date they would be *terminated*, unlawful; E's subsequent mailgram informing strikers that they would be *replaced not terminated* did not effectively repudiate earlier mailgram]

Clark Equipment Company **278 NLRB No. 085**
[statement referring to job security and plant closure, not violation or conduct interfering with election where they were not made in context of threats of loss of benefits, inevitability of strikes and futility of electing U]

Clark Equipment Company **278 NLRB No. 085**
[statements referring to permanent replacement of strikes, not unlawful threats of discharge where they were not made in context of unlawful statements about inevitability of strikes and futility of U organization]

Clark Equipment Company **278 NLRB No. 085**
[statements made in response to Ee's question that U could not give wages and benefits E did not want to give, that if Ees went on strike they could be replaced, and subsequent interrogation as to whether Ee thought that E needed U and if U could give Ee more benefits, violative where Ee was not active U adherent, and repeated questioning was coercive; statements were not found unlawful threats of discharge or of futility of selecting U, however]

Evans St. Clair, Inc. **278 NLRB No. 065**
[telling one Ee that another Ee would be discharged for U activity, violation]

Quality Aluminum Products, Inc. **278 NLRB No. 049**
[threatening discharge for wearing U buttons, violation]

Rood Industries, Inc. **278 NLRB No. 026**
[supervisor's statement to leading U activist and organizer *do you want your job here* held unlawful warning that latter's advocacy of U's cause among his fellow Ees was inconsistent with continued employment at E's plant]

Zartic, Inc. **277 NLRB No. 171**
[telling Ee that if U did come in, she would be out of a job, violation and interference]

Uniontown Hospital Association **277 NLRB No. 144**
(threatening Ees with discharge for signing U authorization cards, unless they later retrieved them, and for voting for U in election, violation and interference)

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(E's comments allegedly threatening Ees with layoffs by stating that major customer had warned E it would discontinue patronage of E if E became organized, not unlawful, since comments had factual basis and therefore were protected by 8(c), where comments were corroborated by major customer's manager who testified he had *concerns* about his company's ability to receive equipment if strike occurred and about possible interruption and efficiency of workforce in connection with product delivery)

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(E's statements to known leading U supporter that he wished Ee would *screw up* or *ruin something* so that E *could get rid of the problem* held unlawful and interference with election since use of euphemism *problem* clearly indicated genesis of threat was Ee's organizing activities)

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(Ee's pre-election statement to Ee that *men that had gone U had cut off their nose to spite their face*, and that E *was going to shut its doors* held to constitute unlawful threats of discharge and plant closure)

Kona 60 Minute Photo **277 NLRB No. 092**
(posted notice referring to matter of U representation and possible dismissal of some and/or all Ees held clearly implied threat of discharge for U activities, notwithstanding E's contention that such statement merely expressed E's intention to oppose U only w/i limits of law because statement noted that matter of U representation and dismissal had been *turned over* to E's legal department; rather, statement clearly connected seeking U representation with dismissal which belied E's strained and unrealistic interpretation of statement)

Kona 60 Minute Photo **277 NLRB No. 092**
(coercive effect of E's threat to hire new Ees if Ees struck held, in context of E's refusal to bargain in good faith, analogous to that of threat to bargain in bad faith so as to force a strike, and amounted to veiled threat of discharge)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(supervisor informing Ee that production was down, he didn't know if it was due to U activities, or what, but that *it had better pick up or else*, and when Ee asked what he meant by *or else* replying *take it anyway you like, take it as a threat or whatever, and if you don't like it, you can leave now*, unlawful, especially where criticism of production, after he found out about U activity, contrasted with his former opinion of Ee's work)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(E's owner informing Ee there was *one man he would like to fire*, unlawful, since clear E's owner was referring to U's key organizer, in view of timing and fact E's owner had twice before suggested directly to U adherent that he quit and that he hoped to find gounds to fire him)

Hydro-Air Equipment, Inc. d/b/a Lanco **277 NLRB No. 012**
(informing Ees that E had signed contract with U and that Ees would be required to join U pursuant to security clause or be replaced, unlawful, since contract was signed with minority U in violationof Section 8(a)(2))

Palmas Del Mar Company **277 NLRB No. 011**
(E's telling Ees in remarks, speech, letters, and notice in their paycheck that if they voted for disfavored U, interested purchaser would not buy the business, E would have to close it, and they would lose their jobs found unlawful and objectionable election conduct)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(threatening to obtain U cards signed by Ees even if E had to pay for them and to fire signers, violative and objectionable)

Walter Garson, Jr & Associates **276 NLRB No. 137**
(violation, where Ee told supervisor Ees who were gathered and discussing how to get out of U, that he was worrying about his job and wished supervisor would talk with Ees, and supervisor answered *well, I understand you have kids and all*, since reply to Ee implied that in his opinion unionization of E could be of such economic impact that Ees' job would be jeopardized, especially where supervisor's relationship with management would infer opinion based on inside knowledge of E's economic position)

Walter Garson, Jr & Associates **276 NLRB No. 137**
(E's statement to Ees that if Ees became unionized and if E and negotiated higher labor costs, and if E suffered loss of work, Ees might be laid off, not coercive and hence not violative, since not prediction of inevitable events under E's control, but reminder of economic facts of life i.e. negotiated wage and benefit increases sometimes have debilitating effect on ability to compete)

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(supervisor impliedly threatened to discharge Ee because of his U activities by telling Ee that he would have been discharged if supervisor had not vouched for him and that Ee be careful whom he talked to about U)

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(supervisor's telling Ees that fellow worker was discharged because he was distributing U cards held unlawful implied threat to discharge other Ees if they engaged in U activity)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**

Superior Container, Inc. **276 NLRB No. 055**
(chief executive's interrogation of Ee concerning U meeting and his threat, in no uncertain terms, that anybody signing U card would be fired, unlawful, since such statements, emanating from chief executive during U campaign on plant premises, have clear and restraining effect upon Ees)

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(telling Ees during U campaign that E would *build a case* against U sympathizers in order to get rid of them, violative and objectionable)

Pillod of Mississippi, Inc. **275 NLRB No. 117**
(E's showing Ees a poster which related to layoffs at another furniture company which purpoted to illustrate those Ees of E who would have been laid off if Ees worked for the other company, not violative, since there was no evidence that E otherwise suggested that its Ees would be laid off if U won election)

Florsheim Shoe Shops, Inc. **275 NLRB No. 015**
(statement to shop steward by supervisor that manager would pay steward $50,000 to start car repair shop just to get rid of him, not violative where day prior to such offer, steward initiated conversation with supervisor in which he suggested he could be willing to *get rid of* local U in return for $100,000 and his pension; E's *counter-offer* conveyed by supervisor appeared to be part of ongoing discussion initiated by steward to ascertain whether E would pay him for ceasing his U activities, and not a threat to discharge steward)

Atlantic Interstate Messengers, Inc. **274 NLRB No. 171**
(threat to terminate economic strikers if they did not return to work by E's deadline, violative)

Crystal Linen & Uniform Service, Inc. **274 NLRB No. 137**
(E's threatening Ees with discipline and discharge not violative, where Ees who, while on strike, accepted employment with E's competitor and affirmatively solicited their former customers to switch their business to E's competitor; although Ees were on strike and did not disparage service of E, their activity was not concerted and Ees who compete with their E and who solicit E's customers to switch to competitor are disloyal and may properly be disciplined or threatened with discipline)

5036-8312—Cont.

Offshore Shipbuilding, Inc. **274 NLRB No. 077**
(violation, where foreman told Ees they would be discharged for U activities, and sent to hiring hall in another city where U drive originated to join U)

Miss Elaine, Inc. **274 NLRB No. 036**
(E violated 8(a)(1) and (2) when it threatened Ees, not previously included in unit, by stating that they must join U or be discharged)

M. W. Kellogg Constructors, Inc. **273 NLRB No. 134**
(telling travelers that they would be laid off before shutdown phase of the project because of nonmembership in local U, telling a traveler that if he transferred his membership to the local U he would be eligible to work the shutdown phase, and telling a traveler that he was laid off because local U had given instructions for all travelers to be laid off, violative)

Wackenhut Corporation **JD-288-86**
[supervisor's threatening discharge if Ee mentioned U one more time, violation]

Cassidy Cleaning, Inc. **JD-239-86**
[suggesting to Ees that turncoat who started U activities had been discharged held unlawful implied threat to discharge U activists]

Cassidy Cleaning, Inc. **JD-239-86**
[telling Ees that Ees would be fired because U won election and that there would be a house-cleaning held unlawful threat of reprisal]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. **JD-(NY)-34-86**
[telling unlawfully locked out U adherents that E could not afford U and that if U got in certain number of Ees would have to be fired or laid off and that only few of locked out Ees would be taken back, unlawful]

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company **JD-83-86**
[telling known U adherent that E did not need U and they could be replaced, unlawful]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[E's voluntarily informing Ee of its discharge of U adherents and asking her how she liked her job held unlawful thinly-veiled threat to discharge Ee whom E had also unlawfully interrogated about her U activities]

Collins Industries, Inc. **JD-33-86**
[in answer to Ee's question about discharges by E of Ees voting for U, E's reply that ballot would be secret and there was no way of knowing who voted for U so there could not be any retaliation, unlawful, since E thereby implied that, if he found out who voted for U, there jobs would be in jeopardy, and such conduct was consistent with E's anti-U campaign]

Educational Broadcasting Corporation d/b/a WNET/Thirteen **JD-(NY)-125-85**
[violation, where E threatened to discharge and blacklist Ee because she filed and pursued grievance]

Northline Bus Center, Inc. **JD-(ATL)-41-85**
(news bulletin to Ees edited, reviewed, and printed by E, unlawful, where bulletin raised question whether Ees would be fired for attending U meeting and then clearly conveyed message to Ees that any Ee seeking assistance from U would be considered disloyal to E and implicitly threatened Ees with discharge if they engaged in U activities)

Acar Machine & Tool Co., Inc. **JD-240-85**
(supervisor's threat that E would *weed out* U organizers if U lost election, violative)

Phil's Food Market, Inc. **JD-(SF)-108-85**
(threatening strikers with discharge, violative)

Phil's Food Market, Inc. **JD-(SF)-105-85**
(E's letter to strikers enclosing *accrued vacation and sick leave paychecks* and wishing them luck in their new endeavor held threat of loss of employment and of reinstatement rights)

Eastman Machine Company and its wholly owned subsidiary, Cutting Room Appliances Corp. **JD-(NY)-42-85**
(threats of *bumping* by other Ees if U was voted in, held veiled threat of discharge)

Vax Gas, Inc. **JD-(SF)-33-85**
(supervisor informing Ee, in reply to Ee's inquiry as to whether change in sick leave policy which had adverse impact on ees was instituted because of U organizing, that *there had been a morale problem with company and it was going to get better or there were going to be major changes and that he had interviewed prospective new Ees*, unlawful, absent evidence of legitimate objective for statement, or relationship that would remove coercive impact)

Harry Rosenblatt & Sons **JD-(SF)-30-85**
(E's stating w/i Ee's hearing range that leading U activist was being discharged for trying to change E found unlawful threat that other Ees would meet his fate if they engaged in protected activities)

M.F. Enterprises, Inc. d/b/a Gopher Restaurant **JD-417-84**
(E informing Ees it would refuse to bargain with its chosen bargaining agent, that it would file for bankruptcy, thereby endangering Ees' jobs, and that if Ees persisted in their U adherence, it would hire non-U Ees to replace them, unlawful)

N.L.R.B. v. Eli Gordon, Gerald Tillinger and Seymour Tillinger, a Copartnership d/b/a Balsam Village Management Company **792 F.2d 29 (C.A. 2, May 1986)**
[threatening to discharge and discharging Ees for refusing to renounce U, violations]

N.L.R.B. v. Nueva Engineering, Inc. **761 F.2d 961 (C.A. 4, May 1985)**
(supervisor informing Ee that he did not like Us, asking Ee how he felt about Us and when Ees replied that he supported U, informing Ee that if Ees voted for U representation alternative would be to convert to prototype shop-which required much less Ees-and institute big layoff, violative; additionally, interrogation and threat took place in E's vice president's office and purpose of questioning not explained)

Baker Manufacturing Company v. N.L.R.B. **759 F.2d 1219 (C.A. 5, May 1985)**
(general manager telling Ee who was wearing U badge that if he would repent his sins he would have peace of mind found threat that Ee would keep his job only if he ceased U activities where E had discharged other U supporters and laid off Ee next day)

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. **778 F.2d 8 (C.A. 6, Dec. 1985)**

N.L.R.B. v. Norbar, Inc. **752 F.2d 235 (C.A. 6, Jan. 1985)**
(threatening Ee by saying that taking job as U steward could cost him his job with E, violative)

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[plant superintendent's asking one Ee about another Ee's U activities, requesting information about them, and saying *we'll take care of* second Ee's activities, insufficient, in isolation, to support finding of threat of discipline or discharge, but substantially supportive of finding of request to engage in surveillance, especially where manager asked another Ee what he had heard about U activity and requested that he *keep his ears open*]

N.L.R.B. v. Chicago Metallic Corporation **794 F.2d 527 (C.A. 9, July 1986)**
[threats of discharge and warnings for campaigning on company time, violative, notwithstanding threats were directed at Ee who was perceived by other Ees as supervisor, where he was not supervisor for purposes of 8(a)(1) claim]

5036-8312-5000 Directed at supervisors

Reeves Brothers, Inc. **277 NLRB No. 153**
[E's statement to group of supervisory leadmen, in accusing them of starting U campaign, that *I can assure you when this whole thing is over, the very ones that started it will be somewhere else*, not violative, notwithstanding contention that statement was intended for repetition to rank-and-file Ees, where discharge threat was not overheard by Ees nor did E instruct supervisors to carry message back to their crews; consistent with its holding in *Parker-Robb*, 262 NLRB 402, Bd did not infer harmful secondary effects on Ees' statutory rights from threats]

5036-8314 Issuance of, or change in, absenteeism rule

Rood Industries, Inc. **278 NLRB No. 026**
[supervisor's implied threat to Ees that if U's organizing campaign succeeded U would oblige E to discharge Ees who were absent from work for 3 consecutive days held unlawful warning of imposition of harsher policies if Ees voted for U]

5036-8315 File for bankruptcy

Tomco Carburetor Company **275 NLRB No. 001**

Abe Ocks, An Individual, d/b/a Kingform Cap Company **JD-188-85**
(threatening to file bankruptcy proceedings if Ees chose U, violative)

5036-8317 Change in meal and/or other break period practices

N.L.R.B. v. E. I. DuPont De Nemours **750 F.2d 524 (C.A. 6, Dec. 1984)**
(supervisors' telling Ees that their open support of U stood in the way of their becoming supervisors, violative)

5036-8321 Loans

Link Manufacturing Co. **281 NLRB No. 028**
[threat to Ee who was recipient of E loan that, if U won recognition, E would stop informal policy of making loans to Ees, unlawful]

5036-8322 Less favorable treatment

Springfield Hospital **281 NLRB No. 076**
[threat to withdraw liberal leave policy in cases of emergency if U won election, violative]

Ro-Lab Rubber Co., Inc. **279 NLRB No. 057**
[E's president's telling Ees that if U came in, E's lenient policy regarding attendance would be discontinued, violative]

Decasper Corporation **278 NLRB No. 022**
[asking E why she wanted U while in same conversation reminding Ee she had recently had two days off to participate in arts and crafts fair with implication that such favors might be imperialed by her U adherence, unlawful and warranted setting aside of election]

5036-8325 Lockout

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**

5036-8327 Loss of opportunities for advancement

National Micronetics, Inc. **277 NLRB No. 095**
(telling Ees that they had forfeited chances of advancement by engaging in U activities, violation and interference)

American Federation of State, County & Municipal Employees **JD-131-85**
(threat to successful grievant that, if he were given contested position, he *would stay down there for the rest of his life*, violative)

5036-8328 Oppose employee's unemployment compensation claim

Link Manufacturing Co. **281 NLRB No. 028**
[implying to Ee that, if he did not cooperate and support E in election, E would contest unemployment benefits in event of Ee's layoff, unlawful]

Hadaya Brothers, Inc. **277 NLRB No. 093**
(E's statement to Ee that E would not give her unemployment compensation because of her activities on behalf of rival U, violative)

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**
(E's statement to U steward that if he could come into shop and handle U business while out on disability he could lose his workmen's compensation, not unlawful, since remark standing alone as passing wisecrack was too ambiguous under the circumstances to constitute threat or otherwise interfere either with steward's own rights under Act or his capacity to act for others as steward)

N.L.R.B. v. Norbar, Inc. **752 F.2d 235 (C.A. 6, Jan. 1985)**
(telling Ees that it was not a goood idea to file for unemployment compensation benefits and that he should withdraw his claim, violative)

5036-8329 Loss of benefits

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's statement to Ee that negotiations would start from *scratch* and that there was possibility E would not want to agree with everything U asked for, not unlawful, where thrust of remarks was not that Ees would automatically lose benefits if they selected U, but rather, in context of all of supervisor's remarks, he was expressing permissible opinion which could not reasonably be interpreted as threat to deliberately extend bargaining]

Lynn-Edwards Corp. **282 NLRB No. 007**
[E's statements that Ees covered by U-negotiated contracts could not participate in Ee stock ownership plan, and E's maintenance of such restrictive provisions in the plan's governing document, violation and election interference]

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer **281 NLRB No. 161**
[E's announcement prior to election, that it could no longer consider changing medical insurance carriers because of pending *R* ptn, violative; further, E's subsequent announced change in insurance carriers, not violative, since E was simply righting the wrong of withholding a change and to hold otherwise would place employers in the untenable position of being barred from any corrective action once a wrong step was taken during pendency of a *R* case matter]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[telling Ees that they would not be permitted to participate in E's retirement plan because they had signed U authorization cards, unlawful]

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place **281 NLRB No. 008**
[informing Ees that, if U got in, bargaining *starts out fresh - you don't start with what's in handbook*, while waving Ee handbook which included among *other items Ee benefits, unlawful*, since conveyed impression that E would require Ees to give up existing Ee benefits, rather than merely description of realities of collective bargaining process, that U cannot compel concessions, nor guarantee retention of all present benefits]

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place **281 NLRB No. 008**
[no violation, where in response to Ee's question, whether Ees would lose credit union if U voted in, E's administrator replied *there is possibility because all benefits must be negotiated*, since statement *merely explanation of what could happen as result of collective bargaining negotiations*]

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's supervisor telling Ee that if U got in conditions would be the same but if they didn't get in conditions would improve, violative and held a promise of benefit only and not an additional prediction of loss of benefits]

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor's remarks to Ees about U and bargaining from *scratch*, unlawful, since remarks carried express threat that bargaining from scratch would start only after Ees had been reduced to *minimum wage* and all their benefits taken away, thereby threatening loss of existing benefits not necessarily as result of good faith bargaining]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[telling Ees that after bargaining their benefits might not be what they presently had, not violation where E expressed legal position that E did not have to start bargaining from present level of benefits and what Ees might expect as result w/o threatening to take away benefits]

Histacount Corp., A Subsidiary of S.C.M. Corporation **278 NLRB No. 104**
[statements that bargaining *can take weeks, months, or even years*, E is *legally entitled to bargain from ground zero*, and *there is no guarantee that E's existing benefits will survive bargaining*, not unlawful, where they were made in context indicating that bargaining is process in which each side makes its own proposals, that it requires mutual agreement, and existing benefits may be traded away; and statements do not relay message that E would unilaterally discontinue existing benefits if Ees selected U, but rather that benefits may be lost as result of bargaining]

Precision Founders, Inc. **278 NLRB No. 084**
[telling Ees that if U came in pension plan would no longer be in effect, unlawful threat of loss of benefits]

Clark Equipment Company **278 NLRB No. 085**
[E statements that bargaining means *putting everything on the table* including present benefits and that ct decision had upheld E's right to inform Ees that E need not agree to continue existing wages and benefits, found accurate reflection of obligations and possibilities of bargaining process rather than unlawful and objectionable implied threat to take away benefits or bargain regressively if U won]

Clark Equipment Company **278 NLRB No. 085**
[asking Ee how he was going to vote, whether voting for U was right thing, and whether Ee knew that, if U won, he could lose his benefits, violation, notwithstanding Ee was known active U supporter]

Evans St. Clair, Inc. **278 NLRB No. 065**
[threatening that Ees would be deprived of benefits for one year if U came in, violation]

Electronic Data Systems International Corporation **278 NLRB No. 014**
[supervisor suggesting that Ee think over whether to support U because if U came in Ees could lose benefits, and stating that E knew about problems, but they could not be solved immediately, not unlawful threat, since no evidence of coercion, but was simply statement of what might result from U representation, and could not be construed as implied promise of benefit for voting against U; however, supervisor's subsequent remarks that best thing that could happen would be for U to lose election because problems would then be solved and leaders of U movement would be fired, constituted unlawful promise of benefit if U were defeated

Uniontown Hospital Association **277 NLRB No. 144**
(threats of loss of benefits if U was elected, violation and interference)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(threatening that Ees would lose their free uniforms, insurance, Christmas bonuses, weekly tanks of gas and other benefits if they voted for U or U got in, violative and objectionable)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(E's asking Ee if U had told him Ees could lose benefits if U came in held not coercive since, while it is true Ees can lose benefits in process of collective bargaining, and while E suggested such conclusion w/o explaining whole process by which it could come about, such omission in itself was not coercive)

Stovall Manufacturing Company, Inc. **275 NLRB No. 039**
(threat of loss of Christmas bonus due to selecting U, violative)

Electrical Workers, Local Union No. 596 (Lylloth G. Woodall, an Individual) **274 NLRB No. 196**
(threatening reduction of U adherent's benefits because of her involvement in U handbilling, violative, notwithstnading she was in single-Ee unit, where her involvement in handbilling was form of assistance to labor organization protected by Sec. 7)

5036-8329—Cont.

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. JD-(ATL)-61-86
[supervisor informing Ee that if U came in Ee would probably not offer more than 50 cent per hour increase and that Ees would lose everything anyway, including holiday pay and vacations, constituted unlawful threats of loss of benefits and futility of selecting U representation]

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. JD-(ATL)-61-86
[E's management showing Ees blank piece of paper and informing Ees that blank paper represented what Ees would start with if U got in, and that legally E could start off bargaining with only minimum wage, that E's could lose benefits because U would give up everything to get checkoff]

5036-8333 Overtime work, loss of; consequences for refusing to perform

Link Manufacturing Co. 281 NLRB No. 028
[E's statement to Ee, before Ee initiated U organizing activities, that E would start cracking down on people who did not want to work overtime, and threatening loss of job for even talking about U, unlawful where, contrary to E's assertion that remarks were not taken seriously, Ee took E's attitude on overtime seriously enough to repeat E's remarks to other Ees; in any event, law proscribes threats of retaliation w/o regard to subjective view of Ees]

Tomco Carburetor Company 275 NLRB No. 001
(threatening Ee with loss of overtime because of his U activities, violative)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(telling Ee that if U negotiates contract overtime provision E will hire more Ees rather than pay overtime, not unlawful, since this was not situation where E's statements equating unionization *per se* with loss of overtime or other work which have consistently been held to constitute unlawful threats; rather, E's statement was based on objective fact of overtime provision proposed by U; E may in nondiscriminatory manner, absent contractual restriction, hire more Ees to avoid impact of contractual overtime provision)

5036-8334 Loss of jobs

Air Express International USA, Inc. 281 NLRB No. 127
[threat by supervisor of closure of facility and loss of jobs if U came in, made in presence of statutory supervisor, not unlawful, since remarks directed at another supervisor and outside presence of any statutory Ee]

Link Manufacturing Co. 281 NLRB No. 028
[E's statement to Ee, before Ee initiated U organizing activities, that E would start cracking down on people who did not want to work overtime, and threatening loss of job for even talking about U, unlawful where, contrary to E's assertion that remarks were not taken seriously, Ee took E's attitude on overtime seriously enough to repeat E's remarks to other Ees; in any event, law proscribes threats of retaliation w/o regard to subjective view of Ees]

Link Manufacturing Co. 281 NLRB No. 028
[E's statement to Ee that there were long-time Ees who *could lose their jobs because of U* held unlawful threat of retaliation against Ees for supporting U; E's suggestion of loss of jobs was not based on any economic considerations or matters outside E's control; E's accompanying remark that he did not like idea of U made it clear it was his own attitude toward U which would cause loss of jobs; and E, as owner and president, had power to implement his suggestion]

Bay State Ambulance and Hospital Rental, Inc. 280 NLRB No. 122
[E's president's memorandum to Ees informing them that w/o customers *we are all doomed to look for other jobs* and *let's be careful that we do not vote ourselves into a new situation*, violative and not protected by 8(c) where such statement was not linked to E's business but rather was linked to Ees' voting and statements were not based on objective facts regarding E's business situation or customers and thus, were not merely projected statements of opinion]

Mississippi Chemical Corporation 280 NLRB No. 046
[suggesting to Ee that fellow Ee's employment would be in jeopardy if latter was involved in U activity held unlawful as implicit threat to Ee herein]

United States Aviex Company 279 NLRB No. 110
[supervisor's conduct during U's campaign in approaching Ee wearing U hat and asking if Ee was satisfied with company, to which Ee responded affirmatively, and then stating *Well, I don't know, if you're satisfied or not because you're wearing a funny hat around the company* held not unlawful, since supervisor's statement did not reasonably convey threat of job loss in view of totality of circumstances, including Ee's open organizing activity and absence of any other statements reasonably tending to coerce Ee]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[threats of loss of work, violation and interference]

Jones Plumbing Co., Inc.; et al. d/b/c Instant Plumbing Company 277 NLRB No. 067

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. 277 NLRB No. 001
(threatening Ees with loss of employment if U, competing against U favored by E, became Ee representative)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(E's interrogating Ee about his intentions with respect to U, accompanied by statements that E had heard Ee was siding with U, that E considered U a cancer, and that everyone siding with it would be eliminated, unlawful, in view of E's extreme opposition to U as illustrated by his reference to it as cancer, and numerous other acts of unlawful threats and interrogation, thereby showing pervasive pattern of such acts)

Walter Garson, Jr & Associates 276 NLRB No. 137
(violation, where Ee told supervisor Ees who were gathered and discussing how to get out of U, that he was worrying about his job and wished supervisor would talk with Ees, and supervisor answered *well, I understand you have kids and all*, since reply to Ee implied that in his opinion unionization of E could be of such economic impact that Ees' job would be jeopardized, especially where supervisor's relationship with management would infer opinion based on inside knowledge of E's economic position)

Walter Garson, Jr & Associates 276 NLRB No. 137
(E's statement to Ees that if Ees became unionized and if E and negotiated higher labor costs, and if E suffered loss of work, Ees might be laid off, not coercive and hence not violative, since not prediction of inevitable events under E's control, but reminder of economic facts of life i.e. negotiated wage and benefit increases sometimes have debilitating effect on ability to compete)

Bell Halter, Inc. 276 NLRB No. 136
(supervisor's remarks to Ee that Ee might be *endangered*, made in connection with references to joining U, not unlawful, where remarks were too vague, disjointed, and incomplete to substantiate finding that supervisor unlawfully threatened Ee; threatening connotation was word *endanger*, but it was not clear what was endangered, and it would be speculative to conclude that supervisor was implicitly threatening Ee with loss of job or other reprisals)

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152
(E's president informing Ee that if Ee did not stop rousing up Ees, that Ees would be out of jobs, and Ee should give Ees credit for having their own convictions, unlawful, in context of Ee's public opposition to E's contract proposals, and reasonably calculated to lead Ee to believe it was threat aimed at dissuading him from continuing to express his opposition to E's contract proposals)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(threat of job loss for Ee's wife due to U campaign, violative)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 105
(cumulative effect of E's literature and consultant's speech, not unlawful threat of job loss and objectionable conduct; Ee's letter describing post-unionization layoffs due to higher wages was personal experience; lawfully posted newspaper article describing strikers' hardships not support for broader violation; trade journal article about store closings and Ees' letter asking help in keeping jobs merely described economic conditions; Ee's letter about U focused on Ee-U relations not store closings; and consultant's speech about store closings and *striking* stated economic realities)

Ausable Communications, Inc. 273 NLRB No. 166
(threatening Ees with loss of stock ownership, loss of seniority, subcontracting out work and loss of jobs if U came in, unlawful)

Steffer Brothers JD-269-86
[E's statement to Ees gathered together, made immediately after tally of votes in election, that E had won and everybody had their jobs back and everybody worked next day, unlawful, since E's statement was, by implication, threat that no one would have their jobs had E lost election or should lose any subsequent one, thereby effectively discouraging Ee support of U]

Steffer Brothers JD-269-86
[statement by company official, overheard by Ee, that any person who brought U in was going to be eliminated, unlawful, even absent evidence that official intended statement to be overheard by Ees, since statement's necessary effect was to discourage Ee from engaging in U activities at risk of losing his job]

B & W Machine & Welding Company JD-(SF)-107-86
[E's statement to Ee that before he would go U he would hire *scabs off the street* held unlawful threat to replace Ees with individuals who did not support U]

Morning Star International, Inc. JD-209-86
[E's conduct, in anticipation of U demand for recognition, in converting attendance checking procedure into unprecedented production reviews held unlawful threat to Ees' employment, since Ees knew that E was using his

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powers of appraisal to demonstrate dramatically dangerous position in which their tenure of employment lay]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86

[telling unlawfully locked out U adherents that E could not afford U and that if U got in certain number of Ees would have to be fired or laid off and that only few of locked out Ees would be taken back, unlawful]

N.L.R.B. v. Norbar, Inc. 752 F.2d 235 (C.A. 6, Jan. 1985)

(telling Ees that, if U were elected or there was a strike, they could, or would, be *out of work*, violative)

Lemon Drop Inn, Inc. v. N.L.R.B. 752 F.2d 323 (C.A. 8, Jan. 1985)

(E restaurant manager's threat to waitress that if he heard further talk of Ee organization, he would close restaurant and fire Ees, violative)

5036-8335 Harsher working conditions

Rood Industries, Inc. 278 NLRB No. 026

[supervisor's implied threat to Ee that if U's organizing campaign succeeded, E would adopt more stringent policy requiring Ees to stand, instead of sitting at their work places, held unlawful imposition of harsher policies if Ees voted for U]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047

(E's owner informing Ee he was going to lower Ee complement, but would do it legally by seniority, and stated he *didn't know what we all are going to get out of this i.e., U campaign, but that if we wanted to play hard ball he was going to play hard ball*, unlawful, inasmuch as *hard ball* belies earlier reference to doing everything legally, and Ee could reasonably conclude that conditions would be harsher)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual 274 NLRB No. 115

(threatening returning strikers with more onerous or intolerable working conditions so that they would quit, violative)

5036-8337 Loss of seniority

Stop N' Go Inc. 279 NLRB No. 052

Aussie Communications, Inc. 273 NLRB No. 166

(threatening Ees with loss of stock ownership, loss of seniority, subcontracting out work and loss of jobs if U came in, unlawful)

5036-8338 Working hours

Middletown Hospital Association 282 NLRB No. 079

[supervisor's telling Ee that if U came in E would have to adhere to posted work schedules and would not be able to give Ees days off as it presently did because it would be out of E's hands held unlawful threat of change in working conditions adverse to Ees if U succeeded, and implying that onus for such change would rest with U]

Uniontown Hospital Association 277 NLRB No. 144

(E's agent's threatening part-time Ees with loss of flexibility as to days and hours when they could work, violation and interference)

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 105

(no violation or objectionable conduct by E's distributing to its Ees a letter in which another E's Ee recounted his past personal experience with unionization; E's apprising Ees of others' experience and opinions did not predict or threaten retaliatory conduct by E and was intended to enable Ees to make informed decision)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86

[threatening to reduce work hours of U supporters to harass them into quitting, violation]

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86

[threatening to reduce Ee's shifts because he participated in Bd proceeding, violation]

5036-8339 Loss of access to management

Springfield Hospital 281 NLRB No. 076

[supervisor telling Ees that if U won election, the intercession of steward would be necessary before Ees could have one-on-one meeting with him to discuss personal problems in contrast to present open-door policy, not violative, as statement was explanation that Ees' relationship with management would change so that they would have to deal with management indirectly]

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place 281 NLRB No. 060

[no violation, even accepting GC's version of statements by E's officials, that if U voted in relationship between E and Ees would change and U would speak for Ees, *since no threat explicit or implicit, in statement which explains to Ees, that when they select U to represent them, relationship that existed between Ees and E will not be as before. Section 9(a) of Act contemplates change in manner in which E and Ee deal with each other, and for E to tell Ees about this in course of U election campaign cannot be characterized as objectionable retaliatory threat*]

Port Plastics, Inc. 279 NLRB No. 080

[E president's statement to Ees that he had been able to speak on a one-to-one basis to ees, but would no longer be able to do so if U came in, not violative, since statement simply explicates one of the changes which occur between E and Ees when a statutory representative is chosen and thus, is not coercive]

Michael's Markets of Canterbury, Inc., and Michael's Markets of Jewett City, Inc. 274 NLRB No. 105

(no unlawful threat of Ees' loss of right to speak directly with management upon unionization or objectionable conduct by E's distributing to Ees another E's Ee's letter recounting his past personal experience with and opinion about unionization in which he stated that, once a U came in, it did the talking whereas now Ees could discuss differences with management on one-to-one basis)

5036-8341 Withdrawal of privileges

Walter Garson, Jr & Associates 276 NLRB No. 137

(violation, where after interrogation of Ees about U organizing, supervisor threatened to eliminate smoking and drinking at work areas, reduce hours of work and take away Ees' tables and chairs)

5036-8344 Closer supervision

Olympic Limousine Service, Inc. 278 NLRB No. 133

[telling Ee who was active U supporter that if U won election, E would follow Ee around with pen and pad all day, violative]

Timet, A Division of Titanium Metals Corporation of America 274 NLRB No. 180

(E's foreman's threat to Ee, acting in capacity of U representative, that he would watch Ee's work very closely and *straighten out* Ee, violative where foreman threatened Ee because he was displeased with Ee's words spoken on behalf of Ee he was representing)

5036-8345 Withholding of promotion

Precision Founders, Inc. 278 NLRB No. 004

[disparaging Ee's involvement in U activities and impliedly threatening lack of future promotions due to Ee's U activities, violation]

National Micronetics, Inc. 277 NLRB No. 098

(threatening not to promote Ees if U won election, violation and interference)

5036-8348 No wage increase

Uniontown Hospital Association 277 NLRB No. 144

(threatening Ees with loss of scheduled wage increase, violation and interference)

5036-8349 Financial loss

Toyota of San Francisco 280 NLRB No. 093

[E informing Ees that they owed E reimbursement for overpaid commissions in view of *most favored nation* provision in multi-E agreement which had recently been triggered by U granting more favorable terms to another E, violative, since U was effort to undermine U's position at bargaining table, by going directly to Ees to get Ees to influence U's stance at bargaining table]

Sahara Datsun, Inc. 278 NLRB No. 148

[manager's telling Ee that his approval of customer's credit application and, therefore, Ee's receipt of sales commission would depend on how Ee intended to vote in election, violation]

Gatliff Business Products, Inc. and RBD Service Corporation 276 NLRB No. 060

(threat of economic reprisal by E's owner when he said that he would not invest more money in company to keep it going when it was experiencing financial difficulty but would use money that he had as an escape fund to start another company, violative)

5036-8350 Reduction in pay

Stop N' Go Inc. 279 NLRB No. 082

[threat to reduce pay to minimum wage or less, violation]

5036-8353 Change in method of compensation

Goodman Holding Company, Inc., and Its Wholly-Owned Subsidiaries, Goodman Manufacturing Corp., etc. **276 NLRB No. 098**
(E's telling group of Ees during critical period that a proposed individual incentive pay plan would be subject to negotiation if U was certified, not violative or objectionable, since E's statement was an accurate reflection of E's duty to bargain in good faith with a successful U and there was no evidence E threatened to freeze wages or conditioned pay plan upon defeat of the U)

5036-8354 Reduction in work or in number of employees on job

Walter Garson, Jr & Associates **276 NLRB No. 137**
(violation, where after interrogation of Ees about U organizing, supervisor threatened to eliminate smoking and drinking at work areas, reduce hours of work and take away Ees' tables and chairs)

Okun Brothers Shoe Store, Inc. **275 NLRB No. 145**
(supervisor's threatening Ees with reduction of hours if they voted U in, violative and objectionable)

Starrett Manufacturing Company, Inc. **275 NLRB No. 039**
(contrary to ALJ, Bd found that E did not threaten Ees with declining orders because of U campaign; E's alleged statement that, since U campaign began work orders had declined and warehouses were getting stockpiled, if made, was statement of fact, not threat of reprisal, and Ees' other alleged version of statement, that U stuff was slowing things down so that E could not get things out, described an incidental effect of campaign, not a threat, and was too obscure and vague to be a threat)

5036-8355 Issuing warnings

Rood Industries, Inc. **278 NLRB No. 026**
[supervisor's implied threat to Ees that if U's organizing campaign succeeded U would oblige E to discharge Ees who were absent from work for 3 consecutive days held unlawful warning of imposition of harsher policies if Ees voted for U]

Grance, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(issuance of written warning to Ee for failure to report for work as scheduled, not unlawful, where Ee took permission to be off from work to participate in foot race as blanket permission to absent himself from work for subsequent races, but which was not so construed by E; warning was not related to Ee's U activity but was directed at Ee's attempt to adjust his schedule to accomodate his participation in races w/o E's permission; and original permission was given on condition E kept up with his work but which he failed to do)

5036-8357 Stricter enforcement of rules

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. **281 NLRB No. 068**
[threatening Ee with imposition of stricter work rules if U came in, unlawful]

5036-8358 Refusal to reinstate strikers

Dayton Auto Electric, Inc. **278 NLRB No. 080**
[E sending mailgram to ULP strikers that stated that if strikers did not report to work by certain date they would be *terminated*, unlawful; E's subsequent mailgram informing strikers that they would be *replaced not terminated* did not effectively repudiate earlier mailgram]

Bezzato's, Inc. **277 NLRB No. 100**
(threatening Ees with job loss if they went on strike, violation, since it constituted threatening potential ULP strikers with job loss)

SCA Services of Georgia, Inc. **275 NLRB No. 120**
(threat, unlawful)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(E's throwing strikers' personal belongings out of plant, telling them that if they did not return by certain date that respondents would assume that they had quit, that E was sorry he had hired them, and that they would never come back to work for him, violative as threats of loss of employment)

Phil's Food Market, Inc. **JD-(SF)-105-85**
(threatening loss of reinstatement rights because of strike participation, violative)

Phil's Food Market, Inc. **JD-(SF)-105-85**
(E's letter to strikers enclosing *accrued vacation and sick leave paychecks* and wishing them luck in their new endeavor held threat of loss of employment and of reinstatement rights)

5036-8359 Refusal to recall laid off employees

Central Broadcast Company **280 NLRB No. 056**
[saying that laid off Ees were only hurting themselves and should get the message to get other jobs, violation where, given E's U animus and discriminatory layoff, import was that as long as laid off Ees supported U, they should look for work elsewhere; E was not stating rule requiring Ees' mitigation of backpay, and fact statement might mirror such rule was irrelevant]

5036-8360 Installation of time clocks

Premier Maintenance, Inc. **282 NLRB No. 003**
[E threatening to install timeclock if U won election, unlawful]

5036-8366 Shut down or removal of plant to new location

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[supervisor's statement to Ee that *plant will never have a U, they will close this plant first, you'll all be out of jobs* held single violation rather than separate violations of threat of plant closure and threat of discharge, since supervisor's reference to Ees being out of jobs, in context, was clearly reference to what situation would be if E closed plant]

H. Treffinger Repair Service, Inc. **281 NLRB No. 085**
[threats made to Ee that U would put E out of business or that E would pull out if U got in, unlawful, where E did not state why U's advent would result in threatened consequences, and therefore threats did not constitute predictions]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 011**
[threat to Ees that if they selected U E would relocate its plant held unlawful threat of plant closure and not prediction based on objective facts from which E could have conveyed reasonable belief to Ees as to demonstratable probable consequences of unionization]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 011**
[supervisor's telling Ee that she was afraid that if U came in plant would close, not unlawful, where Ee initiated casual conversation with supervisor who clearly phrased her response in terms of her personal opinion, not as spokesperson for E]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 011**
[supervisor's statement to Ee that plant would close if U came in, unlawful and not expression of supervisor's personal opinion, where Ee believed that supervisor was expressing more than his personal opinion and was repeating *something which came from higher up* because otherwise supervisor would not have known whether plant would close; and supervisor did not offer any objective basis for his prediction that plant would close nor explain that decision to do so would be sole result of economic considerations]

Kawasaki Motors Manufacturing Corporation, U.S.A. **280 NLRB No. 053**
[no threat of plant closure where supervisors presented to Ees during meeting 3 days before scheduled R election information on plant's losses, layoffs, payroll decreases, shortened workweek, and overstocked inventory. Officials clearly created impression that any decision to close plant would be based on its profitability and competitive status in world markets. Their prediction of possible closure was not based on reasons unrelated to economic necessities]

Independent Stave Company, Inc. **278 NLRB No. 089**
[threatening to close plant rather than put new job in U, violation as threat to close if grievance was filed over refusal to recognize U as representative of Ee filling new job]

Clark Equipment Company **278 NLRB No. 085**
[statement referring to job security and plant closure, not violation or conduct interfering with election where they were not made in context of threats of loss of benefits, inevitability of strikes and futility of electing U]

Quality Aluminum Products, Inc. **278 NLRB No. 049**
[threats of plant closure, violation]

Rood Industries, Inc. **278 NLRB No. 026**
[E's remarks to Ees containing prediction of plant closure, unlawful, where prediction was not carefully phrased on basis of objective fact to convey E's belief as to demonstrably probable consequences beyond his control, or to convey management decision already arrived at to close plant in case of unionization; instead, E's language strongly suggested that it had already decided to remove machinery from plant and possibly relocate outside state if U's organizing effort succeeded]

Rood Industries, Inc. **278 NLRB No. 026**
[E's remarks to Ees, presenting figures showing its operating losses and offered as prelude to relocating E's plant outside state held unlawful threat of retaliation if Ees voted for U representation, where point of E's conduct was that financial difficulty had not yet dampened E's determination to operate presently located plant, but that U victory in pending election would cause E to close plant]

Rood Industries, Inc. **278 NLRB No. 026**
[E's remarks to Ees during U organizing drive that E's customers *were anxious for us to get back to normal*, and that if Ees voted against U it would be message to customers that *you're behind me* held not unlawful, since remarks did not carry suggestion of plant closing; rather, E's remarks raised

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customer dissatisfcation with interruptions in production and increased costs as possible effect of U's compaign; consequently, E's threat that it would impose any economic burden on Ees because of loss of customers was protected by 8(c)]

Rood Industries, Inc. **278 NLRB No. 026**
[supervisor's statement to pro-U Ee that supervisior knew that E would close shop if U came in, unlawful, since Ee was likely to conclude that supervisor, as second level supervisor, was authoritative source conveying E's expressed intent]

Rood Industries, Inc. **278 NLRB No. 026**
[supervisor's response to Ee who approached him during U organizing compaign that, if supervisor were E *I'd shut plant down because it's not big enough for U,* not unlawful, since remark was protected by 8(c) inasmuch as it was expression of supervisor's personal attitude toward U, and Ee could readily discern that supervisor was not speaking for E, but for himself]

American Stores Packing Company, A Division of Acme Markets, Inc. **277 NLRB No. 190**
[E's informing Ees that if they did not accept concessions that it had proposed to U, plant would close or would probably close, not violative where E was merely communicating in noncoercive terms with Ees about proposals it had already made to U and telling Ees its version of status of negotiations]

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(Ee's pre-election statement to Ee that *men that had gone U had cut off their nose to spite their face,* and that E *was going to shut its doors* held to constitute unlawful threats of discharge and placlosure)

National Micronetics, Inc. **277 NLRB No. 095**
(E's threatening to close plants if U won election, violation and interfeence where, rather than pointing to objective facts likely to result from unionization that would cause unprofitability, E noted that its plants were uncompetitive and could easily be relocated if U won where five E's officials had threatened to close plants and relocate to another state)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(E's remarks at meeting with Ees that if Ees selected U as their representative E would close his business because he could not afford a U operation held lawful prediction, where E provided objective support for prediction by emphasizing his previous experience with U, by pointing to decline in business, and by telling Ees he could not afford U previously when it represented Ees before being decertified even though business was better then than it was now)

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. **JD-(NY)-34-86**
[telling unlawfully locked out U adherents that they were wasting their time and that E could claim bankruptcy whenever he wished, unlawful, since statement was comparable to threat of plant closure]

N.L.R.B. v. J. Coty Messenger Service, Inc. **——F.2d——**
(C.A. 2, May 1985)
[threat to close company if U came in, unlawful]

5036-8370 Replacement of strikers

Benmit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[threatening to hire permanent replacements, violation]

Dayton Auto Electric, Inc. **278 NLRB No. 080**
[E sending mailgram to ULP strikers that stated that if strikers did not report to work by certain date they would be *terminated,* unlawful; E's subsequent mailgram informing strikers that they would be *replaced not terminated* did not effectively repudiate earlier mailgram]

Clark Equipment Company **278 NLRB No. 085**
[statements referring to permanent replacement of strikes, not unlawful threats of discharge where they were not made in context of unlawful statements about inevitability of strikes and futility of U organization]

Clark Equipment Company **278 NLRB No. 085**
[interrogating found violative, notwithstanding it was of U supporter, where it was done in context of coercive statements of E's readiness to hire replacements in event of strike and of unlawful threat to make examples of Ees at this plant]

Clark Equipment Company **278 NLRB No. 085**
[statements made in response to Ee's question that U could not give wages and benefits E did not want to give, that if Ees went on strike they could be replaced, and subsequent interrogation as to whether Ee thought that E needed U and if U could give Ee more benefits, violative where Ee was not active U adherent, and repeated questioning was coercive; statements were not found unlawful threats of discharge or of futility of selecting U, however]

National Micronetics, Inc. **277 NLRB No. 095**
(threatening that all strikers, ULP as well as economic strikers, could be replaced, violation and interference)

Heck's Inc. **277 NLRB No. 098**
(E president's remarks to meeting of *department managers* in which he threatened closure if U won election, threatened discharge if Ees went on strike, and informed them E would never sign contract, unlawful, where one of the *department managers* was held not supervisor at time of meeting)

Reichhold Chemicals, Inc. **277 NLRB No. 073**
(supervisor's statement during period of negotiations that E would never sign contract and that Ees would lose their jobs if they went out on strike, unlawful)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**

5036-8370-5000 Prior to strike

G. W. Galloway Company **281 NLRB No. 038**
[threat to terminate striking Ees who refused to return to work, unlawful, since this was not case where E has attempted truthfully to explain to Ees its legal prerogative to hire replacements w/o fully detailing protections accorded to strikers as enumerated in *Laidlaw Corp.*, 171 NLRB 1366; here, threat to *terminate* non-returning strikers may be understood as direct threat of reprisal against Ees for striking; nor was coercive impact of E's remarks tempered in any way by E's pronouncement that terminated Ees would be replaced]

Marion Center Supply, Inc. **277 NLRB No. 026**
(threat to force a strike and replace the strikers)

Gaso Pumps, Inc. **274 NLRB No. 076**
(no violation by E informing Ees that in event of strike they may be permanently replaced w/o at same time informing them of their preferential reinstatement rights unless statement may be fairly understood as threat of reprisal or is explicitly coupled with such threats)

5036-8379 Shutdown or liquidation of business

Baddour, Inc. **281 NLRB No. 084**
[supervisor's calling Ee who was not open, active U adherent into his office, discussing personal matters, then giving his *opinions* on U, violation where accompanied by interrogation as to why Ees wanted U and thinly veiled threats concerning consequences of unionization, such as unionized Es going out of business due to high wages]

Unico Replacement Parts, Inc. **281 NLRB No. 046**
[E's comment to Ee that, if discriminatee called OSHA to report unsafe working conditions, *We would close the doors, put on our coveralls and keep working* held unlawful threat of plant closure; while discriminatee's OSHA call would not be protected absent evidence that he acted in concert with other Ees, threat was made with *ler of people around* and could reasonably have been construed that complaints to OSHA, whether made by one or several Ees together, would result in plant closure, thereby restraining Ees in acting in concert in reporting to OSHA]

Bo-Ed Inc. d/b/a Golden Fan Inn **281 NLRB No. 035**
[E's attorney telling Ees in group meetings that a unionized restaurant in the State was not doing well and two other unionized restaurants had closed but that he did not know whether the restaurants' business problems had anything to do with the U, not violative and protected by 8(c); E's attorney's comments were lawful statements of fact and attorney expresaly stated he did not know whether the U had caused business problems and GC did not challenge the accuracy or truthfulness of the statements]

Armon Company **279 NLRB No. 158**
[office manager's telling Ee that E's president *wasn't going to put up with U and would close down before . . . he let a U in,* that U had a *bad reputation,* its apparent head was *ruthless,* that manager knew of a warehouse that was firebombed during U campaign, and president would shut down before he let that happen, violation, rather than lawful remark about closure in response to U violence, since manager stated w/o qualification that E would close before tolerating unionization, and his subsequent references to alleged U violence did not suggest that it, rather than E's desires, would cause closure]

Palmas Del Mar Company **277 NLRB No. 011**
(E's telling Ees in remarks, speech, letters, and notice in their paycheck that if they voted for disfavored U, interested purchaser would not buy the business, E would have to close it, and they would lose their jobs found unlawful and objectionable election conduct)

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(telling Ee that if U got in E would not have to bargain with it and would close the plant, thus giving Ee impression that organizing would be futile, violative and objectionable)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(in finding bargaining order warranted, Bd held threats of closure of E's operation and discharge of leading U activists were particular violations which were likely to have lasting inhibitive effect on substantial percentage of work force)

5036-8379—Cont.

Walter Garson, Jr & Associates — 276 NLRB No. 137
(supervisor asking Ee *what is going on as far as you and U*, and subsequently stating *if you go ahead with U then E will have to go out of business*, unlawful)

Engineered Control Systems, Inc. — 274 NLRB No. 191
(E's president stating he would not sign new contract with U since could not then compete with non-U manufacturers, and if he signed U contract result would be closing plant doors, unlawful, since comments not limited to consequences of agreeing to any particular contract or contract language, rather in context of bypassing U, he implied that any agreement with U would cause him to close business)

Fan-Sy Productions, Inc. — JD-(NY)-49-85
(E asking Ee to sign a statement declaring he did not wish to be represented by U which was involved in organizing campaign at E's plant, violative)

5036-8380 Closure of department, facility, etc.

Kokomo Tube Company — 280 NLRB No. 035
[supervisor's statement to Ee *I guarantee E will shut down if U comes in*, unlawful, in view of supervisor's interrogation of same Ee and fact threat of closingwas unconditional]

Times Wire & Cable Company — 280 NLRB No. 003
[E's posting of picture by timeclock which depicted a halfway constructed plant, violative, where posting of picture was accompanied by E's explanations that the plant depicted was under construction until owners learned it may be union and then stopped construction and moved to another state]

Stop N' Go Inc. — 279 NLRB No. 052
[supervisor's telling Ees that, if U came in, store would close for 30 days, and U card signers would not be rehired, violation]

Pottsville Bleaching and Dyeing Company — 277 NLRB No. 106
(supervisor in meeting with Ees saying he did not want any labor problems from outside or we'll lock the doors, held threat to close plant if U selected as representative for Ees)

N.L.R.B. v. E. I. DuPont De Nemours — 750 F.2d 524 (C.A. 6, Dec. 1984)
(telling Ees that, if U called a strike over wages and benefits, a significant portion of plant would never reopen, violative) 5036-8381

Transfer to another job, shift or plant

La-Z-Boy — 281 NLRB No. 054
[personnel manager's and superintendent's telling open U supporter at gripe session, where he had asked about benefits at E's unionized plant and begun to dominate meeting, that if he liked unionized plant so much they would give him opportunity to transfer and guessed that several in meeting would help him pack, not violation in absence of threats]

Dresser Industries, Inc. — 281 NLRB No. 023
[supervisor's threatening to transfer leadman to another department because of his filing grievance against supervisor, violation]

Eskaton Sunrise Community — 279 NLRB No. 012
[telling Ees that they would not be assigned to shifts they desired to obtain because of their U activities, unlawful, notwithstanding E's contention reason for non-assignment of shifts was other Ees' higher seniority]

Eastman Machine Company and its wholly owned subsidiary, Cutting Foam Appliances Corp. — JD-(NY)-42-85
(violation by attempting to induce Ees to transfer to other jobs out of department that they worked in because of U organizational activity taking place in department)

5036-8383 Transfer to less desirable job

Cartridge Actuated Devices, Inc. — 282 NLRB No. 066
[supervisor's threat to assign Ee to more onerous and hazardous duty, accompanied by statement that Ee was *troublemaker* when Ee protested assignment, unlawful, where Ee was known leading U adherent who had been subjected to ULPs by supervisors; absent evidence to the contrary, characterizing Ee as troublemaker could only be reference to her U activities; and while threat, standing alone, was not of much consequence, it constituted violation when considered in conjunction with other ULPs]

5036-8384 Subcontracting

Ausable Communications, Inc. — 273 NLRB No. 166
(threatening Ees with loss of stock ownership, loss of seniority, subcontracting out work and loss of jobs if U came in, unlawful)

5036-8385 Savings and stock ownership plan

Lynn-Edwards Corp. — 282 NLRB No. 007
[E's statements that Ees covered by U-negotiated contracts could not participate in Ee stock ownership plan, and E's maintenance of such restrictive provisions in the plan's governing document, violation and election interference]

Ausable Communications, Inc. — 273 NLRB No. 166
(threatening Ees with loss of stock ownership, loss of seniority, subcontracting out work and loss of jobs if U came in, unlawful)

5036-8387 Transfer of work elsewhere

Kohler Company — 273 NLRB No. 195
(E's proposal to transfer unit work to another of E's plants if acceptable wage rates were not negotiated, not unlawful threat to remove unit work, as alleged, where by agreeing to broad management rights clause in contract U had waived its right to bargain over such unilateral removal)

Ballou Brick Company v. N.L.R.B. — 798 F.2d 339 (C.A. 8, July 1986)
[supervisor's telling laid-off Ee that chief operating officer had told him that Ees were laid off for U activities and plant would be closed and operations transferred to another facility if U came in, violation]

5036-8391 Implied or veiled threats

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer — 281 NLRB No. 161
[Ee's remarking to other Ees that E's CEO was a *cheap son of a bitch*, held protected concerted activity where comment was addressed to other Ees, Ee made it while Ees were on break and statement was not accompanied by any threat; further, Ee's supervisor telling Ee sometime after this comment, that he understood Ee was unhappy and if supervisor was that unhappy he would leave, violative, since remark was implied threat of retaliation for either Ee's comment about CEO or for signing a U card, both of which constituted protected activity]

Baddour, Inc. — 281 NLRB No. 084
[supervisor's calling Ee who was not open, active U adherent into his office, discussing personal matters, then giving his *opinions* on U, violation where accompanied by interrogation as to why Ees wanted U and thinly veiled threats concerning consequences of unionization, such as unionized Es going out of business due to high wages]

Wayne W. Sell Corporation — 281 NLRB No. 082
[E's vice-president informing Ee that if Ee continued to stick his nose into everybody's business, referring to Ee's filing grievances sooner or later somebody's *going to put it all over his face*, unlawful, since constituted thinly veiled threat of physical harm for protected activity of filing grievances]

Unico Replacement Parts, Inc. — 281 NLRB No. 046
[telling Ee that fellow Ee would be *screwing himself up* by going through with grievance to U, unlawful]

Central Broadcast Company — 280 NLRB No. 056
[telling Ee that E's counsel had said that E would have to do whatever was necessary to solve ugly problem of unionism]

Mississippi Chemical Corporation — 280 NLRB No. 046
[supervisor's statement to Ee engaged in U activities that supervisor would not brook this *union stuff*, coupled with remark that things were about to *get nasty*, held not so thinly veiled threat of unspecified reprisals for U activities]

Mississippi Chemical Corporation — 280 NLRB No. 046
[suggesting to Ee that fellow Ee's employment would be in jeopardy if latter was involved in U activity held unlawful as implicit threat to Ee herein]

Clark Equipment Company — 278 NLRB No. 085
[E statements that bargaining means *putting everything on the table* including present benefits and that ct decision had upheld E's right to inform Ees that E need not agree to continue existing wages and benefits, found accurate reflection of obligations and possibilities of bargaining process rather than unlawful and objectionable implied threat to take away benefits or bargain regressively if U won]

Rood Industries, Inc. — 278 NLRB No. 026
[supervisor's implied threat to Ee that if U's organizing campaign succeeded, E would adopt more stringent policy requiring Ees to stand, instead of sitting at their work places, held unlawful imposition of harsher policies if Ees voted for U]

Rood Industries, Inc. — 278 NLRB No. 026
[supervisor's implied threat to Ees that if U's organizing campaign succeeded U would oblige E to discharge Ees who were absent from work for 3 consecutive days held unlawful warning of imposition of harsher policies if Ees voted for U]

Kona 60 Minute Photo — 277 NLRB No. 092
(posted notice referring to matter of U representation and possible dismissal of some and/or all Ees held clearly implied threat of discharge for U activities, notwithstanding E's contention that such statement merely expressed E's intention to oppose U only w/i limits of law because statement noted that matter of U representation and dismissal had been *turned over* to E's legal department; rather, statement clearly connected seeking U representation with dismissal which belied E's strained and unrealistic interpretation of statement)

Kona 60 Minute Photo — 277 NLRB No. 092
(coercive effect of E's threat to hire new Ees if Ees struck held, in context of E's refusal to bargain in good faith, analogous to that of threat to bargain in bad faith so as to force a strike, and amounted to veiled threat of discharge)

5036-8391—Cont.

Bell Halter, Inc. 276 NLRB No. 136
(supervisor's remarks to Ee that Ee might be *endangered*, made in connection with references to joining U, not unlawful, where remarks were too vague, disjointed, and incomplete to substantiate finding that supervisor unlawfully threatened Ee; threatening connotation was word *endanger*, but it was not clear what was endangered, and it would be speculative to conclude that supervisor was implicitly threatening Ee with loss of job or other reprisals)

Pioneer Hotel and Gambling Hall, Inc. 276 NLRB No. 072
(supervisor impliedly threatened to discharge Ee because of his U activities by telling Ee that he would have been discharged if supervisor had not vouched for him and that Ee be careful whom he talked to about U)

Pioneer Hotel and Gambling Hall, Inc. 276 NLRB No. 072
(supervisor's telling Ees that fellow worker was discharged because he was distributing U cards held unlawful implied threat to discharge other Ees if they engaged in U activity)

Steffer Brothers JD-269-86
[E's statement to Ees gathered together, made immediately after tally of votes in election, that E had won and everybody had their jobs back and everybody worked next day, unlawful, since E's statement was, by implication, threat that no one would have their jobs had E lost election or should lose any subsequent one, thereby effectively discouraging Ee support of U]

Cassidy Cleaning, Inc. JD-239-86
[suggesting to Ees that turncoat who started U activities had been discharged held unlawful implied threat to discharge U activists]

Eastman Machine Company and its wholly owned subsidiary, Cutting Room Appliances Corp. JD-(NY)-42-85
(threats of *bumping* by other Ees if U was voted in, held veiled threat of discharge)

Mobile Concrete, Inc. JD-453-84
(plant superintendent's telling Ee that he knew exactly how many U authorization cards were signed, who had signed them, and that he hoped they would be taken care of, violative)

Coal Systems, Inc. and W. Julian Scalf Engineering & Construction Co., Inc. JD-452-84
(supervisor's telling Ees that their work had been assigned to another company, found alter ego to E herein, and that their seniority had been changed because Ees had filed grievances against E, violative)

5036-8395 Limitation on or withholding of bonus or pay raise

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center 280 NLRB No. 130
[E official's statement to Ees that if the U came in *she would not be able to give Ees recognition or bonuses for excellent work* held unlawful threat of reprisal rather than promise of benefit]

Gatliff Business Products, Inc. and RBD Service Corporation 276 NLRB No. 060
(threat that bonus plan would be stopped if U came in, violative)

5036-8399 Other

Sahara Datsun, Inc. 278 NLRB No. 148
[manager's telling Ee that his approval of customer's credit application and, therefore, Ee's receipt of sales commission would depend on how Ee intended to vote in election, violation]

Uniontown Hospital Association 277 NLRB No. 144
(threats to not grant Ee a reference, violation and interference)

National Micronetics, Inc. 277 NLRB No. 095
(threatening Ees with stricter job classifications and denial of interdepartmental transfers if U became bargaining representative, violation and interference)

Churchill's Catering Corporation d/b/a Churchill's Restaurant 276 NLRB No. 087
(telling Ee that he should stop talking about U during worktime or he was going to have trouble with E held unlawful threat, in view of E's disparate enforcement of its no-solicitation rule)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(threatening Ee that it would be hard for him to get rid of U label and that Ee's tracks were wide and deep, violative)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(threatening that Ee would lose his family unless he abandoned U, violative)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(threat to put out false, derogatory information about Ee violative)

Browning-Ferris Industries of Pennsylvania, Inc. 275 NLRB No. 021
(E's statement to U steward that if he could come into shop and handle U business while out on disability he could lose his workmen's compensation, not unlawful, since remark standing alone as passing wisecrack was too ambiguous under the circumstances to constitute threat or otherwise interfere either with steward's own rights under Act or his capacity to act for others as steward)

Medallion Kitchens, Inc. 275 NLRB No. 008
(threatening Ees that if they went on strike, U would not be coming back, violative)

5042 FORMS OF BENEFITS IN CONDITIONS OF EMPLOYMENT, OR PROMISES THEREOF

5042-0100 Generally

5042-0116 Coercive impact of benefits to dissuade employees from unionization

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center 280 NLRB No. 005
[supervisor at nursing home informing Ee, in response to Ee's question about unionized nursing homes, that after U at another one of E's facilities had been decertified Ees at that facility had received raises, not unlawful, since essentially merely observation made by supervisor in response to Ee's question, and any coercive implication dissipated by supervisor subsequently informing Ee that this was *one example and not representation that same thing would happen at facility at which Ee worked*]

Bronal Electric, Inc. JD-(NY)-21-84
[violation, where E after receiving U's demand for recognition and bargaining, asked Ees *what they wanted*, solicited grievances, promised Ees substantial improvements in working conditions, including wage increases and insurance, if they would withdraw support from U, then threatened to close rather than deal with U]

5042-0133 Timing

5042-0133-1100 During union organizing period

Middletown Hospital Association 282 NLRB No. 079
[discontinuance of rule under which Ees took off from work w/o pay when there was low work load, and announcement of rule's discontinuance, unlawful, where E's action took place in midst of election campaign and was taken to induce Ees to refrain from supporting U]

Middletown Hospital Association 282 NLRB No. 079
[announcing and implementing every other weekend off policy, unlawful, where E's prior position for not giving weekends off because of insufficient staffing suddenly changed w/o any increase in staffing; such change came about through E's programs unlawfully soliciting and remedying E complaints and grievances; and benefit was granted during election campaign with no adequate showing of business justification]

Springfield Hospital 281 NLRB No. 076
[hiring additional receptionists at higher than normal starting pay and adjusting pay of all receptionists upward after new receptionists completed probationary period which was 6 weeks before election, not violative, since pay raises was part and parcel of legitimate business decision to hire additional Ees and to commensurately upgrade rate of pay in existing job classification to bring it in line with other receptionist classifications at E, and these decisions made month before R ptn filed]

Resistance Technology, Inc. 280 NLRB No. 117
[rescission of warning letters concerning new absenteeism policy in midst of U organizing campaign, violative where purpose of E's action was to undermine Ees' U activity]

Delta Data Systems Corp. 279 NLRB No. 169
[preelection grant of benefits including relaxed lateness policy, no use of timeclock at lunch time, and establishment of Ee grievance committee, violative and interfered with election, notwithstanding E claim that changes had been under consideration prior to U campaign, where changes were not scheduled or implemented until after U drive began and were announced at meeting during which E president expressed anti-U animus]

Westinghouse Electric Corporation 277 NLRB No. 016
(implementation of small group meetings viewpoint with plant manager where Ees could voice their grievances, unlawful, as this was grant of benefit to Ees to discourage their resort to unionization as means of obtaining more effective labor-management communications, notwithstanding E held monthly production meetings where questions were raised since viewpoint meetings differed in format and objective, resulted in changes to working conditions and initiated after start of U campaign; however, charge of solicitation of grievances at viewpoint meetings dismissed as this was in keeping with established practice at production meetings)

5042-0133-1300 During critical preelection period

Premier Maintenance, Inc. 282 NLRB No. 003
[E's announcement of wage increases and other benefits after 1st election, and 10 days prior to 2nd election, unlawful]

Playboy Elsinor Associates, t/a Playboy Hotel & Casino 281 NLRB No. 159

Kokomo Tube Company 280 NLRB No. 035
[grant of across board wage increase, unlawful, since granted to undermine U campaign, where announced 1 day after E had obtained knowledge of U

5042-0133-1300—Cont.

activity based on more than rumors, increase received by Ees after U had filed R ptn, and where previouse increases had been tied to E's profits whereas these raises wee not justified by profits]

Clark Equipment Company **278 NLRB No. 085**

[announcement and implementation of new job evaluation system resulting in wage increase and institution of new wage rate on election day, not violation or conduct interfering with election where implementation was already planned and Ees informed of its imminent announcement when U filed request to proceed]

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**

[reinstitution of *Ee of the Month* award and offering $100 to winner each month during pre-election period not violative in view of both length of U's (approximately 13 months) organizational drive and large number of hospital Ees (approximately 1300). Designation of one individual as Ee of month can not reasonably be said to be so significant as to influence in any way attitude of Ees or outcome of election]

5042-0133-2500 After election while objections or challenges are pending

Middletown Hospital Association **282 NLRB No. 079**

[E's post-election conduct in promising Ee benefits in response to their previous complaints, unlawful, since election proceeding was then in progress with qcr still existing with objections to election pending, and E acted at its risk in promising benefits before outcome of election was certain]

Middletown Hospital Association **282 NLRB No. 079**

[announcement of part-time Ee benefits, unlawful, where announcement, deliberately delayed until almost immediately after election unfavorable to U while objections to election were pending, was reasonably calculated to convey to Ees that E would treat Ees better w/o U than with it, and that Ee was giving them reward for voting against U; E's defense that announcement was delayed because it was trying to avoid ULP charge, rejected, since Ees were never so advised but were told delay was caused by election]

Southland Frozen Foods, Inc. **JD-(NY)-78-86**

[E's conduct, at time when qcr was pending because of unresolved objections to election, in improving its restroom and cafeteria facilities held not to constitute unlawful granting of benefits, since they were not granted to influence Ee sentiment concerning U representation, in view of absence of active U campaign for considerable period and of any ULP, indefinite period of time before objections to election could be finally adjudicated, and relatively insubstantial nature of benefit]

5042-0133-3700 After election before expiration of time for filing objections

Premier Maintenance, Inc. **282 NLRB No. 003**

[E's announcement of wage increases and other benefits after 1st election, and 10 days prior to 2nd election, unlawful]

5042-0167 Practice of similar changes

Kokomo Tube Company **280 NLRB No. 035**

[grant of across board wage increase, unlawful, since granted to undermine U campaign, where announced 1 day after E had obtained knowledge of U activity based on more than rumors, increase received by Ees after U had filed R ptn, and where previouse increases had been tied to E's profits whereas these raises wee not justified by profits]

5042-0175 Announcement or grant of benefits

Resistance Technology, Inc. **280 NLRB No. 117**

[rescission of warning letters concerning new absenteeism policy in midst of U organizing campaign, violative where purpose of E's action was to undermine Ees' U activity]

Gull, Inc. **279 NLRB No. 127**

[E's institution of open-door policy constituting major change from prior policy of scheduled meetings with small group of Ees chosen by E, accompanied by requests for questions from Ees and by statements telling them of extra few dollars in their paychecks in lieu of dental plan, and possibility of additional equipment, as well as sending managers to classes to improve their communication with Ees held unlawful grant of benefits designed to undermine Ee support for U, rather than solicitation of grievances; in that respect, policy was in effect implied promise that further grievances would be remedied w/o U representation]

Walter Garson, Jr & Associates **276 NLRB No. 137**

(E granting Ees pay raises a few days later or earlier than would have been granted pursuant to E's announced policy, not unlawful, since granting was in substantial accord with pre-announced policy to such extent as to negate any reasonable inference it was motivated by anti-U considerations)

Adams Super Markets Corp. **274 NLRB No. 194**

(no violation, where E distributed 3 weeks prior to election Ee handbook which had been as announced as in progress 5 weeks previously, and was under consideration for over a year, in which new policy regarding leave, jury pay, and broader definition of full-time Ees were announced, since handbook outdated, thus long planned changes made for legitimate business reasons)

Adams Super Markets Corp. **274 NLRB No. 194**

(E announcing medical insurance plan revision 10 days before election, not unlawful, since business justification for not delaying announcement of plan until after election where new plan placed cap on E's liability; further, plan under consideration, with Ees knowledge, for year)

5042-0183 Solicitation of grievances implies promise of benefits by correction

Middletown Hospital Association **282 NLRB No. 079**

[implementation of programs for E-Ee communication through meetings or written submissions by Ees held unlawful solicitation of grievances; even accepting E's contention that programs were continuation of E's prior efforts, through annual Ee meetings and other methods to solicit and remedy Ee complaints, violation would still be found since E's letter to Ees announcing program accurately characterized them as new, and they were substantially different from E's prior practices]

Middletown Hospital Association **282 NLRB No. 079**

[fact that E's programs for E-Ee communication applied to all Ees, including Ees other than U activists, held no defense to finding that implementation of programs constituted unlawful solicitation of Ee grievances]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**

[E's promise to Ees, during meeting with Ees for purpose of soliciting grievances, to correct maintenance problems with restrooms, shortly after advent of U campaign, unlawful]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**

[E's comments during meeting with Ees for purpose of soliciting grievances concerning implementation of dental plan held not unlawful promise of benefit where E's reaffirmation of dental plans, announced to Ees months before advent of U campaign, did not constitute assurance to Ees that grievances would be corrected in order to discourage Ees from obtaining U representation]

Air Express International USA, Inc. **281 NLRB No. 127**

[E's regional manager, on visit to facility after learing of U activity at that facility, unlawfully solicited Ee grievances and impliedly promised to remedy them, and promised benefits, where he told Ee he was there to find out what problems were and try to *solve them*, and told Ee that Ee deserved promotion to supervisor with raise]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**

[E's solicitation of grievances and complaints at meetings with Ees with subsequent correction thereof held unlawful effort to discourage Ee U activity, notwithstanding E's claims that meetings were direct result of Ee survey conducted prior to U campaign where, by time U activity began, E had completed action it planned to take in response to survey, and once E learned of U activity, it initiated Ee meetings for purpose of soliciting additional grievances and complaints from Ees]

Resistance Technology, Inc. **280 NLRB No. 117**

Sealectro Corporation **280 NLRB No. 015**

[during meeting E asking assembled Ees what the problems are and Ee replying layout, pension plans, profit sharing, and a credit union, to which E responded there was no reason why E could not have pension plan or credit union, violative, as conduct involved solicitation of grievances during U organizational campaign]

Gull, Inc. **279 NLRB No. 127**

[E's institution of open-door policy constituting major change from prior policy of scheduled meetings with small group of Ees chosen by E, accompanied by requests for questions from Ees and by statements telling them of extra few dollars in their paychecks in lieu of dental plan, and possibility of additional equipment, as well as sending managers to classes to improve their communication with Ees held unlawful grant of benefits designed to undermine Ee support for U, rather than solicitation of grievances; in that respect, policy was in effect implied promise that further grievances would be remedied w/o U representation]

Dandridge Textile, Inc., Ronald W. Woods, Individually and As Officer and Managing Agent **279 NLRB No. 015**

[E's announcement of institution of program of soliciting Ee views and concerns on individual basis with indication E would be more receptive to complaints, violative where E knew of U campaign at time of announcement]

Woodline Motor Freight, Inc. **278 NLRB No. 152**

[E's actual remedying of grievance is not necessary element of violation, provided there is U issue before Ees as when occuring in circumstances of organizational effort, and/or upcoming election, there may be implied promise of benefit, which is rebuttable]

United Cloth Company, Inc. **278 NLRB No. 088**

[supervisor's request to Ee to have Ees come to her regarding *problems* and she would see what she could do, held not to constitute unspecified promises of benefits; however, her remarks did constitute unlawful solicitation of

5042-0183—Cont.

grievances to discourage U activity, since statement clearly reflected intent to remedy problems which were reason for U organizing drive]

Clark Equipment Company **278 NLRB No. 085**
[distributing survey questionnaire to Ees, not violation, since there was no express promise to remedy grievances, and no promise could be implied where E had practice of conducting surveys, however different from survey herein, and survey was made eleven months after election when nothing but instant litigation was pending]

Clark Equipment Company **278 NLRB No. 085**
[promise to remedy grievances disclosed by E's solicitation of grievances may be implied when there has been no previous solicitation, and solicitation occurs in context of organizational campaign]

Larry Chapman, A Sole Proprietor, d/b/a Farm Boy Food Mart **278 NLRB No. 058**
[soliciting Ees' complaints about benefits and impliedly promising to resolve them during U organization drive, violation]

Hunter Douglas, Inc. **277 NLRB No. 123**
(E's use of Ee committee formed and dominated by E for purpose of soliciting grievances, and correction of grievances pursuant to suggestions received, unlawful)

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(Ee meeting called by top E official and held in his office to determine Ee complaints that prompted them to seek U representation, unlawful, where E did not have established practice of soliciting grievances, and E's inquiry was accompanied by implied and/or explicit promises to respond to complaints as evidenced by E's inquiry of Ees what it would take *to keep the U out*)

Mid-State Distributing Co., Inc. **276 NLRB No. 172**
(E's pre-election survey asking Ees to state their views about management and conditions of employment, unlawful, where survey's form and substance established that grievances and complaints were being solicited from Ees under circumstances implying promise of favorable resolution of at least some of Ee grievances, and one major, longstanding grievance was in fact subsequently remedied; and solicitation of grievances was not negated by any clear expression from E that no promises were being made)

Mid-State Distributing Co., Inc. **276 NLRB No. 172**
(E's pre-election speech to Ees referring to prior survey which was found to have unlawfully solicited Ee grievances with implicit promise to resolve them, unlawful, where E's disclaimer of not promising anything did not alter message that surveyed grievances were going to be positively addressed and that undermining of U was underlying motivating purpose; and fact that operative motives may include a benign one, did not detract from effect of unlawful one)

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**

Bell Halter, Inc. **276 NLRB No. 136**
(survey allegedly to ascertain Ee grievances, thereby implicitly promising to resolve them, not unlawful, where there was precedent for survey; its timing during U campaign was of no great significance since it would have been reasonable for E to conduct survey prior to U's filing of ptn when E already was aware of U activity; in reporting on survey to Ees, E's reference to *open door policy* showed it previously existed, making it improbable E would promise new policy; and E made no promise of any particular change to correct E-Ee communication problem)

Bell Halter, Inc. **276 NLRB No. 136**
(E's remarks that Ees, through conduct of U campaign, had captured his attention so that it was not necessary to further underscore such attention by voting for U, not unlawful, since such admission by E is neither tantamount to, nor indicative of, promise to take remedial action on Ee complaints particularly where, as here, E repeatedly disavowed any implications of promise of benefit)

Ednor Home Care, Inc. **276 NLRB No. 042**
(violation where E's owner solicited grievances and promised benefits, told Ees they could resolve problems between themselves w/o U, and proposed establishment of grievance committee, notwithstanding E's owner did not tell Ees it would be futile to bring in U)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[urging Ee to get Ees together as a team and telling her that if Ees had come to E before going to U E would have taken care of it held unlawful solicitation of grievances of Ee and fellow Ees in effort to dissuade them from voting for U]

Collins Industries, Inc. **JD-33-86**
[where E solicits grievances there is at least implied promise to remedy them which is unlawful unless there is past practice of solicitation such that implied promise to remedy grievance is not change and not grant of new benefit; moreover, such conduct can affect election and, occurring between time ptn was filed and election, is basis for setting aside election]

Northline Bus Center, Inc. **JD-(ATL)-41-85**
(E's urging Ees to bring their and other Ees' problems to him, unlawful, since complaint or grievance solicitation in midst of U campaign was implied promise to remedy Ees' grievances; and E's actions amounted to more than implied promise to take such remedial steps, since E took action on at least 1 of Ees' problems and announced that it had done so)

Benson Associates **JD-101-85**
(supervisor's soliciting Ee to seek supervisor's help with any problems, rather than going to U, unlawful, since solicitation was inducement to vote against U by indicating that U representation was unnecessary and that supervisor would be problem-solver resulting in increased benefits and improved terms and conditions of employment)

5042-3300 Forms of benefits

5042-3305 Commissions

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(grant of greater draw against commissions in response to unlawfully solicited grievances during U organizing campaign, violative)

5042-3319 Employee handbook

Adams Super Markets Corp. **274 NLRB No. 194**
(no violation, where E distributed 3 weeks prior to election Ee handbook which had been as announced as in progress 5 weeks previously, and was under consideration for over a year, in which new policy regarding leave, jury pay, and broader definition of full-time Ees were announced, since handbook outdated, thus long planned changes made for legitimate business reasons)

5042-3320 Insurance

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer **281 NLRB No. 161**
[E's announcement prior to election, that it could no longer consider changing medical insurance carriers because of pending *R* ptn, violative; further, E's subsequent announced change in insurance carriers, not violative, since E was simply righting the wrong of withholding a change and to hold otherwise would place employers in the untenable position of being barred from any corrective action once a wrong step was taken during pendency of a *R* case matter]

Angelica Corporation **276 NLRB No. 038**
(E's directly announcing to Ees that it would soon implement life insurance program for Ees during decertification election campaign, violative)

Adams Super Markets Corp. **274 NLRB No. 194**
(E announcing medical insurance plan revision 10 days before election, not unlawful, since business justification for not delaying announcement of plan until after election where new plan placed cap on E's liability; further, plan under consideration, with Ees knowledge, for year)

5042-3335 Improvement of plant facility

Southland Frozen Foods, Inc. **JD-(NY)-78-86**
[E's conduct, at time when qcr was pending because of unresolved objections to election, in improving its restroom and cafeteria facilities held not to constitute unlawful granting of benefits, since they were not granted to influence Ee sentiment concerning U representation, in view of absence of active U campaign for considerable period and of any ULP, indefinite period of time before objections to election could be finally adjudicated, and relatively insubstantial nature of benefit]

5042-3340 Promotion

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(promoting several Ees in small unit to supervisory positions during critical period, assertedly to comply with state law, violative and objectionable, since real reason was to disenfranchise active U supporters, where state law did not in fact support E's position and even though job descriptions of Ees promoted would indicate supervisory status, those promoted did not in fact exercise any supervisory duties but rather performed same job as in the past)

United Artists Eastern Theatres, Operating Valentine Theatre **275 NLRB No. 025**
(telling Ee who was active U supporter that a promotion could be arranged if he would drop everything with the U, violative)

County Respiratory Products, Inc. **JD-(NY)-107-85**
(offering Ee promotion to deter him from supporting U, violative)

5042-3350 Bonus

Freedom WLNE-TV, Inc. **278 NLRB No. 167**
[E's conditioning payment of Christmas bonus upon contract ratification, violative]

5042-3350—Cont.

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(grants of new monthly bonus and new Christmas bonus as result of solicitation of Ee grievances in context of U organizing campaign, violative)

Brocal Corp. d/b/a Alert Medical Transport **276 NLRB No. 066**
(giving Ees turkeys shortly before election (held December 30), violative; contention that turkeys were Christmas bonus as was past practice, rejected, as E did not have such past practice)

Budget Rent A Car of Washington, Inc. **276 NLRB No. 032**
(E's restructuring bonus system for its Ees at airport location, assertedly to stem tide of unionization, not violative where anticipated increase in sales required E to adjust bonus eligibility quota so that Ees as group would not reap windfall relative to Ees in other locations not enjoying similar increase in profits; likewise, increase in personnel required E to reformulate percentage of above-quota profits to be shared by individual Ees)

5042-3353 Achievement awards, production incentive systems, etc.

Southern Maryland Hospital Center **276 NLRB No. 153**
(institution of *Employee of the Month* award with a $100 cash prize during critical period, violative)

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**
[reinstitution of *Ee of the Month* award and offering $100 to winner each month during pre-election period not violative in view of both length of U's (approximately 13 months) organizational drive and large number of hospital Ees (approximately 1300). Designation of one individual as Ee of month can not reasonably be said to be so significant as to influence in any way attitude of Ees or outcome of election]

5042-3362 Expenses

Reeves Brothers, Inc. **277 NLRB No. 153**
[conferring additional uniform allowance on Ees, not violative, notwithstanding contention that purpose of increased benefit was to discourage Ees from supporting U, where subsidy was nominal and did not rise to level of *benefit* to influence Ees' freedom of choice in election]

5042-3365 Leave; sick, maternity/paternity, funeral, etc.

Electronic Data Systems International Corporation **278 NLRB No. 014**
[granting Ees, during U campaign, payment for maternity and funeral leave benefits which had been denied them when they actually took such leaves, unlawful]

5042-3369 Change in meal and/or other break period practices

Radio Broadcasting Co. **277 NLRB No. 121**
(promising that someone would be available to sign paychecks and that Ees would not be held to one-half hour lunch period to remedy Ee grievances, violative)

5042-3370 Increased holiday and vacation benefits

Stop N' Go Inc. **279 NLRB No. 052**
[grant of vacation pay to induce abandonment of U support, violation]

Studio S.J.T., Limited **277 NLRB No. 126**
(implementing addition of paid holidays in effort to dissuade Ees from unionizing, violative)

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(granting paid vacations in response to grievances unlawfully solicited during U organizing campaign, violative)

Barnes and Noble Bookstores, Inc. **237 NLRB No. 196**
(announcement during U campaign, of vacation policy benefit that was in accordance with E's established practice and would have been announced anyway, not unlawful)

5042-3379 Redress of grievances

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[establishment of grievance committee and new grievance procedure, violation and interference]

Hunter Douglas, Inc. **277 NLRB No. 123**
(E's use of Ee committee formed and dominated by E for purpose of soliciting grievances, and correction of grievances pursuant to suggestions received, unlawful)

5042-3380 Wage increase

Middletown Hospital Association **282 NLRB No. 079**
[announcement updating and increasing cost-of-living base rate, unlawful, where following several years of unremedied Ee complaints about cost-of-living rate, announcement was made immediately after E received Ee complaints unlawfully solicited through programs designed to solicit and promise remedies for Ee concerns, and E attributed increase in part or entirely to concerns expressed by Ees through programs]

Premier Maintenance, Inc. **282 NLRB No. 080**
[E's announcement of wage increases and other benefits after 1st election, and 10 days prior to 2nd election, unlawful]

Springfield Hospital **281 NLRB No. 076**
[hiring additional receptionists at higher than normal starting pay and adjusting pay of all receptionists upward after new receptionists completed probationary period which was 6 weeks before election, not violative, since pay raises was part and parcel of legitimate business decision to hire additional Ees and to commensurately upgrade rate of pay in existing job classification to bring it in line with other receptionist classifications at E, and these decisions made month before R ptn filed]

Kokomo Tube Company **280 NLRB No. 038**
[grant of across board wage increase, unlawful, since granted to undermine U campaign, where announced 1 day after E had obtained knowledge of U activity based on more than rumors, increase received by Ees after U had filed R ptn, and where previouse increases had been tied to E's profits whereas these raises wee not justified by profits]

Woodcliff Lake Hilton Inn, Inc. **279 NLRB No. 146**
[granting wage increase soon after inception of U campaign, violative where announcement of increase contained reference to U campaign and E's asserted business reason discredited]

Dandridge Textile, Inc., Ronald W. Woods, Individually and As Officer and Managing Agent **279 NLRB No. 015**
[E's unprecedented wage increase during U organizational campaign, violative]

Clark Equipment Company **278 NLRB No. 085**
[announcement and implementation of new job evaluation system resulting in wage increase and institution of new wage rate on election day, not violation or conduct interfering with election where implementation was already planned and Ees informed of its imminent announcement when U filed request to proceed]

Studio S.J.T., Limited **277 NLRB No. 126**
(implementing new merit and wage classification systems in effort to dissuade Ees from unionizing, violative)

BASF Wyandotte Corporation **276 NLRB No. 175**
(E's foreman's discussing merits of salaried versus hourly benefits with Ee, not violative where discussions were essentially factual and foreman did not make any promises to Ee about benefits or suggest that Ee disavow U)

Walter Garson, Jr & Associates **276 NLRB No. 137**
(E granting Ees pay raises a few days later or earlier than would have been granted pursuant to E's announced policy, not unlawful, since granting was in substantial accord with pre-announced policy to such extent as to negate any reasonable inference it was motivated by anti-U considerations)

Angelica Corporation **276 NLRB No. 038**
(unilaterally promulgating and implementing improvements in wages and working conditions, violative where done prior to issuance of certification of results of decertification election that U lost)

Mor Warehouse & Accessory **275 NLRB No. 165**
(E selectively granting wage increases and promising benefits to Ees to discourage support for U, two months after R ptn had been filed, unlawful, particularly in view of E's other ULPs)

Workroom For Designers, Inc. and Sidney H. Sinselman, an Individual **274 NLRB No. 115**
(advertising for strike replacements at higher wages than those previously paid strikers, violative)

Easthampton Electrical Services, Inc. **JD-85-85**
(granting wage increase which appeared in Ees' paychecks immediately following U organizing meeting, not unlawful, absent evidence of E's knowledge of U activity and E's justification that some of its Ees had received raises upon receiving journeymen electrician status and raises were necessary to prevent wage compression among journeymen)

5042-3388 More favorable working hours

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(grant of split work shift in response to grievances unlawfully solicited due to U organizing campaign, violative)

5042-3394 Parties, etc

Easthampton Electrical Services, Inc. **JD-85-85**
(Christmas party after R ptn filed not violative where party was not first party given on E's premises, party was planned, organized and paid for by Ees of E and Ees of E next door to E, rather than by E)

5042-3399 Miscellaneous benefits

Middletown Hospital Association **282 NLRB No. 079**
[announcement of part-time Ee benefits, unlawful, where announcement, deliberately delayed until almost immediately after election unfavorable to U while objections to election were pending, was reasonably calculated to

5042-3399—Cont.

convey to Ees that E would treat Ees better w/o U than with it, and that Ee was giving them reward for voting against U; E's defense that announcement was delayed because it was trying to avoid ULP charge, rejected, since Ees were never so advised but were told delay was caused by election]

Without Reservation **280 NLRB No. 165**
[promising to take care of Ee for not signing U authorization card, violation]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle **280 NLRB No. 043**
[granting benefits to Ees in form of complimentary entertainment coupons as part of promotional program, unlawful where, unlike in past promotions, Ees benefited directly herein; and, although coupon booklets were not delivered until after election, Ees were informed of new benefit just few days before election; and assuming absence of u animus, ALJ held it was irrelevant to issue of whether E violated 8(a)(1)]

Delta Data Systems Corp. **279 NLRB No. 169**
[preelection grant of benefits including relaxed lateness policy, no use of timeclock at lunch time, and establishment of Ee grievance committee, violative and interfered with election, notwithstanding E claim that changes had been under consideration prior to U campaign, where changes were not scheduled or implemented until after U drive began and were announced at meeting during which E president expressed anti-U animus]

National Micronetics, Inc. **277 NLRB No. 095**
(distributing discount coupons to Ees to create impression of providing benefits and dissuade Ees from supporting U, violation and interference)

5042-6700 Promises or offers of benefits

5042-6702 Nonspecific promise of benefit

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's statements during question-and-answer sessions following speeches to Ees held too vague to rise to level of unlawful promises of benefits, where her statements, that she was not unpopular former supervisor she had replaced, and she would make changes if given a chance, were made in response to questions raising Ee complaints about specific working conditions; and supervisor's speeches preceding question-and-answer sessions were free of unlawful comments, and nothing else she said during such sessions was alleged to have violated Act]

Middletown Hospital Association **282 NLRB No. 079**
[E's post-election conduct in promising Ee benefits in response to their previous complaints, unlawful, since election proceeding was then in progress with qcr still existing with objections to election pending, and E acted at its risk in promising benefits before outcome of election was certain]

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's supervisor telling Ee that if U got in conditions would be the same but if they didn't get in conditions would improve, violative and held a promise of benefit only and not an additional prediction of loss of benefits]

United Cloth Company, Inc. **278 NLRB No. 088**
[supervisor's request to Ee to have Ees come to her regarding *problems* and she would see what she could do, held not to constitute unspecified promises of benefits; however, her remarks did constitute unlawful solicitation of grievances to discourage U activity, since statement clearly reflected intent to remedy problems which were reason for U organizing drive]

National Micronetics, Inc. **277 NLRB No. 095**
(E's asking Ees for *another chance* and *more time*, held too vague to rise to level of illegal promise of benefits or objectionable conduct where E made no specific promise but merely expressed general desire to do better)

Angelica Corporation **276 NLRB No. 038**
(violation, where E promised, prior to decertification election, improved *money and benefits* w/o U together with its assurance that all non-U facilities would be treated same and its iteration of superior benefits available at non-U facility)

Angelica Corporation **276 NLRB No. 038**
(E's posting memorandum to Ees that stated that improvements in wages and benefits and other privileges had resulted from E's regular reviews of its non-U facilities, not violative where memorandum promised only that, absent U, Ee's facility would be reviewed in manner similar to that employed at E's other non-U facilities)

Naral Color Corporation **276 NLRB No. 061**
(telling Ee that *things would get better* after U's contract expired, not violative, where statement was unaccompanied by any promise of benefit and was thus a general opinion protected by 8(c))

Joan Faust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(telling Ees during U campaign that E would do more for Ees after the building mortgage was paid off in 10 years, violative and objectionable)

5042-6703 Implied promises

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**
[where at Ee meeting E failed to respond to Ees' complaints regarding minimal benefits and holidays, no promise could be implied from E's silent smile when complaints were made, and no ULP arose from it]

Boaz Carpet Yarns, Inc. **280 NLRB No. 094**
[E's notice that E could make no changes absent good faith doubt or proof of U's loss of majority status where E's efforts to get election to prove Ees' disaffection with U, as shown by their ptn, had been blocked by U's ULP charges, followed by notice of poll of Ees' opinion about U, not promise of benefit absent mention of Ee benefits or gain from decertification]

Ro-Lab Rubber Co., Inc. **279 NLRB No. 057**
[E's president's stating that if U were not voted in, *changes will be made*, violative since statement constituted implied promise of benefit]

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[*E's actual remedying of grievance is not necessary element of violation, provided there is U issue before Ees as when occuring in circumstances of organizational effort, and/or upcoming election, there may be implied promise of benefit, which is rebuttable*]

Clark Equipment Company **278 NLRB No. 085**
[statements that E building management team and had developed program to improve conditions found permissible reminder of existing good conditions and of improvements started before election campaign and appeal for Ees' confidence, rather than unlawful and objectionable promise of improved benefits if Ees rejected U]

Rood Industries, Inc. **278 NLRB No. 026**
[implied promise of improvements in attendance point system, and implementation of such promise, unlawful, in view of E's hostility to U, timing of announcement when U's representation was still pending; beneficial aspects of improvements to Ees and fact that E's conduct was designed to suggest to Ees that source of benefits conferred was also source from which future benefits must flow and which may dry up if not obliged, and that Ees were unlikely to understand that E was holding out promise as inducement for them to reject U]

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(E's implicit promise of benefit to Ees expressing opposition to U competing against U favored by E, unlawful, since conduct demonstrated that E was prepared to reward Ees opposing disfavored U and, by implication, to punish its supporters)

National Council of Young Israel d/b/a Shalom Nursing Home **276 NLRB No. 118**
(E's administrator did not unlawfully impliedly promise benefits to Ees to induce them to vote against U, where he told Ees repeatedly during preelection meetings about terms and conditions of employment, but told Ees he would be fair, and gave as example of how he dealt with Ees, wage increases and bonuses received by non-U Ees, but reinterated he was not making any promises)

Bonanza Sirloin Pit **275 NLRB No. 54**
(attempting to secure Ee's support in pending Bd election by implied offer of job to Ee's husband, violative)

Wells Fargo Armored Service Corp. **JD-(SF)-19-86**
[remarks to Ees designed to cause them to discontinue U activity at branch by providing opportunity to transfer to unionized branch at higher pay, violation]

5042-6710 Improved working conditions

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(supervisor's newly imposed warning system and promise of new furnishings, not violative where supervisor was recently hired and such suggestions could well come from such new supervisor and be implemented)

5042-6712 Training employees for better job

T & T Machine Company, Inc. **278 NLRB No. 139**
[supervisor calling Ee into his office, where in presence of three supervisors Ee was asked *how he felt about U*, and upon Ee's reply he didn't like Us, he was cautioned not to associate with U supporters, promising Ee he would have training to enhance his skill level above that of U supporters that E planned to get rid of, and informing Ee if he would report his errors directly to those supervisors, his record would be clean, but errors of U supporters would be recorded, unlawful]

5042-6715 Promotion

Air Express International USA, Inc. **281 NLRB No. 127**
[E's regional manager, on visit to facility after learing of U activity at that facility, unlawfully solicited Ee grievances and impliedly promised to remedy them, and promised benefits, where he told Ee he was there to find out what problems were and try to *solve them*, and told Ee that Ee deserved promotion to supervisor with raise]

Westinghouse Electric Corporation **277 NLRB No. 016**
(changes in job grading plan based on E's decision as to which Ees should be upgraded, not unlawful, where department were filled according to established published procedure which would not limit those eligible to Ees in department in which upgraded jobs located)

5042-6715—Cont.

Benson Associates **JD-101-85**
(promising to grant Ee promotion based on his rejection of U, unlawful)

5042-6720 Job protection

T & T Machine Company, Inc. **278 NLRB No. 139**
[supervisor calling Ee into his office, where in presence of three supervisors Ee was asked *how he felt about U*, and upon Ee's reply he didn't like Us, he was cautioned not to associate with U supporters, promising Ee he would have training to enhance his skill level above that of U supporters that E planned to get rid of, and informing Ee if he would report his errors directly to those supervisors, his record would be clean, but errors of U supporters would be recorded, unlawful]

T & T Machine Company, Inc. **278 NLRB No. 139**
[asking Ee *who had called U?* and offering to meet Ee *anywhere at anytime to receive information about U organizing drive*, adding that such information would enable Ee to keep his job, unlawful]

Pillod of Mississippi, Inc. **275 NLRB No. 117**
(E did not neutralize effects of prior threats of plant closure and retaliation by giving Ees last minute *job guarantees* 1 day before election and assurances of continued employment where *guarantee* was ambiguous, statement did not specifically and unambiguously disavow E's prior conduct found unlawful and no assurances were given to Ees that in the future, E would not interfere in exercise of Ees' Section 7)

5042-6725 Change in workweek

Noral Color Corporation **276 NLRB No. 061**
(telling Ees during decertification campaign in response to Ee questions, that there was a *possibility* E would go to a 40-hour week and such workweek would add $4,000.00 per year to Ees' paychecks if E was non-U, not violative, since remark was couched in terms of a possibility and thus was a hypothetical situation and a proper reflection of what might happen if U's contract restrictions on overtime pay and workweek were removed)

5042-6732 Implementation of contract negotiated elsewhere

H. A. Satin Co., Inc. **JD-(ATL)-2-86**
[E's president informing Ees at non-unionized facility of cost of U dues, and initiation fees, stating that he saw no reason for Ees to begin working for U as they would receive same benefits as Ees at E's unionized facility w/o joining or voting in U, unlawful]

5042-6735 Transfer

Wells Fargo Armored Service Corp. **JD-(SF)-19-86**
[remarks to Ees designed to cause them to discontinue U activity at branch by providing opportunity to transfer to unionized branch at higher pay, violation]

5042-6740 Profit-sharing plan

Noral Color Corporation **276 NLRB No. 061**
(telling Ees at group meetings prior to decertification election that they would be eligible for E's stock-option-program if they were non-U and U was opposing such plan for unit Ees at the bargaining table, not violative, since E was simply pointing out an existing benefit its non-U Ees enjoyed which would be available to unit Ees if they were non-U)

5042-6745 Pension plan

Weiner Optical Company **274 NLRB No. 143**
(supervisor's telling Ees during meeting that E could look into several different pension and health plans in the event of decertification, not violative, since Ees were never promised increased benefits where Ees were told there were *no guarantees in life* and E was merely informing Ees of alternatives available to it in event of decertification w/o making reference to the level of benefits under alternative plans; further, such statements did not amount to soliciting Ees to bypass U or individual bargaining since statements were all in reference to what *may* occur subsequently in the absence of U representation)

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. **JD-(NY)-34-86**
[telling unlawfully locked out U adherents that E did not want U, and offering to revoke 10% pay cut, to look into pension plan, and to give raises to some lower paid Ees, unlawful]

5042-6750 Insurance benefits

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[E's comments during meeting with Ees for purpose of soliciting grievances concerning implementation of dental plan held not unlawful promise of benefit where E's reaffirmation of dental plans, announced to Ees months before advent of U campaign, did not constitute assurance to Ees that grievances would be corrected in order to discourage Ees from obtaining U representation]

Radio Broadcasting Co. **277 NLRB No. 121**
(E's president's statement, prior to election, that he would *look into* increased health coverage found not to be unlawful promise, especially where there was no other evidence that he promised or even discussed increased health care benefits; evidence of additional health benefits given over 4 months after election also did not support finding of unlawful promise)

Mor Warehouse & Accessory **275 NLRB No. 168**
(E selectively granting wage increases and promising benefits to Ees to discourage support for U, two months after R ptn had been filed, unlawful, particularly in view of E's other ULPs)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(E informing Ees that E was suffering from serious financial problems, asking Ees for suggestions as to how E could save money, urging Ees to persuade U to *move off a dime* on E's bargaining proposals, and informed Ees that if Ees went non-U E would give pay increases, equal or better health benefits than U offering, financial assistance to Ees who wished to purchase own trucks, but if U refused to accept E's proposals, E would operate non-U, unlawful; statements not predictions of economic consequences protected by Sec. 8(c) inasmuch as E did not substantiate financial losses and in view of other contemporaneous illegal statements)

Weiner Optical Company **274 NLRB No. 143**
(supervisor's telling Ees during meeting that E could look into several different pension and health plans in the event of decertification, not violative, since Ees were never promised increased benefits where Ees were told there were *no guarantees in life* and E was merely informing Ees of alternatives available to it in event of decertification w/o making reference to the level of benefits under alternative plans; further, such statements did not amount to soliciting Ees to bypass U or individual bargaining since statements were all in reference to what *may* occur subsequently in the absence of U representation)

5042-6775 Bonus

Robert W. Wise, d/b/a Robert W. Wise Cabinetry **JD-(SF)-157-85**

5042-6780 Wage increase

Airport Distributors, Inc. **280 NLRB No. 091**
[asking Ee what it *would take* to discourage his support for U, whether he desired raise of $1 per hour, and would Ee go out on strike with U, accompanied by denigration of Ee with obscenity when Ee indicated he probably would go out on strike held not only act of coercive interrogation but also unlawful promise of wage increase for purpose of dissuading Ee from supporting U]

Products Unlimited Corp. **280 NLRB No. 041**
[supervisor informing Ees that E would not agree to U wage and benefit demands, and at same time promised to try to obtain raise for Ees as inducement to not vote for U, unlawful]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[supervisor at nursing home informing Ee, in response to Ee's question about unionized nursing homes, that after U at another one of E's facilities had been decertified Ees at that facility had received raises, not unlawful, since essentially merely observation made by supervisor in response to Ee's question, and any coercive implication dissipated by supervisor subsequently informing Ee that this was *one example and not representation that same thing would happen at facility at which Ee worked*]

United Electrical & Mechanical, Inc. **279 NLRB No. 034**
[promising Ees pay raises to influence their vote in election, violative]

Fox-Art Theatres, Inc. **278 NLRB No. 115**
[offer of raise in wage rate, to discourage Ees participation in anticipated strike resulting from recent reduction in wages, unlawful]

Orval Kent Food Company, Inc. **278 NLRB No. 057**
[E's promising Ees that when U was voted out, they could get raise, violative]

Radio Broadcasting Co. **277 NLRB No. 121**
(E found not to have made unlawful promise of wage increases by making general remark that wage increase was good idea and further stating that he could not promise anything; nor was wage increase given over 4 months later sufficient to bolster finding that E had promised to increase wages)

Angelica Corporation **276 NLRB No. 038**
(E's promising its Ees increased wages and benefits, violative, notwithstanding U first raised issue of benefits available to E's non-U Ees and E was clearly entitled to answer questions posed by its Ees, since E was not entitled to do so in such way as to convey message that it was willing to do more for unrepresented Ees than it was for Ees who were represented by U; E's repeated self-serving assertions that it could make no promises did not detract from what was otherwise promise of benefits)

Angelica Corporation **276 NLRB No. 038**
(E's posting memorandum to Ees that stated that improvements in wages and benefits and other privileges had resulted from E's regular reviews of its non-U facilities, not violative where memorandum promised only that, absent U, Ee's facility would be reviewed in manner similar to that employed at E's other non-U facilities)

5042-6780—Cont.

Norsl Color Corporation 276 NLRB No. 061
(telling Ees during decertification campaign in response to Ee questions, that there was a *possibility* E would go to a 40-hour week and such workweek would add $4,000.00 per year to Ees' paychecks if E was non-U, not violative, since remark was couched in terms of a possibility and thus was a hypothetical situation and a proper reflection of what might happen if U's contract restrictions on overtime pay and workweek were removed)

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152
(E informing Ees that E was suffering from serious financial problems, asking Ees for suggestions as to how E could save money, urging Ees to persuade U to *move off a dime* on E's bargaining proposals, and informed Ees that if Ees went non-U E would give pay increases, equal or better health benefits than U offering, financial assistance to Ees who wished to purchase own trucks, but if U refused to accept E's proposals, E would operate non-U, unlawful; statements not predictions of economic consequences protected by Sec. 8(c) inasmuch as E did not substantiate financial losses and in view of other contemporaneous illegal statements)

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. JD-(ATL)-61-86
[supervisor's promise of wage increase if Ees did not resign U cards following finding that original cards had been tainted by supervisory involvement, unlawful]

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. JD-(ATL)-61-86
[E's personnel manager's statements that she had surveyed other Es in area and that E's wage scale was *possibly dollar behind* and that she could not promise Ees as much as dollar increase, constituted unlawful promise of wage increase to diminish U support and statement was not neutralized by statement she could not promise dollar]

John's Lumber & Hardware Company JD-199-86
[E offering directly to Ees wage increase, and more valuable total package than it had implemented after expiration of contract if Ees would petition to decertify U, w/o offering increase to U, unlawful]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86
[telling unlawfully locked out U adherents that E did not want U, and offering to revoke 10% pay cut, to look into pension plan, and to give raises to some lower paid Ees, unlawful]

Collins Industries, Inc. JD-33-86
[E's response to Ee's query about his failure to receive wage increase Ee thought he was entitled to, that E would look into it, unlawful; while there may not have been direct promise of granting wage increase to Ee, under circumstances herein and in view of nature of E's anti-U campaign, E's response sufficiently tended to be promise of benefit]

Abe Ochs, An Individual, d/b/a Kingform Cap Company JD-188-85
(offering Ee wage increase and sum of money in attempt to induce her to drop this case, violative)

N.L.R.B. v. E. I. DuPont De Nemours 750 F.2d 524 (C.A. 6, Dec. 1984)
(promise that if U did not win election, E would provide substantial cost of living increase, violative)

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)
[promising Ees wage increase or to pay them for any time they had lost if they would abandon or renounce U, and telling Ee that if he would get rid of U, E would give him check in any amount, unlawful]

5042-6785 Loans

Link Manufacturing Co. 281 NLRB No. 028
[telling Ee that E's loan to Ee would not have to be repaid if he refused to vote in election held unlawful promise of benefit based on U considerations]

5042-6788 Vacations

Radio Broadcasting Co. 277 NLRB No. 121
(promising personal days for all Ees, and increased vacation benefits, in order to discourage them from voting for U, violative)

5042-6795 Plant improvements

Cartridge Actuated Devices, Inc. 282 NLRB No. 066
[E's promise to Ees, during meeting with Ees for purpose of soliciting grievances, to correct maintenance problems with restrooms, shortly after advent of U campaign, unlawful]

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(E's promise of additional parking areas and guards for parking areas, not unlawful, since promise not motivated by desire to influence Ees in their exercise of Section 7 rights, where plans for improved parking areas made before U appeared on scene, and in view of business reason of anticipated growth)

5042-6798 Redress of grievances

Radio Broadcasting Co. 277 NLRB No. 121
(promising that someone would be available to sign paychecks and that Ees would not be held to one-half hour lunch period to remedy Ee grievances, violative)

Radio Broadcasting Co. 277 NLRB No. 121
(impliedly promising to recognize and deal with Ee grievance committee if U lost election, violative)

5042-6799 Other promises

United States Aviex Company 279 NLRB No. 110
[promising Ee, who was father of son in layoff status, that E would recall son to work if father voted for company, unlawful]

Woodline Motor Freight, Inc. 278 NLRB No. 152
[supervisor's statement to Ee that *terminal isn't closed yet and it's not too late to do anything*, coercive and constituted unlawful promise of benefit]

Rood Industries, Inc. 278 NLRB No. 026
[implied promise of improvements in attendance point system, and implementation of such promise, unlawful, in view of E's hostility to U, timing of announcement when U's representation was still pending; beneficial aspects of improvements to Ees and fact that E's conduct was designed to suggest to Ees that source of benefits conferred was also source from which future benefits must flow and which may dry up if not obliged, and that Ees were unlikely to understand that E was holding out promise as inducement for them to reject U]

Grunco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(asking Ee if he remembered date he signed U card and promising Ee a dinner if Ee found out date he signed card, unlawful)

Bell Halter, Inc. 276 NLRB No. 136
(E's remarks that Ees, through conduct of U campaign, had captured his attention so that it was not necessary to further underscore such attention by voting for U, not unlawful, since such admission by E is neither tantamount to, nor indicative of, promise to take remedial action on Ee complaints particularly where, as here, E repeatedly disavowed any implications of promise of benefit)

5042-8300 Offer to pay union's fine, dues or initiation fees

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118
[promising to speak to general manager about obtaining reimbursement for Ee's initiation fee, violation]

Greyhound Lines, Inc. 275 NLRB No. 166
(no violation where E offered to pay initiation fees to Ees after they crossed picket line as offer not made as inducement to get these Ees to come back to work but rather because E felt that supervisors may have mislead these Ees into believing that they would not need to pay initiation fees or rejoin U)

5042-8500 Offer of money

Premier Maintenance, Inc. 282 NLRB No. 003
[E's promise to pay Ee, who was scheduled to be on vacation on day of election, to stay and vote, unlawful]

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(E's telling Ee that he would pay money to keep U from organizing its Ees, violative)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(promising Ees financial rewards if they ceased their U activities, violative)

Abe Ochs, An Individual, d/b/a Kingform Cap Company JD-188-85
(offering Ee wage increase and sum of money in attempt to induce her to drop this case, violative)

5045 EMPLOYER-SPONSORED MEETINGS WITH EMPLOYEES

Westinghouse Electric Corporation 277 NLRB No. 016
(implementation of small group meetings viewpoint with plant manager where Ees could voice their grievances, unlawful, as this was grant of benefit to Ees to discourage their resort to unionization as means of obtaining more effective labor-management communications, notwithstanding E held monthly production meetings where questions were raised since viewpoint meetings differed in format and objective, resulted in changes to working conditions and initiated after start of U campaign; however, charge of solicitation of grievances at viewpoint meetings dismissed as this was in keeping with established practice at production meetings)

Herrick & Smith 275 NLRB No. 062
(where reason for poor evaluation and subsequent discharge (poor work performance and attitude) by supervisor found pretextual, and that evaluation based on only 1 week's work permits inference to be drawn that supervisor was trying to build case for Ee'sdischarge in retaliation for Ee

5045—Cont.

organizing meeting with managing partner and other Ees in which complaints against supervisor were aired)

5048 EMPLOYER-SPONSORED POLLS, ELECTIONS, ETC.

5048-0100 Generally

5048-0140 Not unlawful per se

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(majority status (of Ee bargaining representative) can be established by means other than NLRB-conducted election such as *informal-election* in instant case where with E present and consent, Ees secretly marked ballot *yes* or *no* and put ballot in hat)

5048-0160 Safeguards for polls to ascertain majority in respect to request to recognize

5048-0160-1700 Purpose to determine truth of union's claim of majority

American Mirror Company, Inc. 277 NLRB No. 179

[polling Ees as to their U sentiments, following signed rejections from 42 of 108 unit Ees and 4 separate oral reports that U no longer enjoyed majority support, not unlawful]

5048-0160-1900 Purpose to solicit grievances about working conditions

Clark Equipment Company 278 NLRB No. 085

[distributing survey questionnaire to Ees, not violation, since there was no express promise to remedy grievances, and no promise could be implied where E had practice of conducting surveys, however different from survey herein, and survey was made eleven months after election when nothing but instant litigation was pending]

Southland Frozen Foods, Inc. JD-(NY)-78-86

[survey of Ees conducted for E by outside consulting firm and having primary purpose of soliciting Ee grievances not construed as interrogation and Bd's usual protective requirements not applicable, where there was no question in survey which sought to ascertain Ees' U sentiment; at any rate, in view of procedure in conducting survey and absence of other ULPs, survey was not coercive]

Southland Frozen Foods, Inc. JD-(NY)-78-86

[survey of Ees, having primary purpose of eliciting Ee grievances and conducted when qcr was pending because of unresolved objections to election, held not unlawful, where survey was administered during postelection period when active campaigning had long ceased and was conducted in context free of ULPs; in these circumstances, it cannot be concluded that survey had purpose of eroding Ee support for U]

5048-0160-5800 Assurances against reprisal given

Boaz Carpet Yarns, Inc. 280 NLRB No. 004

[poll to provide proof of Ees' disaffection with U, not violation where it was result of Ee ptn, an independent objective basis for doubting U's majority status, its purpose of ascertaining truth of Ees' own claim was communicated to them, Ees were assured of no reprisal, and poll was conducted by secret ballot; E's failure to notify U had de minimis impact, and processing of E's ptn for election had placed U on notice of Ees' disaffection a month before]

5048-0160-6700 Poll by secret ballot

S.M.S. Automotive Products, Inc. 282 NLRB No. 006

[E's conducting a private secret ballot election among Ees, violative, where at time election was conducted, E had unlawfully entered into contract with U that did not enjoy majority support and E did nothing to repudiate the unlawful contract prior to election; further, E's granting recognition to another U that won election and that U's acceptance of recognition, unlawful, since by conducting the unlawful election, U could not have represented an uncoerced majority of Ees]

5048-0160-8300 Employer has not engaged in ULP's or otherwise created coercive atmosphere

S.M.S. Automotive Products, Inc. 282 NLRB No. 006

[E's conducting a private secret ballot election among Ees, violative, where at time election was conducted, E had unlawfully entered into contract with U that did not enjoy majority support and E did nothing to repudiate the unlawful contract prior to election; further, E's granting recognition to another U that won election and that U's acceptance of recognition, unlawful, since by conducting the unlawful election, U could not have represented an uncoerced majority of Ees]

5048-3300 Method employed

5048-3320 Elections

S.M.S. Automotive Products, Inc. 282 NLRB No. 006

[E's conducting a private secret ballot election among Ees, violative, where at time election was conducted, E had unlawfully entered into contract with U that did not enjoy majority support and E did nothing to repudiate the unlawful contract prior to election; further, E's granting recognition to another U that won election and that U's acceptance of recognition, unlawful, since by conducting the unlawful election, U could not have represented an uncoerced majority of Ees]

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(majority status (of Ee bargaining representative) can be established by means other than NLRB-conducted election such as *informal-election* in instant case where with E present and consent, Ees secretly marked ballot *yes* or *no* and put ballot in hat)

5048-3340 Petitions, cards, etc., distributed for signature

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164

[*petition* urging Ees to vote against U, distributed among Ees at E's grocery store for their signature, and thereby polling Ees in such manner as to reveal their individual sentiments with respect to U, unlawful, where E adopted ptn as its own by store manager's statement to Ee that *store was going around to pass around ptn for Ees who were against U to sign*, and by presenting ptn to Ee and telling him that with 2 more signatures E could win election]

5048-3360 Polling or surveying employees

Tri-State Culvert Manufacturing, Inc. 280 NLRB No. 007

[poll to ascertain whether Ees desired representation by U which E had voluntarily recognized, not unlawful, where at time of recognition U lacked majority support of Ees]

Tri-State Culvert Manufacturing, Inc. 280 NLRB No. 007

[poll to ascertain whether Ees desired U representation, conducted after Ee majority signed ptn renouncing support for U, not unlawful, where there was no evidence that E encouraged or suggested that anti-U Ee circulate ptn, and evidence did not support finding that such Ee's activities were carried out with either acquiescence, knowledge, or support of E; while circumstances surrounding anti-U ee's activities created *suspicion* about E's improper involvement, mere suspicion or suggestion of impropriety cannot substitute for evidence]

Mid-State Distributing Co., Inc. 276 NLRB No. 172

(E's pre-election survey asking Ees to state their views about management and conditions of employment, unlawful, where survey's form and substance established that grievances and complaints were being solicited from Ees under circumstances implying promise of favorable resolution of at least some of Ee grievances, and one major, longstanding grievance was in fact subsequently remedied; and solicitation of grievances was not negated by any clear expression from E that no promises were being made)

Bell Halter, Inc. 276 NLRB No. 136

(survey allegedly to ascertain Ee grievances, thereby implicitly promising to resolve them, not unlawful, where there was precedent for survey; its timing during U campaign was of no great significance since it would have been reasonable for E to conduct survey prior to U's filing of ptn when E already was aware of U activity; in reporting on survey to Ees, E's reference to *open door policy* showed it previously existed, making it improbable E would promise new policy; and E made no promise of any particular change to correct E-Ee communication problem)

Crest Industries Corp. 276 NLRB No. 067

(upon demand for recognition, and U's assertion that majority of Ees signed cards, E's president's asking *is this what you want*, not violative where U's representatives were present when poll was conducted, U agent had authorization cards in his hand and immediately offered to show them to E's president to confirm Ees' affirmative response to poll, and U agent's purpose in having Ees accompany him when he made demand for bargaining was to enable Ees to answer any questions E might have)

Southland Frozen Foods, Inc. JD-(NY)-78-86

[survey of Ees conducted for E by outside consulting firm and having primary purpose of soliciting Ee grievances not construed as interrogation and Bd's usual protective requirements not applicable, where there was no question in survey which sought to ascertain Ees' U sentiment; at any rate, in view of procedure in conducting survey and absence of other ULPs, survey was not coercive]

Southland Frozen Foods, Inc. JD-(NY)-78-86

[survey of Ees, having primary purpose of eliciting Ee grievances and conducted when qcr was pending because of unresolved objections to election, held not unlawful, where survey was administered during postelection period when active campaigning had long ceased and was conducted in context free of ULPs; in these circumstances, it cannot be concluded that survey had purpose of eroding Ee support for U]

Landmark International Trucks, Inc. v. N.L.R.B. 775 F.2d 148 (C.A. 6, Oct. 1985)

[E's otherwise noncoercive letter not rendered coercive by inclusion of E's request that it be notified of Ees' resignation from U, notwithstanding Bd's finding that E's request served no legitimate purpose]

5048-5000 Objective basis for doubting union's majority

5048-5000—Cont.

Tri-State Culvert Manufacturing, Inc. 280 NLRB No. 087
[poll to ascertain whether Ees desired U representation, conducted after Ee majority signed ptn renouncing support for U, not unlawful, where there was no evidence that E encouraged or suggested that anti-U Ee circulate ptn, and evidence did not support finding that such Ee's activities were carried out with either acquiescence, knowledge, or support of E; while circumstances surrounding anti-U Ee's activities created *suspicion* about E's improper involvement, mere suspicion or suggestion of impropriety cannot substitute for evidence]

Buez Carpet Yarns, Inc. 280 NLRB No. 004
[poll to provide proof of Ees' disaffection with U, not violation where it was result of Ee ptn, an independent objective basis for doubting U's majority status, its purpose of ascertaining truth of Ees' own claim was communicated to them, Ees were assured of no reprisal, and poll was conducted by secret ballot; E's failure to notify U had de minimis impact, and processing of E's ptn for election had placed U on notice of Ees' disaffection a month before]

5048-6700 Responsibility of employer shown by

5048-6740 Supervisors' participation in distribution or collection

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
]*petition* urging Ees to vote against U, distributed among Ees at E's grocery store for their signature, and thereby polling Ees in such manner as to reveal their individual sentiments with respect to U, unlawful, where E adopted ptn as its own by store manager's statement to Ee that *store was going around to pass around ptn for Ees who were against U to sign,* and by presenting ptn to Ee and telling him that with 2 more signatures E could win election)

5048-6780 Timing of employer canvass

5048-6780-1300 During organization campaign

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
]*petition* urging Ees to vote against U, distributed among Ees at E's grocery store for their signature, and thereby polling Ees in such manner as to reveal their individual sentiments with respect to U, unlawful, where E adopted ptn as its own by store manager's statement to Ee that *store was going around to pass around ptn for Ees who were against U to sign,* and by presenting ptn to Ee and telling him that with 2 more signatures E could win election)

5048-6780-3700 After election while objections or challenges are pending

Southland Frozen Foods, Inc. JD-(NY)-78-86
[survey of Ees, having primary purpose of eliciting Ee grievances and conducted when qcr was pending because of unresolved objections to election, held not unlawful, where survey was administered during postelection period when active campaigning had long ceased and was conducted in context free of ULPs; in these circumstances, it cannot be concluded that survey had purpose of eroding Ee support for U]

5051 ACTIONS BASED UPON RACIAL OR OTHER MINORITY GROUP CONSIDERATIONS

5051-0100 Generally

N.L.R.B. v. Vought Corporation - MLRS Systems Division 788 F.2d 1378 (C.A. 8, Apr. 1986)
[E warning Ee regarding his passing rumor to other black Ees that white Ee was being groomed for supervisory position over recently promoted black Ee and suggesting that black Ees meet with management regarding situation, unlawful, since Ee's remarks constituted protected concerted activity inasmuch related to group action concerning possible racial discrimination; thus Ee's motives irrelevant, and absent evidence his discussions disrupted production]

5054 AVOIDANCE OR ABANDONMENT OF RESORT TO ACT URGED OR REQUIRED BY EMPLOYER

5054-1300 Conditioning reinstatement on employee's not presenting grievances

Springfield Hospital 281 NLRB No. 076
[supervisor's threat to get even with Ee because he had engaged in protected concerted activity by signing petitions, violative]

Educational Broadcasting Corporation d/b/a WNET/Thirteen JD-(NY)-125-85
[violation]

5054-2500 Conditioning bargaining on withdrawal of charges

John Wanamaker Philadelphia 279 NLRB No. 140
[E's refusing to sign any agreement with U until U withdrew ULP charges, violative; further, E's informing Ees it would not sign a contract with U until ULP charges were withdrawn, violative]

5054-4300 Conditioning employment on refraining from attempting to enforce contract

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. 279 NLRB No. 073
[Ees who refused to go to work for company which had purchased E were unlawfully constructively discharged, where E had refused to bargain with U, declared it was going to go non-U, and Ees would lose benefits, since their employment conditioned on abandonment of their rights guaranteed by Act]

5054-4700 Conditioning employment on informing about union activities

T & T Machine Company, Inc. 278 NLRB No. 139
[asking Ee *who had called U?* and offering to meet Ee *anywhere at anytime to receive information about U organizing drive,* adding that such information would enable Ee to keep his job, unlawful]

5054-6300 Conditioning continued employment on refraining from engaging in union activities

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center 280 NLRB No. 005
[E's administrator informing Ees during decertification ptn drive that their contined employment was conditioned upon their resigning from U, unlawful]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. 279 NLRB No. 073
[Ees who refused to go to work for company which had purchased E were unlawfully constructively discharged, where E had refused to bargain with U, declared it was going to go non-U, and Ees would lose benefits, since their employment conditioned on abandonment of their rights guaranteed by Act]

5054-6500 Conditioning employment on promise not to engage in protected activities

Central Broadcast Company 280 NLRB No. 056
[telling laid-off U supporter that new hiring policy conditioned employment on applicant's agreement not to become involved in U activity, violation]

Montgomery Elevator Company 278 NLRB No. 122
[E's superintendent informing nonmember Ee that U had met with officials of E and that U was challenging right to work law and specifically challenging Ee's job and that Ee getting out of U would cost Ee his job, unlawful]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047
(asking applicant for employment about his feelings on unionization at initial interview, informing applicant there was U organizing drive going on but not to pay any attention to solicitors, and subsequently asking applicant how he would vote in election to determine whether there would be U representation, and upon his reply that he would vote *No,* informing applicant he was hired, violative)

5060 AVOIDANCE OR REPUDIATION OF UNION URGED OR REQUIRED BY EMPLOYER

5060-0800 Inducing abandonment of strike

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011
[supervisor unlawfully solicited striking Ees' resignations from U since his conversations with Ees went beyond providing information regarding avoiding fines by resigning and conditioned return to work on resignation from U, and where supervisor evidenced continuing interest in knowing whether or not nurses intended to resign and return to work, and in some instances offered assistance in effecting resignation that was not merely ministerial]

Fox-Art Theatres, Inc. 278 NLRB No. 115
[offer of raise in wage rate, to discourage Ees participation in anticipated strike resulting from recent reduction in wages, unlawful]

Government Employees (Office Employees, Local No. 2) 278 NLRB No. 055
[offer to Ee of ability to use current year's leave and *advance* of subsequent year's leave as inducement to abandon strike, violative]

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual 274 NLRB No. 115
(promising strikers better benefits if they returned to work and helped E complete his contract, violative)

5060-1600 Abandonment of incumbent union for membership in rival union

Hydro-Air Equipment, Inc. d/b/a Lanco 277 NLRB No. 012
(threatening Ees with discharge if Ees did not sign U authorization cards for U, unlawful)

5060-2000 Abandonment of outside union

Food Concepts, Inc. **JD-(NY)-36-85**
(when E closed down one of its 2 locations, each represented by different U, and transferred those Ees to remaining location, a merger of units occurred and qcr existed. E violated Act when he recognized and applied contract of U that represented original Ees at location to the newly moved Ees, and also when supervisor threatened transferred Ees with discharge if they did not join other U)

5060-2500 Assistance in effecting resignation

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[no violation where E's manager in response to request by Ee for aid in getting her U authorization card back from U gave her paper and envelope and instructed her to see another Ee, who helped her compose letter to U, not unlawful, since aid was minimal and at Ee's request and manager did not follow up to ascertain if Ee requested card back]

Mississippi Chemical Corporation **280 NLRB No. 046**
[Ee's execution of memo drafted by supervisor renouncing Ee's U support, not unlawful, where Ee voluntarily w/o any kind of solicitation decided to renounce U; supervisor's suggestion that Ee's decision be put into writing was not a demand; and supervisor's willingness to make changes in drafted document demonstrated both its voluntary nature and absence of any design by supervisor to utilize specific language (no exceptions)]

Eastern States Optical Co., Inc. **275 NLRB No. 058**
(E's attorney did not render unlawful assistance to Ees in preparation of decertification ptn where Ees contacted attorney after ptn initiated, neither attorney nor E played any role in Ees' decision to initiate ptn and E did not solicit any signatures. Attorney supplying Ees with unit description, names of E's officials necessary to complete Bd ptn, and statement that 6 signatures probably sufficient for Bd's ptn was nothing more than editorial or ministerial aid)

5060-3300 Inducing abandonment of union by granting benefits or making concessions

Middletown Hospital Association **282 NLRB No. 079**
[discontinuance of rule under which Ees took off from work w/o pay when there was low work load, and announcement of rule's discontinuance, unlawful, where E's action took place in midst of election campaign and was taken to induce Ees to refrain from supporting U]

Central Broadcast Company **280 NLRB No. 056**
[radio station program director's telling one announcer that sales manager had recommended that he be givne back his morning show and *a little raise* and sales manager's asking another announcer what it would take to get things *back to normal*, whether it was a matter of money, violations in view of U activity going on]

Stop N' Go Inc. **279 NLRB No. 052**
[grant of vacation pay to induce abandonment of U support, violation]

Rood Industries, Inc. **278 NLRB No. 026**
[implied promise of improvements in attendance point system, and implementation of such promise, unlawful, in view of E's hostility to U, timing of announcement when U's representation was still pending; beneficial aspects of improvements to Ees and fact that E's conduct was designed to suggest to Ees that source of benefits conferred was also source from which future benefits must flow and which may dry up if not obliged, and that Ees were unlikely to understand that E was holding out promise as inducement for them to reject U]

Ednor Home Care, Inc. **276 NLRB No. 042**
(violation where E's owner solicited grievances and promised benefits, told Ees they could resolve problems between themselves w/o U, and proposed establishment of grievance committee, notwithstanding E's owner did not tell Ees it would be futile to bring in U)

Budget Rent A Car of Washington, Inc. **276 NLRB No. 032**
(giving Ees assurances that their complaints and grievances would be redressed in order to derail U organization, violative)

N.L.R.B. v. Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **785 F.2d 46 (C.A. 2, Mar. 1986)**
[successor's attempt to induce U members to forego protections of U contract by renouncing membership in U and releasing successor from any claims of U or its members against it, violation]

5060-4100 Benefits conditioned on abandonment of union

Toyota of San Francisco **280 NLRB No. 093**
[language in brochure describing E's health plan that stated plan was available to any Ee of group who was not in occupation classification represented by U, violative of Section 8(a)(1) since it penalizes represented Ees, notwithstanding plan actually available to represented Ees]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[supervisor at nursing home informing Ee, in response to Ee's question about unionized nursing homes, that after U at another one of E's facilities had been decertified Ees at that facility had received raises, not unlawful, since essentially merely observation made by supervisor in response to Ee's question, and any coercive implication dissipated by supervisor subsequently informing Ee that this was *one example and not representation that same thing would happen at facility at which Ee worked*]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[supervisor informing Ees that if Ees were to get rid of U, they would be able to get better deal with E on their own, and informing Ee that ptn was being circulated to decertify U, unlawful, since constituted promise of benefits if Ees would reject U]

United Artists Eastern Theatres, Operating Valentine Theatre **275 NLRB No. 025**
(telling Ee who was active U supporter that a promotion could be arranged if he would drop everything with the U, violative)

Tomco Carburetor Company **275 NLRB No. 001**
(promising Ees health insurance coverage if they abandoned U, violative)

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. **JD-(ATL)-61-86**
[supervisor's promise of wage increase if Ees did not resign U cards following finding that original cards had been tainted by supervisory involvement, unlawful]

John's Lumber & Hardware Company **JD-199-86**
[E offering directly to Ees wage increase, and more valuable total package than it had implemented after expiration of contract if Ees would petition to decertify U, w/o offering increase to U, unlawful]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. **JD-(NY)-34-86**
[asking unlawfully locked out U adherent if he would forget U if E retracted recently made 10% pay cut, unlawful]

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**
[promising Ees wage increase or to pay them for any time they had lost if they would abandon or renounce U, and telling Ee that if he would get rid of U, E would give him check in any amount, unlawful]

Medallion Kitchens, Inc. v. N.L.R.B. **806 F.2d 185 (C.A. 8, Nov. 1986)**
[E's statements that it could give Ees raises if it were not for U, not unlawful, since statements vague, were not made with intent to coerce Ees, and further, qualified with condition that Ees perform well, and raises not conditioned on Ees' refusal to support U]

5060-4400 Benefits conditioned on not joining strike

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[supervisor asking nurses aide if she intended to strike not coercive and unlawful, since necessary to adequately staff facility during strike, but supervisor following question by suggesting to nurses aide that she would be discharged if she went out on strike, especially in view of her probationary status, unlawful]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[telling Ees if they went out on strike and later wanted to return to work or if they continued towork during anticipated strike, it would be necessary for them to first resign from U, violative]

Fox-Art Theatres, Inc. **278 NLRB No. 115**
[offer of raise in wage rate, to discourage Ees participation in anticipated strike resulting from recent reduction in wages, unlawful]

5060-4700 Continued employment conditioned on abandonment of union

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[telling applicant for employment that E was going to be non-U, requesting that applicant withdraw from U and show withdrawal card to E and after hiring applicant, readvising applicant that if he intended to remain with E, he had to obtain withdrawal card and show it to E, violative]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[E's administrator informing Ees during decetification ptn drive that their contined employment was conditioned upon their resigning from U, unlawful]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[telling Ees if they went out on strike and later wanted to return to work or if they continued towork during anticipated strike, it would be necessary for them to first resign from U, violative]

5060-4700—Cont.

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**
[telling Ees of predecessor E that if they got a withdrawal card from U they would be guaranteed a job with successor E, violative]

5060-5000 Reemployment conditioned on abandonment of union

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[telling applicant for employment that E was going to be non-U, requesting that applicant withdraw from U and show withdrawal card to E and after hiring applicant, readvising applicant that if he intended to remain with E, he had to obtain withdrawal card and show it to E, violative]

Central Broadcast Company **280 NLRB No. 056**
[telling laid-off U supporter that new hiring policy conditioned employment on applicant's agreement not to become involved in U activity, violation]

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**
[telling Ees of predecessor E that if they got a withdrawal card from U they would be guaranteed a job with successor E, violative]

The Gateway Theatre Corporation d/b/a Senator Threatre, Capitol Hill Cinemas **277 NLRB No. 186**
[informing Ee *due to your U brother, you no longer have a job. You and (another Ee) are two good people. I could use you outside U,* unlawful since E is conditioning reemployment on resignation from U]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. **JD-(NY)-34-86**
[telling unlawfully locked out U adherents that they could get back to work if they signed paper disavowing U, unlawful]

Abe Ocks, An Individual, d/b/a Kingform Cap Company **JD-188-85**
(conditioning offers of employment upon Ees' refusal to join or support the U, violative)

5060-5200 Employment conditioned on applicant's or employee's lack of union sentiments

Central Broadcast Company **280 NLRB No. 056**
[telling laid-off U supporter that new hiring policy conditioned employment on applicant's agreement not to become involved in U activity, violation]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(asking applicant for employment about his feelings on unionization at initial interview, informing applicant there was U organizing drive going on but not to pay any attention to solicitors, and subsequently asking applicant how he would vote in election to determine whether there would be U representation, and upon his reply that he would vote *No,* informing applicant he was hired, violative)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(telling Ee that to keep his job as assistant to manager he would have to be all company, and if he was going to be all U he would have to go back to his former job held unlawful ultimatum where Ee's job as assistant manager was not supervisory)

5060-6300 Solicitation of grievances

Baddour, Inc. **281 NLRB No. 084**
[supervisor's offer of assistance to Ee, not violation, notwithstanding supervisor's unlawful interrogation of Ee about his feelings about U, where offer was made following inquiry as to how Ee's daughter was doing and appeared in that context to have been offer of personal assistance rather than solicitation of work-related grievances]

Soulectro Corporation **280 NLRB No. 015**
[during meeting E asking assembled Ees what the problems are and Ee replying layout, pension plans, profit sharing, and a credit union, to which E responded there was no reason why E could not have pension plan or credit union, violative, as conduct involved solicitation of grievances during U organizational campaign]

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors **279 NLRB No. 068**
[E's foreman telling group of Ees he was disappointed they took their complaints to U steward because it was a morale problem, steward could not help them and from then on, they should bring their problems to him, violative]

Stop N' Go Inc. **279 NLRB No. 052**

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[solicitation of grievances, violation and interference]

Uniontown Hospital Association **277 NLRB No. 144**

Hunter Douglas, Inc. **277 NLRB No. 123**
(E's use of Ee committee formed and dominated by E for purpose of soliciting grievances, and correction of grievances pursuant to suggestions received, unlawful)

National Micronetics, Inc. **277 NLRB No. 095**
(soliciting Ee grievances during campaign so as to adjust them, violation and interference)

Westinghouse Electric Corporation **277 NLRB No. 016**
(implementation of small group meetings viewpoint with plant manager where Ees could voice their grievances, unlawful, as this was grant of benefit to Ees to discourage their resort to unionization as means of obtaining more effective labor-management communications, notwithstanding E held monthly production meetings where questions were raised since viewpoint meetings differed in format and objective, resulted in changes to working conditions and initiated after start of U campaign; however, charge of solicitation of grievances at viewpoint meetings dismissed as this was in keeping with established practice at production meetings)

Bell Halter, Inc. **276 NLRB No. 136**
(survey allegedly to ascertain Ee grievances, thereby implicitly promising to resolve them, not unlawful, where there was precedent for survey; its timing during U campaign was of no great significance since it would have been reasonable for E to conduct survey prior to U's filing of ptn when E already was aware of U activity; in reporting on survey to Ees, E's reference to *open door policy* showed it previously existed, making it improbable E would promise new policy; and E made no promise of any particular change to correct E-Ee communication problem)

Budget Rent A Car of Washington, Inc. **276 NLRB No. 032**

PYA/Monarch, Inc. **275 NLRB No. 167**
(no violation, where during U campaign vice-president asked Ees if they *had any problems impeding production,* and in response Ees expressed need for various new supplies and equipment, and E subsequently supplied equipment a month before schedule as purchases of equipment underway before U campaign started)

Okun Brothers Shoe Store, Inc. **275 NLRB No. 145**
(questioning of Ees about their problems by members of consulting firm hired by E in response to U campaign, unlawful and objectionable solicitation of grievance where it carried inference of implicit promise to correct problems, and consultants suggested Ee handbook as specific solution to problems)

University of Richmond **274 NLRB No. 182**
(supervisor's telling Ee that she had heard that Ee was upset and was concerned and wanted to know what was wrong, not unlawful solicitation of grievances with promise of redress where Ee testified that supervisor made no promises and expressed only an inability to help)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[soliciting Ee grievances and impliedly promising to remedy them by soliciting Ees to form Ee negotiation committee to draft contract for E's approval, appointing representative to negotiate with committee, then refusing to sign contract because committee had failed to prevent holding of U representation election, violation]

Robert W. Wise, d/b/a Robert W. Wise Cabinetry **JD-(SF)-157-85**
(asking Ees to write down what they thought they were worth and stating that they would probably be receiving that amount, violative)

Easthampton Electrical Services, Inc. **JD-85-85**
(E's president asking Ee who had arrived late for general meeting of Ees if Ee had any problems with job materials, trucks or anything else, where such inquiry had been made at meeting and E's past practice had been to hold regular twice-a-year meetings for purpose of soliciting Ee grievances)

5060-6900 Solicitation of expression of opposition to union

PYA/Monarch, Inc. **275 NLRB No. 167**
(general manager unlawfully solicited Ee to encourage other Ees to vote against U, notwithstanding Ee went to manager's office on his own initiative to discuss U, Ee did not initiate discussion on campaigning for E, nor did he volunteer to campaign)

Fan-Sy Productions, Inc. **JD-(NY)-49-85**
(E asking Ee to sign a statement declaring he did not wish to be represented by U which was involved in organizing campaign at E's plant, violative)

5060-7500 Solicitation of repudiation of union

Texas Bus Lines, Inc. **277 NLRB No. 075**
(encouraging Ees to form an Ee committee and soliciting them to disassociate themselves from their exclusive representative, violation)

Walter Garson, Jr & Associates **276 NLRB No. 137**
(E gave no unlawful assistance or support to Ees in filing anti-U ptn letter and E merely advised Ees to communicate with NLRB and did not assist in

5060-7500—Cont.

any way with formulation of ptn; nor was E's permitting Ees to deliberate and prepare ptn on work time, providing assistance in communicating with absent Ees and transportation to NLRB office, unlawful, since no more work time given for this effort than for other solicitations, and all such assistance was merely ministerial)

5060-7550 Decertification petition

Inner City Broadcasting Corporation **281 NLRB No. 162**
[encouraging Ee to seek to decertify U, unlawful]

Architectural Woodwork Corporation **280 NLRB No. 108**
[telling Ees that it was up to them to file decertification ptn, in wake of Bd's dismissal of E's RM ptn, and offering to supply Bd agent's telephone number, violation where E had previously told them that it was losing contracts to non-U Es and it would not bargain with U and implicated that some Ees would have their wages reduced by U contract]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[E's administrator informing Ees during decetification ptn drive that their contined employment was conditioned upon their resigning from U, unlawful]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[notwithstanding E's no solicitation rule, rule not applied disparately by allowing decertification ptn to circulate as E also allowed solicitations among Ees for charitable and private business purposes. Further, ptn not tainted either as E did not assist in formulation and circulation of ptn]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[U decertification ptn tainted and E's withdrawal of recognition and unilateral changes in conditions of employment in reliance thereon, unlawful, where e had made statements informing Ees that in order to keep working during anticipated strike they would have to resign from U, and in view of small majority of Ees who signed decertification ptn]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[supervisor asking Ee how she felt about communications between herself and U, speaking of E's side regarding U representation and referring to circulation of anti-U ptn, unlawful]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[E unlawfully involved itself with decertification ptn beyond permissible bounds, where E's attorney informed Ee who had expressed dissatisfaction with U what must be done if one wanted to circulate decertification ptn, thereby instigating ptn, giving Ee NLRB's telephone number, supervisor committed E to keeping names on ptn confidential, read over proposed ptn and indicated his approval, permitted use of E's equipment to copy ptn, and circulation of ptn on E's premises and time, and concurrently E unlawfully interrogated Ees and promised Ees benefits if they rejected U]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[*Ministerial acts by E that help Ees in processing decertification ptn do not necessarily violate Act. However, even ministerial acts can be unlawful where they are done in context which is not free of coercive conduct. Where E instigates and promotes decertification ptn, or another U repudiation document, it interferes with rights of Ees under Section 7 of Act*]

Eastern States Optical Co., Inc. **275 NLRB No. 058**
(E's attorney did not render unlawful assistance to Ees in preparation of decertification ptn where Ees contacted attorney after ptn initiated, neither attorney nor E played any role in Ees' decision to initiate ptn and E did not solicit any signatures. Attorney supplying Ees with unit description, names of E's officials necessary to complete Bd ptn, and statement that 6 signatures probably sufficient for Bd's ptn was nothing more than editorial or ministerial aid)

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**
(manager's introduction, during discussion with Ee in manager's office about Ee morale, subject of U's decertification to explain how it could be done and what the effects would be, unlawful, since E had no prior knowledge of any decertification activity going on, it was not stuff of innocuous conversation but rather, in light of parties, context, subject matter, and text of conversation, conveyed implication that E was using his leverage to influence Ee on question of U representation, and thereby constituted both unlawful interrogation and solicitation)

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**
(E's statements to U stewards telling them he was not in favor of Us and referring to value of dealing directly with Ees and company U and bringing up matter of U decertification held unlawful solicitation to abandon U and to lead Ees to believe continued support of U was futile)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's president suggesting Ee file decertification ptn, unlawful, where suggestion made at same time they were discussing Ee's new wage rates, and Ee was subsequently made supervisor and given wage increase, and in view of fact E had given unlawful support to earlier untimely filed decertification ptn)

Amar-Cal Industries, Inc. **274 NLRB No. 148**
(E's furnishing Ee with blank decertification ptn for Ee at Ee's request and giving Ee address where completed ptn should be mailed, not violative)

Weisser Optical Company **274 NLRB No. 143**
(supervisor's telling Ee that *it was getting close to this time* referring to Bd's *open period* when decertification ptn can be filed, telling Ee that E's president was *trying to get things started* and informing Ees during a meeting that he thought Ees were mature enough to work out differences w/o a *third party*, held unlawful encouragement of decertification ptn and withdrawal of recognition based on ptn violative; E's unsolicited involvement with ptn was far more than ministerial aid since idea of ptn was implanted in Ees' mind by E, thus tainting ptn and E's good-faith doubt of U's majority status)

Choctawhatchee Electric Cooperative, Inc. **274 NLRB No. 084**
(E's supervisor's encouragement of circulation of ptn among its Ees to decertify U by unlawfully interrogating and threatening Ee and promising raises to Ees, violative)

John's Lumber & Hardware Company **JD-199-86**
[E offering directly to Ees wage increase, and more valuable total package than it had implemented after expiration of contract if Ees would petition to decertify U, w/o offering increase to U, unlawful]

Duct-O-Wire Company **JD-(ATL)-3-86**
[E did not render unlawful assistance to Ees in preparation of decertification ptn where E played no role in Ees' decision to initiate ptn and E did not solicit any signatures; E's actions in supplying Ees with 4-page package discussing rights on decertification were nothing more than ministerial aid]

New Galax Mirror Corporation **JD-475-84**
(E's telling Ees it would be in their best interest not to have anything to do with the U and to sign a decertification ptn, violative)

5060-7575 Deauthorization petition

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(soliciting Ee to organize and get Ees to sign a ptn to keep the U out and stop the Bd election, vioaltive)

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(solicitation of Ees' drafting and signing document which stated that they would resolve their own problems w/o the U and would ask the U to *beg out* from its demand for recognition, violative)

5060-8300 Solicitation of resignation from union

Toyota of San Francisco **280 NLRB No. 093**
[violation, where in reply to Ee's question as to what Ees could do to avoid strike, E's president replied that Ee could resign from U or consult attorney about process of resigning from U, since he was not merely advising Ees of statutory right, but suggesting resignation]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[E's administrator informing Ees during decetification ptn drive that their contined employment was conditioned upon their resigning from U, unlawful]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**
[telling Ees if they went out on strike and later wanted to return to work or if they continued towork during anticipated strike, it would be necessary for them to first resign from U, violative]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[supervisor unlawfully solicited striking Ees' resignations from U since his conversations with Ees went beyond providing information regarding avoiding fines by resigning and conditioned return to work on resignation from U, and where supervisor evidenced continuing interest in knowing whether or not nurses intended to resign and return to work, and in some instances offered assistance in effecting resignation that was not merely ministerial]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[*E does not violate Act merely by providing ees with information on how to resign from U as long as E makes no attempt to ascertain whether Ees will avail themselves of this right nor offers any assistance or otherwise creates situation where ees would tend to feel peril in refraining from such revocation*]

Peoples Gas System, Inc. **275 NLRB No. 075**
(E's sending letters to Ees requesting that they inform E of decisions to revoke dues-checkoff authorizations and to resign from U, not violative where bargaining agreements provided for short annual *escape* period during which Ees could revoke checkoff authorizations and required that notice of revocation must be given to both E and U; further, letters assured Ees that whether they remained U members or resigned would make no difference in terms and conditions of employment; and E was actually responding to Ee inquiries in providing them with information about U resignation)

5060-8300—Cont.

Eastern States Optical Co., Inc. 275 NLRB No. 058
(no violation where E vice president allowed Ee to sign decertification ptn; vice president did nothing more than accede to Ee's voluntary request to sign ptn lawfully in his possession which had already served as basis for withdrawal of recognition from U)

Eastern States Optical Co., Inc. 275 NLRB No. 058
(no violation where E vice president allowed Ee to sign decertification pta; vice president did nothing more than accede to Ee's voluntary request to sign ptn lawfully in his possession which had already served as basis for withdrawal of recognition from U)

5060-8500 Advising Ees not to sign authorization cards

Adco Metals, Inc. 281 NLRB No. 172
[E informing Ees in writing that they could expect to be subpoenaed as witnesses in Federal proceeding if they signed U authorization cards, unlawful, since deemed coercive as was threat that identity of signers would be disclosed, and absent any issues likely to be litigated concerning signing of U cards; neither U animus nor falsity of statement not prerequisite for finding of violation]

Williamson Piggly Wiggly, Inc. 280 NLRB No. 125
[violation, where E's manager asked Ee's grandfather-in-law to ask Ee not to sign U card, and when Ee in response to his request informed her grandfather-in-law that she had already signed card, he informed Ee that E would never let U in and she might as well start looking for another job. Since Ee's grandfather-in-law was agent of E acting on E's express behest]

Southwire Company 277 NLRB No. 043
(E's speeches and notices stating that U authorization cards might be disclosed to it and admonishing Ees not to sign cards unless they knew what it would mean to them, their families and fellow Ees, violative where speeches and notices were made against background of E's history of violating Act and in immediate *context of pervasive violations in instant case.* In T3context, E's comments are a *rather pointed hint* that it would similarly retaliate against Ees who signed cards)

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(E distributing document which advised Ees not to sign U cards unless they were sure they understood what it meant and its effect on them, and stated that, after Bd certification of U, company must deal only with U concerning wages, hours, and working conditions of all Ees, regardless of whether Ee had singed card or joined U, not unlawful, since *statements made concerning self-representation were nothing more than lawful reminder of principle of majority rule which is central to national policy of fostering collective bargaining*)

5060-8700 Solicitation of revocation of dues checkoff authorizations

Peoples Gas System, Inc. 275 NLRB No. 075
(E's sending letters to Ees requesting that they inform E of decisions to revoke dues-checkoff authorizations and to resign from U, not violative where bargaining agreements provided for short annual *escape* period during which Ees could revoke checkoff authorizations and required that notice of revocation must be given to both E and U; further, letters assured Ees that whether they remained U members or resigned would make no difference in terms and conditions of employment; and E was actually responding to Ee inquiries in providing them with information about U resignation)

United Technologies Corporation 274 NLRB No. 087
(E's issuing written notifications to Ees, setting forth in accurate manner, contractual rights of Ees to revoke their dues checkoff authorizations during escape periods and their concomitant right to terminate their U membership, not violative, notwithstanding E stated its preference for open shop, where notifications to Ees as well as to supervisors did not contain any threats or promises and were therefore non-coercive on their face; communications expressly stated that Ees was free to choose whether to retain their U membership and their dues checkoff authorizations)

5060-8900 Solicitation of formation of employee grievance or bargaining committee

Hunter Douglas, Inc. 277 NLRB No. 123
(violation, where E's manager suggested formation of Ee committee, during U campaign, to discuss problems and remedies, meetings of committee were held on company time in company cafeteria, with agenda set by manager)

Texas Bus Lines, Inc. 277 NLRB No. 075
(encouraging Ees to form an Ee committee and soliciting them to disassociate themselves from their exclusive representative, violation)

Walter Garson, Jr & Associates 276 NLRB No. 137
(violation, where E encouraged Ees to form grievance committee after U demand for recognition and had also solicited complaints, promised pay raise, improved medical insurance, sick leave, and holiday benefits, notwithstanding E stated he could make no promises as to medical insurance, where he made no disclaimer with regard to grievance committee)

Walter Garson, Jr & Associates 276 NLRB No. 137
(grievance committee meeting not unlawful notwithstanding encouragement of grievance committee formation held unlawful, where only meeting of committee held and no intimation given E would remedy any complaints)

Edner Home Care, Inc. 276 NLRB No. 042
(violation where E's owner solicited grievances and promised benefits, told Ees they could resolve problems between themselves w/o U, and proposed establishment of grievance committee, notwithstanding E's owner did not tell Ees it would be futile to bring in U)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86
[soliciting Ee grievances and impliedly promising to remedy them by soliciting Ees to form Ee negotiation committee to draft contract for E's approval, appointing representative to negotiate with committee, then refusing to sign contract because committee had failed to prevent holding of U representation election, violation]

5060-9100 Solicitation of withdrawal of union designation cards

H. Treffinger Repair Services, Inc. 281 NLRB No. 085
[supervisor's request that Ee give him his unsigned authorization card, unlawful, where, except for E, supervisor held top position at plant and sought information that could be used against Ee, and E had history of hostility to U]

Rockwell International Corp. 278 NLRB No. 013
[E merely giving Ees sample letter to use for purpose of revoking their U authorization cards, not unlawful, since E may lawfully inform Ees of their right to revoke authorization cards even if Ees have not solicited such information as long as E makes no attempt to ascertain whether Ees avail themselves of this right or offers any assistance or otherwise creates impression that Ees are in peril by refraining from revoking their cards]

Marion Center Supply, Inc. 277 NLRB No. 026

University of Richmond 274 NLRB No. 182
(E's conducting meeting of Ees and furnishing them with letters to RD requesting return of their authorization cards, not unlawful solicitation to withdraw authorization cards where Ees initiated idea of withdrawal w/o suggestion from E, and E told them that they could do as they wished with the letters, and E would not monitor their actions)

5062 REFUSAL TO RECOGNIZE AND/OR BARGAIN

Sierra Hospital Foundation 274 NLRB No. 056
(E unlawfully threatened to refuse to bargain in good faith when supervisor stated that hospital administrator would not agree to anything U asked for in negotiations, and that there would be a strike)

Dextra Industries, Inc. 273 NLRB No. 204
(violation where E refused to negotiate new agreement with U and thereafter terminated its shop Ees to avoid its bargaining obligation with U)

5066 GOING OVER HEADS OF REPRESENTATIVES

5066-6300 Denying plant access to union

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121
[E's refusal to admit U representative to plant and on another occasion ordering her off premises and following her around plant and making abusive remarks, unlawful]

5066-7000 Undermining authority of representatives

5066-7025 Bargaining directly with employees

Transport Service Company 282 NLRB No. 011
[E's meeting directly with its Ees w/o notice to U to convince unit members to accept mid-term concessions under contract, violation]

Toyota of San Francisco 280 NLRB No. 093
[E suggesting to Ee that if Ees forfeited coverage under U health and welfare programs, E would open IRAs, unlawful, since amounted to attempt to deal directly with Ees, thereby bypassing U, even if it did not constitute unlawful *promise* of benefit]

M & C Vending Co., Inc. and Its Wholly Owned Subsidiary Ada Automatic Sales Company, Inc. 278 NLRB No. 047
[violation, where E bypassed U and dealt directly with Ees by soliciting Ees' opinions regarding pension fund, since *E may not seek to determine for himself the degree of support, or lack thereof, which exists for stated position of Ees' bargaining agent*]

Alamo Cement Company 277 NLRB No. 034
(E's telling two individuals found Ees herein in spite of E's having changed their job title to supervisor that, if they wanted to become part of bargaining unit, E could arrange it, too vague to constitute direct dealing with Ees, as

5066-7025—Cont.

alleged, in absence of specific promises of change or negotiation or follow-up on conversation by any of the parties)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(E informing Ees that E was suffering from serious financial problems, asking Ees for suggestions as to how E could save money, urging Ees to persuade U to *move off a dime* on E's bargaining proposals, and informed Ees that if Ees went non-U E would give pay increases, equal or better health benefits than U offering, financial assistance to Ees who wished to purchase own trucks, but if U refused to accept E's proposals, E would operate non-U, unlawful; statements not predictions of economic consequences protected by Sec. 8(c) inasmuch as E did not substantiate financial losses and in view of other contemporaneous illegal statements)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's president informing Ees he would be willing to subcontract with them if U were decerrtified, showing Ee decertification ptn and seeking to induce Ee to decertify U, unlawful, notwithstanding Ee originated idea of subcontracting)

Hawthorn Mellody, Inc. **275 NLRB No. 055**
(no unlawful bypassing of U and dealing directly with Ees where E met with Ees for purpose of getting acquainted with E's new general manager and only after Ee raised issue of overtime did E discuss it)

John's Lumber & Hardware Company **JD-199-86**
[E offering directly to Ees wage increase, and more valuable total package than it had implemented after expiration of contract if Ees would petition to decertify U, w/o offering increase to U, unlawful]

5066-7050 Offering employees better terms than offered to union

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[supervisor informing Ees that if Ees were to get rid of U, they would be able to get better deal with E on their own, and informing Ee that ptn was being circulated to decertify U, unlawful, since constituted promise of benefits if Ees would reject U]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[supervisor informing Ee that E was ready to talk with them about wages and working conditions, that Ees were foolish to continue to let U represent them, that E was ready to give Ees better deal than U was trying to get for them, unlawful]

John's Lumber & Hardware Company **JD-199-86**
[E offering directly to Ees wage increase, and more valuable total package than it had implemented after expiration of contract if Ees would petition to decertify U, w/o offering increase to U, unlawful]

5066-7077 Failure to checkoff and remit dues and fees

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(E's failure and refusal to forward dues withheld from Ee pay checks to U in violation of contract, unlawful)

M.F. Enterprises, Inc. d/b/a Gopher Restaurant **JD-417-84**
(E's failing to deduct U dues and forward to U, unlawful)

5066-8400 Where initiative is employee's

AAL, Inc., d/b/a River Oaks Nursing Home **275 NLRB No. 012**
(discharge of 2 (U) unit Ees because of their *walkout* over E's staffing proposals not violative, since facts establish walkout occurred w/o prior U knowledge and was not in support of policies and actions theretofore taken by U since U had decided against proffering contract proposal for specific staffing of aides, and U agent did not avail himself of opportunity at meeting to discuss walkout to join in with demands of dischargees for specific staffing of aides)

5072 INTERFERENCE WITH UNION OR COLLECTIVE ACTIVITIES

5072-0200 Interference with access to union

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(prohibiting Ees from talking with U organizers or with each other about U, or even frequenting bars where U Ees drank unlawful)

Tomco Carburetor Company **275 NLRB No. 001**
(threatening to discharge Ee for seeking U's help in obtaining health insurance, violative)

Borden Inc. **JD-(SF)-007-86**
[it is tendency to interfere with Ee receipt of U literature which is coercive rather than actual effect of such conduct]

Northline Bus Center, Inc. **JD-(ATL)-41-85**
(news bulletin to Ees edited, reviewed, and printed by E, unlawful, where bulletin raised question whether Ees would be fired for attending U meeting and then clearly conveyed message to Ees that any Ee seeking assistance from U would be considered disloyal to E and implicitly threatened Ees with discharge if they engaged in U activities)

5072-0400 Ordering union representative out of plant or off jobsite

Fairmont Hotel Company d/b/a The Fairmont Hotel **282 NLRB No. 027**
[hotel refusing to permit non-Ee U representatives to continue to handbill for area standards for Ees of one of hotel's suppliers on hotel's private property near its main entrance, not unlawful, since herein E's property rights outweighed U's Section 7 right to inform public regarding lack of area standards, where activity at hotel's entrance increased possibility of theft of luggage, tort liability, and congestion and litter, atmosphere expected by guests violated, hotel had no interest in economic success of E with which U had dispute, nor was there vital link to Ees located on hotel's property]

Springfield Hospital **281 NLRB No. 076**
[no violation where E sought to arrest U organizer for holding meeting in E's parking lot as there was no showing that E had uniformly permitted non-Ees to congregate for any purpose in its parking lot and had singled out U organizer and his organizing effort for police action. Fact E tolerated U organizer's presence along outer periphery of lot did not entitle him to freely pursue his organizing activity freely on premises]

Crest Industries Corp. **276 NLRB No. 067**
(E's threatening to call police if U agents did not leave its premises, not violative where there was no showing that U lacked alternative means of communicating with Ees, and balance of conflicting interests must be struck in favor of E's private property rights)

5072-0500 Disclosure of employees who signed cards

Adco Metals, Inc. **281 NLRB No. 172**
[E informing Ees in writing that they could expect to be subpoenaed as witnesses in Federal proceeding if they signed U authorization cards, unlawful, since deemed coercive as was threat that identity of signers would be disclosed, and absent any issues likely to be litigated concerning signing of U cards; neither U animus nor falsity of statement not prerequisite for finding of violation]

Benmit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[threatening to find out who signed U authorization cards, violation]

5072-0800 Bribery

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(E's telling Ee that he would pay money to keep U from organizing its Ees, violative)

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**
(successor E's bribing predecessor's Ees to quit and refusing to rehire them so as to eliminate U majority and bargaining obligation, violative)

Bonanza Sirloin Pit **275 NLRB No. 54**
(bribing Ee with monetary gift to obtain Ee's support pending Bd's R election, violative)

Storall Manufacturing Company, Inc. **275 NLRB No. 039**
(promising Ees financial rewards if they ceased their U activities, violative)

5072-0900 Removal of employees from bargaining unit

Zemco Manufacturing Company **JD-446-84**
(E's engaging in scheme to falsely title five Ees as supervisors to prevent them from supporting U, to provide pretext to discharge them if they did, and to deter other Ees from supporting U, violative)

5072-1100 Influencing strike vote or action

Medallion Kitchens, Inc. v. N.L.R.B. **806 F.2d 185 (C.A. 8, Nov. 1986)**
[supervisor informing Ees one week before strike vote *if you guys go on strike, U is not coming back*, unlawful]

5072-1300 Refusing to hire applicants because of prior union adherence or activity

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(supervisor's telling applicant for employment that he did not believe applicant could be hired because he was active on behalf of U, unlawful)

5072-1500 Solicitation of opposition to union

The Hearst Corporation, San Antonio Light Division **281 NLRB No. 113**
[where E was found to have unlawfully tainted decertification ptn by various 8(a)(1) conduct including specific remarks made to some Ees to undermine support for U, it was no defense that E produced Ee witnesses that had never heard E's unlawful remarks since it was fair to presume some of E's remarks were disseminated among Ees; E is a wrongdoer who must bear

5072-1500—Cont.

responsibility for consequences that flow from unlawful conduct and bears the burden of disentangling consequences from which it is chargeable from those which it is not]

Central Washington Health Services Association d/b/a Central Washing Hospital 279 NLRB No. 011
[supervisor asking Ee how she felt about communications between herself and U, speaking of E's side regarding U representation and referring to circulation of anti-U ptn, unlawful]

Central Washington Health Services Association d/b/a Central Washing Hospital 279 NLRB No. 011
[*Ministerial acts by E that help Ees in processing decertification ptn do not necessarily violate Act. However, even ministerial acts can be unlawful where they are done in context which is not free of coercive conduct. Where E instigates and promotes decertification ptn, or another U repudiation document, it interferes with rights of Ees under Section 7 of Act*]

Studio S.J.T., Limited 277 NLRB No. 126
(recruiting Ee to engage in anti-U conduct, violative)

Walter Garson, Jr & Associates 276 NLRB No. 137
(E gave no unlawful assistance or support to Ees in filing anti-U ptn letter and E merely advised Ees to communicate with NLRB and did not assist in any way with formulation of ptn; nor was E's permitting Ees to deliberate and prepare ptn on work time, providing assistance in communicating with absent Ees and transportation to NLRB office, unlawful, since no more work time given for this effort than for other solicitations, and all such assistance was merely ministerial)

Duroyd Manufacturing, Inc. 276 NLRB No. 025
(E paying another Ee to take Ee to NLRB regional office to file charges against U, assisting Ee in composing charges, and encouraging solicitation of Ee signatures on antiU ptn, unlawful)

PYA/Monarch, Inc. 275 NLRB No. 167
(general manager unlawfully solicited Ee to encourage other Ees to vote against U, notwithstanding Ee went to manager's office on his own initiative to discuss U, Ee did not initiate discussion on campaigning for E, nor did he volunteer to campaign)

Indiana Cabinet Company, Inc. 275 NLRB No. 169
(plant superintendant's statement to Ees that he had heard they were not satisfied with U, there was way they could start ptn through Bd, and E could not help them, not violative where superintendant did not attempt to learn whether Ees would sign it and specifically informed them that E could not assist them with any ptn; moreover, superintendant's mere informing Ees of procedure by which U disaffection ptn could be circulated would not create situation in which Ees would tend to feel peril if they refrained from circulating such ptn)

Indiana Cabinet Company, Inc. 275 NLRB No. 169
(four individuals' signing ptn opposing representation by U not violative even if individuals in question were considered to be supervisors)

Engineered Control Systems, Inc. 274 NLRB No. 191
(E's president suggesting Ee file decertification ptn, unlawful, where suggestion made at same time they were discussing Ee's new wage rates, and Ee was subsequently made supervisor and given wage increase, and in view of fact E had given unlawful support to earlier untimely filed decertification ptn)

Weiser Optical Company 274 NLRB No. 143
(supervisor's telling Ee that *it was getting close to this time* referring to Bd's *open period* when decertification ptn can be filed, telling Ee that E's president was *trying to get things started* and informing Ees during a meeting that he thought Ees were mature enough to work out differences w/o a *third party*, held unlawful encouragement of decertification ptn and withdrawal of recognition based on ptn violative; E's unsolicited involvement with ptn was far more than ministerial aid since idea of ptn was implanted in Ees' mind by E, thus tainting ptn and E's good-faith doubt of U's majority status)

Maple Tree, Inc. JD-(ATL)-48-85
(soliciting Ees to withdraw from U organizing committee and soliciting other Ees to stop U organizing activities, violative)

5072-1600 Solicitation of revocation of authorization cards

Williamson Piggly Wiggly, Inc. 280 NLRB No. 125
[no violation where E's manager in response to request by Ee for aid in getting her U authorization card back from U gave her paper and envelope and instructed her to see another Ee, who helped her compose letter to U, not unlawful, since aid was minimal and at Ee's request and manager did not follow up to ascertain if Ee requested card back]

Sealmactro Corporation 280 NLRB No. 015
[supervisor asking Ee if Ee had signed U card, and when ee said he had, asking Ee if he wanted card back, and when Ee replied *yes*, having Ee sign paper, then informing Ee when U campaign was over Ee organizers would not be there anymore, unlawful]

Rockwell International Corp. 278 NLRB No. 013
[E merely giving Ees sample letter to use for purpose of revoking their U authorization cards, not unlawful, since E may lawfully inform Ees of their right to revoke authorization cards even if Ees have not solicited such information as long as E makes no attempt to ascertain whether Ees avail themselves of this right or offers any assistance or otherwise creates impression that Ees are in peril by refraining from revoking their cards]

Uniontown Hospital Association 277 NLRB No. 144
(soliciting retrieval of U authorization cards and informing Ees of procedure to follow in doing so, violation and interference)

Studio S.J.T., Limited 277 NLRB No. 126
(violation, where Ee, as E's agent, sought revocation of authorization cards)

5072-1900 Decision to use and/or administration of polygraph test

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods JD-(SF)-101-86
[polygraph examination of Ee, unlawful, where questions directed to Ee concerning known U supporter's activity were obviously directed at finding out examined Ee's knowledge of U activity]

5072-2000 Prohibiting employee's discussion about wages or other conditions of employment, or about union

Scientific-Atlanta, Inc. 278 NLRB No. 090
[E's requesting Ees not to discuss their merit raises and disciplining them for doing so, violative]

Electronic Data Systems International Corporation 278 NLRB No. 014
[promulgation of rule that prohibited Ees from discussing salary information, unlawful, since such rule restrained Ees in exercise of their right to engage in concerted activity]

American Lebanese Syrian Associated Charities, Inc. d/b/a A.L.S.A.C. 277 NLRB No. 189
[rule prohibitng Ees from discussing salaries amongst themselves, violative]

The Loft (Showcase, Inc.) 277 NLRB No. 170
[promulgating rule which stated *Any dissatisfaction in your job should be discussed directly with supervisor. Discussing your pay or other problems with your job with your co-workers will be grounds for dismissal* unlawful, notwithstanding rule never enforced and subsequently rescinded, where Ees never notified of E's intention not to enforce rule or of recission]

The Loft (Showcase, Inc.) 277 NLRB No. 170
[Ee's complaining to E at Ee meeting concerning tip pool policy, held concerted protected activity, where Ees had previously met together regarding problem, Ee spoke on behalf of all Ees, and it may be inferred E considered Ee spokesman; further, Ees subsequent discussion of tip pool policy with other Ees was continuation of this protected activity]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186
(prohibiting Ees from talking with U organizers or with each other about U, or even frequenting bars where U Ees drank, unlawful)

Italo Il Casa Romana Restaurant, Inc. JD-(SF)-50-86
[E's owner's telling Ees to keep quiet about meeting in which E told Ees about scheduling charges, violative since E's statement was overly broad restriction on unit Ees' protected rights to communicate]

5072-2200 Interference with right to refrain from union activities

N.L.R.B. v. Eli Gordon, Gerald Tillinger and Seymour Tillinger, a Copartnership d/b/a Balsam Village Management Company 792 F.2d 29 (C.A. 2, May 1986)
[threatening to discharge and discharging Ees for refusing to renounce U, violations]

5072-2300 Interference with employees' right to bargain through representatives of their own choosing

Middletown Hospital Association 282 NLRB No. 079
[supervisor's efforts, when qcr existed as objections to election were pending, to enmesh Ees in construction of committee to handle matters that might be w/i province of U if certified, unlawful]

Putnam Buick, Inc. 280 NLRB No. 101
[Act does not countenance negotiating with individuals when they have bargaining representatives; however, under Sec. 8(c), E is entitled to communicate noncoercively with its unit Ees during negotiations since Ees ought to be fully informed as to all issues relevant to negotiations and parties' positions as to those issues, and Ees are fully capable of evaluating relative merits of those positions for themselves; nonetheless, 8(a)(5) violations will be found if E communications are coercive or invite direct bargaining]

Irving Tanning Company JD-(ATL)-19-85
(violation, where E distributed to its Ees summary description of retirement plan which expressly limited eligibility in plan to those Ees not included in collective bargaining unit)

5072-2400 Interference with employee's right to representation during meetings with employer

Port Plastics, Inc. **279 NLRB No. 050**
[E's refusal to allow U representative attend discharge meeting with Ee, not violative, where E had signed discharge letter prior to meeting and had already made decision to discharge Ee prior to meeting, thus meeting was held simply for purpose of informing Ee of discharge]

Electronic Data Systems International Corporation **278 NLRB No. 014**
[suspension and discharge of Ee who was major solicitor of U authorization cards, not unlawful, since for insubordination rather than for refusal to meet with supervisor w/o witness inasmuch as refusal was not protected under *Weingarten* where meeting was intended for purpose of informing Ee of disciplinary decision already made, and Ee had no reason to believe otherwise, there was no certified or recognized U, and discharge was not in retaliation for U activity where U activity not mentioned in relation to warning to be given at meeting or in connection with previous warnings]

Amoco Oil Company **278 NLRB No. 003**
[refusal to provide Ees with U representative upon request at investigatory interview which Ees reasonably expected would result in discipline, violative, where expectation of discipline was present from fact that Ees were accused of burning up $1,000,000.00 boiler and objective of interview was to fix responsibility, Ees asked for U representative and one was available for them and E had not determined who was to be disciplined prior to investigation]

United States Postal Service **277 NLRB No. 156**
(E held not to have unlawfully denied Ee's request, in course of an investigation and disciplinary interview with E, for U representative, where Ee never asked for contractual U representative but, instead, asked for fellow Ee who was officer of labor organization not representing E's Ees nor in anyway related to E; under *Weingarten* rule, requested representative must be agent of U which is exclusive representative of Ees)

San Antonio Portland Cement Company **277 NLRB No. 036**
(Ees not unlawfully deprived of U representation at interview with E where interviews were conducted, not for investigation but to inform Ees of predetermined discipline; E's asking one ee whether he had any excuse for his conduct was not made in search of further evidence but in effort to assure that Ee understood the reasons for the discipline)

San Antonio Portland Cement Company **277 NLRB No. 036**
(E's silencing Ee's representative who was trying to help Ee answer E's question at investigatory interview in which E sought to discover why Ee was dozing on the job, violative)

Harry M. Stevens, Inc., A/K/A Harry M. Stevens Services, Inc. **277 NLRB No. 031**
(E's refusal to allow unrepresented Ee have coworker attend investigatory interview, not violative, since the right to representation at *Weingarten*--type interviews applies only to unionized Ees)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(Ee's request for U representation at meeting with E held not w/i ambit of *Weingarten* and E's actions not unlawful where E called Ee into his office for purpose of delivering disciplinary writeup concerning Ee's poor attendance, since E had reached final determination to issue such writeup prior to calling Ee into his office)

The Meadows East Inc. **275 NLRB No. 181**
(no violation of *Weingarten* rights where plant was not unionized)

Prudential Insurance Company of America **275 NLRB No. 030**
(denying Ee representation and blocking Ee's exit from interview, not unlawful, where U waived Ee's *Weingarten* right, clearly and unmistakably, in contract clause)

Illinois Bell Telephone Company **275 NLRB No. 27**
(where Bd had ordered Ee who had been unlawfully denied representation during investigatory interview and b..en discharged for misconduct discussed during that interview reinstated with backpay, and E, on remand from ct to determine whether it had independent evidence of Ee's misconduct, showed no such evidence, Bd modified its make-whole remedy to a cease-and-desist order)

E. I. Dupont De Nemours **274 NLRB No. 209**
(on reconsideration after requested remand from ct, Bd reversed prior decision that E violated 8(a)(1) by refusing unrepresented Ee's request for assistance of coworker at investigatory interview in view of recent Bd decision that only unionized Ees had right to representation at investigatory interviews)

E. I. DuPont de Nemours **274 NLRB No. 176**
(discharging Ee solely because of his insubordination in refusing to meet with his supervisor to discuss Ee's allegedly unauthorized posting of Bd document on bulletin board w/o presence of Ee witness, not violative in absence of certified or recognized bargaining representative)

Sears, Roebuck and Co. **274 NLRB No. 055**
(E's denial of Ee's request for presence of representative of his own choosing at *Weingarten*-type interview in non-unionized setting, not violative, since right to representation at *Weingarten*-type interviews applies only to represented Ees; *Material Research Corp.* overruled)

Radisson Muehlebach Hotel **273 NLRB No. 123**
(denying U steward's request for presence of U official at interview which steward reasonably believed would result in his being suspended, violative, since he had been informed of possible suspension immediately before interview)

Greyhound Lines, Inc. **273 NLRB No. 180**
(Ee's *Weingarten* rights violated by E's policy of requiring U representative to remain silent during investigatory interview)

Exxon Shipping Company **JD-(NY)-96-85**
(shipping company's denial of U representation at interview with Ee who had been found in possesion of marijuana by security personnel in violation of rule, unlawful, notwithstanding E's contention purpose of interview was to gain information about use of drugs on ships generally, rather than for purpose of disciplining Ee, since Ee could reasonably fear discipline might result from interview; E's contention that Ee did not have reasonable belief that interview would result in discipline in ivew of assurances given to U representative that Ee would not be disciplined as result of interview, rejected, absent evidence assurances communicated to Ee)

Exxon Shipping Company **JD-(NY)-96-85**
]*Weingarten* rights to U representation at interview with E apply when (1) interview is investigatory i.e. designed to elicit answers to work related questions which might affect Ees or unit, and (2) Ee reasonably fears that discipline might result from interview. Main focus of analysis turns on Bd's perception of state of mind of interviewee and reasonableness of same, rather than purpose of E in conducting interview. Further, regardless of original purpose of interview, when E goes beyond such purpose and questions Ee about misconduct, *full panoply of protectionss accorded Ee under Weingarten may be applicable*)

Exxon Shipping Company **JD-(NY)-96-85**
(fact Ee stayed and answered questions at investigatory interview w/o U representation did constitute voluntary participation or waiver of his right to U representation)

Union Underwear Company, Inc. **JD-77-85**
(Bd has held that *Weingarten rights* (Ee's right to presence of U representative at investigatory interview which Ee reasonably believed would result in disciplinary action) *are inapplicable where there is no certified or recognized U*---. C dismissed since it was undisputed that there was no certified or recognized U involved)

Denver, Colorado Springs, Pueblo Motorways, Inc. **JD-(SF)-31-85**
(E's discharge of Ee following investigatory interview concerning Ee's working at other employment while receiving disability payments from E, not violative of Ee's *Weingarten* rights as alleged where, after E confronted Ee with information about his activities, Ee remarked that he needed to consult an *attorney*, discharge was for cause and not violative of Ee's right to representation during interview, as Ee never mentioned U or fellow Ee, only attorney)

Walter J. Slaughter v. N.L.R.B. (E.I. Dupont DeNemours & Co.) **794 F.2d 120 (C.A. 3, June 1986)**
[in remanding case to Bd for further proceedings, ct reaffirmed its previous view that under reasoning of *Weingarten* it is at least permissible to interpret Sec. 7 as guaranteeing U members and unorganized Ees alike right to represntative at investigatory interviews]

5072-2500 Sponsorship of inside union, employee committee, personnel group, etc.

Middletown Hospital Association **282 NLRB No. 079**
[supporting, participating in, or maintaining professional relations group composed of doctors and nurses at hospital, established as fulfillment of unlawful promise of benefit, held unlawful on that basis, regardless of whether group addressed matters that were terms and conditions of employment]

Bay State Ambulance and Hospital Rental, Inc. **280 NLRB No. 122**
[E's strong promotion of its own Ee association as alternative to U at time election had been scheduled and telling Ees that association would be better avenue to improve working conditions and pay, violative]

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[soliciting Ee grievances and impliedly promising to remedy them by soliciting Ees to form Ee negotiation committee to draft contract for E's approval, appointing representative to negotiate with committee, then refusing to sign contract because committee had failed to prevent holding of U representation election, violation]

Kaset Corporation d/b/a Atlantic Highlands Nursing Home, Inc. **JD-(NY)-110-85**
(suggesting to Ees that they form in-house independent U instead of petitioning U, violation)

5072-2600 Interference with employees' right to selection own representative

Amer-Cal Industries, Inc. 274 NLRB No. 148
(E's furnishing Ee with blank decertification ptn for Ee at Ee's request and giving Ee address where completed ptn should be mailed, not violative)

Food Concepts, Inc. JD-(NY)-36-85
(when E closed down one of its 2 locations, each represented by different U, and transferred those Ees to remaining location, a merger of units occurred and qcr existed. E violated Act when he recognized and applied contract of U that represented original Ees at location to the newly moved Ees, and also when supervisor threatened transferred Ees with discharge if they did not join other U)

5072-2700 Interference with employee's performance of duties as union representative

Orleans International, Inc. 274 NLRB No. 169
(telling U steward in loud voice, when he questioned allegedly discriminatory recission of reprimand to Ee for failing to perform work on Saturday, in effect not to question E's disciplinary policy, unlawful, since steward was performing his duty in justifiably questioning E excusing Ee from performing Saturday work inasmuch as presumably this required more Saturday work of other unit Ees)

United States Postal Service 273 NLRB No. 217
(violation, where E threatened to suspend U steward who protested new policy requiring stewards to process grievances w/i specified period of each day, which was announced at meeting between E and U representatives, stating his belief change of policy was violation of contract and of Act, and that he would leave meeting)

SWS Silicones Corporation JD-484-84
(threatening U steward for filing *picayune* grievances, unlawful)

5072-2800 Abetting activities of employees opposed to union

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018
[minor horseplay on election day between 2 Ees about their respective pro- and anti-U views in presence of supervisor, not unlawful, since conduct was not likely to be *highly coercive* as claimed, where pro-U Ee's support for U was widely known, he did not hesitate to express that support during incident, and supervisor did not participate in incident]

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011
[E granting Ees paid time off to attend meeting arranged by anti-U Ees at which E's attorney spoke about decertification and other options open to anti-U Ees, not unlawful, since E had customarily accorded same treatment to Ees attending U meetings]

Walter Garson, Jr & Associates 276 NLRB No. 137
(E gave no unlawful assistance or support to Ees in filing anti-U ptn letter and E merely advised Ees to communicate with NLRB and did not assist in any way with formulation of ptn; nor was E's permitting Ees to deliberate and prepare ptn on work time, providing assistance in communicating with absent Ees and transportation to NLRB office, unlawful, since no more work time given for this effort than for other solicitations, and all such assistance was merely ministerial)

Duroyd Manufacturing, Inc. 276 NLRB No. 025
(E paying another Ee to take Ee to NLRB regional office to file charges against U, assisting Ee in composing charges, and encouraging solicitation of Ee signatures on antiU ptn, unlawful)

Eastern States Optical Co., Inc. 275 NLRB No. 058
(E's attorney did not render unlawful assistance to Ees in preparation of decertification ptn where Ees contacted attorney after ptn initiated, neither attorney nor E played any role in Ees' decision to initiate ptn and E did not solicit any signatures. Attorney supplying Ees with unit description, names of E's officials necessary to complete Bd ptn, and statement that 6 signatures probably sufficient for Bd's ptn was nothing more than editorial or ministerial aid)

Duct-O-Wire Company JD-(ATL)-3-86
[E did not render unlawful assistance to Ees in preparation of decertification ptn where E played no role in Ees' decision to initiate ptn and E did not solicit any signatures; E's actions in supplying Ees with 4-page package discussing rights on decertification were nothing more than ministerial aid]

5072-2900 Excluding union members from savings and stock ownership plan

Lynn-Edwards Corp. 282 NLRB No. 007
[E's statements that Ees covered by U-negotiated contracts could not participate in Ee stock ownership plan, and E's maintenance of such restrictive provisions in the plan's governing document, violation and election interference]

5072-3000 Soliciting employees to cross picket line

Toyota of San Francisco 280 NLRB No. 093
[E's manager encouraging Ees to follow lead of Ees who would cross picket line in case of strike, unlawful]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center 280 NLRB No. 008
[supervisor asking nurses aide if she intended to strike not coercive and unlawful, since necessary to adequately staff facility during strike, but supervisor following question by suggesting to nurses aide that she would be discharged if she went out on strike, especially in view of her probationary status, unlawful]

5072-3400 Interference with decertification activity

BASF Wyandotte Corporation 276 NLRB No. 175
(foreman's escorting Ee to other Ee's restricted work area where Ee was asked to sign decertification card, not violative; while it was somewhat unusual for Ees to go to other Ee's work area, it was not so unusual as to create atmosphere in which other Ee would tend to be coerced; moreover, foreman's presence was not violative where he said nothing and did not know beforehand why Ees wished to talk)

BASF Wyandotte Corporation 276 NLRB No. 175
(E's leaving confidential memos explaining U decertification in places where Ees could read them, not violative where E did not do so deliberately)

Western Medical Enterprises, Inc., d/b/a ARA Living Center, Verdugo Vista Convalescent Hospital JD-(SF)-54-85
(E's withdrawal of recognition based on ptn signed by majority of Ees indicating they no longer supported incumbent U, not violative, notwithstanding one of E's supervisors had written withdrawal language on 1 of 3 pages of ptn, where this was the only evidence of E's involvement with ptn, ptn was initiated by Ees alone and E held meeting with department heads and told them to remain neutral in regard to ptn, not get involved with it, give advice or answer questions)

5072-3500 Threatening employee with retaliation if he should discuss or file grievance

Wayne W. Sell Corporation 281 NLRB No. 082
[E's vice-president's statement to Ee during grievance meeting that grievances had better stop constituted unlawful threat of unspecified reprisals]

Wayne W. Sell Corporation 281 NLRB No. 082
[E's vice-president informing Ee that if Ee continued to stick his nose into everybody's business, referring to Ee's filing grievances sooner or later somebody's *going to put it all over his face*, unlawful, since constituted thinly veiled threat of physical harm for protected activity of filing grievances]

Wayne W. Sell Corporation 281 NLRB No. 082
[E's statement to Ee who had been grievance chairman and continued to file grievances after resigning office that he would *have his job*, and that someone would *put his nose all over his face* went further than usual shop talk and constituted unlawful threat of physical harm]

5072-3900 Interference with handbilling and other union activities

Caress Bake Shop, Inc. d/b/a Barkus Bakery 282 NLRB No. 055
[attempting to eject U organizers from parking area of property adjacent to E which E had leased to operator of separate business, and calling police to assist in their removal, unlawful, where E's representatives never distinguished between E's premises and those of lease-holder, and U agents were told they had no right to be on leased property; E clearly was attempting to prevent U representatives from distributing literature *anywhere* in parking lot, including property other than its own]

Fairmont Hotel Company d/b/a The Fairmont Hotel 282 NLRB No. 027
[hotel refusing to permit non-Ee U representatives to continue to handbill for area standards for Ees of one of hotel's suppliers on hotel's private property near its main entrance, not unlawful, since herein E's property rights outweighed U's Section 7 right to inform public regarding lack of area standards, where activity at hotel's entrance increased possibility of theft of luggage, tort liability, and congestion and litter, atmosphere expected by guests violated, hotel had no interest in economic success of E with which U had dispute, nor was there vital link to Ees located on hotel's property]

Hoechst Garment Company, A Subsidiary of Spencer Industries, Inc. 279 NLRB No. 081
[monitoring U handbilling on E's property and attempting to evict trespassing U representatives, no violation, since E's attempts to evict were exercise of legitimate proprietory prerogative and E representatives' presence at handbilling was part and parcel of permissible effort to evict]

Brocal Corp. d/b/a Alert Medical Transport 276 NLRB No. 066
(rescheduling E meeting with its Ees, which Ees were required and paid to attend, to coincide with U meeting, violative, since purpose was to prevent Ees from attending U meeting)

Borden Inc. JD-(SF)-007-86
[it is tendency to interfere with Ee receipt of U literature which is coercive rather than actual effect of such conduct]

5072-4000 Solicitation of statements from employees

Products Unlimited Corp. **280 NLRB No. 041**
[asking Ee *why she had been running around day before getting Ees to sign paper during working hours,* not unlawful, since was legitimate interrogation concerning possible violation of no-solicitation rule, notwithstanding gathering of signatures was related to alleged unlawful discriminatory discharge]

5072-4200 Solicitation of employees' withdrawal from union

The Hearst Corporation, San Antonio Light Division **281 NLRB No. 113**
[where E was found to have unlawfully tainted decertification ptn by various 8(a)(1) conduct including specific remarks made to some Ees to undermine support for U, it was no defense that E produced Ee witnesses that had never heard E's unlawful remarks since it was fair to presume some of E's remarks were disseminated among Ees; E is a wrongdoer who must bear responsibility for consequences that flow from unlawful conduct and bears the burden of disentangling consequences from which it is chargeable from those which it is not]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[supervisor unlawfully solicited striking Ees' resignations from U since his conversations with Ees went beyond providing information regarding avoiding fines by resigning and conditioned return to work on resignation from U, and where supervisor evidenced continuing interest in knowing whether or not nurses intended to resign and return to work, and in some instances offered assistance in effecting resignation that was not merely *ministerial*]

5072-5500 Refusal to talk to employees except on individual basis

Regency Electronics, Inc. **276 NLRB No. 002**

SWS Silicones Corporation **JD-484-84**
(threatening U steward for filing *picayune* grievances, unlawful)

SWS Silicones Corporation **JD-484-84**
(informing Ee he *would get in trouble* with E if he did not withdraw pending grievance, and if he filed additional grievances or associated with persons who filed grievances, unlawful)

5072-5600 Disciplining employee for conduct during grievance meeting

Puerto Rican Association for Human Development **JD-(NY)-148-84**
(Ees intervening on behalf of disciplined Ee and at request of this Ee writing memos setting forth their version of incident where memos not malicious, recklessly false or excessively disparaging of E's reputation or services, engaged in protected activities and suspension for writing these memos, violative. Additionally, suspension of Ee over his conduct in supervisor's office during discussion of memos, violative also, since E may not rely on Ee's conduct that it has unlawfully provoked as basis for disciplining Ees)

5072-5700 Interference with arbitration or grievance proceedings or participants therein

Wayne W. Sell Corporation **281 NLRB No. 082**
[E's vice-president's statement to Ee during grievance meeting that grievances had better stop constituted unlawful threat of unspecified reprisals]

Asarco Incorporated Mission Unit **279 NLRB No. 117**
[escorting U steward out of grievance meeting in a manner that assertedly constituted a physical assault, not unlawful, since conduct was neither inherently destructive of Ees' Sec. 7 rights nor did it tend to restrain or coerce Ees in exercise of such rights, given facts of case]

Oil Field Construction Company **JD-(SF)-104-86**
[informing Ees that reason they had not been assigned to job was because of their grievance-filing activity, unlawful]

Educational Broadcasting Corporation d/b/a WNET/Thirteen **JD-(NY)-125-85**
[violation, where E threatened to discharge and blacklist Ee because she filed and pursued grievance]

Puerto Rican Association for Human Development **JD-(NY)-148-84**
(suspending secretary for typing memo that was held protected activity, violative)

5072-5800 Interference with representation on grievance committee

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat **281 NLRB No. 030**
[deferral inappropriate as to issue of who may be U representative at grievance meeting absent contract under which parties were mutually bound by agreed-upon grievance-arbitration procedure]

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat **281 NLRB No. 030**
[refusing to meet and bargain with international U's representative designated as U's representative for processing grievances at grievance step 2 meeting, violation]

5072-6000 noneligibility of bargaining unit employees for benefits

Toyota of San Francisco **280 NLRB No. 080**
[language in brochure describing E's health plan that stated plan was available to any Ee of group who was not in occupation classification represented by U, violative of Section 8(a)(1) since it penalizes represented Ees, notwithstanding plan actually available to represented Ees]

Irving Tanning Company **JD-(ATL)-19-85**
(violation, where E distributed to its Ees summary description of retirement plan which expresly limited eligibility in plan to those Ees not included in collective bargaining unit)

5072-7700 Restraining union or other concerted activities on company time or premises

Bridgeway Oldsmobile, Inc. **281 NLRB No. 148**
[E's announcement of rule prohibiting Ees from gathering in groups only 2 weeks after U's demand for recognition, violative; even though E proferred that rule was imposed because customers were being neglected and one Ee did testify that such a thing *could happen*, timing of rule and E's unremitting opposition to U justify finding Ees' U activities were under surveillance]

Springfield Hospital **281 NLRB No. 076**
[E instituting new non-access rule for off-duty Ees just for date of R election, violative, where rule not disseminated, limited to election day, U animus, and departure from normal policy showed that purpose of rule was to thwart U activity of off-duty Ees]

Springfield Hospital **281 NLRB No. 076**
[employment of off-duty deputy sheriffs, in full uniform, to be present at hospital on day before, and day of election for purpose of denying access on election day to off-duty Ees unless coming to vote, to non-Ees other than deliverymen, and to persons visiting patients, not violative, as no showing that deputies interfered with Ees rights. Deputies did not question any individuals about U activities or sentiments, or interfere with their right to vote, or create coercive atmosphere]

Products Unlimited Corp. **280 NLRB No. 041**
[asking Ee *why she had been running around day before getting Ees to sign paper during working hours,* not unlawful, since was legitimate interrogation concerning possible violation of no-solicitation rule, notwithstanding gathering of signatures was related to alleged unlawful discriminatory discharge]

Saulsactro Corporation **280 NLRB No. 015**
[supervisor asking Ee if he had attended U meeting previous night and how he felt about meeting, unlawful, since not merely casual questioning, but coercive, where supervisor was new and there was no ongoing relationship, and Ee was not self proclaimed U adherent]

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**
[E's Chief Executive Officer's confiscating U campaign materials being distributed by Ee at cafeteria entrance not violative where Official distributed to Ees most of materials he took and no Ee was intimidated by the incident. Conduct in this case was at most a minimal intrusion on Ee rights and not violative]

5072-7750 Distribution of union literature or cards

Consolidated Edison Co. of New York, Inc. **280 NLRB No. 039**
[questioning Ee, who was known participant in dissident U group, concerning his requesting fellow Ees to sign ptn and affidavit contesting U voting procedures, not violative, since Ee was a known participant in dissident U group who solicited his fellow Ees to sign U material while they were on their work (as apposed to break) time. As E is entitled to have its Ees perform their work w/o interruptions, E has right to investigate apparent interferences with its Ees carrying out their duties]

Trover Clinic **280 NLRB No. 002**
[E's statement to Ee that distribution of cartoon in Ee's possession, depicting nervous individual describing himself as undergoing abusive treatment, was possible grounds for discharge, unlawful, since distribution of cartoon would have constituted protected activity, where cartoon was related to Ee's working conditions, E's contention that cartoon was defamatory amounted to concession that it considered it to be directed at E's treatment of Ees, cartoon's message did not remove it from protection of Act, and E did not establish type of circumstances that would render cartoon unprotected]

T & T Machine Company, Inc. **278 NLRB No. 139**
[informing Ee that soliciting was not allowed during working hours and warning Ee abouot harassment of other Ees during working hours, unlawful, absent any indication Ee's limited conversation with other Ee interfered with production]

T & T Machine Company, Inc. **278 NLRB No. 139**
[instituting no-soliciation rule prohibiting any kind of solicitation or distribution of literature during actual working time, unlawful, since rule established for purpose of deterring and impeding Ee efforts to generate U support, in view of timing at onset of organizing campaign, and after issuance of

5072-7750—Cont.

unlawful warning to in-house organizing committee member, and in absence of any business justification for rule]

Clark Equipment Company 278 NLRB No. 085
[interfering with distribution of literature in non-work areas during non-work time, violative and objectionable where Ees were told they could not distribute literature at plant entrance but would have to go to plant gate, and two Ees were threatened with arrest and escorted by security guards to plant gate]

Page Avjet, Incorporated 278 NLRB No. 063
[supervisor gathering up U literature from break area at conclusion of break, not unlawful as he was just cleaning up clutter in break area]

Uniontown Hospital Association 277 NLRB No. 144
(security guard's physically attempting to bar Ee from distributing U literature, violation and interference)

Southern Maryland Hospital Center 276 NLRB No. 153
(E's confiscation of U literature and the then distribution of same to Ees, violative, notwithstanding E's contention that E actually aided U in distribution and therefore such conduct cannot be condemned, since E's obligation is not to interfere at all with Ees' right to distribute U literature)

Bell Helter, Inc. 276 NLRB No. 136
(E unlawfully maintained overly broad no-distribution rule and unlawfully enforced it by confiscating U literature, where E's posted notice, properly authorizing distribution of literature, failed to repudiate old rule, since notice did not assure Ees against further interference with their rights but created impression among Ees of E benevolence in authorizing that which E could not have lawfully prohibited, and notice suggested to Ees that authorization for lawful distribution was subject to withdrawal; moreover, there were no assurances new Ees will not be requested to read and understand old rule)

Bell Helter, Inc. 276 NLRB No. 136
(managerial and supervisory personnel held not to have orally engaged in independently promulgating overly broad no-distribution rule but to have simply enforced long standing rule by prohibiting Ees from distributing U literature and by confiscating it)

Adams Super Markets Corp. 274 NLRB No. 194
(instructing Ee, who admitted to passing out U cards while on duty at cash register not to solicit *when she was working* and that disciplinary action could be taken if conduct repeated, not unlawful, absent evidence of disparate treatment)

Adams Super Markets Corp. 274 NLRB No. 194
(supermarkets' promulgation of facially valid no solicitation rule prohibiting solicitation or distribution of literature of any kind *by any Ee during actual working time of Ee soliciting or Ee being solicited and prohibiting solicitation or distribution on E's property by non-Ees at any time*, in new Ee handbook distributed during U campaign, not unlawful, since no solicitation rule published in handbook not new but amplification and clarification of already posted rule and Ee handbook customary place to include no-solicitation rule)

Offshore Shipbuilding, Inc. 274 NLRB No. 077
(informing Ees they were not to distribute U authorization cards *on company time*, not unlawful)

Ultrapower Services, Inc. JD-(SF)-122-86
[supervisor questioning Ee concerning allegations by other Ees of distribution and solicitation for U by Ee during working hours, ordering Ee to cease such activities if he had engaged in them, and informing Ee that company rule prohibiting solicitation did not preclude U activities before or after work or during lunch, not unlawful, where E's no solicitation/distribution rule was valid, Ee was not disciplined, nor was he coerced by interview inasmuch as he continued his activities, and absent permitting of non-U work time solicitations]

The Limited, Inc. JD-264-85
(E's posting notice and giving speeches to Ees telling them that they should inform E if they are put under pressure to join U and inviting or encouraging Ees to report identity of U supporters, violative)

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)
[E's Chief Executive Officer's confiscating U campaign materials being distributed by Ee at cafeteria entrance not violative where Official distributed to Ees most of materials he took and no Ee was intimidated by the incident. Conduct in this case was at most a minimal intrusion on Ee rights and not violative]

N.L.R.B. v. Vought Corporation - MLRS Systems Division 788 F.2d 1378 (C.A. 8, Apr. 1986)
[warning Ee against passing out U information and harassing Ees during working hours, unlawful, where no evidence Ee's solicitation had adverse impact on production, and in view of fact E allowed anti-U committee to solicit on company time]

N.L.R.B. v. Vought Corporation - MLRS Systems Division 788 F.2d 1378 (C.A. 8, Apr. 1986)
[E's plant security officer informing Ee that he would not be allowed to distribute U literature in plant parking lot, unlawful, notwithstanding supervisors overrode security officer, allowed the distribution and no discipline to Ee, since substantial evidence that statements tended to interfere with Ee's right to distribute U literature in nonworking area on nonworking time, and that there were no special circumstances to justify e's attempted enforcement of overly broad rule]

N.L.R.B. v. Vought Corporation - MLRS Systems Division 788 F.2d 1378 (C.A. 8, Apr. 1986)
[E's no distribution rule which prohibited *reproducing, posting or passing out typed or printed material other than company business w/o permission* unlawfully broad even if never enforced, in view of rule's chilling effect]

5072-7775 Wearing of or display of union insignia or other materials

Armon Company 279 NLRB No. 158
[telling Ee to stop wearing U hat, violation]

Government Employees (Office Employees, Local No. 2) 278 NLRB No. 055
[prohibition against wearing *Hostage/Striker* armbands, violative]

Southwestern Bell Telephone Company 276 NLRB No. 110
(in finding E's removal of *Definition of a Scab* notices from U's bulletin boards, unlawful, Bd did not equate maintaining notice on bulletin board with wearing a pin bearing a slogan, since danger of *confrontation* in the two situations is entirely different; and Bd noted there is a distinction between slogan herein and slogan which could be construed as obscene)

University of Richmond 274 NLRB No. 182
(rule prohibitig Ees from wearing any jewelry except earrings or wedding rings not discriminatorily enforced as to wearing of U insignia, as alleged, notwithstanding some evidence of failure to always enforce it, where rule was justified as to Ees engaged in cooking and serving food and was enforced before U's organizing campaign, albeit imperfectly)

Southern California Edison Company 274 NLRB No. 167
(wearing of button with *Stick Your Retro* written on it, protected, where saying not obscene, message had little significance to outsider so public image of E not injured and message was clearly related to pending negotiations)

5072-7780 Posting notices

National Micronetics, Inc. 277 NLRB No. 095
(maintaining bulletin board in such way that pro-U campaign propaganda, but not anti-U propaganda, could be defaced or removed, violation and interference)

Southwestern Bell Telephone Company 276 NLRB No. 110
(E's removal of *Definition of a Scab* notice from U's bulletin board, unlawful, absent *special circumstances* privileging its removal, where only evidence that notice was disruptive was that Ees were *milling around* or *talking in huddles* instead of working independently at their stations as they normally did; since their supervisors, however, did not tell Ees to go back to work, it cannot be concluded that such *unusual* behavior reasonably signaled serious threat to discipline, especially w/o some indication that E asked Ees to return to their work stations)

Southwestern Bell Telephone Company 276 NLRB No. 110
(supervisors' removal of *Definition of a Scab* notices from U's bulletin boards, removal of which they tried to justify on ground they each had been told by single Ee that there was something distasteful on bulletin board, held not to prove *special circumstances* privileging removal merely by reference to sensibilities of 1 or 2 Ees)

Southwestern Bell Telephone Company 276 NLRB No. 110
(in finding E's removal of *Definition of a Scab* notice from U's bulletin boards, unlawful, Bd did not presume that there was animosity among Ees because number of them crossed picket line during recent strike, so that notice critical of nonstrikers was likely to provoke confrontation, where strike was not accompanied by mass picketing and violence; *United Aircraft Corp.*, 134 NLRB 1632, distg)

Southwestern Bell Telephone Company 276 NLRB No. 110
(in finding E's removal of *Definition of a Scab* notices from U's bulletin boards, unlawful, Bd did not equate maintaining notice on bulletin board with wearing a pin bearing a slogan, since danger of *confrontation* in the two situations is entirely different; and Bd noted there is a distinction between slogan herein and slogan which could be construed as obscene)

Southwestern Bell Telephone Company 276 NLRB No. 110
(violations, where supervisors directed Ees to remove *Definition of a Scab* notices from U's bulletin boards, and issued warnings and threats to Ees for distributing, posting, and reposting notices)

5072-7780—Cont.

Uptilt, Inc. **276 NLRB No. 065**
(violation, where E removed pro-U signs, in view of absence of E rules against posting of signs, and fact that posting of notices regarding non-U matters was permitted)

5072-7784 Circulating petition protesting discharges

Westinghouse Electric Corporation **277 NLRB No. 016**
(violation, where supervisor informed Ees at departmental meeting that protected concerted activity of solicitation of signatures on behalf of Ee who had been discharged could not be conducted on company property)

Cone Mills Corporation-White Oak Plant **273 NLRB No. 188**
(E's interference with Ees' U and/or protected activities by impeding circulation of ptn protecting discharge of 3 U stewards, unlawful)

5072-7787 Other restraints

Trover Clinic **280 NLRB No. 002**
[supervisor's comment to Ee with whom supervisor was on good terms that Ee *keep a low profile* and *be quiet with it*, clearly referring to Ee's U organizing activity, unlawful, since remarks reasonably tended to interfere with Ee's free exercise of her Ee rights, and supervisor's statement concerning U activities can be coercive despite friendly relationship between the individuals and well-intentioned nature of the statements]

Raytheon Missile System Division, Raytheon Company **279 NLRB No. 035**
[supervisor warning U adherent against having any U stuff on his desk during company time, not violative where E was simply utilizing housekeeping rule that was created prior to U's advent in non-discriminatory manner]

5072-8000 Confiscating union literature, etc.

Mississippi Chemical Corporation **280 NLRB No. 046**
[supervisor's conduct assertedly in enforcing no distribution rule by confiscating from Ee break room single leaflet announcing U meeting, unlawful, where E had no written policies or established practice prohibiting nonwork related material in plant and, instead, tolerated such material; accordingly, in view of other 8(a)(1) conduct found herein, supervisor confiscated notice because it concerned U matter; moreover, Ees seeing its removal could reasonably perceive that U notices were not allowed in area; and, unlike removal of one notice from stack of notices, removal of single notice interfered with its intended purpose]

Southern Maryland Hospital Center **276 NLRB No. 153**
(E's confiscation of U literature and the then distribution of same to Ees, violative, notwithstanding E's contention that E actually aided U in distribution and therefore such conduct cannot be condemned, since E's obligation is not to interfere at all with Ees' right to distribute U literature)

Bell Halter, Inc. **276 NLRB No. 136**
(E unlawfully maintained overly broad no-distribution rule and unlawfully enforced it by confiscating U literature, where E's posted notice, properly authorizing distribution of literature, failed to repudiate old rule, since notice did not assure Ees against further interference with their rights but created impression among Ees of E benevolence in authorizing that which E could not have lawfully prohibited, and notice suggested to Ees that authorization for lawful distribution was subject to withdrawal; moreover, there were no assurances new Ees will not be requested to read and understand old rule)

Bell Halter, Inc. **276 NLRB No. 136**
(managerial and supervisory personnel held not to have orally engaged in independently promulgating overly broad no-distribution rule but to have simply enforced long standing rule by prohibiting Ees from distributing U literature and by confiscating it)

Uptilt, Inc. **276 NLRB No. 065**
(violation, where E removed pro-U signs, in view of absence of E rules against posting of signs, and fact that posting of notices regarding non-U matters was permitted)

The Union National Bank of Pittsburgh **276 NLRB No. 013**
(E forwarding letters from U addressed to Ees at work at E's branches to E's main office instead of distributing them to Ees, unlawful implementation of discriminatory no distribution rule, where Ees frequently received personal mail at office; E's contentions that by its use of *E's Internal Distribution Code* on letters, U made E its delivery service and use of E's resources for delivery would violate Sec. 8(a)(2), rejected, since no exposure to liability for one time distribution especially where letters sent directly to branch offices and not sorted in mail room, E's directory not confidential)

Stovall Manufacturing Company, Inc. **275 NLRB No. 039**
(supervisor's collecting U authorization cards from Ees, violative)

Tomco Carburetor Company **275 NLRB No. 001**
(directing Ees to turn in their U authorization cards to their foremen, stating they would lose their jobs if they did not do so, violative)

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**
[E's Chief Executive Officer's confiscating U campaign materials being distributed by Ee at cafeteria entrance not violative where Official distributed to Ees most of materials he took and no Ee was intimidated by the incident. Conduct in this case was at most a minimal intrusion on Ee rights and not violative]

5072-8300 Interference with union or employee meetings

Brocal Corp. d/b/a Alert Medical Transport **276 NLRB No. 046**
(rescheduling E meeting with its Ees, which Ees were required and paid to attend, to coincide with U meeting, violative, since purpose was to prevent Ees from attending U meeting)

Northline Bus Center, Inc. **JD-(ATL)-41-85**
(E's telling Ees that he had sent supervisor to restaurant at which U meeting had been scheduled to ascertain what was going on among Ees, unlawful)

M.F. Enterprises, Inc. d/b/a Gopher Restaurant **JD-417-84**
(threat to discharge or layoff Ees if they discussed U among themselves on their own time away from E's premises, unlawful)

5072-8400 Interference with union contacting employees off employer's premises

Caress Bake Shop, Inc. d/b/a Barkus Bakery **282 NLRB No. 035**
[attempting to eject U organizers from parking area of property adjacent to E which E had leased to operator of separate business, and calling police to assist in their removal, unlawful, where E's representatives never distinguished between E's premises and those of lease-holder, and U agents were told they had no right to be on leased property; E clearly was attempting to prevent U representatives from distributing literature *anywhere* in parking lot, including property other than its own]

5072-8600 Retaliation for engaging in union or other protected activity

Springfield Hospital **281 NLRB No. 076**
[supervisor's threat to get even with Ee because he had engaged in protected concerted activity by signing petitions, violative]

Pete O'Dell & Sons Steel Erectors **275 NLRB No. 140**
(discharge, layoff after subsequent rehire of Ee, violative, as Ee was engaged in protected concerted activity when he testified before Army Corps of Engineers during their investigation of U complaint that E was not in compliance with Davis-Bacon Act by classifying Ees as laborers thereby failing to pay Ees ironworkers wages for ironworker work performed by *laborers*, as Ee was engaged in U activity by assisting U with their complaint, and E tied other 8(a)(1) violations to Ee's U activities)

Studio S.J.T., Limited **277 NLRB No. 126**
(threatening leading U activist with violence to her person or property and physically abusing her because she had engaged in U activity, violative)

Bechtel Power Corporation **277 NLRB No. 088**
(discharge of ee, assertedly for violating E's hardhat rules, violative, since real reason was Ee's complaints about breathing exhaust fumes in working area which complaints were protected concerted activity under *City Disposal*, where Ee's complaints were embodied in contract which had clause providing that all workmen and E's were to see that *safe working conditions are maintained on all jobs*, Ee complained to E-official who admitted receiving similar complaints from other Ees, Ee was longtime U member and told official he wanted to talk to steward and other Ees were not similarly discharged for similar hardhat violations)

5072-8700 Interference with union activity away from employer's property or worksite

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[supervisor ordering Ee to remove pre-U campaign posters at places away from work site, unlawful]

5078 INTERFERENCE WITH ELECTION OR REPRESENTATION PROCEEDINGS OF BOARD

5078-2000 Assistance to one of competing unions

Steven Muss, Cynthia Muss Lawrence and Debbie Muss Kashen, A Copartnership, d/b/a Alexander Muss & Sons **274 NLRB No. 193**
(E's recognition and execution of contract with one U and its withdrawal of recognition from another U which was striking E over failure of contract negotiations, not violative, since no R ptn had been filed with Bd thus raising qcr, and E had objective considerations for doubting striking U's majority status where striking Ees had been on strike for over a year, all strikers had been permanently replaced and 13 of 17 current Ees had freely signed cards authorizing new U to represent them, giving no indication of support for striking U)

5078-4000 Efforts to influence result

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[telling Ee to vote no in election, violation and interference]

5078-4025 Withholding benefits to influence vote

Eskaton Sunrise Community **279 NLRB No. 012**
[telling Ees that they would not receive their paychecks unless they voted *no* in U election, unlawful]

5078-4030 Attempts to have employee refrain from voting

Link Manufacturing Co. **281 NLRB No. 028**
[E's attempt on several occasions to get Ee not to vote in election, unlawful, since inference was clear that E used his authority to coerce Ee for such purpose]

5078-4050 Promise of or grant of benefit

Products Unlimited Corp. **280 NLRB No. 041**
[supervisor informing Ees that E would not agree to U wage and benefit demands, and at same time promised to try to obtain raise for Ees as inducement to not vote for U, unlawful]

United Electrical & Mechanical, Inc. **279 NLRB No. 034**
[promising Ees pay raises to influence their vote in election, violative]

Naral Color Corporation **276 NLRB No. 061**
(telling Ees at group meetings prior to decertification election that they would be eligible for E's stock-option-program if they were non-U and U was opposing such plan for unit Ees at the bargaining table, not violative, since E was simply pointing out an existing benefit its non-U Ees enjoyed which would be available to unit Ees if they were non-U)

Steffer Brothers **JD-269-86**
[offering unlawfully discharged Ee his job if he voted against U in election, unlawful]

H. A. Satin Co., Inc. **JD-(ATL)-2-86**
[E's president informing Ees at non-unionized facility of cost of U dues, and initiation fees, stating that he saw no reason for Ees to begin working for U as they would receive same benefits as Ees at E's unionized facility w/o joining or voting in U, unlawful]

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**
[reinstitution of *Ee of the Month* award and offering $100 to winner each month during pre-election period not violative in view of both length of U's (approximately 13 months) organizational drive and large number of hospital Ees (approximately 1300). Designation of one individual as Ee of month can not reasonably be said to be so significant as to influence in any way attitude of Ees or outcome of election]

5078-4070 Hiring or retaining antiunion employees

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[E's hiring of extra salespeople prior to election, assertedly because of increased sales, violative, since real reason was attempt to pack unit with anti-U votes where E did not demand of these Ees, like other Ees hired before them, that they withdraw from U, some of the Ees hired had originally been fired by E for incompetency and one Ee, who was supposed to have been hired as a supervisor, was hired to do unit work shortly before election]

Bo-Ed Inc. d/b/a Golden Fan Inn **281 NLRB No. 035**
[E did not unlawfully *pack the unit* even though there was evidence that one of E's managers told another Ee that E was having additional work done *to fix up the rooms and beef up the payroll,* since statement was more susceptible to a finding that E was merely expressing a legitimate intention to add Ees to perform legitimate maintenance work; further, E's inclusion on Excelsior list of Ees found to be supervisory did not show any more unlawful purpose where their supervisory status was *clearly debatable*]

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **279 NLRB No. 082**
[E's *packing* the unit with part-time Ees shortly before election, violative, where Ees hired were almost all relatives or friends of management, thus E would know how they would vote and E had, at time it hired part-time Ees, full-time positions available]

State Garden Celery Company, Inc. **JD-243-84**
(hiring 2 Ees 6 weeks before election who had previously been performing electrical work for E held not purpose of packing unit with anti-U Ees since E was attempting to reduce its maintenance costs by hiring own electricians, and E sought to hire these Ees even before any U activity at plant)

State Garden Celery Company, Inc. **JD-243-84**
(E hiring of Ees after R hearing had been held and election was predictably imminent, unlawful, since for purpose of defeating U, where Ees hired were irregular part-time Ees who could not conceivably satisfy any genuine need, nor perform work of full time Ees whom E claimed they were replacing)

5078-4080 Changes in conditions of employment or threats thereof or statements made in connection with election

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[E's attempt to manipulate Ee's resignation shortly before election by telling Ee to go ahead and resign if he was going to vote for U but if he would vote against U, E would put him on sick leave, violative]

Eskaton Sunrise Community **279 NLRB No. 012**
[telling Ees that they would not receive their paychecks unless they voted *no* in U election, unlawful]

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(promoting several Ees in small unit to supervisory positions during critical period, assertedly to comply with state law, violative and objectionable, since real reason was to disenfranchise active U supporters, where state law did not in fact support E's position and even though job descriptions of Ees promoted would indicate supervisory status, those promoted did not in fact exercise any supervisory duties but rather performed same job as in the past)

H. A. Satin Co., Inc. **JD-(ATL)-2-86**
[promulgation of new and more stringent productivity rule, and issuing warnings pursuant thereto, unlawful, since actions taken to discourage Ees from supporting U, where E had never previously issued large number of warnings in single day for low production until w/i 1 month of U campaign, and in view of concurrent unlawful promise of benefits, notwithstanding asserted reason of financial difficulties, where financial problems had been on going for several years]

5078-8000 Restraining employees from voting

Stop N' Go Inc. **279 NLRB No. 052**
[threatening to discharge Ees who took off from work to vote in election, violation]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant **279 NLRB No. 017**
[E's scheduling certain Ees to be off on day of election, assertedly to induce them not to participate in election, not violative, where Ees involved were regularly assigned that day of the week to be off; further, E is not required to employ all workers on election day just so they may find it more convenient to vote]

5078-8200 Offer of or promotion to supervisor to preclude voting in election

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(promoting several Ees in small unit to supervisory positions during critical period, assertedly to comply with state law, violative and objectionable, since real reason was to disenfranchise active U supporters, where state law did not in fact support E's position and even though job descriptions of Ees promoted would indicate supervisory status, those promoted did not in fact exercise any supervisory duties but rather performed same job as in the past)

5081 INTERFERENCE WITH BOARD PROCEEDINGS

5081-1700 Interference with Board investigation

La Salle Investment Co., Ltd., d/b/a Cafe La Salle **280 NLRB No. 043**
[refusal to give letter of recommendation to Ee violative of 8(a)(4), as well as 8(a)(1), where reason for refusal was because U filed ULP charge naming Ee as discriminatee; under S.Ct's *Scrivener* cases, 8(a)(4) is interpreted to afford broad rather than narrow protection to Ee and includes not only Ee who *has filed charges or given testimony* but also Ee otherwise participating in Bd investigation]

Clark Equipment Company **278 NLRB No. 085**
[Ee relations director's statements to Ee that there was some question as to whether Bd subpoenas would be enforced and that compliance was up to Ee's discretion, violation and conduct affecting election, and employment relations manager's statements to him also violation and conduct interfering with election in that they falsely suggested that honoring subpoena was matter of discretion and subpoena could be ignored with impunity]

Clark Equipment Company **278 NLRB No. 085**
[E's notice stating that E took no position about Ees meeting with Bd and/or U representatives and signing papers, and that Ees had no legal obligation to do so, not violation or conduct interfering with election where notice was posted in response to Ees' inquiries, did not mischaracterize Bd's role, did not suggest E's disfavor over Ee's cooperating with Bd, and did not make false statements about Ees' obligation to go to meeting or sign papers]

Clark Equipment Company **278 NLRB No. 085**
[E's statements which denigrate Bd subpoenas and suggest that they need not be honored have only one purpose, to obstruct Bd investigation and presentation of cases and to interfere with Ees' Sec. 7 rights]

Joseph A. Perry d/b/a Holiday Inn-Glendale **277 NLRB No. 148**
(telling Ee that if Bd agent asked her anything about the U she should say she didn't know anything and that the bosses had not told her anything, violative)

Superior Container, Inc. **276 NLRB No. 055**
(where E summoned Ee to his office, told her that Bd agent would question her about prior conversation they had about U, and repeatedly asked Ee whether she remembered his statements to the effect that E would close shop, to which Ee replied that she did not remember and would tell the

5081-1700—Cont.

truth, ALJ held meeting was coercive in nature, since E appeared angry and seemed to attempt to pressure Ee to recant some of her recollection of prior meeting)

5081-3300 Interference with testimony of Board witness

Middletown Hospital Association **282 NLRB No. 079**
[supervisor's cautionary statement, with respect to Ee's subpoena to testify, that Ee could be hurt, unlawful, since it may have tended to restrain Ee in exercise of her right to proffer testimony in furtherance of her U activity]

Clark Equipment Company **278 NLRB No. 085**
[Ee relations director's statements to Ee that there was some question as to whether Bd subpoenas would be enforced and that compliance was up to Ee's discretion, violation and conduct affecting election, and employment relations manager's statements to him also violation and conduct interfering with election in that they falsely suggested that honoring subpoena was matter of discretion and subpoena could be ignored with impunity]

Clark Equipment Company **278 NLRB No. 085**
[E's notice stating that E took no position about Ees meeting with Bd and/or U representatives and signing papers, and that Ees had no legal obligation to do so, not violation or conduct interfering with election where notice was posted in response to Ees' inquiries, did not mischaracterize Bd's role, did not suggest E's disfavor over Ee's cooperating with Bd, and did not make false statements about Ees' obligation to go to meeting or sign papers]

Clark Equipment Company **278 NLRB No. 085**
[E's statements which denigrate Bd subpoenas and suggest that they need not be honored have only one purpose, to obstruct Bd investigation and presentation of cases and to interfere with Ees' Sec. 7 rights]

Joseph A. Perry d/b/a Holiday Inn-Glendale **277 NLRB No. 145**
(telling Ee that if Bd agent asked her anything about the U she should say she didn't know anything and that the bosses had not told her anything, violative)

Southern Maryland Hospital Center **276 NLRB No. 153**
(E's supervisors telling Ee who had received Bd subpoena, that such document was not legal, did not have to be honored and Ee could attend hearing only if she was not scheduled to work, violative, even though Ee was subsequently told she was free to attend hearing)

Quality Millwork Corp. and Its Alter Ego Quality Door Co. **276 NLRB No. 069**
(telling Ees that they need not appear at Bd hearing pursuant to Bd subpoenas, violative)

Coca Cola Bottling Company of Buffalo, Inc. **274 NLRB No. 195**
(discharge of Ee, assertedly to maintain supposedly uniform disciplinary system, violative where real reason for discharge was to discourage him and other Ees from offering testimony which would exonerate other Ee and thereby demonstrate that E had erred in accusing other E of strike misconduct)

Roskin Brothers, Inc. **274 NLRB No. 053**
(E's statement to Ee that he shouldn't *worry* in response to Ee's doubt about appearing at Bd hearing, not violative)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[counseling Ee subpoenaed by GC to testify at ULP hearing to recant his affidavit or take a vacation during hearing dates, directing Ee-witness to testify to as little as possible at Bd hearing and not to testify adversely to E, telling Ee-witness that U business was in the past and not to *stir up trouble* by his testimony, and telling Ee E was upset with him because of his testimony, violations]

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[threatening to reduce Ee's shifts because he participated in Bd proceeding, violation]

N.L.R.B. v. J. Coty Messenger Service, Inc. **———F.2d———**
(C.A. 2, May 1985)
[influencing former Ee to ignore validly served Bd subpoena, thereby infringing upon right of current Ees to have their rights vindicated by Bd, was violative]

5081-6700 Requesting to see copies of employees' statement to Board or attempting to obtain such copies

Dayton Typographic Service, Inc. v. N.L.R.B. **778 F.2d 1180 (C.A. 6, Dec. 1985)**
[E's attorney questioning Ee concerning upcoming ULP trial, asking him if he had given statement to Bd and asking for a copy of his Bd affidavit, not violative, notwithstanding E did not give *Johnnie's Poultry* assurances, since E did not coerce Ee where Ee implicitly wanted to cooperate with E, there was no evidence that Ee's affidavit would disclose matters outside scope of C, i.e., Ee's U or lack of U activity, and E made no threats to Ee]

5081-7000 Interference with access to Bd processes

Sea-Land Service, Inc. (Sea Operations) **280 NLRB No. 084**
[ship's captain, responsible for transmitting all communications from ship, interrogating and discharging radio officer about message he sent at sea requesting local Bd's phone number, violative, notwithstanding legitimacy of captain's inquiry in asking whether radio was used in unauthorized manner, repeated inquiries as to *why* dischargee asked for Bd's phone number were not relevant to captain's responsibilities regarding communication equipment. Basis for discharge did not distinguish between specific questions asked so that lawful and unlawful motives cannot be separated]

Grand Rapids Die Casting Corp. **279 NLRB No. 093**
[suspension and discharge of U steward, assertedly because of insubordination by refusing an order to return to work, violative, since real reason was her activity of grievance processing and threatening to file charges with Bd where Ee was threatened with discharge if she filed charges after Ee threatened to when E told her she was spending too much time on grievances, and E's manager continuously brought up fact Ee said she might file charges on day Ee was discharged]

John H. Cooney, Inc. **275 NLRB No. 088**
(layoff of two Ees, (who did not *kick-back* to their E their backpay, to which State Department of Labor determined they were entitled) because project upon which they were working was suspended, not violative, since their work project was suspended; no additional work was available for them; and that two Ees did not *kick back* to E not supported by record; two Ees would have been laid off regardless of any protected activity w/i which they may have engaged)

Fluid Packaging Company, Inc. **JD-127-86**
[seeking to have Ee sign release waiving Ee's right to file charges with Bd involving lay-off, recall, or otherwise arising out of employment with E, violation]

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-86**
(E's inquiry of Ee as to why Ee had not completed repairs coupled with question as to what *harassment* she was referring in ULP charge she had filed, followed by attack on Ee for filing charge, unlawful)

N.L.R.B. v. Norbar, Inc. **752 F.2d 235 (C.A. 6, Jan. 1985)**
(requesting that Ee drop charges he had filed with the Bd, violative)

5081-8700 Inducement of withdrawal of charges

John Wanamaker Philadelphia **279 NLRB No. 140**
[E's refusing to sign any agreement with U until U withdrew ULP charges, violative; further, E's informing Ees it would not sign a contract with U until ULP charges were withdrawn, violative]

Texaco, Inc. **273 NLRB No. 164**
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

Steffer Brothers **JD-269-86**
[offering to reemploy unlawfully discharged Ee and others who had been similarly terminated if Ee persuaded his brother to discontinue ULP proceeding against E, unlawful]

5081-9500 Inducement of the filing of charges against union

Duroyd Manufacturing, Inc. **276 NLRB No. 025**
(E paying another Ee to take Ee to NLRB regional office to file charges against U, assisting Ee in composing charges, and encouraging solicitation of Ee signatures on antiU ptn, unlawful)

5082 ACTIONS AGAINST SUPERVISOR

5082-2500 For activities inconsistent with status as supervisor

Reeves Brothers, Inc. **277 NLRB No. 153**
[interrogating and admonishing supervisors concerning their role in securing signed U cards, not violative where interviews were conducted privately, no references were made to rank-and-file Ees and E concentrated only on its concerns about U activities of supervisors]

5082-3000 For refusing to commit unfair labor practice

Carpenters Local 925; et al. (Charlene Seier, an Individual) **279 NLRB No. 145**
[business agent (BA) not threatened by U president telling him that he was *putting his job on the line* after BA wrote letter to executive board of U threatening to resign if board went ahead and fired one of its own Ees for

5082-3000—Cont.

seeking outside U representation, since U did not tell BA that he should execute decision to fire Ee. Supervisor can be fired for participating in concerted activities but not for refusing to commit ULP]

5082-4000 For participation in concerted activities

Carpenters Local 925; et al. (Charlene Seier, an Individual) 279 NLRB No. 145

[business agent (BA) not threatened by U president telling him that he was *putting his job on the line* after BA wrote letter to executive board of U threatening to resign if board went ahead and fired one of its own Ees for seeking outside U representation, since U did not tell BA that he should execute decision to fire Ee. Supervisor can be fired for participating in concerted activities but not for refusing to commit ULP]

5084 ASSISTANCE TO UNIONS

5084-0100 Generally

Black Grievance Committee v. N.L.R.B. 749 F.2d 1072 (C.A. 3, Dec. 1984)

(E's according one minority U privileged status over another minority U, thus encouraging membership in former while discouraging it in latter violative, notwithstanding neither U seeks 9(a) exclusive representative status, since E interfered with Sec. 7 rights of Ees to band together in group of their choice)

5084-2500 Assistance where 8(a)(2) not found

5084-2567 Inside or favored union

Harte & Company, Inc. 278 NLRB No. 128

[no violation of Section 8(a)(1) where U representative made statements that newly hired Ees at E's newly purchased facility would lose their jobs if they did not join U, notwithstanding statements made on E's premises obviously with E's permission, since extension of bargaining agreement to new facility was legal, and U representative's presence on E's premises authorized]

5084-5000 Forms of assistance

5084-5050 Exclusive recognition of minority union

5084-5050-6700 Subsequent acquisition of majority status immaterial

American Bakeries Company and Local Union No. 51, Teamsters (Local No. 326, Bakery Workers) 280 NLRB No. 160

[bargaining prior to achievement of U's majority status, violative despite fact that contract is not enforced or is conditioned upon U's ability to demonstrate majority standing at some later time]

5084-5067 Inducement of employees to join union

Hydro-Air Equipment, Inc. d/b/a Lanco 277 NLRB No. 012

(threatening Ees with discharge if Ees did not sign U authorization cards for U, unlawful)

Hydro-Air Equipment, Inc. d/b/a Lanco 277 NLRB No. 012

(informing Ees that E had signed contract with U and that Ees would be required to join U pursuant to security clause or be replaced, unlawful, since contract was signed with minority U in violationof Section 8(a)(2))

5084-5083 Solicitation of employees

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119

[U's card majority not tainted by solicitation of authorization cards by supervisor where Ees aware that E was opposed to Us, and that supervisor soliciting was about to be discharged by incoming new manager]

Harte & Company, Inc. 278 NLRB No. 128

[no violation of Section 8(a)(1) where U representative made statements that newly hired Ees at E's newly purchased facility would lose their jobs if they did not join U, notwithstanding statements made on E's premises obviously with E's permission, since extension of bargaining agreement to new facility was legal, and U representative's presence on E's premises authorized]

Hydro-Air Equipment, Inc. d/b/a Lanco 277 NLRB No. 012

(informing Ees that E had signed contract with U and that Ees would be required to join U pursuant to security clause or be replaced, unlawful, since contract was signed with minority U in violationof Section 8(a)(2))

The Union National Bank of Pittsburgh 276 NLRB No. 013

(E forwarding letters from U addressed to Ees at work at E's branches to E's main office instead of distributing them to Ees, unlawful implementation of discriminatory no distribution rule, where Ees frequently received personal mail at office; E's contentions that by its use of E's *Internal Distribution Code* on letters, U made E its delivery service and use of E's resources for delivery would violate Sec. 8(a)(2), rejected, since no exposure to liability for one time distribution especially where letters sent directly to branch offices and not sorted in mail room, E's directory not confidential)

Moe Warehouse & Accessory 275 NLRB No. 165

(in order for U authorization cards to be tainted by participation of supervisor in U campaign, participation of supervisory personnel *must be of such kind as to have implied to Ees signing cards that E favored U or that there is reasonable basis for believing that Ees whose cards are sought to be invalidated were coercively induced to designate U*)

5090 CONTRACTS

5090-2500 Individual contracts

5090-2517 Contracts, legal in execution and terms, used to obstruct processes and benefits of collective bargaining

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119

[contract between one U and theatre chain which covered cashiers and candy attendants at E's theatres not bar to efforts of another U to organize Ees at one of E's theatres, where contract had not been applied at all for year at theatre which other U sought to organize and prior thereto there was only limited enforcement, particularly where E had deliberately withheld benefits of contract from Ees at that theatre and Ees were unaware of contract's existence; E's contention that substantial compliance with bargaining agreement at some of its locations constituted substantial compliance at another location, rejected]

5090-5000 Affirmative defenses

5090-5033 Contract terminable at will

Automobile Workers, Local No. 1309 (International Harvester Company) JD-18-86

[U letter of agreement stating that it did not intend to have steward granted superseniority to represent himself--apparently no other unit Ees remained--notwithstanding superseniority provisions of contract, and that agreement was voidable by E or U by written notification at any time, not binding contract but statement of intent voidable by U at will and thus no basis for holding violative E's retention of U steward pursuant to U's invocation of superseniority clause]

Automobile Workers, Local No. 1309 (International Harvester Company) JD-18-86

[U stewards justifiably presumed to have valid lay-off-recall superseniority on basis of U's retaining on-the-job representation for processing grievances; superseniority of nonstewards of officers engaged in no on-the-job, steward-like functions, to whom it was later extended, was evaluated under different criteria]

5090-7500 Union-security agreements

5090-7575 Extension of valid agreement to new plant or newly-hired employees

Harte & Company, Inc. 278 NLRB No. 128

[no violation, where E and U agreed to extend bargaining agreement with security clause in effect at former facility to E's newly purchased facility, since new facility was essentially extension of E's old operation where new plant produced same products using same machinery, Ees performed essentially same functions. Contention move not mere relocation since it took too long for substantial percentage of transferees to arrive at new plant, rejected, since transferees constituted more than 40% of new work force on date transfer process *substantially completed*, and 8 month period to complete transfer operations not unreasonable herein]

5090-8700 Discriminatory maintenance of contract clause

5090-8750 Superseniority and/or other benefits for union officials or stewards

Automobile Workers, Local No. 1309 (International Harvester Company) JD-18-86

[retaining pyrometer steward pursuant to U's invocation of superseniority clause of contract, not unlawfully discriminatory as to two Ees who were not allowed to bump steward from sole remaining pyrometer position but laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

5096 VIOLENCE AND THREATS THEREOF

5096-2100 Arrest

Springfield Hospital 281 NLRB No. 076

[no violation where E sought to arrest U organizer for holding meeting in E's parking lot as there was no showing that E had uniformly permitted non-Ees to congregate for any purpose in its parking lot and had singled out U organizer and his organizing effort for police action. Fact E tolerated U organizer's presence along outer periphery of lot did not entitle him to freely pursue his organizing activity freely on premises]

5096-2100—Cont.

Springfield Hospital **281 NLRB No. 076**
[attempt to enforce invalid no-access rule against off-duty Ees by causing their arrest when evidence showed that Ees did not disturb on-duty Ees or disturb patients in patient-care areas, violative]

Springfield Hospital **281 NLRB No. 076**
[supervisor informing off-duty Ee that she was subject to arrest if she remained in certain location of hospital, violative, as Ee was aware that arrests were made earlier in day of Ees in this location]

Clark Equipment Company **278 NLRB No. 083**
[interfering with distribution of literature in non-work areas during non-work time, violative and objectionable where Ees were told they could not distribute literature at plant entrance but would have to go to plant gate, and two Ees were threatened with arrest and escorted by security guards to plant gate]

Steffer Brothers **JD-269-86**
[E's threat delivered over loudspeaker to Ees on company property shortly after their discharge, that E wanted them off his property or he would call police and have them arrested, unlawful, not only as to Ees directly threatened but also to other Ees who were present to hear threat]

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**
[E's threatening Ee with visit from policy if he failed to cooperate, unlawful, where E was concurrently insisting that Ee tell the truth and that, if Ee knew anything about U, it would be well worth his while to tell E about it]

5096-2900 Assault on, and abuse of, pickets

Airport Distributors, Inc. **280 NLRB No. 091**
[supervisor's conduct during Ee picketing in pointing firearm at picket line captain in initimidating fashion, unlawful, since such intimidation was calculated and unprovoked, and inhibited Ee picketing]

Indiana Desk Company, Inc. **276 NLRB No. 165**
(supervisor hitting picket outside of E's plant with his car, violative, as this interfered with striker's right to picket)

Indiana Desk Company, Inc. **276 NLRB No. 165**
(violations where, while 2 top supervisors of E watched, security force hired by E to protect plant during strike arrived at plant in 10 vehicle caravan with approximately 30 men and 8 dobermans and german sheperd dogs and guards carried guns from cars to trailer, guards practiced martial arts and dogs allowed to lunge at each other and to attack guards wearing protective sleeves while pickets watched, as these displays were for purpose of intimidating strikers)

Indiana Desk Company, Inc. **276 NLRB No. 165**
(violation where guards hired by E drove alongside vehicle driven by striker and tried to force his vehicle off the road)

Indiana Desk Company, Inc. **276 NLRB No. 165**
(no violation where guards hired by E were merely pushing or shoving pickets out of way so that vehicles could come in or out of plant, but pushing and shoving pickets at other times, violative)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(hitting, punching, and spitting on strikers, and even bumping police officer, violative)

5096-7000 Inflicting, or inciting infliction of, violence on union adherents

Studio S.I.T., Limited **277 NLRB No. 126**
(threatening leading U activist with violence to her person or property and physically abusing her because she had engaged in U activity, violative)

Storall Manufacturing Company, Inc. **275 NLRB No. 039**
(threatening that Ee would lose his family unless he abandoned U, violative)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(requests to truck drivers to run picketers off the road and kill them, or to run over them, violative)

5096-8000 Assault on union representative or threat thereof

Asarco Incorporated Mission Unit **279 NLRB No. 117**
[escorting U steward out of grievance meeting in a manner that assertedly constituted a physical assault, not unlawful, since conduct was neither inherently destructive of Ees' Sec. 7 rights nor did it tend to restrain or coerce Ees in exercise of such rights, given facts of case]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. **279 NLRB No. 091**
[E threatening U official with bodily harm in presence of Ees, not unlawful, since threat spoken in Italian, which was not understood by any Ees]

Batavia Nursing and Convalescent Inn **275 NLRB No. 125**
(election day assault by E's attorney acting as its lead counsel upon U's field organizer in presence of Ees, unlawful, since attorney's actions were w/in *general* scope of his authority, even though E may not have authorized specific acts in question)

5096-8400 Threats of bodily harm

Wayne W. Sell Corporation **281 NLRB No. 082**
[E's vice-president informing Ee that if Ee continued to stick his nose into everybody's business, referring to Ee's filing grievances sooner or later somebody's *going to put it all over his face*, unlawful, since constituted thinly veiled threat of physical harm for protected activity of filing grievances]

Wayne W. Sell Corporation **281 NLRB No. 082**
[E's statement to Ee who had been grievance chairman and continued to file grievances after resigning office that he would *have his job*, and that someone would *put his nose all over his face* went further than usual shop talk and constituted unlawful threat of physical harm]

Eskaton Sunrise Community **279 NLRB No. 012**
[threatening Ees with physical harm if they continued their U activities, unlawful]

Studio S.I.T., Limited **277 NLRB No. 126**
(threatening leading U activist with violence to her person or property and physically abusing her because she had engaged in U activity, violative)

Superior Warehouse Grocers, Inc. **277 NLRB No. 010**
(E's president's telling Ee he would *like to choke* him and telling another Ee that he would break his neck if U was successful, violative)

Indiana Desk Company, Inc. **276 NLRB No. 165**
(violations where, while 2 top supervisors of E watched, security force hired by E to protect plant during strike arrived at plant in 10 vehicle caravan with approximately 30 men and 8 dobermans and german sheperd dogs and guards carried guns from cars to trailer, guards practiced martial arts and dogs allowed to lunge at each other and to attack guards wearing protective sleeves while pickets watched, as these displays were for purpose of intimidating strikers)

Indiana Desk Company, Inc. **276 NLRB No. 165**
(violation where guards hired by E drove alongside vehicle driven by striker and tried to force his vehicle off the road)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(threats of physical harm to U organizers, violative)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(threats to kill picketers, to kill one picketer's family, and to burn homes of two picketers, violative)

B & W Machine & Welding Company **JD-(SF)-107-86**
[threatening life of Ee because of his participation in Bd proceedings, unlawful]

Phil's Food Market, Inc. **JD-(SF)-105-85**
(E's agent's threatening picketers with physical harm and displaying drawn gun and E's vice president's threatening them with assault by deliberately driving close to them in dangerous reckless manner, violative)

N.L.R.B. v. Norbar, Inc. **752 F.2d 235 (C.A. 6, Jan. 1985)**
(foreman's asking Ee if he had been using foreman's name for U business and threatening to punch him in the nose if he had, violative)

5098 CONDUCT OF EMPLOYER OTHER THAN IMMEDIATE EMPLOYER OF EMPLOYEES

The Martin Brower Company **JD-(SF)-63-86**
[E's warning deliveryman that further violation of E's rule against deliverymen conversing with E's Ee, not violation where rule was nondiscriminatorily applied, warning was not threat but prediction of possible consequences, and E showed no animus against deliveryman, notwithstanding deliverman had, when employed by E, filed grievance against E and ULP charge and civil suit upon being discharged]

7500 AFFIRMATIVE DEFENSES TO CHARGES OF INTERFERENCE, RESTRAINT, OR COERCION

7525 NON-COERCIVE NATURE OF MISCONDUCT

La-Z-Boy **281 NLRB No. 054**
[personnel manager's and superintendent's telling open U supporter at gripe session, where he had asked about benefits at E's unionized plant and begun to dominate meeting, that if he liked unionized plant so much they would give him opportunity to transfer and guessed that several in meeting would help him pack, not violation in absence of threats]

7525—Cont.

The Standard Products Company, Rocky Mount Division 281 NLRB No. 018
[minor horseplay on election day between 2 Ees about their respective pro- and anti-U views in presence of supervisor, not unlawful, since conduct was not likely to be *highly coercive* as claimed, where pro-U Ee's support for U was widely known, he did not hesitate to express that support during incident, and supervisor did not participate in incident]

Lucky Stores, Inc. d/b/a Gemco 279 NLRB No. 153
[manager's interrogation of Ee concerning his U activities, unlawful, notwithstnading claimed social or friendly relationship between the two, since mere existence of such relationship, of itself, does not automatically nullify coercive effect of otherwise unlawful remarks; discussion, conducted in manager's office principally to issue warning notices to Ee, was business-oriented, rather than social, and demonstrated manager's economic power over Ee who received no assurance of no reprisals and became apprehensive as result of manager's remarks; and claimed personal relationship was not established]

Pilled of Mississippi, Inc. 275 NLRB No. 117
(E did not neutralize effects of prior threats of plant closure and retaliation by giving Ees last minute *job guarantees* 1 day before election and assurances of continued employment where *guarantee* was ambiguous, statement did not specifically and unambiguously disavow E's prior conduct found unlawful and no assurances were given to Ees that in the future, E would not interfere in exercise of Ees' Section 7)

7527 ALTERNATIVES TO ACTION WOULD VIOLATE OTHER SECTIONS OF NLRA OR OTHER STATUTES

Times Wire & Cable Company 280 NLRB No. 003
[E's failure to grant an annual wage increase during pendency of U election, violative, where E had established policy for at least 3 years prior to election of granting annual wage increases; further, E's contention that it had no choice but to withhold wage increase because of upcoming election, rejected, where evidence clearly showed E had attempted to place the onus for withholding on the U rather than attempting to comply with the law]

7530 MISINTERPRETATION OF LAW

National Micronetics, Inc. 277 NLRB No. 095
(distribution of accurate decision with portions of LRRM report highlighted and characterized as *true*, held not illegal threat)

The Union National Bank of Pittsburgh 276 NLRB No. 013
(E forwarding letters from U addressed to Ees at work at E's branches to E's main office instead of distributing them to Ees, unlawful implementation of discriminatory no distribution rule, where Ees frequently received personal mail at office; E's contentions that by its use of *E's Internal Distribution Code* on letters, U made E its delivery service and use of E's resources for delivery would violate Sec. 8(a)(2), rejected, since no exposure to liability for one time distribution especially where letters sent directly to branch offices and not sorted in mail room, E's directory not confidential)

7550 MISCONDUCT OF EMPLOYEE

Dandridge Textile, Inc., Ronald W. Woods, Individually and As Officer and Managing Agent 279 NLRB No. 015
[discharge of 2 Ees for remarks made to E's owner in meeting concerning wage increases, violative notwithstanding owner may have found Ees' remarks unpleasant or distressing, where Ees' statements were not so vulgar or defamatory as to render them unfit for further service]

7550-0100 Generally

Quality C.A.T.V., Inc. 278 NLRB No. 156
[discharge of two TV linemen who installed television strands on utility poles and who refused to work during and after rainstorm because they were wet, violative, since their concerted refusal to work was to protest requirement that they climb poles when wet, an employment condition. Ee's protest was protected whether Ees acted because they were concerned about their safety, their personal comfort, or their supervisor's attitude. In carrying out their protest, Ees did not exceed permidsable bounds of protected activity]

7550-0125 Condonation vitiates defense

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. 801 F.2d 636 (C.A. 3, Sept. 1986)
[discharge for repeated lateness of Ee who had discussed wages with other Ees and suggested that they contact U if next wage increase was unsatisfactory, violation where lateness was sanctioned by E, rule was *elastic term*, conditions for discharge were not rigid, and Ee received no recent warnings, was not docked any pay, and received positive evaluation and offer of promotion]

7550-0133 Lawful discipline or admonition

Consumers Power Company 282 NLRB No. 024
[upon finding discharge of Ee, assertedly for assaulting his supervisor, part of res gestae of Ee's protected concerted activity and not unlawful, Bd rejected E's contention that its disciplinary policy *mandates* discharging Ee, since Ee was not discharged for similar conduct on prior occasion nor initially discharged herein, thereby indicating E had discretion in choosing disciplinary action against Ee; at any rate, E's disciplinary policy cannot lawfully *mandate* that Ee be discharged in violation of 8(a)(1)]

Aztec Concrete, Inc. and E.M.L. Construction Company, Joint Employers 277 NLRB No. 142
(layoffs allegedly because of slack work, Ees' substandard performance, drinking on job, and extended lunch breaks, violative where they were due to Ees' complaining to Corps of Engineers about E's failure to comply with Davis-Bacon wage and job-classification requirements at federal military installation)

Felbro, Inc. 274 NLRB No. 186
(E's telling Ees, who were demanding an explanation for layoff of Ee, that if they did not return to work they would be sent home, and then clocking them out and refusing to pay them for the remainder of the day, not violative, since Ees repeatedly refused to go back to work and E took no disciplinary action against Ees but simply refused to pay them for the remainder of the day they refused to work)

The Martin Brower Company JD-(SF)-63-86
[E's warning deliveryman that further violation of E's rule against deliverymen conversing with E's Ee, not violation where rule was nondiscriminatorily applied, warning was not threat but prediction of possible consequences, and E showed no animus against deliveryman, notwithstanding deliverman had, when employed by E, filed grievance against E and ULP charge and civil suit upon being discharged]

Bombay Palace of Westchester, Inc. JD-(NY)-81-85
[discharging Ee for taking three-month vacation, not violation, where discharge was according to E's past practice, and Ee knew when he left for vacation that job would not be held open past normal vacation period]

7550-0143 Disloyalty of employee

Squier Distributing Company 276 NLRB No. 133
(discharge of Ees for giving statements to sheriff in connection with his investigation of possible embezzlement of corporate funds by E, violative, as Ees were acting for their *mutual aid or protection* since they viewed -- as result of 2 after work meetings -- that their concerted cooperation with sheriff as best method of safeguarding their jobs which bears relationship to Ees' interests as Ees and is, therefore, concerted activity. Disloyalty claim rejected)

7550-0175 Mistaken belief as to misconduct no defense if conduct in fact did not occur

Coca Cola Bottling Company of Buffalo, Inc. 274 NLRB No. 195
(discharge of Ee for allegedly making bomb threat, violative where he did not engage in such misconduct)

7550-2500 Undermining or circumventing grievance procedure

N.L.R.B. v. Architectural Research Corporation 748 F.2d 1121 (C.A. 6, Nov. 1984)
(discharge of two Ees for stopping work and confronting E about restoring afternoon break, not violative, since action was not protected where break had been eliminated from contract by agreement with U and the two Ees, although having been repeatedly told that it was matter to be decided by E and U and that they should file a grievance, had persisted in trying to bypass the U and deal directly with E about it)

7550-3100 Undermining or circumventing bargaining representative

AAL, Inc., d/b/a River Oaks Nursing Home 275 NLRB No. 012
(discharge of 2 (U) unit Ees because of their *walkout* over E's staffing proposals not violative, since facts establish walkout occurred w/o prior U knowledge and was not in support of policies and actions theretofore taken by U since U had decided against proffering contract proposal for specific staffing of aides, and U agent did not avail himself of opportunity at meeting to discuss walkout to join in with demands of dischargees for specific staffing of aides)

7550-3700 Violence or threats thereof

Consumers Power Company 282 NLRB No. 024
[discharge of Ee, assertedly for assaulting his supervisor, unlawful, where Ee's conduct, as part of res gestae of protected concerted activity, in raising his fists to supervisor reflexively in response to supervisor's motioning of his hands in Ee's face, was not so egregious as to cause Ee to lose protection of Act nor of such character as to render him unfit for further service; nor was Ee's similar reaction to supervisor on prior occasion regarded by E so inherently egregious as to warrant his discharge at that time]

7550-5000 Work-related misconduct

Cherokee Heating and Air Conditioning Co. **280 NLRB No. 044**
[discharge for taking day off w/o prior approval and w/o informing E of intent to retain employment, not violation]

D & D Distribution Company, A Division of D & D Sewing Company **277 NLRB No. 097**
(discharge of Ee assertedly for excessive tardiness and absenteeism, unlawful, notwithstanding that Ee's record of tardiness was substantially worse than that of any other Ee in the year before his discharge, and that E had no past record of ULPs, where E failed to show that Ee would have been terminated for tardiness and absenteeism even in absence of his concerted activity)

D & D Distribution Company, A Division of D & D Sewing Company **277 NLRB No. 097**
(discharge of Ee assertedly for excessive tardiness and absenteeism, unlawful, where inference was warranted that E had knowledge of Ee's protected concerted activities; for months-long period prior to discharge Ee was neither docked for, nor warned about his attendance but, instead, was praised for his work; and immediately after discharge E told Ee that real reason for discharge was not lateness but Ee's attitude toward E, thereby supporting inference that Ee's concerted activities caused his termination)

National Car Rental **JD-NY)-60-85**
(no violation, since discharge for insubordination, where aafter heated argument with Ee, supervisor ordered Ee to leave his office, and Ee responded that if supervisor wanted her to leave he *would have to fire her*)

7550-6000 Breach of employer's rules

American Lebanese Syrian Associated Charities, Inc. d/b/a A.L.S.A.C. **277 NLRB No. 189**
[discharge of Ees because of their possession and dissemination of allegedly confidential list showing Ees' pay and pay raises, in violation of E's rules, violative, where E's claim that list confidential seriously undercut by fact that list was left at copy machine used by all Ees, E had known for months that Ees possessed list yet did nothing and Ees were discharged for violation of unlawful rule prohibiting talking about salaries]

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. **801 F.2d 636 (C.A. 3, Sept. 1986)**
[discharge for repeated lateness of Ee who had discussed wages with other Ees and suggested that they contact U if next wage increase was unsatisfactory, violation where lateness was sanctioned by E, rule was *elastic term*, conditions for discharge were not rigid, and Ee received no recent warnings, was not docked any pay, and received positive evaluation and offer of promotion]

7550-7000 Offensive personal behavior

Caterpillar Tractor Company **276 NLRB No. 151**
276 NLRB No. 151
(suspending U steward for drawing and disseminating cartoon containing obnoxious obscenities directed at foreman whom steward dealt with on grievances, not violative where Ee's misconduct was so egregious that it exceeded scope of whatever protection it might otherwise have been entitled, and obscenities had inevitable negative effect on foreman's supervisory status in eyes of other Ees)

Paint America Co. **JD-17-86**
[discharge of Ees allegedly for concertedly complaining to E regarding wages, hours, and working conditions, not unlawful, where Ees were discharged for flagrant violation of most basic of industrial rules regarding privacy of confidential documents; there was no connection between Ees purported complaints and their discharge; rather, they were discharged for handling and looking through documents of their supervisor, which conduct Ees knew was wrong]

7550-7500 Strike misconduct

Georgia Kraft Company, Woodcraft Division **275 NLRB No. 091**
(on remand, Bd held that, in light of decision in *Clear Pine Mouldings*, E's discharge of two strikers, who visited home of non-striking Ee and in presence of Ee's pregnant wife and young daughter stated, while cursing in drunken state, that they would *take care of* Ee if he returned to work was not unlawful, since strikers' remark constituted threat and circumstances were obviously coercive and intimidating)

N.L.R.B. v. Preterm, Inc. **784 F.2d 426 (C.A. 1, Feb. 1986)**
[misconduct of striking Ee directed against patrons or customers of E, or others seeking to enter (E's) premises for business purposes, is equivalent of misconduct against fellow Ees]

7550-8700 Breach of no-strike clause or threat thereof

Metropolitan Edison Company **279 NLRB No. 047**
[threatening discipline, including suspension, for refusing to cross stranger picket line, not violation where broad no-strike clause waived Ee's right to honor stranger picket line, in absence of any evidence in bargaining history or past practice demonstrating that parties expressly excluded sympathy strikes from no-strike clause coverage]

7567 VOLUNTARY QUIT

Modern Iron Works, Inc. **281 NLRB No. 151**
[discharge of Ees for engaging in work stoppage when they sought to get larger wage increase than they had received from E, unlawful, notwithstanding E's contention that they had quit, where work stoppage was protected concerted activity, and there was no evidence Ees voluntarily relinquished their employment with E, which was clearly evidenced by their spokesman's express disclaimer that they had quit]

Ozark Properties, Inc. d/b/a Holiday Inn **274 NLRB No. 096**
(discharge of Ees because of their participation in and support of a strike over working conditions violative, notwithstanding E's contention Ees were voluntary quits when they refused to return to work after a demand to return to work, where Ees walked off job at beginning of work day and set up picket line to protest work conditions and later that day, when striking Ees met with president of E, he demanded that Ees return to work or pick up their paycheck and normal practice of E was to give Ees a final paycheck when they were terminated)

Country Crest Creations, Ltd. **JD-271-86**
[Ees' going home early because work area was cold, not voluntary quit]

Dr. Olinda Floro **JD-12-86**
[Ee was discharged, rather than voluntarily quitting, where Ee responded to E's telling her to remove her things from office by stating that she could not believe what E was doing to her, E stated intention to pay Ee severance pay, E was training a coworker to take over Ee's duties and was advertising for replacement]

N.L.R.B. v. CER Inc. **762 F.2d 482 (C.A. 5, June 1985)**
(Ee choosing to quit job rather than change manner in which he protested E's violations of bargaining agreement, which E viewed as prohibited since Ee was leaving his work station to correct violations, held constructive discharge rather than voluntary quit and violative, since Ee was faced with choice of discontinuing protected U activity or being terminated)

John Morrison, et al. (Carriage Ford, Inc.) v. N.L.R.B. **772 F.2d 283 (C.A. 6, Sept. 1985)**
[Bd properly found that Ees had voluntarily quit and were not unlawfully discharged for engaging in protected activity of protesting change in work hours, where it was conceded by all parties that E had right to set working hours and, contrary to Ees claim that they were given no opportunity to discuss new hours and were summarily discharged. Bd found that E announcerl new hours and gave all Ees, and not just Ees herein, option of continuing to work new hours or leaving their employment]

7587 WAIVER OF RIGHT UNDER COLLECTIVE-BARGAINING AGREEMENT

Page Avjet Corporation **275 NLRB No. 113**
(E's implementing and enforcing new uniform policy prohibiting the wearing of any *non-company buttons or patches... on any part of the uniform including the hat*, assertedly because E was concerned with its public image, violative, since rule was overbroad and no special circumstances existed to limit Ees' right to wear U insignia, where policy applied to all unit Ees regardless of amount of contact they had with the public; further, U did not waive right to complain by giving E right to establish conditions under which uniforms were to be worn since agreement did not limit what could be worn)

7599 OTHER

Dr. Olinda Floro **JD-12-86**
[defense that E lacked knowledge of Ees' concerted protected activity, rejected where E's sister informed E of it, Ees' complaints were overheard, and E's knowledge was shown by questions she asked Ee before discharging her]

518 EMPLOYER DOMINATION, ASSISTANCE OR SUPPORT OF LABOR ORGANIZATION

0100 GENERALLY

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)

[*Legislative history of Section 8(a)(2) of NLRA makes clear that Congress intended it, much as Section 302 LRRA, to be provision prohibiting bribery and company dominated Us, not prohibiting kind of labor-management cooperation necessary to collective bargaining as giving paid time to U steward for performance of U duties*]

0120 EMPLOYER'S OBLIGATION OF NEUTRALITY TOWARDS EMPLOYEE'S ORGANIZATIONAL ACTIVITIES (See also 518-4040-6701-3300)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. 764 F.2d 182 (C.A. 3, June 1985)

(effect of Bd's *Bruckner* rule (262 NLRB 955) is that when faced with two rival non-incumbent Us, E is free to recognize that U authorized by an uncoerced majority at any time *until* the filing of a valid R ptn, and once notified of valid R ptn. E must refrainn from recognizing any of the rival non-incombent Us)

0180 MAJORITY SUPPORT OR APPROVAL OF EMPLOYER'S ACTIONS NOT CONTROLLING

The Lawson Company v. N.L.R.B. 753 F.2d (C.A. 6, Jan. 1985)

(Ee satisfaction with an existing (Ee bargaining) committee is *one* element that Bd should consider in determining whether E has violated Section 8(a)(2) of Act. Here, Ee dissatisfaction, with Ee bargaining committee was expressed by signing U authorization cards)

2000 FORMS OF DOMINATION AND INTERFERENCE

2017 EMPLOYER PARTICIPATION IN FORMATION OR INITIATION OF LABOR ORGANIZATION

2017-1400 Initial suggestion or instigation by employer

Hunter Douglas, Inc. 277 NLRB No. 123

(violation, where E's manager suggested formation of Ee committee, during U campaign, to discuss problems and remedies, meetings of committee were held on company time in company cafeteria, with agenda set by manager)

Texas Bus Lines, Inc. 277 NLRB No. 075

(holding mandatory meetings with Ees in which E strongly suggested that Ees establish Ee committee, showing willingness in management-committee meeting to bargain with Ee committee, and dealing with a committee member concerning Ee grievances found to constitute unlawful assistance and interference with formation and administration of Ee committee)

2017-1417 Transfer of employees

Food Concepts, Inc. JD-(NY)-36-85

(when E closed down one of its 2 locations, each represented by different U, and transferred those Ees to remaining location, a merger of units occurred and qcr existed. E violated Act when he recognized and applied contract of U that represented original Ees at location to the newly moved Ees, and also when supervisor threatened transferred Ees with discharge if they did not join other U)

2017-2800 Direct participation of employer

Superior Container, Inc. 276 NLRB No. 055

(E unlawfully dominated and controlled formation of Ee committee where he selected Ees to serve on committee and told committee that it was expected to address Ee or safety complaints and was to meet once a month; such committee, created by E to deal with E grievances, is clearly encompassed w/i proscription of 8(a)(2))

2017-2833 Supervisor's participation or assistance in campaigning and soliciting for union

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119

[supervisor urging Ees to sign cards for U which it favored, and threatening Ees with discharge if they did not sign cards constituted unlawful assistance to U, notwithstanding there existed contract with U for which E demanded Ees sign cards, where Ees at location involved were unaware of contract, had not previously signed authorization cards, U had made no effort to enforce contract at location involved, and effort to have Ees sign cards occurred only after another U had filed ptn to represent Ees]

2050 TIME OF ORGANIZATION

2050-6700 Concurrent with or immediately after organizational drive of outside union

Hunter Douglas, Inc. 277 NLRB No. 123

(violation, where E's manager suggested formation of Ee committee, during U campaign, to discuss problems and remedies, meetings of committee were held on company time in company cafeteria, with agenda set by manager)

2083 ADMINISTRATION OF ORGANIZATION

2083-3300 Dictation or guidance by employer

Superior Container, Inc. 276 NLRB No. 055

(E unlawfully dominated and controlled formation of Ee committee where he selected Ees to serve on committee and told committee that it was expected to address Ee or safety complaints and was to meet once a month; such committee, created by E to deal with E grievances, is clearly encompassed w/i proscription of 8(a)(2))

2083-5000 Interference without domination

Texas Bus Lines, Inc. 277 NLRB No. 075

(E which was found to assist and interfere with Ee committee herein found not to dominate it where there is no evidence that E permitted Ees to use its premises for meetings, paid them for time spent in operating said committee, or controlled the committee by having its representatives as members)

2083-6700 Meetings

2083-6750 Called and attended by employer's representatives

Hunter Douglas, Inc. 277 NLRB No. 123

(violation, where E's manager suggested formation of Ee committee, during U campaign, to discuss problems and remedies, meetings of committee were held on company time in company cafeteria, with agenda set by manager)

2083-8300 Employer voice in affairs of employee committee

Baker Mine Services, Inc., d/b/a Coppinger Machinery Service, Inc. 279 NLRB No. 085

[E paying members of Ee committee negotiating committee for time spent negotiating bargaining agreement, providing ballots for committee elections, allowing elections during working hours w/o loss of pay, giving advice to Ee committee members during negotiations, meeting directly with Ees to encourage ratification of bargaining agreement negotiated with Ee committee, and paying cost of printing agreement, not unlawful; absent evidence of lack of arms-length relationship between E and U properly litigated, such activities only deemed cooperation of ministerial nature]

4000 FORMS OF ASSISTANCE AND SUPPORT

4001 GENERALLY

4001-5000 Assistance to nonqualified representative

4001-5000—Cont.

Rainey Security Agency, Inc. 274 NLRB No. 041
(C allegation that E violated 8(a)(1), (2) and (3) as result of alleged failure of U to adequately represent Ees not sustained where the only plausible basis for holding E statutorily liable would be on theory that E conspired in installing U as Ee representative with full knowledge that U did not represent majority, and in such case, E could perhaps be held liable under 8(a)(1) and (3); however, while there was well-grounded suspicion of such knowing conspiracy, evidence did not quite demonstrate it)

4010 SUGGESTION OF FORMATION OR INITIATION OF UNION

Texas Bus Lines, Inc. 277 NLRB No. 075
(holding mandatory meetings with Ees in which E strongly suggested that Ees establish Ee committee, showing willingness in management-committee meeting to bargain with Ee committee, and dealing with a committee member concerning Ee grievances found to constitute unlawful assistance and interference with formation and administration of Ee committee)

Sears, Roebuck and Co. 274 NLRB No. 085
(establishment of communications committee by company manager, not unlawful, where committee was not labor organization, its function being to increase company efficiency rather than to deal with E on behalf of Ees)

4020 PERMITTING USE OF COMPANY TIME, PREMISES OR FACILITIES

4020-5000 Facilities

Safeway Stores, Inc. 276 NLRB No. 099
(E unlawfully assisted and supported U and U unlawfully accepted such assistance and support during its organizing campaign at E's new chain retail store, where E made store facilities available for U representatives to solicit U membership and health and welfare applications when E had already unlawfully recognized U, thus facilitating U access to store and giving U representatives opportunity to tell Ees U already represented them, which is unlike situation where neutral E's granting access to U to solicit Ees. w/o more, does not constitute unlawful assistance)

4020-5060 Clerical, telephone, and other facilities

BASF Wyandotte Corporation 274 NLRB No. 147
(E's contention that its granting of privileges to U i.e. permitting U chairman to spend 4 hours of paid time each workday conducting U business including grievance processing, use of office, telephone, and copying machine, violated Section 8(a)(2) as unlawful support of U, and thus justified unilateral withdrawal of privileges as illegal rather than mandatory subject of bargaining, rejected, since grant of time and property not violative of Section 8(a)(2) where U had been recognized and dealt with at arms length, but merely friendly cooperation of amiable labor management relationship, absent deeper E involvement or intrusion into U affairs)

4020-6700 Meetings

Baker Mine Services, Inc., d/b/a Coppinger Machinery Service, Inc. 279 NLRB No. 085
[E paying members of Ee committee negotiating committee for time spent negotiating bargaining agreement, providing ballots for committee elections, allowing elections during working hours w/o loss of pay, giving advice to Ee committee members during negotiations, meeting directly with Ees to encourage ratification of bargaining agreement negotiated with Ee committee, and paying cost of printing agreement, not unlawful; absent evidence of lack of arms-length relationship between E and U properly litigated, such activities only deemed cooperation of ministerial nature]

Hunter Douglas, Inc. 277 NLRB No. 123
(violation, where E's manager suggested formation of Ee committee, during U campaign, to discuss problems and remedies, meetings of committee were held on company time in company cafeteria, with agenda set by manager)

The Kroger Company 275 NLRB No. 202
(where E remedied prior unlawful recognition and execution of U contract by repudiating such action, Bd held fact that E allowed U to conduct contract ratification meeting at E's facility immediately following company meeting did not add to prior unlawful conduct, where company meeting was voluntary, no supervisors or E officials were present at ratification meeting, and GC did not contend that E's allowing U to discuss ratification with Ees immediately after company meeting and/or mechanics of ratification vote were unlawful or supported finding that earlier recognition was not cured)

4020-8300 Organizational activities

4020-8333 Meetings

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. 280 NLRB No. 118
[E's holding meetings with Ees and allowing its agent to solicit authorization cards during breaks, recognizing U based on those authorization cards and entering into contract with U and telling applicants for employment that E could not use them if they had a *Teamster* attitude (which was the U E did not want to recognize or deal with), violative]

4020-8367 Solicitation

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. 282 NLRB No. 001
[E's inviting U to organize its new delicatessen Ees, inviting U representatives to be present when it was signing up applicants for employment, directing applicants to U, and stating applicants had to join U in order to work, violation]

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119
[supervisor urging Ees to sign cards for U which it favored, and threatening Ees with discharge if they did not sign cards constituted unlawful assistance to U, notwithstanding there existed contract with U for which E demanded Ees sign cards, where Ees at location involved were unaware of contract, had not previously signed authorization cards, U had made no effort to enforce contract at location involved, and effort to have Ees sign cards occurred only after another U had filed ptn to represent Ees]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. 280 NLRB No. 118
[E's agent soliciting signatures on authorization cards in front of E's supervisors, violative]

4025 PRIVATE ELECTIONS

S.M.S. Automotive Products, Inc. 282 NLRB No. 006
[E's conducting a private secret ballot election among Ees, violative, where at time election was conducted, E had unlawfully entered into contract with U that did not enjoy majority support and E did nothing to repudiate the unlawful contract prior to election; further, E's granting recognition to another U that won election and that U's acceptance of recognition, unlawful, since by conducting the unlawful election, U could not have represented an uncoerced majority of Ees]

4030 FINANCIAL SUPPORT

4030-1400 Checkoff

4030-1408 Deducting union dues without employee's checkoff authorizations

United States Postal Service 279 NLRB No. 008
[continuing to withhold Ee's dues after revocation of dues checkoff authorization, violation, notwithstanding revocation was not w/i *open* annual period designated in dues authorization and governing bargaining agreement, where authorization directing E to assign to U *such regular and periodic membership dues as the Union may certify as due and owing* provided for payment of dues as quid pro quo for U membership, so that, when Ee validly resigned U membership, his agreement to have membership dues assigned ceased to exist for purpose of dues checkoff]

4030-1467 Soliciting dues deduction authorizations

Mode O'Day Company, Division of Wickes Companies, Inc. 280 NLRB No. 029
[inclusion of check off authorization form among forms furnished Ees during hiring process may justify finding that Ees were led to believe that execution of such authorization was condition of employment]

Mode O'Day Company, Division of Wickes Companies, Inc. 280 NLRB No. 029
[requiring Ee to sign U dues check off authorization form at time of hire and deducting U initiation fee from wages pursuant to authorization, unlawful, since Ee's execution of authorization was not voluntary where Ee, given filled-in authorization form along with other forms she was required to sign, could reasonably assume that she was required to sign authorization form predated as of date of hire and to sign on such date; and E further encouraged Ee to sign immediately by assuring her no monies would be deducted for 30 days]

4030-4200 Expenses of suspected union defrayed, or supplies paid for

Baker Mine Services, Inc., d/b/a Coppinger Machinery Service, Inc. 279 NLRB No. 085
[E paying members of Ee committee negotiating committee for time spent negotiating bargaining agreement, providing ballots for committee elections, allowing elections during working hours w/o loss of pay, giving advice to Ee committee members during negotiations, meeting directly with Ees to encourage ratification of bargaining agreement negotiated with Ee committee, and paying cost of printing agreement, not unlawful; absent evidence of lack of arms-length relationship between E and U properly litigated, such activities only deemed cooperation of ministerial nature]

4030-5600 Payment or granting of leave for time spent on union business

4030-5600—Cont.

Baker Mine Services, Inc., d/b/a Coppinger Machinery Service, Inc. 279 NLRB No. 085
[E paying members of Ee committee negotiating committee for time spent negotiating bargaining agreement, providing ballots for committee elections, allowing elections during working hours w/o loss of pay, giving advice to Ee committee members during negotiations, meeting directly with Ees to encourage ratification of bargaining agreement negotiated with Ee committee, and paying cost of printing agreement, not unlawful; absent evidence of lack of arms-length relationship between E and U properly litigated, such activities only deemed cooperation of ministerial nature]

Hunter Douglas, Inc. 277 NLRB No. 123
(violation, where E's manager suggested formation of Ee committee, during U campaign, to discuss problems and remedies, meetings of committee were held on company time in company cafeteria, with agenda set by manager)

BASF Wyandotte Corporation 274 NLRB No. 147
(E's contention that its granting of privileges to U i.e. permitting U chairman to spend 4 hours of paid time each workday conducting U business including grievance processing, use of office, telephone, and copying machine, violated Section 8(a)(2) as unlawful support of U, and thus justified unilateral withdrawal of privileges as illegal rather than mandatory subject of bargaining, rejected, since grant of time and property not violative of Section 8(a)(2) where U had been recognized and dealt with at arms length, but merely friendly cooperation of amiable labor management relationship, absent deeper E involvement or intrusion into U affairs)

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)
[*Legislative history of Section 8(a)(2) of NLRA makes clear that Congress intended it, much as Section 302 LRRA, to be provision prohibiting bribery and company dominated Us, not prohibiting kind of labor-management cooperation necessary to collective bargaining as giving paid time to U steward for performance of U duties*]

4040 RECOGNITION AND EXECUTION OF CONTRACT

The Kroger Company 275 NLRB No. 202
(where E remedied prior unlawful recognition and execution of U contract by repudiating such action, Bd held fact that E allowed U to conduct contract ratification meeting at E's facility immediately following company meeting did not add to prior unlawful conduct, where company meeting was voluntary, no supervisors or E officials were present at ratification meeting, and GC did not contend that E's allowing U to discuss ratification with Ees immediately after company meeting and/or mechanics of ratification vote were unlawful or supported finding that earlier recognition was not cured)

4040-0100 Generally

Windsor Place Corp. 276 NLRB No. 051
(E can recognize U w/o determining or requiring that U demonstrate its majority status, but risks 8(a)(2) liability for recognizing a U supported by a minority of unit Ees)

4040-0167 Presumption of majority status at time of execution

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008
(where E and minority U unlawfully entered into, maintained and enforced contract containing both U security and exclusive referral provisions, fact that persons were referred by U to employment with E held not proof that they were U members or had authorized U to represent them thereby conferring majority status on U)

Rainey Security Agency, Inc. 274 NLRB No. 041
(while E in 8(a)(2) case need not initially shoulder burden of proving a majority, law requires that there must in fact have been majority at time of recognition; fact of majority support will ordinarily be presumed, as all actions such as recognition are normally assumed to be consistent with the law; but once there is some showing that any earlier-gathered majority, however manifested, might have been obtained or maintained by improper influence, Bd may, in exercise of its reasoned judgment, require parties to separate until properly joined)

4040-1700 Premature when number of employees not representative complement

4040-1716 In absence of employees

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008
(notwithstanding E's contention that it was acting in good faith and seeking to avoid jurisdictional dispute between 2 Us, E held to have unlawfully extended recognition to 1 of the Us at E's new facility, and U to have unlawfully accepted recognition at time that Ees had not yet been hired)

The Kroger Company 275 NLRB No. 202
(E's recognition and execution of U contract covering E's warehouse Ees and truckdrivers, unlawful, where E failed two-pronged test for determining if recognition of U is lawful since, first, only 3 out of full complement of 21 Ees were working when E extended recognition to U and, second, E could not have been in normal production inasmuch as warehouse function was distribution of groceries to retail stores and no drivers had been hired)

The Kroger Company 275 NLRB No. 202
(in finding that E unlawfully recognized and executed contract with U at which time E did not employ representative complement of its work force, Bd rejected E's contention that its recognition of U was lawful since 3 of planned complement of 9 warehouse Ees had been hired as of recognition date, where contract applied to unit of warehouse Ees *and* truckdrivers)

The Kroger Company 275 NLRB No. 202
(E cured its initial unlawful recognition and execution of U contract where E timely repudiated such conduct w/i days of its occurrence; repudiation was unambiguous and specific, as E expressly withdrew recognition, rescinded contract, and assured Ees of their free choice in joining U; there was adequate publication and Ees were assured their Sec. 7 rights would not be interfered with in future, as E told each Ee that he would be employed regardless of whether he joined U; and there was no other illegal conduct by E)

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. 275 NLRB No. 182
(retail-service E unlawfully assisted U representing unit of its truckdrivers by signing contract containing exclusive hiring hall and U security clauses which covered as yet to be hired warehousemen as well as truckdrivers, hiring only warehousemen referred by U, and applying U security clause to them where warehousemen were not accreted to truckdrivers' unit; recognition was premature in absence of showing of U authorization cards or uncoerced majority, and prehire agreement as to warehousemen and E's application of it and its exclusive hiring hall and U security clauses was unlawful)

Tyler Distribution Centers, Inc. JD-(NY)-21-86
[E's according recognition to one local U at new plant and executing contract before it had hired any Ees, violative; further, E's enforcement of U security requirements thereafter as it hired Ees, violative]

4040-1733 Expanding unit

Metropolitan Teletronics Corp. 279 NLRB No. 134
[grant of recognition and execution of contract containing U security clause not violation for lack of representative complement at time, where work force at new plant performing same functions as at closed plants constituted representative complement and expectation of expansion contingent on grant of state assistance was too uncertain for expanding unit to be found]

Harte & Company, Inc. 278 NLRB No. 128
[no violation, where E and U agreed to extend bargaining agreement with security clause in effect at former facility to E's newly purchased facility, since new facility was essentially extension of E's old operation where new plant produced same products using same machinery, Ees performed essentially same functions. Contention move not mere relocation since it took too long for substantial percentage of transferees to arrive at new plant, rejected, since transferees constituted more than 40% of new work force on date transfer process *substantially completed*, and 8 month period to complete transfer operations not unreasonable herein]

Harte & Company, Inc. 278 NLRB No. 128
[no premature recognition when E relocated facility 32 miles away and parties agreed to extend existing agreement with its security clause to new site, as operations remained essentially the same, and transferees from old plant constituted substantial percentage (approximately 40% or more) of new plant Ee complement *on date that the transfer process was substantially completed*, not date when plant fully operational]

The Kroger Company 275 NLRB No. 202
(E's recognition and execution of U contract covering E's warehouse Ees and truckdrivers, unlawful, where E failed two-pronged test for determining if recognition of U is lawful since, first, only 3 out of full complement of 21 Ees were working when E extended recognition to U and, second, E could not have been in normal production inasmuch as warehouse function was distribution of groceries to retail stores and no drivers had been hired)

The Kroger Company 275 NLRB No. 202
(in finding that E unlawfully recognized and executed contract with U at which time E did not employ representative complement of its work force, Bd rejected E's contention that its recognition of U was lawful since 3 of planned complement of 9 warehouse Ees had been hired as of recognition date, where contract applied to unit of warehouse Ees *and* truckdrivers)

The Kroger Company 275 NLRB No. 202
(E cured its initial unlawful recognition and execution of U contract where E timely repudiated such conduct w/i days of its occurrence; repudiation was unambiguous and specific, as E expressly withdrew recognition, rescinded contract, and assured Ees of their free choice in joining U; there was adequate publication and Ees were assured their Sec. 7 rights would not be interfered with in future, as E told each Ee that he would be employed regardless of whether he joined U; and there was no other illegal conduct by E)

4040-1750 Inappropriate unit

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. **275 NLRB No. 182**
(retail-service E unlawfully assisted U representing unit of its truckdrivers by signing contract containing exclusive hiring hall and U security clauses which covered as yet to be hired warehousemen as well as truckdrivers, hiring only warehousemen referred by U, and applying U security clause to them where warehousemen were not accereted to truckdrivers' unit; recognition was premature in absence of showing of U authorization cards or uncoerced majority, and prehire agreement as to warehousemen and E's application of it and its exclusive hiring hall and U security clauses was unlawful)

Food Concepts, Inc. **JD-(NY)-36-85**
(when E closed down one of its 2 locations, each represented by different U, and transferred those Ees to remaining location, a merger of units occurred and qcr existed. E violated Act when he recognized and applied contract of U that represented original Ees at location to the newly moved Ees, and also when supervisor threatened transferred Ees with discharge if they did not join other U)

4040-2100 Coerced majority representative

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. **282 NLRB No. 001**
[executing contract with U security clause, violation where U did not represent uncoerced majority, E knew that its contract with U representing other of its Ees arguably covered them, and E enforced U-security clause by soliciting initiation fees and dues for U]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**
[E's holding meetings with Ees and allowing its agent to solicit authorization cards during breaks, recognizing U based on those authorization cards and entering into contract with U and telling applicants for employment that E could not use them if they had a *Teamster* attitude (which was the U E did not want to recognize or deal with), violative]

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(E and assisted U unlawfully entered into, maintained, and enforced U security contract covering Ees at E's new facility at time that U, having been recognized at time that Ees had not yet been hired, did not represent uncoerced majority of Ees)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. **764 F.2d 182 (C.A. 3, June 1985)**
(E's recognizing and entering into contract containing U security with U pursuant to card check (no incumbent U present), violative, where, at time above events took place, there were unremedied ULPs from prior organizing attempt by another U which made unfettered Ee free choice unlikely while those practices remained unremedied)

4040-2500 Inappropriate unit

United States Steel Corporation **280 NLRB No. 098**
[extending coverage of existing collective-bargaining agreement to group of Ees not previously covered and not yet hired, violation notwithstanding contention that truckdrivers at old facility were accreted to unit of warehouse Ees at new facility]

Safeway Stores, Inc. **276 NLRB No. 099**
(E unlawfully recognized U and U unlawfully accepted recognition when both E and U knew that U did not represent uncoerced majority of Ees, where recognition occurred under contract covering existing multistore unit containing recognition clause including *future stores* w/i U's jurisdiction, but new store Ees were never given opportunity in an election to ascertain whether they desired U representation and thus desired to join larger unit; and new store Ees were not accreted to existing unit)

The Kroger Company **275 NLRB No. 202**
(in finding that E unlawfully recognized and executed contract with U at which time E did not employ representative complement of its work force, Bd rejected E's contention that its recognition of U was lawful since 3 of planned complement of 9 warehouse Ees had been hired as of recognition date, where contract applied to unit of warehouse Ees *and* truckdrivers)

4040-4100 Where another union certified

Armco, Inc., Eastern Steel Division, Ashland Works **279 NLRB No. 143**
[successor E's contention that incumbent U at new plant had waived right to represent Ees by yielding representational rights to a rival U and failing to request bargaining, rejected, and E's refusal to bargain with incumbent U, unilateral changes in terms and conditions of employment, recognition of rival U and enforcing U security, violative, since bargaining request would have been futile i.e., E had already granted recognition to rival U, Ees at new plant had not been accreted and incumbent U had in no way *clearly and unmistakeably* waived right to represent Ees]

Paper Manufacturers Company **274 NLRB No. 070**
(E's recognition of U as bargaining representative of Ees who had been transferred to new location violative, where transferred Ees were represented by another U and did not constitute an accretion to an existing unit or give majority support to rival U which E recognized)

4040-4200 Where another union recognized

Matlock, Inc. **278 NLRB No. 036**
[E unlawfully refused to bargain with U representing majority of its Ees, rendered unlawful assistance to another U not having such representation, and discriminated in hire and tenure of Ees by entering into and maintaining U security contract with other U and by requiring Ees to join latter U and pay specified initiation fees and dues]

Steven Muss, Cynthia Muss Lawrence and Debbie Muss Keshen, A Copartnership, d/b/a Alexander Muss & Sons **274 NLRB No. 193**
(E's recognition and execution of contract with one U and its withdrawal of recognition from another U which was striking E over failure of contract negotiations, not violative, since no R ptn had been filed with Bd thus raising qcr, and E had objective considerations for doubting striking U's majority status where striking Ees had been on strike for over a year, all strikers had been permanently replaced and 13 of 17 current Ees had freely signed cards authorizing new U to represent them, giving no indication of support for striking U)

4040-4500 Where employer has valid contract with another union

Food Concepts, Inc. **JD-(NY)-36-85**
(when E closed down one of its 2 locations, each represented by different U, and transferred those Ees to trmaning location, a merger of units occurred and qcr existed. E violated Act when he recognized and applied contract of U that represented original Ees at location to the newly moved Ees, and also when supervisor threatened transferred Ees with discharge if they did not join other U)

4040-5000 Exclusive recognition of minority representative (see also 512-5084)

S.M.S. Automotive Products, Inc. **282 NLRB No. 006**
[E and U entering into negotiations for successor contract and concluding such contract, at time when majority of Ees had signed ptn signifying their disaffection from U and both E and U had knowledge of such disaffection, violative; such ptn negates existence of legitimate interest of incumbent U in pursuing negotiations, notwithstanding ptn was circulated and presented during 60-day insulated period of contract]

Safeway Stores, Inc. **276 NLRB No. 099**
(E unlawfully recognized U and U unlawfully accepted recognition when both E and U knew that U did not represent uncoerced majority of Ees, where recognition occurred under contract covering existing multistore unit containing recognition clause including *future stores* w/i U's jurisdiction, but new store Ees were never given opportunity in an election to ascertain whether they desired U representation and thus desired to join larger unit; and new store Ees were not accreted to existing unit)

Windsor Place Corp. **276 NLRB No. 051**
(E can recognize U w/o determining or requiring that U demonstrate its majority status, but risks 8(a)(2) liability for recognizing a U supported by a minority of unit Ees)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(grant of exclusive recognition to minority U constitutes unlawful 8(a)(2) support; *minority U* for these purposes includes both a U which has simply failed to secure sufficient support in unit for which it is recognized and U which has obtained ostensible majority support that is tainted by coercion and therefore is unreliable)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(E violated 8(a)(2) and U violated 8(b)(1)(A), respectively, by E's proffering recognition to U and executing contract with U, and U's acceptance of recognition and entering into contract with E, where U did not represent uncoerced majority either because it never obtained authorization cards from majority of Ees or because, if it did, authorization cards may have been poisoned by dues deduction forms furnished to applicants to fill out even before E's operations had begun and by accompanying statements made by U's agents that applicants had to join U)

4040-5025 Good-faith belief as to majority status immaterial

Safeway Stores, Inc. **276 NLRB No. 099**

Windsor Place Corp. **276 NLRB No. 051**
(E's recognizing and entering into contract with U, violative, since U did not have majority support where 1 person in 2 person unit had signed authorization cards for two different Us, Ee had not clearly indicated support for one U over the other and E knew at time of extending recognition, that Ee had signed two authorization cards, thus negating claim that it knew U had achieved majority status)

4040-5025—Cont.

Ryder/P.I.E. Nationwide 275 NLRB No. 084
(E's recognition of U and U's acceptance thereof, and their execution of contract, unlawful, where U never had valid majority in combined regular clerical unit resulting from merger of freight terminal offices of 2 Ees since E's and U's reliance on casual Ee's authorization card to include her in regular Ees' unit was contrived to lend colorable legitimacy to improper inclusion in unit, thereby tipping majority balance in favor of U; and parties' good faith but mistaken belief that Ee was regular Ee did not excuse prohibited conduct)

4040-5050 Subsequent acquisition of majority status immaterial

American Bakeries Company and Local Union No. 51, Teamsters (Local No. 326, Bakery Workers) 280 NLRB No. 160
[bargaining prior to achievement of U's majority status, violative despite fact that contract is not enforced or is conditioned upon U's ability to demonstrate majority standing at some later time]

James Naderlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008
(fact that assisted U subsequently achieved majority status prior to actual signing of contract held not valid defense to parties' prior commission of ULPs)

The Kroger Company 275 NLRB No. 202
(in finding that E remedied its prior unlawful recognition and execution of U contract by repudiating such action, Bd distinguished instant case from those in which E's initial unlawful recognition so tainted subsequent events that U's eventual receipt of majority support was irrelevant and did not validate initial recognition; unlike those cases E here withdrew recognition, rescinded contract, and advised each Ee that he would be employed whether or not he chose to join U, thereby effectively removing *deceptive cloak of authority* and remedying earlier violation)

Ryder/P.I.E. Nationwide 275 NLRB No. 084
(where E's and U's execution of contract was unlawful because of improper inclusion of casual Ee in combined regular Ees' unit resulting from merger of 2 Es, thereby tipping majority balance in favor of U, ALJ held fact that casual Ee was made regular Ee retroactive to date before implementation of merger did not cure situation since belated acquisition of majority is of no saving consequence if earlier recognition was unlawful)

4040-5088 Where another union certified as representative of unit found appropriate

Armco, Inc., Eastern Steel Division, Ashland Works 279 NLRB No. 143
[successor E's contention that incumbent U at new plant had waived right to represent Ees by yielding representational rights to a rival U and failing to request bargaining, rejected, and E's refusal to bargain with incumbent U, unilateral changes in terms and conditions of employment, recognition of rival U and enforcing U security, violative, since bargaining request would have been futile i.e., E had already granted recognition to rival U, Ees at new plant had not been accreted and incumbent U had in no way *clearly and unmistakeably* waived right to represent Ees]

Hydro-Air Equipment, Inc. d/b/a Lanco 277 NLRB No. 012
(E's recognition of and signing contract with U as representative of Ees at new location, unlawful, since it was under continuing obligation to recognize and bargain with another U which had represented Ees at previous location, inasmuch as relocation took place during certification year, at time of recognition of other U majority of unit consisted of Ees who had transferred from old location, and only significant change in operations was geographic)

4040-6700 During existence of real question of representation

4040-6701 Generally

4040-6701-3300 Employer obligation of neutrality

M.M.B. Energy Glen Cove Corp. JD-(NY)-149-84
(no unlawful lulling of U into inaction by telling U that its offer to refer Ees to E for jobs was premature where E told rival U same thing, and both Us had access to E's plant and later received reports that E was hiring; rival U, however, undertook organizing campaign, secured majority of authorization cards, and was lawfully recognized by E, which had no duty of neutrality because it recognized rival U with its uncoerced majority before charging party U filed ptn)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. 764 F.2d 182 (C.A. 3, June 1985)
(effect of Bd's *Bruckner* rule (262 NLRB 955) is that when faced with two rival non-incumbent Us, E is free to recognize that U authorized by an uncoerced majority at any time *until* the filing of a valid R ptn, and once notified of valid R ptn, E must refrainn from recognizing any of the rival non-incombent Us)

4040-6733 What creates real question of representation

4040-6733-3300 Colorable claim of competing union

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. 282 NLRB No. 001
[executing contract with U security clause, violation where U did not represent uncoerced majority, E knew that its contract with U representing other of its Ees arguably covered them, and E enforced U-security clause by soliciting initiation fees and dues for U]

Metropolitan Teletronics Corp. 279 NLRB No. 134
[grant of recognition to and execution of contract containing U security clause with one of two Us which had represented Ees transferred from two closed plants, not violation where Ees from plant who were formerly represented by recognized U constituted 63 percent of merged work force and Ees from other closed plant represented by other U denied recognition constituted no more than 5 percent of work force recognized]

Windsor Place Corp. 276 NLRB No. 051
(E's recognizing and entering into contract with U, violative, since U did not have majority support where 1 person in 2 person unit had signed authorization cards for two different Us, Ee had not clearly indicated support for one U over the other and E knew at time of extending recognition, that Ee had signed two authorization cards, thus negating claim that it knew U had achieved majority status)

4040-6733-6700 Pendency of petition under section 9

Steven Muss, Cynthia Muss Lawrence and Debbie Muss Keshen, A Copartnership, d/b/a Alexander Muss & Sons 274 NLRB No. 193
(E's recognition and execution of contract with one U and its withdrawal of recognition from another U which was striking E over failure of contract negotiations, not violative, since no R ptn had been filed with Bd thus raising qcr, and E had objective considerations for doubting striking U's majority status where striking Ees had been on strike for over a year, all strikers had been permanently replaced and 13 of 17 current Ees had freely signed cards authorizing new U to represent them, giving no indication of support for striking U)

M.M.B. Energy Glen Cove Corp. JD-(NY)-149-84
(no unlawful lulling of U into inaction by telling U that its offer to refer Ees to E for jobs was premature where E told rival U same thing, and both Us had access to E's plant and later received reports that E was hiring; rival U, however, undertook organizing campaign, secured majority of authorization cards, and was lawfully recognized by E, which had no duty of neutrality because it recognized rival U with its uncoerced majority before charging party U filed ptn)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. 764 F.2d 182 (C.A. 3, June 1985)
(E's recognizing and entering into contract containing U security with U purusuant to card check, and that U's accepting recognition and entering into contract, violative, since, at time above events took place, there was real qcr where another U had on file with Bd a valid R ptn known to E at time it recognized former U; further, former U's defense that it had no knowledge of latter U's R ptn at time it initiated card check, rejected)

4040-6767 Continued recognition of incumbent pending resolution of question

4040-6767-7500 After expiration of contract

Steven Muss, Cynthia Muss Lawrence and Debbie Muss Keshen, A Copartnership, d/b/a Alexander Muss & Sons 274 NLRB No. 193
(E's recognition and execution of contract with one U and its withdrawal of recognition from another U which was striking E over failure of contract negotiations, not violative, since no R ptn had been filed with Bd thus raising qcr, and E had objective considerations for doubting striking U's majority status where striking Ees had been on strike for over a year, all strikers had been permanently replaced and 13 of 17 current Ees had freely signed cards authorizing new U to represent them, giving no indication of support for striking U)

4040-7500 During insulated period of contract

4040-7567 With minority union

4040-7567-6700 Where employer has knowledge of loss of majority

S.M.S. Automotive Products, Inc. 282 NLRB No. 006
[E held to have knowledge that incumbent U had lost majority support where Ees responsible for getting decertification ptn signed attempted to deliver it to E but E refused to accept, E was told at that time that majority of Ees had signed ptn and E's counsel was served with copy of ptn but refused to accept it]

4040-7567-6700—Cont.

S.M.S. Automotive Products, Inc. 282 NLRB No. 006
[E and U entering into negotiations for successor contract and concluding such contract, at time when majority of Ees had signed ptn signifying their disaffection from U and both E and U had knowledge of such disaffection, violative; such ptn negates existence of legitimate interest of incumbent U in pursuing negotiations, notwithstanding ptn was circulated and presented during 60-day insulated period of contract]

4040-7800 Extension of contract to relocated facility

Harte & Company, Inc. 278 NLRB No. 128
[no violation, where E and U agreed to extend bargaining agreement with security clause in effect at former facility to E's newly purchased facility, since new facility was essentially extension of E's old operation where new plant produced same products using same machinery, Ees performed essentially same functions. Contention move not mere relocation since it took too long for substantial percentage of transferees to arrive at new plant, rejected, since transferees constituted more than 40% of new work force on date transfer process *substantially completed*, and 8 month period to complete transfer operations not unreasonable herein]

Harte & Company, Inc. 278 NLRB No. 128
[*In determining whether bargaining agreement in effect at old location is to be applied to new location, Bd must distinguish between situations where new facility is basically same operation removed to new site from those where new facility is somehow different operation from original. In former case bargaining agreement in effect at old location is logically applied at new one. In latter old agreement has no place at new facility*]

Harte & Company, Inc. 278 NLRB No. 128
[Bd has developed standards in contract bar and failure to bargain cases to determine if there is sufficient continuity of operations to justify applying existing agreement to new location. Existing contract will remain in effect after relocation if operations are substantially same and if Ees from old plant constitute approximately 40% or more of new Ee complement. In relocation situations determining whether U should continue to represent Ees at new location involves balancing of newly hired Ees' interest in choosing whether or not to have U representation against transferees' interest in retaining fruits of their collective activity]

Harte & Company, Inc. 278 NLRB No. 128
[no premature recognition when E relocated facility 32 miles away and parties agreed to extend existing agreement with its security clause to new site, as operations remained essentially the same, and transferees from old plant constituted substantial percentage (approximately 40% or more) of new plant Ee complement *on date that the transfer process was substantially completed*, not date when plant fully operational]

4040-8300 Extension of contract to additional groups of employees

United States Steel Corporation 280 NLRB No. 098
[extending coverage of existing collective-bargaining agreement to group of Ees not previously covered and not yet hired, violation notwithstanding contention that truckdrivers at old facility were accreted to unit of warehouse Ees at new facility]

United States Steel Corporation 280 NLRB No. 098
[including U-security clause in pre-hire agreement with U, violation where E offered unlawful recognition to u representing existing unit to which the Ees were unlawfully accreted]

Armco, Inc., Eastern Steel Division, Ashland Works 279 NLRB No. 143
[successor E's contention that incumbent U at new plant had waived right to represent Ees by yielding representational rights to a rival U and failing to request bargaining, rejected, and E's refusal to bargain with incumbent U, unilateral changes in terms and conditions of employment, recognition of rival U and enforcing U security, violative, since bargaining request would have been futile i.e., E had already granted recognition to rival U, Ees at new plant had not been accreted and incumbent U had in no way *clearly and unmistakeably* waived right to represent Ees]

4040-8367 Where question of representation exists

Food Concepts, Inc. JD-(NY)-36-85
(when E closed down one of its 2 locations, each represented by different U, and transferred those Ees to remaining location, a merger of units occurred and qcr existed. E violated Act when he recognized and applied contract of U that represented original Ees at location to the newly moved Ees, and also when supervisor threatened transferred Ees with discharge if they did not join other U)

4050 UNION SECURITY AND PREFERENCE AGREEMENTS

4050-3300 Agreements legal on their face with assisted unions

United States Steel Corporation 280 NLRB No. 098
[including U-security clause in pre-hire agreement with U, violation where E offered unlawful recognition to u representing existing unit to which the Ees were unlawfully accreted]

4050-3301 Generally

4050-3301-5000 First proviso to section 8(a)(3) does not protect agreements with assisted union

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. 282 NLRB No. 001
[executing contract with U security clause, violation where U did not represent uncoerced majority, E knew that its contract with U representing other of its Ees arguably covered them, and E enforced U-security clause by soliciting initiation fees and dues for U]

4050-3312 In contract with union for employees who are represented by another union

Armco, Inc., Eastern Steel Division, Ashland Works 279 NLRB No. 143
[successor E's contention that incumbent U at new plant had waived right to represent Ees by yielding representational rights to a rival U and failing to request bargaining, rejected, and E's refusal to bargain with incumbent U, unilateral changes in terms and conditions of employment, recognition of rival U and enforcing U security, violative, since bargaining request would have been futile i.e., E had already granted recognition to rival U, Ees at new plant had not been accreted and incumbent U had in no way *clearly and unmistakeably* waived right to represent Ees]

4050-3325 In contract with favored union

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. 282 NLRB No. 001
[executing contract with U security clause, violation where U did not represent uncoerced majority, E knew that its contract with U representing other of its Ees arguably covered them, and E enforced U-security clause by soliciting initiation fees and dues for U]

Matlack, Inc. 278 NLRB No. 036
[E unlawfully refused to bargain with U representing majority of its Ees, rendered unlawful assistance to another U not having such representation, and discriminated in hire and tenure of Ees by entering into and maintaining U security contract with other U and by requiring Ees to join latter U and pay specified initiation fees and dues]

4050-3350 In contract with minority union

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. 275 NLRB No. 182
(retail-service E unlawfully assisted U representing unit of its truckdrivers by signing contract containing exclusive hiring hall and U security clauses which covered as yet to be hired warehousemen as well as truckdrivers, hiring only warehousemen referred by U, and applying U security clause to them where warehousemen were not acccreted to truckdrivers' unit; recognition was premature in absence of showing of U authorization cards or uncoerced majority, and prehire agreement as to warehousemen and E's application of it and its exclusive hiring hall and U security clauses was unlawful)

Tyler Distribution Centers, Inc. JD-(NY)-21-86
[E's according recognition to one local U at new plant and executing contract before it had hired any Ees, violative; further, E's enforcement of U security requirements thereafter as it hired Ees, violative]

4050-3375 Union membership requirements

4050-3375-2000 Execution of

Mix Elaine, Inc. 274 NLRB No. 036
(E supported and assisted U in violation of 8(a)(1) and (2) and U violated 8(b)(1)(A) and (2) by entering into, maintaining, and enforcing memorandum agreement which extended coverage of existing U-security contract to Ees who had never before been members of unit, and requiring them to become members of U w/o affording them 30 days grace period w/i which to become U members; Ees were taken into unit w/o designating U through signed cards or election; and they received no explanation nor were they informed of 30-day grace period and were simply told to join U or lose their jobs)

4050-3375-4000 Maintenance of

Mix Elaine, Inc. 274 NLRB No. 036
(E supported and assisted U in violation of 8(a)(1) and (2) and U violated 8(b)(1)(A) and (2) by entering into, maintaining, and enforcing memorandum agreement which extended coverage of existing U-security contract to Ees who had never before been members of unit, and requiring them to become members of U w/o affording them 30 days grace period w/i which to become U members; Ees were taken into unit w/o designating U through signed cards or election; and they received no explanation nor were they informed of 30-day grace period and were simply told to join U or lose their jobs)

4050-3375-4000—Cont.

Tyler Distribution Centers, Inc. JD-(NY)-21-86
[E's according recognition to one local U at new plant and executing contract before it had hired any Ees, violative; further, E's enforcement of U security requirements thereafter as it hired Ees, violative]

4050-3375-6000 Preferential hiring or referral provision

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. 275 NLRB No. 182
(retail-service E unlawfully assisted U representing unit of its truckdrivers by signing contract containing exclusive hiring hall and U security clauses which covered as yet to be hired warehousemen as well as truckdrivers, hiring only warehousemen referred by U, and applying U security clause to them where warehousemen were not accreted to truckdrivers' unit; recognition was premature in absence of showing of U authorization cards or uncoerced majority, and prehire agreement as to warehousemen and E's application of it and its exclusive hiring hall and U security clauses was unlawful)

4060 PARTICIPATION OF SUPERVISORS IN AFFAIRS OF LABOR ORGANIZATION

4060-1600 Solicitation of union membership and support

Food Concepts, Inc. JD-(NY)-36-85
(when E closed down one of its 2 locations, each represented by different U, and transferred those Ees to remaining location, a merger of units occurred and qcr existed. E violated Act when he recognized and applied contract of U that represented original Ees at location to the newly moved Ees, and also when supervisor threatened transferred Ees with discharge if they did not join other U)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. 277 NLRB No. 001
(E unlawfully assisted and supported favored U over rival U, in view of supervisors' non-interference with Ee solicitation in support of favored U; supervisors' signing of favored U's autorization cards, granting of time off for Ees attending its meetings, and comments of top management officials and owners that E could operate with favored U)

4060-5000 Serves as officer, or in other official capacity

Oil Field Construction Company JD-(SF)-106-86
[E's permitting statutory supervisor to act as U's steward unlawful, since E thereby interfered with Ees' right to be represented by individuals having single-minded loyalty to their interests and interfered with U's proper administration of its representative function inasmuch as apparent and actual conflict of interest existed between individual's supervisory responsibilities and his duties as steward, and E was aware of such dual role]

Oil Field Construction Company JD-(SF)-104-86
[E's permitting U's president to act as supervisor, not unlawful, where in his role as president, supervisor's connection with bargaining matters, i.e., negotiations or grievance handling, was too remote to warrant finding that requisite conflict of interest existed]

Festival Enterprises, Inc. JD-(SF)-185-85
[E's permitting two high level supervisors to participate in internal affairs of U by attending meetings and holding office, violative; further, E's contention that it could not violate 8(a)(2) since supervisors did not supervise any unit Ees, rejected, since supervisors were potentially placed on both sides of the table regardless of whom they supervised]

4060-6700 Membership on negotiating committee

Festival Enterprises, Inc. JD-(SF)-185-85
[E's negotiating with low level supervisor who belonged to U and administered contract for unit Ees, violative; further, fact that supervisor did not negotiate contract or process grievances w/i 6 month period preceding C did not bar issuance under 10(b) since E's interference in administration of U itself may have caused this lack of activity]

4060-8300 Participation in union meetings

Festival Enterprises, Inc. JD-(SF)-185-85
[E's permitting two high level supervisors to participate in internal affairs of U by attending meetings and holding office, violative; further, E's contention that it could not violate 8(a)(2) since supervisors did not supervise any unit Ees, rejected, since supervisors were potentially placed on both sides of the table regardless of whom they supervised]

4070 DECLARATIONS OF UNION PREFERENCE

4070-5000 Favoring one outside union over others

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. 277 NLRB No. 001
(while finding that, if E had stated to Ees that it favored 1 of 2 rival outside Us and would not unlawfully undermine Ee support of favored U, such statement would be lawful, Bd held that what E had stated was that it would reward Ees who supported favored U because it would not be *that much of an expense* to E, which contrasted sharply with E's unlawful efforts to undermine Ees' support of competing U; accordingly, Bd found E unlawfully assisted and supported favored U which E felt it could better control)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. 277 NLRB No. 001
(E unlawfully assisted and supported favored U over rival U, in view of supervisors' non-interference with Ee solicitation in support of favored U; supervisors' signing of favored U's autorization cards, granting of time off for Ees attending its meetings, and comments of top management officials and owners that E could operate with favored U)

Palmas Del Mar Company 277 NLRB No. 011
(urging Ees to abandon support for U they favored in election campaign and support and solicit other Ees to form an organization to campaign for and support U favored by E, unlawful and objectionable support of U)

4090 DISCRIMINATION IN EMPLOYMENT, OR THREATS THEREOF, TO ASSIST LABOR ORGANIZATION

4090-1400 Discharge, layoff, suspension, or refusal to hire for not supporting favored union

Miss Elaine, Inc. 274 NLRB No. 036
(E violated 8(a)(1) and (2) when it threatened Ees, not previously included in unit, by stating that they must join U or be discharged)

4090-3700 Discharge or layoff for refusal to sign checkoff authorization or to permit withholding of union assessments

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008
(E unlawfully assisted U by telling Ee that he would be terminated w/i 7 days if Ee did not permit E to withhold U assessments from Ee's wages pursuant to contract with U)

4090-4900 Preferential wages and benefits for Union members

F & C Transfer Co., Inc. 277 NLRB No. 071
(E's payment of higher wages and contribution to pension fund only for those Ees in unit who were members of U, unlawful. Further, since contract on its face applied to both bonded and nonbonded Ees (only bonded Ees could become members of U), parol evidence may not be used to establish U represents only bonded Ees)

6000 STATUS OF SUCCESSOR TO DOMINATED OR ASSISTED LABOR ORGANIZATION

8000 AFFIRMATIVE DEFENSES

The Kroger Company 275 NLRB No. 202
(E cured its initial unlawful recognition and execution of U contract where E timely repudiated such conduct w/i days of its occurrence; repudiation was unambiguous and specific, as E expressly withdrew recognition, rescinded contract, and assured Ees of their free choice in joining U; there was adequate publication and Ees were assured their Sec. 7 rights would not be interfered with in future, as E told each Ee that he would be employed regardless of whether he joined U; and there was no other illegal conduct by E)

524 EMPLOYER DISCRIMINATION IN EMPLOYMENT

0100 GENERALLY

Rainey Security Agency, Inc. **274 NLRB No. 041**

(C allegation that E violated 8(a)(1), (2) and (3) as result of alleged failure of U to adequately represent Ees not sustained where the only plausible basis for holding E statutorily liable would be on theory that E conspired in installing U as Ee representative with full knowledge that U did not represent majority, and in such case, E could perhaps be held liable under 8(a)(1) and (3); however, while there was well-grounded suspicion of such knowing conspiracy, evidence did not quite demonstrate it)

0117 SCOPE OF PROSCRIPTION

0117-2500 Act does not touch normal exercise of the right of the employer to select its employees or to discharge them

Lone Star Industries, Inc. **279 NLRB No. 078**

[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

0117-9200 Discriminatee need not be engaged in concerted activity

Salem Leasing Corporation v. N.L.R.B. **774 F.2d 85 (C.A. 4, Oct. 1985)**

[as there is no cross reference in Sec. 8(a)(3), as there is in Sec. 8(a)(1), to Sec. 7 organizational rights, ct reluctant to read a *concerted activity* requirement into Section 8(a)(3)]

0133 INDIVIDUALS AFFECTED

0133-0100 Generally

0133-0150 Identification of specific victims not always essential

Activ Industries, Inc. **277 NLRB No. 040**

(in adopting ALJ's conclusion that E unlawfully terminated more than third of its work force, Bd emphasized that it was E's mass discharge, and not its selection of Ees for discharge that was unlawful; accordingly, GC was not required to show correlation between each Ee's U activity and his or her discharge)

Cassidy Cleaning, Inc. **JD-239-86**

[it is not essential for GC to establish that each and every member of group of Ees allegedly discharged for U activities was U activist, since anyone removed in course of discriminatorily motivated housecleaning is discriminatee, even if not personally engaged in U activities; moreover, in view of large number voting in favor of U, there was statistical chance that large percentage of Ees voted for U and that anyone discharged was U supporter]

0133-2500 Nonunion employees

Dubose Masonry, Inc. **279 NLRB No. 125**

[discharge of non-U bricklayers while U bricklayers were standing around at jobsite, violative, since GC presented *prima facie* case where evidence was sufficient to support inference that Ees lack of U membership was motivating factor in E's decision to terminate. E's assertion that non-U bricklayers were laid off because of decline in work at jobsite was unsupported]

0133-3100 Union employees

Plateau Coal Sales, Inc. **279 NLRB No. 156**

[E's seeking to induce Ees to work w/o U representation and withdrawing offers of employment from its entire work force when Ees refused to work nonU, held violative, since E wanted to avoid recognizing U, and Ees were U members]

0133-3125 Union employees where union is the employer

Northern District of Connecticut Iron Workers Local Union No. 15, Joint Apprenticeship Committee (Bruce Gilbert, an Individual) **278 NLRB No. 131**

[violation, where U through its participation in Joint Apprentice Committee (JAC) discharged apprentice coordinator since discharge was for his intra-U activities, where he and 1 member of JAC had been rivals in campaigns for U office, and that member had appointed two other members of JAC while he was U president, in view of timing of discharge which took place when composition of committee was about to change, committee failed to specify reason for discharge and abruptness of discharge]

0133-5000 Relative of active union members

Retail Delivery Systems, Inc. **JD-(NY)-15-86**

[termination of Ee (dropping him from casual list) because of U activities carried on by his brother, violative]

0133-6200 Employee of person other than respondent

0133-6250 Employee of independent contractor

ARA Leisure Services, Inc. v. N.L.R.B. **782 F.2d 456 (C.A. 4, Jan. 1986)**

[discharge of helpers of *tableheads* i.e. vendors who sold novelties items at concessions at sports arena, by E which operated concessions under lease arrangement, unlawful, since *tableheads* held supervisors in employ of E rather than independent contractors, and in view of E's U animus and fact discharges took place two weeks before election, notwithstanding specific knowledge by e of U sympathies of only 4 out of 18 helpers, since E had general knowledge of U support among novelty helpers, E's contention that termination of *tableheads* required discharge of helpers also, rejected]

0133-7500 Applicants for employment

Stop-N-Go Foods, Inc. **279 NLRB No. 102**

[E's refusal to hire applicant, unlawful, since for her filing ULP charge against her former E over her discharge and giving testimony at ULP hearing, especially where applicant explained to E that former E's asserted reason for discharge, improper cash handling, had been held to be pretext]

0133-7600 Probationary employee

North Vernon Forge, Inc. **278 NLRB No. 106**

[discharge of rehired probationary Ee because Ee complained about his job assignment to his supervisor and to U making him alleged unsatisfactory probationary Ee, held violative since attempts by Ee to enforce provisions of existing collective bargaining agreement, even though agreement was ambiguous as to Ee's rights, are protected concerted activity under Act, as long as Ee's interpretations of agreement had reasonable basis]

S. Rosenthal and Company, Inc. d/b/a Rosenthal-Kaufmann Lithograph Company **276 NLRB No. 068**

(where E, pursuant to past practice, had extended part-time Ees' probationary period so as to have more time to assess their qualifications and find full-time positions for them, its discharging them when U demanded strict compliance with contract provision requiring that they be included in the bargaining unit or be discharged, not violative, since U effectively ended their probationary period and E discharged them because it had no full-time positions open rather than because of anti-U animus or discrimination)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**

(discharge of probationary part-time Ee at store acquired by E from former owner, assertedly for limited availability for work and slow performance, not unlawful, where Ee's assertion of contractual rights to obtain additional hours from former E was no basis for imputing retaliatory motivation on E's actions some 3 months later, in view of absence of U animus or of wholesale termination of U members following change of ownership, removal of supervisor having fractious relationship with Ee from his evaluation, and other supervisors' unfavorable comments about Ee's performance)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**

(discharge of probationary Ee who had insisted upon right to U representation at disciplinary meeting with E and who had filed grievances concerning

0133-7600—Cont.

her assignment dispute with E, not unlawful, since discharge was well-grounded in legitimate business interests where Ee had extreme-poor attendance record; Ee had repeated disagreements with work schedule because of restrictions on her availability, and she exhibited unacceptable work habits during short time she had been working for E)

0133-8000 Confidential employee

Airport Distributors, Inc. 280 NLRB No. 091

[Ee holding 10 percent of E's stocks and assertedly discharged for violating E work rule held not divested of protection of Act by his stock ownership which was not determinative factor of unprotected status; rather, degree of participation in management and/or labor policy was relevant; here, there was no evidence that individual received any preference because of his stock ownership or that he participated in formulation of any policies involving management or Ee relations]

Raytheon Missile System Division, Raytheon Company 279 NLRB No. 035

[E's transfer of compensation assistant in E's industrial relations department to position in production control department, not violative where Ee had current legitimate access to confidential labor relations information at time her pro-U sympathy first became known to E; E's decision to transfer her was predicated on more than conjecture, but rather on reasonable apprehension, based on her pro-U activity, that she might compromise confidential labor relations information]

0133-8700 Supervisory employees

Opelika Foundry 281 NLRB No. 121

[E's refusal to meet with grievance committee which included individual as member, and subsequently discharging individual allegedly because of his U activity, not unlawful, since individual held to be supervisor]

0133-8725 Not protected because of union membership or participation in concerted activity

0133-8725 Not protected because of union membership or participation in concerted activity

Heck's Inc. 277 NLRB No. 098

(discharge of individual held to be supervisor, not unlawful, absent evidence discharge was for refusal to commit ULPs)

ARA Leisure Services, Inc. v. N.L.R.B. 782 F.2d 456 (C.A. 4, Jan. 1986)

[discharge of *tableheads* i.e. vendors of novelty items at concessions located at sports arena, who had helpers who assisted them, not unlawful, since they were held supervisors in employ of E which operated concessions under lease rather than independent contractor]

0133-9000 Strikers

Lone Star Industries, Inc. 279 NLRB No. 078

[notwithstanding no prior preemployment physical exam policy and only instituted after economic strike ended, and notwithstanding it has been applied to recalled strikers, but not all of replacement Ees have undergone physicals, no violations over instituting physical exam policy or failure to reinstate recalled striker who failed exam, even though physician said illness treatable and posed no threat to his ability to perform job, since policy of E is that all Ees will take physical, policy bore no indication of discriminatory intent, E also discharged striker replacement who had same illness and policy was reasonable response to potential liability]

Lone Star Industries, Inc. 279 NLRB No. 078

[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. 278 NLRB No. 102

[discharge of 3 U committeemen who participated in wildcat strike and appeared on picket line, violation, since E singled them out for disparate treatment because of their U office, where there was no evidence that they engaged in strike leadership activities, similarly situated Ees were not disciplined, and E knew that two of the committeemen had urged other Ees to return to work and unless E capitulated on grievance held not threatened to cause strike]

Government Employees (Office Employees, Local No. 2) 278 NLRB No. 085

[U-E's discriminatory and unilateral withholding of scheduled annual leave from Ees participating in strike, violation, since inherently destructive of significant employee rights]

Brady-Stannard Motor Co., Inc. 273 NLRB No. 178

(Bd found that after impasse wages paid to striker replacements was consistent with E's final offer to U to continue expired contract for 1 year where Bd looked at *actual* earnings received by replacements over 6 month period and it showed they were equal to or lower than what strikers earned in similar period in prior year notwithstanding wage package of replacements different from strikers. Therefore, no violation by offering replacements higher wage formula but where actual wages same, because it was, in effect, offering same contract to replacements as one that expired and which was offered to U)

0133-9300 Foreign nationals and illegal aliens

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[Es' reporting of undocumented alien workers to INA in retaliation for their U activities after U won election held constructive discharge where such reporting was sole cause of INA investigation and workers' departure from country, and this result was foreseen by Es]

0150 WHAT CONSTITUTES DISCRIMINATION

0150-0100 Generally

The Trustees of Columbia University in the City of New York 279 NLRB No. 019

[Bd dismissed 8(a)(3) allegation that E unlawfully withdrew non-contractual tuition benefit plan in retaliation for U's successfully pursuing grievance over similar contractually required fund where proof of 8(a)(3) allegation depended on proof of 8(a)(5) allegation that Bd dismissed in deferring to arbitrator's award finding that E did not have to provide both benefits]

Pullman Power Products Corporation 275 NLRB No. 112

(U activities of Ee, plus Ee's layoff, w/o causal connection do not alone make out case of prohibited discrimination; rather Bd must evaluate all relevant evidence to determine if GC has affirmatively shown that layoffs were unlawfully motivated)

Robins Federal Credit Union 273 NLRB No. 165

(although sequence of events, particularly timing of discharge of Ee on eve of election and method by which Ee was summarily dismissed gave rise to suspicion as to whether E terminated Ee because of her U activities, mere suspicion is not sufficient to support finding of violation)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(not every action that encourages or discourages U membership is unlawful; if allegedly discriminatory action is not *inherently destructive* of Ee rights, E or U can prevail if it shows *legitimate and substantial business justifications* for the action)

0150-2500 Differentiation between employees

Lone Star Industries, Inc. 279 NLRB No. 078

[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

Leads Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014

(granting disparate increases to Ees of each facility of joint E who received substantially equivalent evaluations overall, violative, since joint E intended that Ees of one of joint Es' facilities receive substantially lower increases than their counterparts because they selected U to represent them. E intended that dissimilar result occur)

Garrett Railroad Car & Equipment, Inc. 275 NLRB No. 151

(recalling Ee (economic striker) out of seniority after strike's end, violative, since such treatment of Ee was disprate. E's action was not shown to be for some legitimate business reason or purpose and assessed in background of E's ULPs was inherently destructive of Ee Section 7 rights. Record provided sufficient evidence of E's singling out Ee striker who wanted to abandon strike (E had learned) and rendered this Ee-striker favorable disparate treatment some 3 weeks after strike ended)

0150-2550 Discrimination based on identity of representative

Kansas City Terminal Elevator Company 274 NLRB No. 010

(E's imposing 3-day suspension on its Ee, U activist and shop steward, because Ee had been playing cards during scheduled working time, but during lull in production process, violative, since suspension letter received by Ee indicated that conduct for which Ee was suspended was first offense-Ee had been guilty of safety related offense but E did not consider card playing in same category-which according to E's *progressive disciplinary system* should have been cause only for written disciplinary warning)

0150-2575 Discrimination based upon holding union office

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**
(prima facie case made out for successor's unlawful failure to rehire Ees where: 1) Ees were known U adherents, 2) majority of Ees not rehired were U leaders, 3) disparate treatment as other Ees rehired were guilty of same offenses that successor alleged for not rehiring these Ees, and 4) successor found to have unlawfully refused to bargain with U, which constituted additional evidence of U animus)

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**
(where substantial majority of Ees not rehired were U leaders, strong circumstantial evidence of U animus is present, though evidence probative and not dispositive, notwithstanding successor retained some U Ees)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd considered S.Ct's *Metropolitan Edison* decision from standpoint of U's waiver of U officials' Sec. 7 rights to extent they have affirmative duty to prevent illegal work stoppages, U's lawful bargaining away of statutory protection accorded U officials, insufficiency of general no-strike clause to constitute waiver, relevance of arbitration decisions in establishing waiver, and establishment of waiver by circumstances surrounding bargaining relationship as well as by language of agreement itself)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd held that, with regard to specificity requirement for naming of U officials as opposed to specificity regarding what affirmative action can be expected of U in event of unlawful strike, it has long been established that U, like an E, acts through its agents and it would be radical departure from longstanding precedent to hold that U's contractual or other obligations must be explicitly designated as responsibility of specified officials or agents)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(imposition of disparate disciplinary suspensions on U stewards for violating no-strike provision, not unlawful, where U assumed duty to prevent unlawful strikes and thereby waived steward's statutory rights; while S.Ct in *Metropolitan Edison* found affirmative action cannot be required unless such requirement is bargained for, it merely held general *no-strike* clause was not enough to constitute waiver and left open what contractual language would suffice; here, contract unequivocally imposed duty to end unlawful strike, and stewards did not fulfill their contractual obligations even under most narrow construction of contract)

Mead Packaging **273 NLRB No. 181**
(8(a)(3) and 8(b)(2) of the Act prohibit Es and Us, respectively, from discriminating against Ees *in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization...*, and absent appropriate justification, E or U policies are unlawful if they treat Ees disparately according to their level of U activity; and in addition, bargaining agreements which discourage or encourage U activities through a disparate grant of benefits are unlawful unless providing the benefit serves legitimate statutory purposes and indirectly benefits all unit Ees)

Local Union 1392, Electrical Workers v. N.L.R.B. (Indiana & Michigan Electric Co.) **786 F.2d 733 (C.A. 6, Mar. 1986)**
[where E imposing more severe disciplinary suspensions on U stewards for violating no-strike provision, not unlawful where contractual language showed U intent for its officials to attempt to prevent unauthorized work stoppages, and this language constituted *clear and unmistakable waiver* of officials right to be free from selective discipline]

0150-5000 Change in terms or conditions of employment

Consolidated Edison Co. of New York, Inc. **280 NLRB No. 039**
[transfer of Ee, active participant in dissident U group, to less desirable time and work site, not violative since there was no substantive evidence to explain why E would chose to discriminate against Ee at time of transfer, as Ee had been engaging in his dissident activities for about 5 years w/o recrimination. Ee an experienced inspector, replaced inexperienced inspector on transfer]

Harold Weinz; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**
[E's unilateral *reclassification of its (motel) desk clerks to supervisory positions, violative, where conduct, coupled with E's other ULPs and coinciding with other violative layoffs effectuated decimation of unit. Evidence discloses no* justifiable reason for such conduct and record evidence suggests there would be 1:1 ratio of supervisors to unit Ees]

Brady-Stannard Motor Co., Inc. **273 NLRB No. 178**
(Bd found that after impasse wages paid to striker replacements was consistent with E's final offer to U to continue expired contract for 1 year where Bd looked at *actual* earnings received by replacements over 6 month period and it showed they were equal to or lower than what strikers earned in similar period in prior year notwithstanding wage package of replacements different from strikers. Therefore, no violation by offering replacements higher wage formula but where actual wages same, because it was, in effect, offering same contract to replacements as one that expired and which was offered to U)

0167 REQUIREMENT OF ENCOURAGEMENT OR DISCOURAGEMENT OF UNION MEMBERSHIP

0167-0100 Generally

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. **778 F.2d 292 (C.A. D.C., Dec. 1985)**
[in deciding that in some cases *inference* or *presumption* of alleged encouragement or intent to encourage will not be applied (as in U-procured firing to enforce provision of valid hiring hall agreement) what occurs is application of principle that Act was not intended to interfere significantly with those activities of E and U, whether encouraging or intending to encourage U membership, which are sufficiently important means by which Es achieve *nondiscriminatory business purpose* or by which Us *attempt to benefit all represented Ees*]

0167-0500 Only encouragement or discouragement resulting from discrimination prohibited

The Trustees of Columbia University in the City of New York **279 NLRB No. 019**
[Bd dismissed 8(a)(3) allegation that E unlawfully withdrew non-contractual tuition benefit plan in retaliation for U's successfully pursuing grievance over similar contractually required fund where proof of 8(a)(3) allegation depended on proof of 8(a)(5) allegation that Bd dismissed in deferring to arbitrator's award finding that E did not have to provide both benefits]

0167-1000 Affirmative showing of prohibited motive required

The Lawson Company v. N.L.R.B. **753 F.2d (C.A. 6, Jan. 1985)**
(under Section 8(a)(1) and (3) of Act, E's *motive* is critical element in determining whether grant of benefits, prior to R election by E, is violative of Act)

Purolator Armored, Inc. v. N.L.R.B. **764 F.2d 1423 (C.A. 7, July 1985)**
(notwithstanding operation was losing money, E violated Act by terminating said operation as E was willing to absorb these losses until U won election which shows that economics was not foremost in E's decision, and as U elected as operation's representative was same as one that represented other E units and there was frequent interchange with Ees, the closure had chilling effect on unionism)

0167-1017 Violation where action motivated in part by objective of encouragement or discouragement

Sea-Land Service, Inc. (Sea Operations) **280 NLRB No. 084**
[ship's captain, responsible for transmitting all communications from ship, interrogating and discharging radio officer about message he sent at sea requesting local Bd's phone number, violative, notwithstanding legitamacy of captain's inquiry in asking whether radio was used in unauthorized manner, repeated inquiries as to *why* dischargee asked for Bd's phone number were not relevant to captain's responsibilities regarding communication equipment. Basis for discharge did not distinguish between specific questions asked so that lawful and unlawful motives cannot be separated]

Garrison Valley Center, Inc. **277 NLRB No. 164**
(discharge of Ee who was most active Ee on behalf of U during U's organizing campaign allegedly because Ee left patient at E's nursing home unattended while performing other work, violative, since E failed to meet burden of establishing that E would have discharged Ee even in absence of her U activities. Record evidence demonstrated that E had tolerated brief absences for work-related reasons and would discharge an Ee *only* when serious injury or death resulted from Ee's conduct)

0167-1033 Prohibited motive inferable from conduct inherently destructive of employee rights

Government Employees (Office Employees, Local No. 2) **278 NLRB No. 055**
[U-E's discriminatory and unilateral withholding of scheduled annual leave from Ees participating in strike, violation, since inherently destructive of significant employee rights]

MacDonald Miller Company **277 NLRB No. 079**
(discharge of Ee doing certain work, no violation, notwithstanding discharge was admittedly due to fact he was subject of U grievance demanding that

0167-1033—Cont.

Ees doing such work be paid higher wage under U contract, since, contrary to GC, doctrine of inherent destruction of Ee rights did not apply in grievance context, absent proof of U animus, because there was no far-reaching impact on work force and no visible and continuing obstacle to Ees' exercise of Sec. 7 rights; even assuming, arguendo, that inherent destruction doctrine had merit, it had been rebutted by E's explanation that paying higher wage would reduce its competitiveness)

Griffith-Hope Company 275 NLRB No. 073

(although finding that E violated 8(a)(5) by unilaterally subcontracting unit work resulting in layoff of Ees, Bd held subcontracting did not violate 8(a)(3) since, while E subcontracted work to avoid paying contractual wage and benefits, its unlawful action was not *inherently destructive* of Ees' Sec. 7 rights, particularly since there was no U animus)

Kenner Printing Company, Inc. JD-(NY)-32-85

(E's conversion of oral warning system to written one following notification of U's intent to organize E's Ees not inherently destructive of Ees' rights, as alleged, where E's purpose was to document instances of Ee misconduct, and campaign was free of ULPs by E)

Kobell v. Thorsen Tool Co. ———— F.Supp.————(DC M.D. PA, Dec. 1982)

0167-1033-5000 Notwithstanding conduct motivated by substantial business justification

Thomas Janitorial Service, Inc. JD-(SF)-60-86

[where E was successful bidder on contract and failed to contact predecessor's Ees who were U members to ascertain whether they would work below U scale, violative, notwithstanding no U animus and failure of U to respond to E's request for wage scale prior to his making bid. E had no indication Ees would not work at reduced wages but just assumed so leaving his failure to offer employment to be based on U membership which is *inherently destructive* of Ees' statutory rights]

0167-3000 Intent need not be shown where encouragement or discouragement foreseeable consequence

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[while real motive or true purpose underlying challenged conduct is controlling, specific intent to encourage or discourage U membership is not always necessary to sustain violations of Section 8 of the Act; discrimination may be inferred and some conduct may by its very nature contain implications of required intent; natural foreseeable consequences of certain action may warrant inference; however, where intent is inferred from conduct, it may be difficult to identify true motive because of possible complex of motives]

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[although *true purpose* or *real motive* in hiring or firing is test of statutorily required intent to encourage U membership, it need not be shown by specific proof, since some conduct may by its very nature contain implications of required intent; where E conduct inherently encourages or discourages U membership, common law rule that man is held to intend foreseeable consequences of his conduct, is applicable]

0167-5000 Discrimination must be based on union animus or protected activity

Ro-Lab Rubber Co., Inc. 279 NLRB No. 057

[E proved it would have discharged Ee for multiple incidents of negligence and unexcused absence even if there had been neither U activities by Ees nor unlawful retaliatory general increase in discipline by E]

Westinghouse Electric Corporation 278 NLRB No. 061

[fact E's unilateral mid-term changes in Ees' terms and conditions of employment were prompted by economic rather than discriminatory considerations is immaterial if E did not bargain about those changes. Defense that refusal to bargain did not take place in context of overall subjective, bad faith may be available when charge is violation of Section 8(a)(3) of Act, but it is no defense to 8(a)(5) allegation]

C. D. Draucker d/b/a Redding Industrial Electric 275 NLRB No. 087

(no independent U animus required to be shown for finding violation where refusal to reemploy job applicant referred by U through hiring hall was based on E's experience with applicant in former employment with E at construction project at which time applicant, as U steward, engaged in protected U activities which irked E and general contractor)

Castricone Contractors, Inc. JD-(NY)-80-85

(discharge of Ee who joined U after starting work and when he gave E his U papers was told by E that Ee *could either finish off the day or go home now — there were other people in U laid off that are not working*, violative as E member of E association that signed contract with U and Ee discharged because E would have had to pay Ee contract wage)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[inquiry into motivation for challenged conduct is critical because Section 8 does not outlaw all encouragement or discouragement of membership in Us; only such as is accomplished by discrimination is prohibited; real purpose behind a U's action is crucial because all U-procured employment action demonstrates U's power and encourages membership and all U action is motivated by desire, proximate or ultimate, to encourage membership]

0183 ADEQUACY OF EVIDENCE TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP

0183-0100 Generally

The Trustees of Columbia University in the City of New York 279 NLRB No. 019

[Bd dismissed 8(a)(3) allegation that E unlawfully withdrew non-contractual tuition benefit plan in retaliation for U's successfully pursuing grievance over similar contractually required fund where proof of 8(a)(3) allegation depended on proof of 8(a)(5) allegation that Bd dismissed in deferring to arbitrator's award finding that E did not have to provide both benefits]

Taylor & Gaskin, Inc. 277 NLRB No. 065

(in adopting ALJ's finding that E violated 8(a)(4) and (1) when it refused to rehire laid-off Ee because he had filed ULP charge against E, Bd disagreed with ALJ's statement that *Wright Line* does not apply to cases where there is finding that *asserted legitimate business reason* for adverse action was pretextual)

Quality Rolls, Inc. JD-189-86

[evidence developed in course of undercover investigation of Ees designed to develop facts to support discharges which would weaken U's strength among remaining workforce cannot be used to exonerate E from charge of unlawful discrimination]

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)

(as E motivation is factual question, Bd's conclusion concerning motivation must be upheld if supported by substantial evidence)

0183-3300 Burden of coming forward

0183-3333 Burden of showing discriminatory motive on General Counsel

Enterprise Aggregates Corporation 276 NLRB No. 011

(no violation when E who had paid retirement benefits previously refused to pay these benefits to strikers, in view of failure by GC to make out prima facie case that denial of benefits was based on Ees' protected activities GC relied solely on earlier case against E on same issue in which Bd found that E's refusal to pay benefits was based on E's animosity towards participants in strike. Absent any other evidence, Bd refused to infer same proximate cause in instant case especially in light of passage of more than year from end of strike and E ceasing operations until Ees requested benefits)

John J. Hudson, Inc. 275 NLRB No. 123

(layoff of three Ees who had signed U authorization cards, not violative, notwithstanding it occurred three days after supervisor informed manager of Ees' organizing efforts and one day after supervisor told Ee who was wearing U button that Ees were killing themselves by trying to organize, since layoff was according to seniority, U had not filed one grievance or ULP charge in twenty-seven years it had represented E's Ees at another facility, and supervisor's statement did not establish requisite U animus where it was made after manager responsible for labor relations at both facilities had told supervisor to lay Ees off)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)

(while GC must usually show that E knew about individual Ee's U activities before Bd may conclude E violated Sec. 8(a)(3), GC may also prevail by showing E ordered general layoffs for purpose of discouraging U activities of some. This theory is viable even though some Ees who actually opposed U were laid off with their pro-U counterparts, or if all pro-U Ees not laid off. Focus is on E's motivation in ordering extensive layoffs, rather than upon pro-U or anti-U status of particular Ees)

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)

(when Ee's discharge is motivated both by legitimate business reasons and reasons related to Ee's exercise of protected activities, ct will find ULP only if protected activity was substantial factor in decision to discharge; burden never shifts but as affirmative defense, E may show by preponderance of evidence that Ee would have been terminated even in absence of protected conduct)

0183-3333-3300 When employer's conduct causes comparatively slight harm to employee rights and employer raises defense of business justification

Harter Equipment, Inc. **280 NLRB No. 071**
[Bd held hiring of temporary Ees in order to operate business during lawful lockout to bring economic pressure in support of legitimate bargaining position, not unlawful, where use of temporary Ees (1) is measure reasonably adapted to achievement of legitimate E interest, and (2) has only comparatively slight adverse effect on protected Ee rights; and Bd need not require more proof of E's legitimate purpose nor engage in balancing E interests against Ee rights to find violation, even absent independent proof of unlawful E motivation; *Inland Trucking Co.*, 179 NLRB 350, overruled]

Lone Star Industries, Inc. **279 NLRB No. 078**
[E presented no *legitimate and substantial business justifications* for changing its longstanding work assignment policy (favoring senior drivers over junior drivers) during strike and retaining that change thereafter thus, even assuming that adverse effect of policy on Ees' rights was only *coinparatively slight*, E's action violative since E failed to prove that it had legitimate and substantial business justification for policy change]

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) **793 F.2d 1062 (C.A. 9, July 1986)**
[*where discharged Ee alleges that his discharge constitutes ULP, GC bears burden of proving Ee's exercise of protected activity was motivating factor in termination. As affirmative defense, E may show by preponderance of evidence that it would have terminated Ee despite protected activity*]

0183-3333-6700 No burden where employer conduct inherently destructive of employer rights

Harter Equipment, Inc. **280 NLRB No. 071**
[in finding E's use of temporary Ees during lawful lockout not violative, Bd held use of temporary Ees had only comparatively slight effort on Ee rights, and E's effort to remain in operation after lawful lockout was not *inherently destructive* nor per se violation of Act w/o inquiry into E's motivation; fact that E was protagonist in locking out Ees did not warrant inferring any greater impact on Ee rights from subsequent use of temporary Ees; and distinction as to effects between lawful *offensive* and *defensive* economic weaponry no longer exists]

0183-3367 Prima facie case places burden of coming forward on employer

International Hat Company, A Wholly-Owned Subsidiary of Interco Incorporated **281 NLRB No. 053**
[setting U activist's new rate of pay for bulk cutting at level which substantially reduced his earnings, violation where E knew it was setting rate too low to maintain Ee's earnings and failed to establish that reduction in earnings would have occurred absent Ee's U activities]

Arlington Hotel Company, Inc. **278 NLRB No. 007**
[discharging U activist for undercharging customer by falsifying meal ticket, not violation, since, even if U activities were a motive, E met its *Wright Line* burden where Ee failed to clarify any question about E's discontinuation of *freebies*, and supervisor making discharge decision lacked personal U animus, was not treating Ee disparately, as he was new on job, and was ignorant of Ee's identity when he started investigating matter]

United States Postal Service **277 NLRB No. 156**
(ALJ's personal belief that E's legitimate reason was sufficient to warrant action taken is not substitute for evidence that E would have relied on this reason alone)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(reduction of Ee's position and job responsibilities from designation as temporary manager, not unlawful, even though Ee's U sympathies were motivating factor for E's action, where E would have reassigned Ee even absent protected conduct, since Ee admitted he wanted to return to former position because earnings as temporary manager were insufficient to justify extra responsibilities and risk of losing qualifying papers for former position; and Ee's wages did not increase as temporary manager, and he retained existing wage rate upon returning to former position)

Jefferson Electric Company, A Division of Litton Systems, Inc. **274 NLRB No. 104**

Industrial Agrico Processing, Inc. **274 NLRB No. 102**
(discharge of U adherent because he loitered in controller's office, violative, since credible testimony and in context of numerous ULPs show that E failed to demonstrate that it would have discharged Ee even in absence of Ee's U activity)

County Respiratory Products, Inc. **JD-(NY)-107-85**
(discharge of Ee for threatening E's president with physical violence, not violative, notwithstanding E may have been pleased to have reason to discharge Ee who was prime suspect in U activity, where E would have discharged even in absence of U activity)

Roberto Sanchez and Elva Rodriguez v. N.L.R.B. **785 F.2d 409 (C.A. 2, Mar. 1986)**
[discharge of U steward allegedly for driving incident, rather than for U activities, unlawful, since U steward met his burden of proving under *Wright Line* that discharge was result of U animus]

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. **778 F.2d 8 (C.A. 6, Dec. 1985)**
[once GC has demonstrated that Ee's protected activity was substantial or motivating factor in E's adverse action against Ee, E may then avoid liability if it can prove by preponderance of evidence that there were independent, legitimate reasons for its decision; thus, in mixed or dual motive cases, where there is both anti-U animus and nondiscriminatory reason for adverse action, burden of proof shifts to E to prove that adverse action would have occurred in any event for valid reasons]

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. **778 F.2d 8 (C.A. 6, Dec. 1985)**
[if ALJ erred in failing to employ formal *Wright Line* analysis and to follow its burden-shifting procedures of imposing on E affirmative defense for escaping liability, such error was harmless since ALJ at least found that E had failed to prove its affirmative defense]

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**
[in reviewing Bd's findings with respect to discharges of Ees, ct held that, under *Wright Line*, E, in essence, has affirmative defense which he must prove by preponderance of evidence]

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company **762 F.2d 769 (C.A. 9, June 1985)**
(when Ee's discharge is motivated both by legitimate business reasons and reasons related to Ee's exercise of protected activities, ct will find ULP only if protected activity was substantial factor in decision to discharge; burden never shifts but as affirmative defense, E may show by preponderance of evidence that Ee would have been terminated even in absence of protected conduct)

0183-3375 Employer's burden not satisfied where reason pretexual

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[although ALJ found E's proferred reason for discharge of Ee, i.e., insubordination, was wholly pretextual and real reason for discharge was Ee's U support, Bd still applies *Wright Line* analysis in all cases alleging violations of 8(a)(3) and (1); however, because finding of pretext necessarily means that E's reasons did not exist or were not relied on, inference of wrongful motive is left intact and discharge is unlawful]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[Ee's discharge for sleeping on job, unlawful, notwithstanding that Ee was marginal Ee briefly employed by E and was recipient of series of reprimands for tardiness, where E did not meet its *Wright Line* burden that it would have discharged Ee even absent his U activity, in view of supervisor's statement to Ee that he would not be fired if he would get back his U authorization card]

Taylor & Gaskin, Inc. **277 NLRB No. 065**
(in adopting ALJ's finding that E violated 8(a)(4) and (1) when it refused to rehire laid-off Ee because he had filed ULP charge against E, Bd disagreed with ALJ's statement that *Wright Line* does not apply to cases where there is finding that *asserted legitimate business reason* for adverse action was pretextual)

Power-Seal Corporation **276 NLRB No. 036**
(E's contention that it had discharged family of former plant manager and part owner of the business, because, while still employed by E, latter had conceived of competing business which became viable the day after his resignation failed to rebut prima facie case of discharge for U activity where reason on which E relied to discharge Ees was shown not to have existed and E failed to show that it would have taken same action in absence of protected conduct)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[discharge of Ees held unlawful where evidence of Ees' U activities, E's widespread 8(a)(1) conduct, express demonstration of U animus, and active curiosity in Ees' organizing activties was sufficient to establish prima facie case of unlawful motivation for discharges; and, since E's asserted reasons for discharges were pretextual, E failed to meet its *Wright Line* burden]

0183-6700 Sufficiency of evidence

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[individual demonstrations of E's anti-U motivation, together with ULPs, support finding of anti-U motivation where all laid-off Ees had signed U authorization cards, those deemed U leaders were not recalled, E listed most

0183-6700—Cont.

of laid-off Ees as potentially voting for U, and chief operating officer said Ees were laid off for U activities and told former Ee he would be considered for employment after U campaign died down]

0183-6701 Generally

Pullman Power Products Corporation **275 NLRB No. 112**
(layoff of Ees, who had been active in replacing U steward, for poor workmanship and because some of Ees were *troublemakers,* not unlawful, notwithstanding that layoff occurred after E's superintendent met with Ees, since each of critical aspects of meeting was susceptible to two different meanings, one lawful and other unlawful, and record taken as whole gave insufficient basis for Bd to choose unlawful meaning over lawful meaning)

Stewart-Warner Corporation/Thor Power Tool Company **JD-(ATL)-62-86**
[suspicion raised by Ee's U activities, E's knowledge thereof, and limited evidence of E's U animus held not proof of unlawful motivation in discharge of active U adherent]

0183-6712 Circumstantial evidence

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**
(where substantial majority of Ees not rehired were U leaders, strong circumstantial evidence of U animus is present, though evidence probative and not dispositive, notwithstanding successor retained some U Ees)

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. **778 F.2d 8 (C.A. 6, Dec. 1985)**
[Bd may rely on all the evidence, including direct admissions as well as circumstantial evidence, which alone may be sufficient, in detemining E's actual motive underlying its actions]

0183-6712-2500 Direct evidence rarely obtainable and not essential

Yaohan of California, Inc. **280 NLRB No. 032**
[even in absence of credited evidence of direct knowledge of Ee's U activities, circumstances surrounding his discharge held sufficient to create inference that E was aware of Ee's U activities and fired him for that reason]

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **JD-98-85**
(discriminatory intent may be inferred not only from direct evidence but from record as a whole)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**
(improper motivation need not be demonstrated by direct evidence but may be inferred from all circumstances and must be upheld if it is reasonable in light of proven facts)

0183-6725 Inference of discrimination

T & T Machine Company, Inc. **278 NLRB No. 139**
[inference of unlawful motivation in E's layoff of 4 members of U in-house organizing committee not dispelled by E's failure to layoff other Ees who openly favored U, nor would inference be dispelled if E had laid off Ees who had no involvement with U]

Activ Industries, Inc. **277 NLRB No. 040**
(direct evidence of discriminatory motivation is not necessary to support finding of discrimination and such intent may be inferred from record as a whole)

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**
(prima facie case made out for successor's unlawful failure to rehire Ees where: 1) Ees were known U adherents, 2) majority of Ees not rehired were U leaders, 3) disparate treatment as other Ees rehired were guilty of same offenses that successor alleged for not rehiring these Ees, and 4) successor found to have unlawfully refused to bargain with U, which constituted additional evidence of U animus)

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**
(successor E based hiring decisions on consultation with predecessor E where record showed that successor spent on average of 75 seconds reviewing each personnel file)

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**
(where substantial majority of Ees not rehired were U leaders, strong circumstantial evidence of U animus is present, though evidence probative and not dispositive, notwithstanding successor retained some U Ees)

Enterprise Aggregates Corporation **276 NLRB No. 011**
(no violation when E who had paid retirement benefits previously refused to pay these benefits to strikers, in view of failure by GC to make out prima facie case that denial of benefits was based on Ees' protected activities GC relied solely on earlier case against E on same issue in which Bd found that E's refusal to pay benefits was based on E's animosity towards participants in strike. Absent any other evidence, Bd refused to infer same proximate cause in instant case especially in light of passage of more than year from end of strike and E ceasing operations until Ees requested benefits)

Pullman Power Products Corporation **275 NLRB No. 112**
(Bd reversed ALJ, notwithstanding assertion that reversal turned on ALJ's demeanor credibility findings, since Bd, to same extent as ALJ, is free to draw its own inferences from record so long as demeanor is not involved)

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods **JD-(SF)-101-86**
[absent direct evidence, trier of fact may infer from total circumstances that motive for discharge was desire to eliminate U adherents; if stated motive is found false, inference is that there is another motive E desires to conceal and that such motive is unlawful]

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods **JD-(SF)-101-86**
[discharge of cashiers at E's store, who were known or believed to be leaders in Ees' organizing efforts, assertedly because they were responsible for cash shortages at work, unlawful; absent direct evidence that Ees personally took funds, surrounding circumstances including E's anti-U animus, made inference appropriate that E's motivating factor was desire to eliminate U adherents]

N.L.R.B. v. Sherwood Trucking Company **775 F.2d 744 (C.A. 6, Oct. 1985)**
[E's refusal to hire Ees of company that formerly performed work subcontracted to E, assertedly because of former Ees' affiliation with U, not violative where anti-U statements which would have formed basis for concluding that refusal to hire was illegal were made by individual who held no supervisory position with E during relevant period, and motivating factor in E's not hiring Ees was condition attached to E's receiving contract for performing work]

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**
(while GC must usually show that E knew about individual Ee's U activities before Bd may conclude E violated Sec. 8(a)(3), GC may also prevail by showing E ordered general layoffs for purpose of discouraging U activities of some. This theory is viable even though some Ees who actually opposed U were laid off with their pro-U counterparts, or if all pro-U Ees not laid off. Focus is on E's motivation in ordering extensive layoffs, rather than upon pro-U or anti-U status of particular Ees)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**
(E's decision to have mass layoff w/i hours after becoming aware of U's organizational effort suports Bd's inference of improper motivation)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**
(E deviated from past practice in sending letters to 4 laid off Ees suggesting that they seek employment elsewhere because there was no reason to believe they would be recalled. Since three of four Ees were among most prominent U adherents, Bd could reasonably view letters as evidence of E's anti-U animus)

Lemon Drop Inn, Inc. v. N.L.R.B. **752 F.2d 323 (C.A. 8, Jan. 1985)**
(inference of E's unlawfulness may be drawn from E's hostility toward U, coincidence between Ee's activities and discharge, or absence of previous warnings or reprimands to Ee)

0183-6737 Uncorroborated testimony of dischargee sufficient

Hotel & Restaurant Employees, Local 2 v. N.L.R.B. **735 F.2d 1152 (C.A. 9, June 1984)**

0183-6750 Insignificance of discriminatee in union evidence of lack of prohibited motive

Florsheim Shoe Store Company **279 NLRB No. 133**
[discharge of Ee who was member of U while working for this e in another state, not violative, notwithstanding Ee fired abruptly (only 1-1/2 hours after starting on job) and no justification given for discharge since no showing of U animus on part of E nor had E prevented former U members from working at its nonU stores]

0183-6775 Union activities of employee plus discharge or discipline do not alone make out a case of prohibited discrimination

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[discharge of U adherent, not unlawful, where pursuant to E's policy for receiving 3 written reprimands and other Ees had received reprimands for

0183-6775—Cont.

similar offenses. *Ee is not immune from discipline because pro-U; such Ee may not be singled out for discipline, but he is not immune from discipline*]

Ro-Lab Rubber Co., Inc. **279 NLRB No. 057**
[E's failure to recall Ee prior to other Ees violated 8(a)(3), where warnings to Ee would have been given in absence of U activity and that Ee was recalled when sufficient work and application of E's criteria for recall warranted]

Pierre's Vending Company, Inc. **274 NLRB No. 184**
(notwithstanding that E's cessation of U activist's Saturday work was violative, warning notice, based on customer complaint concerning Ee's serving vending machine at customer's facility and later discharge for his *sloppy work habits and misconduct*, not violative, since Ee's work was not satisfactory and E showed that action of warning and subsequent discharge of Ee would have taken place even in absence of mechanic's U activity)

Quality Rolls, Inc. **JD-189-86**
[suspicion generated by evidence that E was not above use of discharge in its effort to weaken newly certified U held not to outweigh evidence that alleged discriminatee would have been terminated even if he had not engaged in U activity]

Advoc-System, Inc. **JD-126-85**
(lay off of U activist, not violative where GC failed to establish that anti-U bias was motivating factor in decision to lay him off)

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. **803 F.2d 1333 (C.A. 4, Oct. 1986)**
[*mere exercise of protected rights does not immunize Ee from discharge and it is error to accord no weight to Ee's performance deficiencies*]

0183-6789 Lack of employer's specific knowledge of individual employees and differences in union activity between individual employees immaterial

Wilco Business Forms, Inc. **280 NLRB No. 154**
[layoff motivated by exercise of protected Ee conduct need not include every single Ee of whom E had knowledge was engaged in such protected conduct. Where lay-off en masse is implemented in response to protected Ee conduct, GC is not obligated to establish anti-U motive with respect to each individual Ee laid-off]

Ballou Brick Co. **277 NLRB No. 009**
(E's contention, in defense of allegations of unlawful discharge of 13 Ees, that GC's *prima facie* case must include evidence that E was aware that each individual engaged in protected activity, rejected, since a general knowledge of Ees' U activities is sufficient and in instant case, E had knowledge that its Ees were engaging in U meetings)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[even if E does not have specific knowledge of individual Ee's U activities but nevertheless discharges such Ees because other Ees engaged in U activities, discharge is unlawful since E violates Act where, notwithstanding actual conduct of Ee, it lays off such Ee because of belief or suspicion; moreover, where E engages in pattern of discriminatory conduct against Ee groups because many, even though not all, of them engaged in U activity, discrimination suffered by all Ees as result of E conduct is unlawful]

ARA Leisure Services, Inc. v. N.L.R.B. **782 F.2d 456 (C.A. 4, Jan. 1986)**
[*where overall decision has been found to be prompted by U organizational activity, individual discharges may be ascribed to that same cause where, as here, E has actual knowledge of some Ees' U activity, and reasonable suspicion that other terminated Ees were among U supporters also*]

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1178 (C.A. 6, May, 1985)**
(while GC must usually show that E knew about individual Ee's U activities before Bd may conclude E violated Sec. 8(a)(3), GC may also prevail by showing E ordered general layoffs for purpose of discouraging U activities of some. This theory is viable even though some Ees who actually opposed U were laid off with their pro-U counterparts, or if all pro-U Ees not laid off. Focus is on E's motivation in ordering extensive layoffs, rather than upon pro-U or anti-U status of particular Ees)

1700 UNION OR OTHER PROTECTED ACTIVITY OF DISCRIMINATEE

1717 ACTIVE PARTICIPATION IN UNION ACTIVITIES

1717-1000 Officers or leaders in union affairs

Esco Elevators, Inc. **276 NLRB No. 138**
(on ct remand, Bd held Ee's safety-related complaints constituted U endeavor and not personal undertaking, and his discharge purportedly because of fist fight with another Ee, unlawful, where Ee emphasized safety matters in campaign for U office before being elected U president; inspection of safety conditions at job sites was part of his role as U official; E was discharged by supervisor who had ascertained Ee was pressing safety conditions because he was U president; and other U officers were involved in attempting to resolve safety problem)

N.L.R.B. v. Esco Elevators, Inc. **794 F.2d 1078 (C.A. 5, July 1986)**
[Bd's conclusion on remand that Ee's safety complaints were not merely personal undertaking, but rather part of Ee's U campaign for U president Ee had emphasized safety issues, and supervisors' minds campaign was related to his safety complaints, U had investigated and discussed need for correction of alleged unsafe conditions with E's management]

1717-1900 Conspicuous in unionizing effort

Garrison Valley Center, Inc. **277 NLRB No. 164**
(discharge of Ee who was most active Ee on behalf of U during U's organizing campaign allegedly because Ee left patient at E's nursing home unattended while performing other work, violative, since E failed to meet burden of establishing that E would have discharged Ee even in absence of her U activities. Record evidence demonstrated that E had tolerated brief absences for work-related reasons and would discharge an Ee *only* when serious injury or death resulted from Ee's conduct)

1717-2400 Grievance protest or acting as grievance committeeman

Garland Coal & Mining Co. **276 NLRB No. 102**
(discharge of chairman of grievance and safety committees for insubordination for refusing to sign E's memorandum threatening discharge if committees' members interfered in any activity outside their own unit, unlawful, where chairman's conduct did not remove him from protection of Act, since his refusal to sign did not impede or disrupt productivity in any way; refusal took place in private and not in front of other Ees; authority of supervisors involved was not publicly undermined; and there was no claim official's conduct exceeded acceptable bounds of conduct)

1717-3300 Demanding compliance with bargaining contract

MacDonald Miller Company **277 NLRB No. 079**
(discharge of Ee, allegedly for his U activities and U stewardship and interest in enforcing contractual term according his job higher wages, not violation, since E showed no U animus and acted in accordance with such contractual term in transferring Ee's job to other U members already making such higher wages, leaving Ee w/o a job and E w/o obligation to retain him)

1717-3600 Participation in sympathy strike

Arizona Public Company **273 NLRB No. 210**
(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work*, and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

Indianapolis Power & Light Company **273 NLRB No. 211**
(broad no-strike clause in bargaining agreement though not expressly mentioning sympathy strikes nevertheless held to include sympathy strikes in its proscription, unless extrinsic evidence indicates parties intended otherwise, and suspension and threat of discharge made to sympathy striker, not violative)

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) **788 F.2d 1412 (C.A. 9, May 1986)**
[sympathy strikers' suspension lawful based on new Bd rule that, absent extrinsic evidence of contrary intent, general no-strike clause waived right to engage in such strikes, reversed and remanded, Bd treated rule as establishing irrebuttable presumption that broad no-strike clause barred such strike, rather than as shifting burden of proving whether clause was intended to encompass sympathy strikes. Bd relied on clause and U letter disavowing strike w/o discussing intent, prior rule's impact on contract's meaning, terms, or negotiations, and parties' conduct under it as rule required]

1717-6700 Participation in State board proceedings

Thompson's Gas, Inc. and Del-Ro Transports, Inc. **274 NLRB No. 092**
(in finding no violation of 8(a)(1), (2), and (3) in E's termination of Ee's privilege to make personal purchases on E's charge account, Bd held that even if E's action was related to Ee's claim with state department of labor regarding wages and monies owed to him by E, it could properly be concluded that no violation should be found on such ground because it was not concerted activity)

1717-7200 Solicitation

1717-7200—Cont.

Consolidated Edison Co. of New York, Inc. 290 NLRB No. 039

[transfer of Ee, active participant in dissident U group, to less desirable time and work site, not violative since there was no substantive evidence to explain why E would chose to discriminate against Ee at time of transfer, as Ee had been engaging in his dissident activities for about 5 years w/o recrimination. Ee an experienced inspector, replaced inexperienced inspector on transfer]

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)

[discipline for violation of E's (Hospital's) no solicitation rule *not an ULP*, where E undisputedly showed (1) violation of rule, (2) failed attempt to resolve dispute and possibly, withdraw discipline, and (3) final disciplinary actions in proportion to conduct involved, even though E had allowed some innocuous activity, such as sale of some raffle tickets, Girl Scout cookies and cosmetics by Ees w/o reprisal under E's rule]

Restaurant Corporation of America v. N.L.R.B. 801 F.2d 1390 (C.A. D.C., Sept. 1986)

[non-U solicitations involving intra-Ee generosity designed to express appreciation of fellow Ees on occasions such as birthdays or departures held not substantially equivalent to U solicitation; therefore, E's failure to treat non-U solicitation and U solicitation alike did not constitute *discrimination* w/i meaning of 8(a)]

1717-7600 **Strike leadership**

1717-7625 Leadership in spontaneous work stoppage

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. 278 NLRB No. 102

[discharge of 3 U committeemen who participated in wildcat strike and appeared on picket line, violation, since E singled them out for disparate treatment because of their U office, where there was no evidence that they engaged in strike leadership activities, similarly situated Ees were not disciplined, and E knew that two of the committeemen had urged other Ees to return to work and unless E capitulated on grievance held not threatened to cause strike]

1717-7650 Non-ULP strike

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. 278 NLRB No. 102

[discharge of 3 U committeemen who participated in wildcat strike and appeared on picket line, violation, since E singled them out for disparate treatment because of their U office, where there was no evidence that they engaged in strike leadership activities, similarly situated Ees were not disciplined, and E knew that two of the committeemen had urged other Ees to return to work and unless E capitulated on grievance held not threatened to cause strike]

1717-9800 **Union stewardship**

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. 278 NLRB No. 102

[discharge of 3 U committeemen who participated in wildcat strike and appeared on picket line, violation, since E singled them out for disparate treatment because of their U office, where there was no evidence that they engaged in strike leadership activities, similarly situated Ees were not disciplined, and E knew that two of the committeemen had urged other Ees to return to work and unless E capitulated on grievance held not threatened to cause strike]

Orleans International, Inc. 274 NLRB No. 169

(discharge of U steward, unlawful, since not for driving with expired license or for involvement in automobile accident but rather for his repeated filing and pursuing grievances and performance of other duties as steward, bringing intra-U charges against individual who was E's agent, his ardent bargaining positions and demands, and activities on behalf of dissident U group, where discharge was five and a half weeks after accident, discharges of other Ees in similar circumstances had been for significantly greater offenses, and in view of E's demonstrated U animus)

Kansas City Terminal Elevator Company 274 NLRB No. 010

(E's imposing 3-day suspension on its Ee, U activist and shop steward, because Ee had been playing cards during scheduled working time, but during lull in production process, violative, since suspension letter received by Ee indicated that conduct for which Ee was suspended was first offense-Ee had been guilty of safety related offense but E did not consider card playing in same category-which according to E's *progressive disciplinary system* should have been cause only for written disciplinary warning)

United Parcel Service, Inc. 273 NLRB No. 205

(suspension and discharge of U stewards for participation in strike which was in violation of no strike agreement, not unlawful, notwithstanding contention actions discriminatory because of U office these individuals held as other strikers not similarly disciplined, where U stewards went beyond simple participation and provided leadership to rank-and-file Ees by relaying messages from U business agent, picketing in more than one location, and explaining strike to television reporters)

1783 KNOWLEDGE OF EMPLOYER AS TO DISCRIMINATEE'S UNION ACTIVITY

1783-0100 **Generally**

Link Manufacturing Co. 281 NLRB No. 028

[layoff of Ees, several of whom had signed U cards and engaged in U activities, held unlawful w/o regard to specific knowledge on E's part of pro-U activities of particular Ees, where E, upon being apprised of filing of election ptn, effected layoffs in order to purge itself of possible U supporters, thereby reacting to advent of U in nature of *power display*]

Activ Industries, Inc. 277 NLRB No. 040

(discrimination in regard to group of Ees in their employment including U members not known oy E to be U members tends to discourage U membership and activities no less than discrimination against known U members alone)

Ballou Brick Co. 277 NLRB No. 009

(E's contention, in defense of allegations of unlawful discharge of 13 Ees, that GC's *prima facie* case must include evidence that E was aware that each individual engaged in protected activity, rejected, since a general knowledge of Ees' U activities is sufficient and in instant case, E had knowledge that its Ees were engaging in U meetings)

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86

[even if E does not have specific knowledge of individual Ee's U activities but nevertheless discharges such Ees because other Ees engaged in U activities, discharge is unlawful since E violates Act where, notwithstanding actual conduct of Ee, it lays off such Ee because of belief or suspicion; moreover, where E engages in pattern of discriminatory conduct against Ee groups because many, even though not all, of them engaged in U activity, discrimination suffered by all Ees as result of E conduct is unlawful]

ARA Leisure Services, Inc. v. N.L.R.B. 782 F.2d 486 (C.A. 4, Jan. 1986)

[*where overall decision has been found to be prompted by U organizational activity, individual discharges may be ascribed to that same cause where, as here, E has actual knowledge of some Ees' U activity, and reasonable suspicion that other terminated Ees were among U supporters also*]

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

[as matter of causation, there can be no finding of discrimination based on an Ee's engaging in protected activity unless E was aware of or suspected Ee's activity]

1783-0150 Employer chargeable with supervisor's or agent's knowledge

Woodline Motor Freight, Inc. 278 NLRB No. 152

[knowledge of Ee's U activities by a supervisor not imputed to E where supervisor denied informing any other of E's officials and he played no role in Ee's discharge]

Dr. Olinda Flora JD-12-86

[E's sister who worked in E's office found agent whose knowledge of Ees' concerted protected activities was imputed to E where she regularly served as conduit of information to E concerning Ee activities and statements and she enjoyed a special status and authority in the office]

1783-2500 **Effect of absence of**

1783-2550 Sustained as defense

Woodline Motor Freight, Inc. 278 NLRB No. 152

[discharge of driver violative of Sec. 8(a)(1) where for requesting installation of airconditioning in E's trucks, since request concerted inasmuch as driver had spoken to several other Ees about matter, notwithstanding he discussed airconditioning with E's president w/o going through chain of command thus violating rule, where E's president himself did not attempt to enforce rule, and discharge memo did not spedifically mention violation of rule as reason for discharge; however, discharge not violative of Sec. 8(a)(3) in view of lack of knowledge of Ee's U activities by E's officials who discharged him]

Leeward Nursing Home 278 NLRB No. 157

[no unlawful subcontracting by E where E seriously investigated possibility of subcontracting for economic reasons prior to obtaining knowledge of U activity]

ICG Electric, Inc. JD-(SF)-032-86

Easthampton Electrical Services, Inc. JD-85-85

(discharges of Ees not unlawful, notwithstanding discharges took place one month after Ees had returned to 40 hour week, previously in slow times hours of all Ees had been cut rather than some Ees discharged, E had had profitable year, and two weeks prior to discharges had granted unit wide

1783-2550—Cont.

salary increase, absent evidence of E knowledge of U organizing activity, and since E offered plausible business and economic reasons for discharges, including fact total hours worked by Ees in dischargees' classification down)

1783-5000 Belief that discriminatee engaged in union activity, where activity not proved

1783-5050 Sufficient to find discrimination

B & W Machine & Welding Company **JD-(SF)-107-86**
[E held to have had knowledge of alleged discriminatees' U activities in view of U's letter requesting recognition; E's statements that Ees were discharged for their U activities; supervisor's admission that he told E identity of Ee who instigated organizing movement; and other circumstances giving rise to inference of knowledge]

ARA Leisure Services, Inc. v. N.L.R.B. **782 F.2d 456 (C.A. 4, Jan. 1986)**
[*where overall decision has been found to be prompted by U organizational activity, individual discharges may be ascribed to that same cause where, as here, E has actual knowledge of some Ees' U activity, and reasonable suspicion that other terminated Ees were among U supporters also*]

1783-7500 Inferable

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[knowledge of Ees' U activity may be inferred to E merely from notification by Bd agent to E that R ptn has been filed, and where E utilizes informants to ascertain identity and U activities of Ees, it may be inferred that *healthy grapevine at work* exists from which E will learn information sought]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[where E has opportunities to overhear conversations of Ees as result of some electronic means of surveilling, such as turned on loudspeaker amplifying system, inference of knowledge by E of ongoing U activities of Ees is supported]

1783-7533 From circumstances

Yaohan of California, Inc. **280 NLRB No. 032**
[even in absence of credited evidence of direct knowledge of Ee's U activities, circumstances surrounding his discharge held sufficient to create inference that E was aware of Ee's U activities and fired him for that reason]

Delta Data Systems Corp. **279 NLRB No. 169**
[Ees engaged in open and extensive U activities, told supervisors that they thought a U was needed, and handed out cards at workplace]

Sahara Datsun, Inc. **278 NLRB No. 148**
[discharge of two U organizers same day E received U ptn for election signed by one of them, violation]

Dr. Frederick Davidowitz, and Dr. Martin Goldberg; P.C. **277 NLRB No. 110**
(discharge of dentist who was U adherent, unlawful, since asserted reasons for discharge: poor production, attitude; violating rules by keeping patients waiting; held pretextual in view of E knowledge of U activity to be inferred from rumor mill, relied on in past by E; timing, discharge took place 1 week after U meeting where dentist had declared support of and following period of his intense solicitation for U; further, writeups in personnel file did not contribute to discharge decision as other dentists had approximate same number of write-ups over equivalent period and not discharged)

D & D Distribution Company, A Division of D & D Sewing Company **277 NLRB No. 097**
(inference that E knew of Ee's concerted activities was warranted most significantly in view of testimony that about a week before Ee's discharge Ee engaged 2 Ees in 5-minute conversation about wages general vicinity and w/i hearing distance of supervisor)

Marion Center Supply, Inc. **277 NLRB No. 026**
(E's knowledge of Ee's union activity inferred from E's knowledge of U campaign, discharge of Ee that occurred almost simultaneously with main U adherent's discharge, and E's asserted reason for discharging Ees being pretextual)

B & W Machine & Welding Company **JD-(SF)-107-86**
[E's knowledge of alleged discriminatees' U activities inferred from circumstances including interrogations which were directed at least in part to determining which Ee initiated organizing drive, very small Ee complement, and timing of terminations after receipt of U's letter requesting recognition]

Morning Star International, Inc. **JD-209-86**
[inferring E's knowledge of Ees' U activities proper in view of timing of their layoffs on same day shortly after Ee solicited Ee who was on close terms with management, to become U member]

Apple Glass Company **JD-89-86**
[E's knowledge of Ees' organizing attempt inferable in view of small work force, Ees' conversation and unionization rumors in shop, decision of brother-in-law of E's president that U was not good for him, and timing of discharges of U organizers]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[E's belief that Ee was U supporter inferred from fact that Ee worked with known chief U organizer, E made diligent effort to learn who were U organizers, and E acknowledged to Ee after Ee's discharge that E was sorry but someone had informed E that Ee was U organizer]

Wells Fargo Armored Service Corp. **JD-(SF)-19-86**
[E's knowledge of Ees' U activity inferrable where he threatened to discharge them immediately on returning to office two business days after office received notice that they were U executive committee members]

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. **801 F.2d 636 (C.A. 3, Sept. 1986)**
[inference of E's knowledge of Ee's activities supported by credible evidence that foreman was close enough to hear Ee's conversations about wage increases and approaching U, E employed only eight to nine Ees in small facility, E believed Ee responsible for graffiti in men's room, Ee's discharge came one week after conversation suggesting that Ees approach U, Ee was told discharge was due to his attitude, and next day another Ee was told E did not like things Ee was saying]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[small plant doctrine does not give rise to presumption of knowledge that E must rebut to prevent establishment of prima facie case but rather permits inference of E knowledge only if Bd establishes by other evidence, direct or circumstantial, E had reason to notice U activities; other evidence necessary to permit inference of E knowledge is often same as that allowing inference that E was motivated by anti-U animus, such as (1) open discussions about U on premises during work hours, (2) timing of discharge, (3) adequacy of E's reasons for discharge, and (4) hiring replacement after discharge for asserted economic reasons]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and inadequate, and new Ees were hired two months after discharges]

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[E's knowledge of U activities of Ees selected for layoff demonstrated by U's request to represent Ees, identification of Ees attending second U meeting, and supervisor's statement that he had driven by tavern where U meeting was held and knew who was there; also, other cts have found proof of E's knowledge of specific Ee's opinion unnecessary in cases of mass layoff]

1783-7567 From smallness of plant

D & D Distribution Company, A Division of D & D Sewing Company **277 NLRB No. 097**
(in case involving protected concerted activity of Ee)

Consolidated Freightways Corporation of Delaware **276 NLRB No. 058**
(knowledge not inferred on basis of small plant doctrine where Ee took pains to conceal his activity of honoring a picket line by taking coffee breaks when pickets were stationed outside his place of employment and E otherwise had no reason to know this was what Ee was doing)

104 West Operating Corp. d/b/a New York Delicatessen **275 NLRB No. 133**
(discharge of Ee assertedly for U activities, not unlawful where small plant doctrine, did not support finding of E knowledge where E employed 46 Ees in delicatessen restaurant, there was no showing that Ee was more active than other Ees in organizing for U nor was there proof that during several months of U campaign only U supporters were fired, and Ees were often discharged on the spot w/o warning which is common in this type of restaurant business)

Bartels & Shores Chemical Company **274 NLRB No. 159**
(inference was warranted that E had prior knowledge of warehouse Ee's U activity when discharging him on basis of small number of warehouse Ees who were closely supervised by one supervisor and fact that the two U advocates openly expressed their sympathies for U)

B & W Machine & Welding Company **JD-(SF)-107-86**

Art Bridges Pontiac **JD-(SF)-118-86**
[*small plant* doctrine inapplicable where Ee testified he took special care so that no one in supervisory position knew he was soliciting signed authorization cards]

Apple Glass Company **JD-89-86**
[E's knowledge of Ees' organizing attempt inferable in view of small work force, Ees' conversation and unionization rumors in shop, decision of broth-

1783-7567—Cont.

er-in-law of E's president that U was not good for him, and timing of discharges of U organizers]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[physical size of work facility or its acoustics enabling E to overhear Ees' conversations supports inference of knowledge by E of ongoing U activities]

Fax-Sy Productions, Inc. JD-(NY)-49-85

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza JD-(ATL)-87-84
(unlawful discharge of Ee w/lowest seniority and working 1 shift per week when E reinstituted old policy that Ees work minimum of 2 shifts per week and took shift from him and gave it to senior Ee who also worked 1 shift, in view of E's animus, no explanation why E delayed 5 months before implementing decision to return to old shift policy, and knowledge of Ee's U inclination inferred from E's knowledge that Ee's brother, also Ee, was U adherent, smallness of workforce (21 Ees) and supervisor at time of his termination voiced concern over U considerations

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. 801 F.2d 636 (C.A. 3, Sept. 1986)
[use of small shop doctrine to infer knowledge of U or pre-U activities, appropriate, even if doctrine applies only where there is other affirmative evidence of E's knowledge]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)
[small plant doctrine does not give rise to presumption of knowledge that E must rebut to prevent establishment of prima facie case but rather permits inference of E knowledge only if Bd establishes by other evidence, direct or circumstantial, E had reason to notice U activities; other evidence necessary to permit inference of E knowledge is often same as that allowing inference that E was motivated by anti-U animus, such as (1) open discussions about U on premises during work hours, (2) timing of discharge, (3) adequacy of E's reasons for discharge, and (4) hiring replacement after discharge for asserted economic reasons]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)
[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and inadequate, and new Ees were hired two months after discharges]

3300 DISCRIMINATION FOR FILING CHARGES OR GIVING TESTIMONY

3301 GENERALLY

3301-5000 Scope of proscription

Sea-Land Service, Inc. (Sea Operations) 280 NLRB No. 084
[ship's captain, responsible for transmitting all communications from ship, interrogating and discharging radio officer about message he sent at sea requesting local Bd's phone number, violative, notwithstanding legitamacy of captain's inquiry in asking whether radio was used in unauthorized manner, repeated inquiries as to *why* dischargee asked for Bd's phone number were not relevant to captain's responsibilities regarding communication equipment. Basis for discharge did not distinguish between specific questions asked so that lawful and unlawful motives cannot be separated]

Newsday, Inc. 274 NLRB No. 019
(no violation where record was completely void of any evidence to show that any of 4 named alleged discriminatees filed charges or testified at Bd hearing; they merely attended sessions of R hearing as did many other Ees)

3325 EMPLOYEE ACTIVITY PROTECTED

3325-1400 Employee or relative filing charges or petition or being named in charge as discriminatee

Norris Concrete Materials, Inc. 282 NLRB No. 045
[Ee unlawfully constructively discharged after his reinstatement pursuant to non-board settlement agreement, where E had not entered into settlement agreement in good faith, and after Ee's reinstatement established classification and discipline systems designed to starve Ee out, and assigned Ee to unsafe truck where E's actions motivated by Ee's son filing prior charge]

Norris Concrete Materials, Inc. 282 NLRB No. 045
[E's layoff of Ee, unlawful, where motivated by Ee's son filing charges rather than by lack of business or Ee's delivery of unsatisfactory batch of cement]

The Lewis Grocer Company 282 NLRB No. 019
[discharge of driver Ee, who was U supporter, assertedly for filing ULP charge against E and his protected activities, not violative, where real reason was his DOT violations]

Wayne W. Sell Corporation 281 NLRB No. 082
[E's assignment of work to Ee that was onerous for him because of his physical condition, and subsequent suspension of Ee, violative of Section 8(a)(4) as well as Section 8(a)(3), where timing of action evidenced motivation for Ee's filing of charge as well as his grievance activity, and in view of E's U animus as demonstrated by its threats of physical harm to Ee in grievance meeting followed by telling him to go tell it to the labor board too]

Bryson Environmental Services, Inc. 281 NLRB No. 039
[E's refusal to reemploy Ee because he had filed ULP charge, violative]

Heck's Inc. 280 NLRB No. 055
[transferring U organizer, violation where supervisor told her it resulted from her ULP charge against E and would be rescinded if she agreed to drop charge]

Heck's Inc. 280 NLRB No. 055
[discharging leading U organizer on whose behalf U had filed ULP charge with Bd, violation, notwithstanding she had been issued three written warnings for breach of company policy, where discharge was closely related in time to her U and Bd-related activities and E had shown animus against her by unlawfully transferring her to another job]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle 280 NLRB No. 043
[refusal to give letter of recommendation to Ee violative of 8(a)(4), as well as 8(a)(1), where reason for refusal was because U filed ULP charge naming Ee as discriminatee; under S.Ct's *Scrivener* cases, 8(a)(4) is interpreted to afford broad rather than narrow protection to Ee and includes not only Ee who *has filed charges or given testimony* but also Ee otherwise participating in Bd investigation]

Dorothy Shamrock Coal Company 279 NLRB No. 174
[E's letter to its laid off Ees saying that it would not discuss reinstitution of operations or reemployment with Ees because they filed ULP charges with Bd not violative where by its very language (from E) expressed nothing more than perceived incapacity or at best temporary reluctance, to delve into matter of reemployment. Clearly E's letter to Ees was not patent refusal to reactivate its trucks and to reinstate drivers]

Stop-N-Go Foods, Inc. 279 NLRB No. 102
[E's refusal to hire applicant, unlawful, since for her filing ULP charge against her former E over her discharge and giving testimony at ULP hearing, especially where applicant explained to E that former E's asserted reason for discharge, improper cash handling, had been held to be pretext]

Woodline Motor Freight, Inc. 278 NLRB No. 152
[E's change in policy which allowed drivers to choose from available runs on the basis of seniority to requiring drivers to take whatever run was assigned, unlawful, since done in response to Ees' support of U and because of recent issuance of ULP complaint alleging unlawfully reduced hours of work]

Independent Stave Company, Inc. 278 NLRB No. 089
[Ee's refusal to comply with terms of contractual agreement to award prize to winner of Ee contest because winning Ee's grievances were subject of Bd charges, violation]

BASF Wyandotte Corporation 278 NLRB No. 028
[E's seeking U.S. District Court order for Ees to withdraw Bd charges concerning E's unilateral elimination of contract's U time clause, not violation where E had reasonable basis for seeking declaratory judgment determining legality of U time clause under Sec. 302]

Telford & Doolen, Inc. 277 NLRB No. 112
(layoff of U steward and Ee and ultimate discharge of Ee, assertedly because they engaged in U activities and because they filed charges or gave testimony under Act, not unlawful, since E's motives were purely economic, coupled with dissatisfaction with Ee's job performance where, as result of its bad financial condition, E laid off its entire work force, recalling Ees only from time to time and ultimately closing department involved; and no replacements were ever hired for terminated Ees)

Taylor & Gaskin, Inc. 277 NLRB No. 065
(in adopting ALJ's finding that E violated 8(a)(4) and (1) when it refused to rehire laid-off Ee because he had filed ULP charge against E, Bd disagreed with ALJ's statement that *Wright Line* does not apply to cases where there is finding that *asserted legitimate business reason* for adverse action was pretextual)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(discharge of Ee, unlawful, where one of the reasons for so finding was fact that Ee was terminated at first possible monent after E learned that Ee was named in U-filed charge as discriminatee)

Confort & Company, Inc. 275 NLRB No. 082
(discharge, after hearing, of U supporter, who was one of Ees who had filed charges against E and representative of charging party designated to be

3325-1400—Cont.

present throughout hearing, violative where E had condoned his absenteeism and tardiness until U campaign began, had wanted to promote him to lead position, had displayed anti-U campaign, had withdrawn its offer to solve Ee's tardiness problem by transferring him to another shift, and had concededly talked with him about his suspension and discharge in presence of E's comptroller in order to have a witness)

Roadway Express, Inc. **274 NLRB No. 052**
(discharge of U steward, who had received numerous purportedly work-related warning letters and 5-day suspension prior to discharge, unlawful where, while there was no dual motive because there was no business justification, GC demonstrated that E considered steward, who had filed numerous charges with Bd and had testified at Bd hearing, and had also protested E's proposed flexible work week, as U activist and harbored animus toward him and his U activities; and E did not meet burden of demonstrating that same action would have been taken irrespective of steward's conduct)

Newsday, Inc. **274 NLRB No. 019**
(no violation where record was completely void of any evidence to show that any of 4 named alleged discriminatees filed charges or testified at Bd hearing; they merely attended sessions of R hearing as did many other Ees)

ITT-FELEC Services, Inc. **JD-(SF)-131-86**
[conditioning Ee's reemployment upon his withdrawal of ULP charge pending before Bd, violation, notwithstanding charge lacked merit, where Ee did not file charge in bad faith or knowingly give false testimony]

E.I. Dupont De Nemours and Company **JD-11-86**
[refusal to hire applicant after layoff, assertedly because she was insubordinate at prior job with same E, violative, since real reason was Ee's persistent U activities and repeated filing of charges with the Bd at prior job where Ee's asserted act of insubordination in protesting overtime and refusing to train Ees was protected activity done in furtherance of her U duties, Ee had 19 years of high quality service with E, and E, in overlooking Ee for hire, hired Ees with little or no experience]

United States Postal Service **JD-375-85**
[denying Ee a promotion to full-time status because she had filed charges with the Bd, violative, where Ee was recommended for promotion prior to filing charge and was denied promotion after charge was filed]

Gallati Cartage of Michigan, Inc. **JD-311-85**
(reprimanding and eventually discharging Ee for filing charges with Bd and giving testimony in support of charges, violative)

Glass Cubes Unlimited, Inc., Decorative Installations, Inc., and Manhattan Stores Interiors, Inc. **JD-(NY)-73-85**
(discharge of Ee for accompanying other individuals to Bd for purpose of filing charges, violative)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(reprimand of Ee who was painter at apartment building because of condition of paint room, unlawful, since for filing ULP charge, in view of timing and fact Ee was given no chance to explain, and no explanation given as to when paint room was inspected or why)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(discharge of painter at apartment building, who was U adherent and filed charges, for failure to work, on usual day off in order to accomplish urgently needed painting, not violative, since discharge would have taken place absent protected activity, inasmuch as work on that day necessary and in view of previous poor quality and slowness of Ee's work)

3325-2100 Consulting with Board agent

Sea-Land Service, Inc. (Sea Operations) **280 NLRB No. 084**
[ship's captain, responsible for transmitting all communications from ship, interrogating and discharging radio officer about message he sent at sea requesting local Bd's phone number, violative, notwithstanding legitamacy of captain's inquiry in asking whether radio was used in unauthorized manner, repeated inquiries as to *why* dischargee asked for Bd's phone number were not relevant to captain's responsibilities regarding communication equipment. Basis for discharge did not distinguish between specific questions asked so that lawful and unlawful motives cannot be separated]

3325-2800 Announced intent to file charges

Book Covers, Inc. **276 NLRB No. 170**
(discharge of Ee for refusing to work overtime as required by contract, violative, as practice was to excuse Ees from working assigned overtime if supervisor presented with reasonable excuse, and excuse which Ee gave, and which lay behind motivation to fire Ee, was that Ee was going to labor board to file charges against E; furthermore, no Ee ever disciplined beyond receiving oral warring before)

3325-4200 Giving testimony at Board or other proceeding

Baddour, Inc. **281 NLRB No. 084**
[causing cessation of workmen's compensation payments to injured Ee in retaliation for testifying at Bd hearing, violation where E informed insurance company that it had been paying wrong Ee, but failed to explain that Ee had given correct identity to E]

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. **281 NLRB No. 068**
[denial of overtime to Ees, unlawful, since E's action was taken because Ees were present in hearing room in instant case as witnesses to be called by GC, where there was huge disparity between overtime worked by Ees herein and that worked by other Ees, and E's explanation for disparity on ground that other Ees were *cooperative* raised clear inference that had Ees herein not been witnesses they would have been considered cooperative and would have had fair share of overtime]

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. **281 NLRB No. 068**
[Ee who signed agreement resigning as Ee in exchange for cash severance payment held not to have voluntarily quit but to have been constructively discharged, where material reduction in his work hours was intended by E to force Ee to quit, and such reduction was in retaliation against Ee for having appeared to testify as GC's witness at hearing in instant case]

Central Broadcast Company **280 NLRB No. 056**
[changing U activist's working conditions by assigning him less skilled job and split shift for his U activities and testifying at Bd hearing, violation]

Central Broadcast Company **280 NLRB No. 056**
[laying off U activists for U activities and testifying at Bd hearing, violation]

Stop-N-Go Foods, Inc. **279 NLRB No. 102**
[E's refusal to hire applicant, unlawful, since for her filing ULP charge against her former E over her discharge and giving testimony at ULP hearing, especially where applicant explained to E that former E's asserted reason for discharge, improper cash handling, had been held to be pretext]

Specialty Steel Treating, Inc. **279 NLRB No. 067**
[issuing Ee written reprimand for failure to return to work after Bd hearing, violation where it was in retaliation for Ee's having testified, as shown by fact that Ee had taken entire day off and was not scheduled to return to work, and supervisor, who attended hearing, did not tell him to return to work]

Telford & Doolen, Inc. **277 NLRB No. 112**
(layoff of U steward and Ee and ultimate discharge of Ee, assertedly because they engaged in U activities and because they filed charges or gave testimony under Act, not unlawful, since E's motives were purely economic, coupled with dissatisfaction with Ee's job performance where, as result of its bad financial condition, E laid off its entire work force, recalling Ees only from time to time and ultimately closing department involved; and no replacements were ever hired for terminated Ees)

La Reina, Inc. **275 NLRB No. 209**
(violation, where Ee at tortilla maker, after testifying contrary to E's interests in Bd proceeding, was supervised more closely, warned about speaking with co-workers, reprimanded for picking dough off floor for reprocessing and quit when ordered to sign warning slip under threat of discharge, where picking up dough which had fallen on floor customary, and E's contention it reprimanded Ee because it believed she had deliberately placed rag in dough to cause E possible liability, rejected)

Cerock Wire & Cable Group, Inc. **274 NLRB No. 111**
(issuing warning to U adherent in retaliation for his testimony at Bd hearing, violative)

Fermont, A Division of Dynamics Corporation of America **274 NLRB No. 131**
(allegation that notice to Ee regarding change in duties was separately aimed at penalizing Ee for having testified against E in previous month in another ULP case dismissed, since no *nexus* was shown between giving of testimony and disciplinary action, where there was significant time lapse between events and no independent evidence to bridge gap)

Roadway Express, Inc. **274 NLRB No. 052**
(discharge of U steward, who had received numerous purportedly work-related warning letters and 5-day suspension prior to discharge, unlawful where, while there was no dual motive because there was no business justification, GC demonstrated that E considered steward, who had filed numerous charges with Bd and had testified at Bd hearing, and had also protested E's proposed flexible work week, as U activist and harbored animus toward him and his U activities; and E did not meet burden of demonstrating that same action would have been taken irrespective of steward's conduct)

Newsday, Inc. **274 NLRB No. 019**
(no violation where record was completely void of any evidence to show that any of 4 named alleged discriminatees filed charges or testified at Bd hearing; they merely attended sessions of R hearing as did many other Ees)

3325-4200—Cont.

Ducane Heating Corporation 273 NLRB No. 175
(permanent layoff of Ee, assertedly because of a decline in business, violative, since real reason was Ee's testimony at Bd hearing against E and her U activity where E did not produce any evidence in support of its economic defense, in fact evidence adduced at trial showed E was very busy, and layoff occurred only 4 days after Ee gave testimony at Bd hearing)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86
[reducing Ee's hours disproportionately for testifying adversely to E at Bd hearing, violation]

Gallati Cartage of Michigan, Inc. JD-311-85
(reprimanding and eventually discharging Ee for filing charges with Bd and giving testimony in support of charges, violative)

County Respiratory Products, Inc. JD-(NY)-107-85
(imposing mandatory overtime on U supporter who testified at R hearing under threat of discharge when another Ee was asking for the work, violative)

15th Avenue Iron Works, Inc. JD-(NY)-141-84
(discharge of Ees violative since it was for their testifying on behalf of U at hearing on E's objections to election)

N.L.R.B. v. Bliss and Laughlin Steel Company, Inc. 754 F.2d 229 (C.A. 7, Feb. 1985)
(discharge of Ee, assertedly because he refused to review and sign contract on behalf of E and thus was insubordinate, violative, since real reason was his U activity and testimony adverse to E at Bd hearing where E was trying to *set up* Ee by having him sign contract in an attempt to prove he was a supervisor and pretextual nature of E's action was shown by fact that after Ee refused to sign contract, E did not attempt to have any other company official act upon it)

3325-4500 Attending Board proceeding

The Lewis Grocer Company 282 NLRB No. 019
[issuing disciplinary warnings to Ee for insubordination, not unlawful, since it could not be inferred that his participation in Bd investigation at trial was in any way motivating factor in E's decision to discipline him]

Comfort & Company, Inc. 275 NLRB No. 082
(discharge, after hearing, of U supporter, who was one of Ees who had filed charges against E and representative of charging party designated to be present throughout hearing, violative where E had condoned his absenteeism and tardiness until U campaign began, had wanted to promote him to lead position, had displayed anti-U campaign, had withdrawn its offer to solve Ee's tardiness problem by transferring him to another shift, and had concededly talked with him about his suspension and discharge in presence of E's comptroller in order to have a witness)

Comfort & Company, Inc. 275 NLRB No. 082
(E's refusal to pay Ee, who was serving as U's representative at Bd hearing, for holiday and day after because he was absent from work to be present at hearing, not violative, since E's action was pursuant to contract and past practice, and Ee was not present at hearing day before holiday for purpose of testifying under subpeona)

Vokas Provision Co., d/b/a The Rich Plan of Western v. N.L.R.B. 796 F.2d 864 (C.A. 6, July 1986)
[in absence of subpoena, Ee does not have statutorily protected right to absent himself from work w/o permission even though he seeks to voluntarily testify at Bd proceeding]

Vokas Provision Co., d/b/a The Rich Plan of Western v. N.L.R.B. 796 F.2d 864 (C.A. 6, July 1986)
[E's refusal to permit six Ees to voluntarily attend Bd R hearing during working time w/o subpoena and its discharge of those Ees for leaving work contrary to E's explicit instructions, not violative]

3325-4900 Providing Board agent with physical evidence

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121
[layoff of Ees for giving photocopies of paycheck and paycheck stubs to U which was using them in bankruptcy proceeding in which E involved, unlawful]

3325-5600 Present at proceeding to give testimony but not called

Quality Millwork Corp. and Its Alter Ego Quality Door Co. 276 NLRB No. 069
(discharge violative where, on going to Bd regional office pursuant to the subpoena, Ee was seen and pointed out to E's attorney by E and was discharged three days later in spite of an unblemished work record)

3325-7000 Giving statement to Board agent

The Well-Bred Loaf, Inc. 280 NLRB No. 036
[discharging Ee for giving written statement to Bd agent about E's alleged violations under investigation, violation, notwithstanding Ee's statement was not signed until day after discharge, where supervisor's finding Ee's statement in Ee's coat pocket and reading it precipitated discharge]

John Morrison, et al. (Carriage Ford, Inc.) v. N.L.R.B. 772 F.2d 283 (C.A. 6, Sept. 1985)
[discharge or layoff of Ees as result of their refusal to assist E in defending E against ULP charges brought by Ees' fellow Ees, unlawful, where Ees were highly productive and, while there was evidence that Ees were terminated for legitimate reasons, record contained substantial evidence which supported Bd's finding that reasons were pretextual]

3325-9200 Cooperating with and assisting Board in its proceedings

The Lewis Grocer Company 282 NLRB No. 019
[issuing disciplinary warnings to Ee for insubordination, not unlawful, since it could not be inferred that his participation in Bd investigation at trial was in any way motivating factor in E's decision to discipline him]

Park Manor Nursing Home, Inc. 277 NLRB No. 028
(E's discharge of U activist, assertedly for failing to obtain supervisory permission before leaving building, violative where real reason for discharge was her cooperation in investigation of U's charge in Bd case, her membership on U's negotiating committee, and her informing Bd that E was responsible for revocation ptn)

Sears, Roebuck and Co. 274 NLRB No. 055
(requiring Ees to take vacation or personal holiday rather than leave w/o pay for time spent attending Bd hearing to assist counsel for GC and charging party, violative, notwithstanding fact that E did not take action to discourage Ees from assisting in presentation)

Building Material & Dump Truck Drivers, Local Union No. 420, Teamsters (Mike Sullivan and Associates) 273 NLRB No. 170
(discharge of business agent not violative, even if he was discharged, in part, because of his refusal to accept reduced amount of backpay in prior Bd proceeding, where U demonstrated that business agent would have been discharged, in any event, because of his failure to properly carry out his assigned duties and responsibilities as business agent)

3350 FORMS OF DISCRIMINATION

3350-3100 Denial of vacation or overtime pay

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. 281 NLRB No. 068
[denial of overtime to Ees, unlawful, since E's action was taken because Ees were present in hearing room in instant case as witnesses to be called by GC, where there was huge disparity between overtime worked by Ees herein and that worked by other Ees, and E's explanation for disparity on ground that other Ees were *cooperative* raised clear inference that had Ees herein not been witnesses they would have been considered cooperative and would have had fair share of overtime]

3350-3500 Change in fringe benefits

3350-3500 Change in fringe benefits

Baddour, Inc. 281 NLRB No. 084
[causing cessation of workmen's compensation payments to injure.] Ee in retaliation for testifying at Bd hearing, violation where E informed insurance company that it had been paying wrong Ee, but failed to explain that Ee had given correct identity to E]

3350-5000 Conditioning employment upon withdrawal of charges

ITT-FELEC Services, Inc. JD-(SF)-131-86
[conditioning Ee's reemployment upon his withdrawal of ULP charge pending before Bd, violation, notwithstanding charge lacked merit, where Ee did not file charge in bad faith or knowingly give false testimony]

3350-5600 Issuance of warning or reprimand

Heck's Inc. 280 NLRB No. 055
[issuing written warnings to U organizer for breaches of company policy, lawful, notwithstanding they followed unlawful transfer of organizer to different job for filing charges with Bd, since occurrence of unlawful transfer did not grant organizer immunity from discipline for failing properly to perform new job]

Specialty Steel Treating, Inc. 279 NLRB No. 067
[issuing Ee written reprimand for failure to return to work after Bd hearing, violation where it was in retaliation for Ee's having testified, as shown by fact that Ee had taken entire day off and was not scheduled to return to work, and supervisor, who attended hearing, did not tell him to return to work]

3350-5600—Cont.

Cerock Wire & Cable Group, Inc. **274 NLRB No. 111**
(issuing warning to U adherent in retaliation for his testimony at Bd hearing, violative)

Roadway Express, Inc. **274 NLRB No. 052**
(E's issuance of purportedly work-related warning letters to U steward who had filed numerous charges against E with Bd and had testified at Bd hearing, and had also protested E's proposal to institute flexible work week, unlawful, where E viewed steward as U activist and harbored animus toward him and his U and protected activities, letters were issued w/o justification, and in one instance supervisor purposefully sought reason for issuing warning letter to steward)

Gallati Cartage of Michigan, Inc. **JD-311-85**
(reprimanding and eventually discharging Ee for filing charges with Bd and giving testimony in support of charges, violative)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, where there was no disparate application of concededly valid rule; and there were no other indicia of discriminatory intent)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, where there was no disparate application of valid rule even though Ee had solicited for Ee dinner while on working time in sight of E's managers' where dinner was isolated event sponsored and promoted by E itself, E is free to utilize its Ees' paid time for whatever legal activity it chooses, and Ees are not entitled to use medium of communication simply because E is using it)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, not withstanding contention that, if GC was permitted to demonstrate that management officials had themselves at various times used working time to distribute pro-company literature, such showing would entitle U's adherents to *equal time*, since Bd cases do not demonstrate existence of rule favoring or enforcing doctrine of *equal time* for U's)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(reprimand of Ee who was painter at apartment building because of condition of paint room, unlawful, since for filing ULP charge, in view of timing and fact Ee was given no chance to explain, and no explanation given as to when paint room was inspected or why)

3350-6000 Layoff or threat thereof

Norris Concrete Materials, Inc. **282 NLRB No. 045**
[E's layoff of Ee, unlawful, where motivated by Ee's son filing charges rather than by lack of business or Ee's delivery of unsatisfactory batch of cement]

Central Broadcast Company **280 NLRB No. 056**
[laying off U activists for U activities and testifying at Bd hearing, violation]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks **279 NLRB No. 121**
[layoff of Ees for giving photocopies of paycheck and paycheck stubs to U which was using them in bankruptcy proceeding in which E involved, unlawful]

Telford & Doolen, Inc. **277 NLRB No. 112**
(layoff of U steward and Ee and ultimate discharge of Ee, assertedly because they engaged in U activities and because they filed charges or gave testimony under Act, not unlawful, since E's motives were purely economic, coupled with dissatisfaction with Ee's job performance where, as result of its bad financial condition, E laid off its entire work force, recalling Ees only from time to time and ultimately closing department involved; and no replacements were ever hired for terminated Ees)

Ducane Heating Corporation **273 NLRB No. 175**
(permanent layoff of Ee, assertedly because of a decline in business, violative, since real reason was Ee's testimony at Bd hearing against E and her U activity where E did not produce any evidence in support of its economic defense, in fact evidence adduced at trial showed E was very busy, and layoff occurred only 4 days after Ee gave testimony at Bd hearing)

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
(inclusion of U adherents in layoff during normal seasonal layoffs, assertedly contrary to seniority practices in past when Ees herein were retained, not unlawful, notwithstanding E's U animus and suspicious timing of layoffs shortly after election, where lesser seniority of retained Ee had little significance under circumstances herein; recall of less senior Ees before recalling Ees herein was based on past practice; and acceptance of GC's argument against E's reasons for recalling Ees other than Ees herein would require ALJ and Bd to improperly substitute their judgment for management's)

John Morrison, et al. (Carriage Ford, Inc.) v. N.L.R.B. **772 F.2d 283 (C.A. 6, Sept. 1985)**
[discharge or layoff of Ees as result of their refusal to assist E in defending E against ULP charges brought by Ees' fellow Ees, unlawful, where Ees were highly productive and, while there was evidence that Ees were terminated for legitimate reasons, record contained substantial evidence which supported Bd's finding that reasons were pretextual]

3350-6200 Discharge or threat thereof

The Lewis Grocer Company **282 NLRB No. 019**
[discharge of driver Ee, who was U supporter, assertedly for filing ULP charge against E and his protected activities, not violative, where real reason was his DOT violations]

Sea-Land Service, Inc. (Sea Operations) **280 NLRB No. 084**
[ship's captain, responsible for transmitting all communications from ship, interrogating and discharging radio officer about message he sent at sea requesting local Bd's phone number, violative, notwithstanding legitimacy of captain's inquiry in asking whether radio was used in unauthorized manner, repeated inquiries as to *why* dischargee asked for Bd's phone number were not relevant to captain's responsibilities regarding communication equipment. Basis for discharge did not distinguish between specific questions asked so that lawful and unlawful motives cannot be separated]

Heck's Inc. **280 NLRB No. 093**
[discharging leading U organizer on whose behalf U had filed ULP charge with Bd, violation, notwithstanding she had been issued three written warnings for breach of company policy, where discharge was closely related in time to her U and Bd-related activities and E had shown animus against her by unlawfully transferring her to another job]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[discharging Ee for giving written statement to Bd agent about E's alleged violations under investigation, violation, notwithstanding Ee's statement was not signed until day after discharge, where supervisor's finding Ee's statement in Ee's coat pocket and reading it precipitated discharge]

Grand Rapids Die Casting Corp. **279 NLRB No. 093**
[suspension and discharge of U steward, assertedly because of insubordination by refusing an order to return to work, violative, since real reason was her activity of grievance processing and threatening to file charges with Bd where Ee was threatened with discharge if she filed charges after Ee threatened to when E told her she was spending too much time on grievances, and E's manager continuously brought up fact Ee said she might file charges on day Ee was discharged]

Telford & Doolen, Inc. **277 NLRB No. 112**
(layoff of U steward and Ee and ultimate discharge of Ee, assertedly because they engaged in U activities and because they filed charges or gave testimony under Act, not unlawful, since E's motives were purely economic, coupled with dissatisfaction with Ee's job performance where, as result of its bad financial condition, E laid off its entire work force, recalling Ees only from time to time and ultimately closing department involved; and no replacements were ever hired for terminated Ees)

Park Manor Nursing Home, Inc. **277 NLRB No. 028**
(E's discharge of U activist, assertedly for failing to obtain supervisory permission before leaving building, violative where real reason for discharge was her cooperation in investigation of U's charge in Bd case, her membership on U's negotiating committee, and her informing Bd that E was responsible for revocation ptn)

Book Covers, Inc. **276 NLRB No. 170**
(discharge of Ee for refusing to work overtime as required by contract, violative, as practice was to excuse Ees from working assigned overtime if supervisor presented with reasonable excuse, and excuse which Ee gave, and which lay behind motivation to fire Ee, was that Ee was going to labor board to file charges against E; furthermore, no Ee ever disciplined beyond receiving oral warring before)

Grasco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(discharge of Ee, unlawful, where one of the reasons for so finding was fact that Ee was terminated at first possible moment after E learned that Ee was named in U-filed charge as discriminatee)

Quality Millwork Corp. and Its Alter Ego Quality Door Co. **276 NLRB No. 069**
(discharge violative where, on going to Bd regional office pursuant to the subpoena, Ee was seen and pointed out to E's attorney by E and was discharged three days later in spite of an unblemished work record)

3350-6200—Cont.

Comfort & Company, Inc. 275 NLRB No. 082
(discharge, after hearing, of U supporter, who was one of Ees who had filed charges against E and representative of charging party designated to be present throughout hearing, violative where E had condoned his absenteeism and tardiness until U campaign began, had wanted to promote him to lead position, had displayed anti-U campaign, had withdrawn its offer to solve Ee's tardiness problem by transferring him to another shift, and had concededly talked with him about his suspension and discharge in presence of E's comptroller in order to have a witness)

United Artists Eastern Theatres, Operating Valentine Theatre 275 NLRB No. 025
(discharge of Ee, assertedly because of unsatisfactory work, violative, since real reason was Ee's participation in R proceeding and his U activity where Ee was told he would be promoted if he dropped the U and E gave inconsistent reasons to support discharge; further, E's contention that Ee's admission to accepting gratuities from patrons in violation of E's rules was conduct sufficient to deny reinstatement, rejected, since there was no evidence this was dischargeable offense and E was willing to overlook such behavior in exchange for Ee's forgoing U activity)

Roadway Express, Inc. 274 NLRB No. 052
(discharge of U steward, who had received numerous purportedly work-related warning letters and 5-day suspension prior to discharge, unlawful where, while there was no dual motive because there was no business justification, GC demonstrated that E considered steward, who had filed numerous charges with Bd and had testified at Bd hearing, and had also protested E's proposed flexible work week, as U activist and harbored animus toward him and his U activities; and E did not meet burden of demonstrating that same action would have been taken irrespective of steward's conduct)

Building Material & Dump Truck Drivers, Local Union No. 420, Teamsters (Mike Sullivan and Associates) 273 NLRB No. 170
(discharge of business agent not violative, even if he was discharged, in part, because of his refusal to accept reduced amount of backpay in prior Bd proceeding, where U demonstrated that business agent would have been discharged, in any event, because of his failure to properly carry out his assigned duties and responsibilities as business agent)

Ducane Heating Corporation 273 NLRB No. 175
(discharge of Ee, assertedly because of substandard production, violative, since real reason was Ee's testimony at Bd hearing against E and his active U support where Ee had excellent work record and E did not find fault with E's production until after he gave testimony at Bd hearing)

Gallati Cartage of Michigan, Inc. JD-311-85
(reprimanding and eventually discharging Ee for filing charges with Bd and giving testimony in support of charges, violative)

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. JD-(NY)-24-85
(discharge of Ee, who was U steward and filed charges against E with Bd and, while out on disability, continued to visit shop to function as U steward, unlawful, where E showed animus towards Ee for his protected activities; E's actions, shortly afer filing of charges, to have Ee *tone down* his activities in investigating charges and as U steward showed E desired to retaliate against Ee for his activities relating to charges and function as U steward; and E failed to establish that Ee was *stealing time* by failing to put in full day's work)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza JD-(ATL)-87-84
(discharge of painter at apartment building, who was U adherent and filed charges, for failure to work, on usual day off in order to accomplish urgently needed painting, not violative, since discharge would have taken place absent protected activity, inasmuch as work on that day necessary and in view of previous poor quality and slowness of Ee's work)

15th Avenue Iron Works, Inc. JD-(NY)-141-84
(discharge of Ees violative since it was for their testifying on behalf of U at hearing on E's objections to election)

Vokas Provision Co., d/b/a The Rich Plan of Western v. N.L.R.B. 796 F.2d 864 (C.A. 6, July 1986)
[E's refusal to permit six Ees to voluntarily attend Bd R hearing during working time w/o subpoena and its discharge of those Ees for leaving work contrary to E's explicit instructions, not violative]

John Morrison, et al. (Carriage Ford, Inc.) v. N.L.R.B. 772 F.2d 283 (C.A. 6, Sept. 1985)
[discharge or layoff of Ees as result of their refusal to assist E in defending E against ULP charges brought by Ees' fellow Ees, unlawful, where Ees were highly productive and, while there was evidence that Ees were terminated for legitimate reasons, record contained substantial evidence which supported Bd's finding that reasons were pretextual]

N.L.R.B. v. Bliss and Laughlin Steel Company, Inc. 754 F.2d 229 (C.A. 7, Feb. 1985)
(discharge of Ee, assertedly because he refused to review and sign contract on behalf of E and thus was insubordinate, violative, since real reason was his U activity and testimony adverse to E at Bd hearing where E was trying to *set up* Ee by having him sign contract in an attempt to prove he was a supervisor and pretextual nature of E's action was shown by fact that after Ee refused to sign contract, E did not attempt to have any other company official act upon it)

3350-6300 Constructive discharge

Norris Concrete Materials, Inc. 282 NLRB No. 045
[Ee unlawfully constructively discharged after his reinstatement pursuant to non-board settlement agreement, where E had not entered into settlement agreement in good faith, and after Ee's reinstatement established classification and discipline systems designed to starve Ee out, and assigned Ee to unsafe truck where E's actions motivated by Ee's son filing prior charge]

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. 281 NLRB No. 068
[Ee who signed agreement resigning as Ee in exchange for cash severance payment held not to have voluntarily quit but to have been constructively discharged, where material reduction in his work hours was intended by E to force Ee to quit, and such reduction was in retaliation against Ee for having appeared to testify as GC's witness at hearing in instant case]

St. Paul's Church Home, Inc. 275 NLRB No. 170
(known active U supporter who quit when her duties and hours of work were markedly changed held to have been unlawfully constructively discharged, where evidence established direct causal connection between discriminatory motivated changes in Ee's duties and hours and quitting of her employment; E engaged in systematic course of conduct punishing Ees because of their U activities and forcing Ees to quit; and this is expecially so, considering unlawful 8(a)(1) conduct by E clearly evidencing U animus)

St. Paul's Church Home, Inc. 275 NLRB No. 170
(E unlawfully constructively discharged Ee by scheduling Ee for work, assertedly pursuant to new policy, when she was unable to do so, where policy was applied to Ee after she was specifically identified as U supporter; application of policy was inconsistent; E demonstrated animus toward Ees supporting U; and E's defense that it imposed same requirement as to all other Ees failed to rebut GC's *prima facie* case)

3350-6600 Denial of promotion

United States Postal Service JD-375-85
[denying Ee a promotion to full-time status because she had filed charges with the Bd, violative, where Ee was recommended for promotion prior to filing charge and was denied promotion after charge was filed]

3350-7000 Work assignment

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant JD-(SF)-33-86
[reducing Ee's hours disproportionately for testifying adversely to E at Bd hearing, violation]

County Respiratory Products, Inc. JD-(NY)-107-85
(imposing mandatory overtime on U supporter who testified at R hearing under threat of discharge when another Ee was asking for the work, violative)

3350-7500 Failure to pay for time lost from work or mandated witness fees

Comfort & Company, Inc. 275 NLRB No. 082
(E's refusal to pay Ee, who was serving as U's representative at Bd hearing, for holiday and day after because he was absent from work to be present at hearing, not violative, since E's action was pursuant to contract and past practice, and Ee was not present at hearing day before holiday for purpose of testifying under subpeona)

3350-7700 Suspension

Wayne W. Sell Corporation 281 NLRB No. 082
[E's assignment of work to Ee that was onerous for him because of his physical condition, and subsequent suspension of Ee, violative of Section 8(a)(4) as well as Section 8(a)(3), where timing of action evidenced motivation for Ee's filing of charge as well as his grievance activity, and in view of E's U animus as demonstrated by its threats of physical harm to Ee in grievance meeting followed by telling him to go tell it to the labor board too]

Grand Rapids Die Casting Corp. 279 NLRB No. 093
[suspension and discharge of U steward, assertedly because of insubordination by refusing an order to return to work, violative, since real reason was her activity of grievance processing and threatening to file charges with Bd where Ee was threatened with discharge if she filed charges after Ee threatened to when E told her she was spending too much time on griev-

3350-7700—Cont.

ances, and E's manager continuously brought up fact Ee said she might file charges on day Ee was discharged]

St. Paul's Church Home, Inc. 275 NLRB No. 170
(E unlawfully changed known U supporter's hours and also disciplined and suspended her for overextending her break period, where Ee had unblemished disciplinary record, nothing was previously said or done if she was late or absent prior to her U activity, changes and discipline occurred shortly after inception of U organizing activity; warning was given to Ee after E received U's demand for recognition, and E failed to establish that it would have taken some actions in absence of Ee's U activity)

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. JD-(NY)-24-85
]*suspension* of Ee employed as delivery driver and acting as shop steward, not unlawful, notwithstanding E's U animus toward U generally and Ee specifically, where Ee, upon being advised by E of requirement for municipality's fitness to drive certificate, could have obtained certificate very same day *suspension* occurred; instead, Ee insisted on route change to which he was not entitled and chose to go to U; nor was Ee in any hurry to return to work in view of conflict between his job herein and with another E, and his delay in reporting to work after obtaining certificate)

3350-8100 Transfer to another job

Hack's Inc. 280 NLRB No. 055
[transferring U organizer, violation where supervisor told her it resulted from her ULP charge against E and would be rescinded if she agreed to drop charge]

Fermont, A Division of Dynamics Corporation of America 274 NLRB No. 131
(allegation that notice to Ee regarding change in duties was separately aimed at penalizing Ee for having testified against E in previous month in another ULP case dismissed, since no *nexus* was shown between giving of testimony and disciplinary action, where there was significant time lapse between events and no independent evidence to bridge gap)

3350-8300 Filing nonmeritorious lawsuit for retaliatory purposes

BASF Wyandotte Corporation 278 NLRB No. 028
[E's seeking U.S. District Court order for Ees to withdraw Bd charges concerning E's unilateral elimination of contract's U time clause, not violation where E had reasonable basis for seeking declaratory judgment determining legality of U time clause under Sec. 302]

3350-8700 Altering conditions of employment

Wayne W. Sell Corporation 281 NLRB No. 082
[E's assignment of work to Ee that was onerous for him because of his physical condition, and subsequent suspension of Ee, violative of Section 8(a)(4) as well as Section 8(a)(3), where timing of action evidenced motivation for Ee's filing of charge as well as his grievance activity, and in view of E's U animus as demonstrated by its threats of physical harm to Ee in grievance meeting followed by telling him to go tell it to the labor board too]

Central Broadcast Company 280 NLRB No. 056
[changing U activist's working conditions by assigning him less skilled job and split shift for his U activities and testifying at Bd hearing, violation]

Woodline Motor Freight, Inc. 278 NLRB No. 152
[E's change in policy which allowed drivers to choose from available runs on the basis of seniority to requiring drivers to take whatever run was assigned, unlawful, since done in response to Ees' support of U and because of recent issuance of ULP complaint alleging unlawfully reduced hours of work]

3350-9400 Refusal to employ, reemploy or recall from layoff

Bynon Environmental Services, Inc. 281 NLRB No. 039
[E's refusal to reemploy Ee because he had filed ULP charge, violative]

Dorothy Shamrock Coal Company 279 NLRB No. 174
[E's letter to its laid off Ees saying that it would not discuss reinstitution of operations or reemployment with Ees because they filed ULP charges with Bd not violative where by its very language (from E) expressed nothing more than perceived incapacity or at best temporary reluctance, to delve into matter of reemployment. Clearly E's letter to Ees was not patent refusal to reactivate its trucks and to reinstate drivers]

Stop-N-Go Foods, Inc 279 NLRB No. 102
[E's refusal to hire applicant, unlawful, since for her filing ULP charge against her former E over her discharge and giving testimony at ULP hearing, especially where applicant explained to E that former E's asserted reason for discharge, improper cash handling, had been held to be pretext]

Unigles Industries, Div. United Merchants & Mfrs. 276 NLRB No. 035
(E's refusal to re-hire discriminatees because they had testified against E in prior ULP case violative)

ITT-FELEC Services, Inc. JD-(SF)-131-86
[conditioning Ee's reemployment upon his withdrawal of ULP charge pending before Bd, violation, notwithstanding charge lacked merit, where Ee did not file charge in bad faith or knowingly give false testimony]

E.I. Dupont De Nemours and Company JD-11-86
[refusal to hire applicant after layoff, assertedly because she was insubordinate at prior job with same E, violative, since real reason was Ee's persistent U activities and repeated filing of charges with the Bd at prior job where Ee's asserted act of insubordination in protesting overtime and refusing to train Ees was protected activity done in furtherance of her U duties, Ee had 19 years of high quality service with E, and E, in overlooking Ee for hire, hired Ees with little or no experience]

3350-9700 Surveillance

La Reina, Inc. 275 NLRB No. 209
(violation, where Ee at tortilla maker, after testifying contrary to E's interests in Bd proceeding, was supervised more closely, warned about speaking with co-workers, reprimanded for picking dough off floor for reprocessing and quit when ordered to sign warning slip under threat of discharge, where picking up dough which had fallen on floor customary, and E's contention it reprimanded Ee because it believed she had deliberately placed rag in dough to cause E possible liability, rejected)

3350-9800 Assault, abuse or harassment

United Artists Eastern Theatres, Operating Valentine Theatre 275 NLRB No. 025
(discharge of Ee, assertedly because of unsatisfactory work, violative, since real reason was Ee's participation in R proceeding and his U activity where Ee was told he would be promoted if he dropped the U and E gave inconsistent reasons to support discharge; further, E's contention that Ee's admission to accepting gratuities from patrons in violation of E's rules was conduct sufficient to deny reinstatement, rejected, since there was no evidence this was dischargeable offense and E was willing to overlook such behavior in exchange for Ee's forgoing U activity)

5000 FORMS OF DISCRIMINATION

5006 BLACKLISTING

American Stevedoring Company 280 NLRB No. 098
[refusal of E, who had obtained contract to perform delivery service for retail stores, to hire drivers of contractor who had previously performed this service, unlawful, since refusal was because of drivers' U membership]

Leeward Nursing Home 278 NLRB No. 157
[no violation, where Ees were discharged as result of subcontracting and some Ees were not hired by subcontractor, since subcontracting lawful, subcontractor not named as Respondent, and absent evidence of blackballing of Ees by Respondent E which subcontracted]

5009 REQUIRING PHYSICAL, PSYCHOLOGICAL OR OTHER EXAMINATIONS

Plateau Coal Sales, Inc. 279 NLRB No. 156
[E's telling one of job applicants who was one of the applicants who allegedly had failed his required physical exam that he and others selected from panel (of applicants) need not be re-examined if they agreed to work non U, violative, since re-examination of job applicants would further delay (E's) dealing with U]

Lone Star Industries, Inc. 279 NLRB No. 078
[notwithstanding no prior preemployment physical exam policy and only instituted after economic strike ended, and notwithstanding it has been applied to recalled strikers, but not all of replacement Ees have undergone physicals, no violations over instituting physical exam policy or failure to reinstate recalled striker who failed exam, even though physician said illness treatable and posed no threat to his ability to perform job, since policy of E is that all Ees will take physical, policy bore no indication of discriminatory intent, E also discharged striker replacement who had same illness and policy was reasonable response to potential liability]

Evans St. Clair, Inc. 278 NLRB No. 065
[placing U leader on involuntary medical leave, not violation where he was found unconscious on platform near his machine, had fallen off platform previously, doctor's note indicated that Ee should not work around machinery, and E suspected that Ee had recurring medical condition that might imperil E's safety record]

5010 ISSUANCE OF WARNING OR REPRIMAND LETTERS

Baddour, Inc. 281 NLRB No. 004
[giving U activist warning and placing him on probation because he could not get to work because of car trouble, rather than giving him day off w/o pay or vacation day as was customary, violation]

Wayne W. Sell Corporation 281 NLRB No. 082
[issuing 2 letters of reprimand to driver for failing to call E's dispatch office prior to his departure from E's facility and for failure to inform dispatch

5010—Cont.

office of overload he had delivered, unlawful, since motivated by Ee's grievance activity in view of E's unlawful threats to Ee for his grievance filing, and fact prior to issuing these 2 letters to Ee w/i few days of each other, E had issued only 4 letters of reprimand in last 5 years]

Link Manufacturing Co. **281 NLRB No. 028**
[written warning given Ee for concededly poor attendance, not unlawful, notwithstanding warning issued after E's receipt of election ptn and unlawful conversion of other Ees' layoffs from temporary to permanent, where E had no specific knowledge of Ee's U activities or reason for focusing its anti-U animus on Ee]

Airport Distributors, Inc. **280 NLRB No. 091**
[issuance of written reprimand to Ee assertedly for numerous incidents of being unavailable for work, unlawful, where E's animosity toward U and particularly toward Ee, timing of reprimand after E presented himself as U-designated steward, and lack of justification gave rise to inference of discriminatory motivation which was not rebutted by E who had indicated general discriminatory retaliatory intent to *go by the book*]

La Reina, Inc. **279 NLRB No. 103**
[strictly enforcing clothing rule and issuing written reprimand and one-day suspension for failure to comply on day after election, violation where rule had formerly been leniently enforced]

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **279 NLRB No. 082**
[E's more strict supervision of Ees, shortening an Ee's lunch period and issuing written warnings to Ees for various reasons, all because E felt it was *losing control* and needed to instill stricter work rules, violative, since real reason was Ees' U activity where E cracked down only after Ees testified at *R* proceeding]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[written warning for attempting to get two Ees to sign U authorization cards while at their work stations, not violation where no-solicitation rule was uniformly enforced, notwithstanding E's use of supervisors to pass out anti-U campaign literature, since no-solicitation rule does not encompass E's situation]

Sahara Datsun, Inc. **278 NLRB No. 148**
[unilaterally instituting, one week after receipt of U ptn, system of written warnings that could be placed in Ees' files for rule infractions rather than oral ones]

BASF Wyandotte Corporation **278 NLRB No. 028**
[issuing oral warning to Ee for destroying copy of safety rule, violation since Ee was U official acting in that capacity in meeting with E]

Hedaya Brothers, Inc. **277 NLRB No. 093**
(E's implementation of new warning system for lateness and absenteeism following election between rival Us, violative, where unlawful motive was shown by statements to Ees threatening discharge for striking, plant closure and telling Ees that to choose either U was futile, E unlawfully discharged supporter of rival U pursuant to new system and E implemented new system in precipitate manner and it was applied inconsistently)

Superior Warehouse Grocers, Inc. **277 NLRB No. 010**

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(issuance of written reprimand admonishing Ee about her poor attitude and work habits, not unlawful, where warning was issued solely because of poor condition in which Ee left her work place when she left for the day and not because of unlawful retaliation for Ee's threat to seek U's assistance in her sechduling dispute with E)

Confort & Company, Inc. **275 NLRB No. 082**
(issuing written warnings to U supporter, allegedly for excessive absenteeism and tardiness, violative where E had issued him only two written warnings and delayed his pay increase only once for same behavior, had offered him promotion to night lead position, and had only begun to pay attention to his tardiness and absenteeism when U campaign was in full swing)

Advertisers Manufacturing Company **275 NLRB No. 019**
(issuance of verbal and written warnings to U's chief steward who was also prominently involved in U matters, for violating work rules prohibiting profane language and sexual and/or racial harassment of other Ees, not unlawful, since incident did not involve common shop talk but was offensive remark directed at person of Ee in manner that violated work rules; U prominence did not isolate steward from discipline for sufficient cause; and warnings were issued after due investigation by E)

Roadway Express, Inc. **274 NLRB No. 052**
(E's issuance of purportedly work-related warning letters to U steward who had filed numerous charges against E with Bd and had testified at Bd hearing, and had also protested E's proposal to institute flexible work week, unlawful, where E viewed steward as U activist and harbored animus toward him and his U and protected activities, letters were issued w/o justification, and in one instance supervisor purposefully sought reason for issuing warning letter to steward)

Radisson Muehlebach Hotel **273 NLRB No. 183**
(reprimanding known U supporter for allegedly waiting on other waitress's table, violative where she only poured coffee or cream for other waitress's customers according to common practice)

Radisson Muehlebach Hotel **273 NLRB No. 183**
(reprimanding U steward for being in area from which he was restricted during decertification election campaign and for allegedly sexually harassing antiU female Ee, violative where, even assuming restriction on U steward was valid, steward had been instructed to work there, and Ee whom he allegedly harassed merely described herself as upset)

Valley Presbyterian Hospital **JD-(SF)-57-86**
[issuing single warning notice both for Ee's soliciting and distributing U literature in acute-care hospital's labor and delivery locker room and for soliciting Ee performing patient care in labor and delivery work area, violation, notwithstanding that, although prohibition as to locker room was unlawful and prohibition as to Ee performing patient care in work area was lawful, since Ee's lawful and unlawful activities were inextricably intertwiened and E did not show that Ee would have received warning notice simply for soliciting in work area]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**
[issuing written warning to Ee who publicized E's alleged ULPs and labor relations in newspaper article, violation where Ee had called in according to prior practice, had not been sufficiently late to have to be replaced]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**
[issuing written warning to waiter, who publicized E's alleged ULPs and labor relations in newspaper article for failure to check out with E after cleaning up and setting table for next meal, violation where offense was trivial]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**
[warning Ee about repeatedly asking guest to sign statement about waiter's service and conduct which resulted in guest's annoyance and E's loss of future business from guest, lawful, notwithstanding Ee was acting in capacity as U steward, since that protected U activity lost protection]

County Respiratory Products, Inc. **JD-(NY)-107-85**
(E's president's issuing disciplinary warning notice to Ee because he believed Ee had signed authorization card and was bringing in U and further threatening to discharge him if he did not sign notice, violative)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, where there was no disparate application of valid rule even though Ee had solicited for Ee dinner while on working time in sight of E's managers' where dinner was isolated event sponsored and promoted by E itself, E is free to utilize its Ees' paid time for whatever legal activity it chooses, and Ees are not entitled to use medium of communication simply because E is using it)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, not withstanding contention that, if GC was permitted to demonstrate that management officials had themselves at various times used working time to distribute pro-company literature, such showing would entitle U's adherents to *equal time*, since Bd cases do not demonstrate existence of rule favoring or enforcing doctrine of T3equal time for U's)

5012 REFUSAL TO EMPLOY OR REEMPLOY

5012-3000 After discharge, layoff, or suspension

Alabama Metal Products, Inc., and Its Alter Ego Delta Laminating, Inc. **280 NLRB No. 123**
[manufacturing company's refusal to recall Ees from layoff for employment at newly formed and separately located company providing products for use by manufacturing company, not unlawful, where factors establishing single E or alter ego status were either absent or insufficient for finding that either of such relationships existed]

Elal Realty Management Inc. **279 NLRB No. 002**
[discharge of Ees and refusal to rehire them by successor E, violative, since reason was Ees' U membership and E's desire to work with non-U Ees where E gave patently false reasons for discharge which justified inference of anti-U motive; further, bargaining order is appropriate for successor E since U made demand to bargain and all Ees are ordered reinstated, thus, successor E employs majority of prior workforce]

United States Steel Corporation **279 NLRB No. 004**
[E's refusal to hire Ee laid off from one of its facilities to work at another of its facilities, unlawful, since for his activities as U grievance chairman where

5012-3000—Cont.

his supervisor's reference to grievance chairman as *troublemaker* when speaking to foreman at facility to which he had applied for transfer connotated his activity of filing grievances, and this characterization was relied upon in rejecting Ees request for transfer. Use of word alone, not violative, but must look at context in which used]

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**
[discharge of 38 Ees and refusal to rehire them as positions became available, violative, since E discharged Ees assertedly because it sold business but was found herein to be single E and alter egos with new E, thus, U's contract remained in effect in regard to all aspects of employment relationship]

Kenneth L. Hand Sr. d/b/a Neighborhood Roofing and Contracting, and Kenneth L. Hand Jr. and Sylvia Hand d/b/a Farrand Park Services **276 NLRB No. 081**
(E's failure to recall Ees following most recent layoff allegedly because there was no available work, violative where E's reason was false and each of these Ees had either sought U's assistance and representation, or had insisted he recieve contractual wage rates and benefits to which he was entitled)

Donald Dunn d/b/a D.C. Construction Company **276 NLRB No. 097**
(E unlawfully failed to reemploy Ee who was laid off job for nondiscriminatory reasons, where E conducted job under its own perception that U limitations blocked hire and continued employment of Ee; supervisor made statements which, on their face, were direct admissions that E withheld employment of Ee because of his lack of U membership; and E's claims that Ee was not rehired because his work was inadequate were shifting and implausible)

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(discharge of Ee, assertedly because she refused promotion to supervisor and thus had to be let go, violative, since real reason was Ee's U activity, where E was engaged in scheme to coerce Ees into accepting supervisory positions in an effort to preclude pro-U Ees from voting; further, E's failure to rehire Ee some 9 months later because she was associated with the *turmoil* at E's premises, violative, since *turmoil* meant Ee's support of U)

Genwal Coal Co., Inc. **275 NLRB No. 077**
(E's refusal to recall discriminatees, allegedly for overstaying lunch break and selling E's coal to others, during period it had hired several new Ees, violative where E had not rebutted GC's *prima facie* case by showing that newly hired Ees were more able or versatile to perform experienced Ees' mining duties and E's admission that he would not recall them because of their U activities)

Eureka Stone Quarry, Inc. **JD-23-86**
[discharge of Ee and subsequent denial of reinstatement, assertedly because Ee sought assistance of U in getting insurance payment, not unlawful, where E and U repeatedly attempted to assist Ee; rather, Ee was terminated because of failure to perform assigned duties]

Coal Systems, Inc. and W. Julian Scalf Engineering & Construction Co., Inc. **JD-452-84**
(lay off of Ees by company, found alter ego of predecessor E herein, and its refusal to recall them because they had filed contractual grievances against predecessor E, violative)

5012-3500 After leave of absence

Judy Hornby Designs, Inc. **279 NLRB No. 168**
[E's refusal to immediately reinstate Ee when she asked to return to work, not unlawful, since not because of her solicitation for U, but rather Ee, on short notice, voluntarily decided to take off whole month of December, after being refused permission by E to work 3 days a week during December; nor did E's limiting its efforts to contact Ee concerning her return to work to day telephone calls rather than also writing and calling in evening constitute lack of good faith effort to contact Ee]

5012-3800 After filing of grievance

Emeryville Trucking, Inc. **278 NLRB No. 153**
[singling out of U activist by refusing to employ him in order to get rid of him altogether, making good on threats to *get* him for filing grievance and helping other Ees file grievances, violative]

Regency Electronics, Inc. **276 NLRB No. 082**
(violative)

5012-3900 After voluntary quit

Exhaton Service Community **279 NLRB No. 012**
[refusal to reemploy U adherents who had left E's employ, assertedly because they were unqualified for vacant positions due to inexperience, unlawful, where E, while declining to reemploy U adherents, hired new Ees for positions in question but presented no evidence that new hires had greater experience than U adherents; and E had previously told U adherents they would be kept on because they were *top of the line* as desired by E]

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(refusal to rehire U activist who had voluntarily quit violative where supervisor stated that he would not consider rehiring him until U issue was resolved)

5012-4000 Discriminatory hiring practice (See also Union Security Requirements 524-5090)

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) **280 NLRB No. 140**
[E held not to have unlawfully discriminated against predecessor's Ees in its driver-recruiting practices since E was recruiting for independent contractor positions, and such individuals are not protected by Act]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**
[E's refusal to hire predecessor's Ees, assertedly because they were not qualified, violative, since real reason was their support for U E did not want to recognize and deal with where E had planned all along not to hire majority of predecessor's Ees, E made predecessor's Ees take employment tests in order to disqualify them while not requiring such of new Ees and many new Ees hired were less experienced than predecessor's Ees]

United States Steel Corporation **280 NLRB No. 090**
[refusing to hire Ees who refused or failed to join U pursuant to U-security clause, violation where E unlawfully recognized U as their representative]

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**
(successor E's bribing predecessor's Ees to quit and refusing to rehire them so as to eliminate U majority and bargaining obligation, violative)

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. **275 NLRB No. 182**
(E's applying illegal prehire agreement containing U security clause to unlawfully assisted U and discriminating against other job applicants by hiring only applicants referred by U, violative)

C.I.M. Mechanical Co., formerly known as Egan Mechanical Co. **275 NLRB No. 100**
(E's hiring of non-U Ees at less than multi-E association's contractual wage rather than using U hiring hall and complying with contract pursuant to Sec. 8(f) pre-hire agreement, lawful, since E was in construction industry, and its termination agreement was lawful where E was not member of association multi-E unit and never established permanent, stable work force, and U never attained majority status)

Inland Container Corporation **275 NLRB No. 60**
(successor E's utilization in its hiring process of preference for *a demonstrated willingness to work in a nonunion environment*, and *successor E's* refusal to hire any Ees of predecessor because of their U membership, violati ve)

5012-5000 To avoid bargaining obligation

American Stevedoring Company **280 NLRB No. 088**
[refusal of E, who had obtained contract to perform delivery service for retail stores, to hire drivers of contractor who had previously performed this service, unlawful, since refusal was because of drivers' U membership]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**
[E's refusal to hire predecessor's Ees, assertedly because they were not qualified, violative, since real reason was their support for U E did not want to recognize and deal with where E had planned all along not to hire majority of predecessor's Ees, E made predecessor's Ees take employment tests in order to disqualify them while not requiring such of new Ees and many new Ees hired were less experienced than predecessor's Ees]

Plateau Coal Sales, Inc. **279 NLRB No. 156**
[E's seeking to induce Ees to work w/o U representation and withdrawing offers of employment from its entire work force when Ees refused to work nonU, held violative, since E wanted to avoid recognizing U, and Ees were U members]

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**
(successor E's bribing predecessor's Ees to quit and refusing to rehire them so as to eliminate U majority and bargaining obligation, violative)

Maritz Communications Company, A Wholly Owned Subsidiary of Maritz, Inc. **274 NLRB No. 016**
(purchaser's failure to hire Ee of seller, not unlawful, since due to loss of work rather than U affiliation; contention that purchaser was motivated by U affiliation rather than business considerations evidenced by disparate treatment, rejected, inasmuch as Ee retained had more familiarity with certain equipment; nor did purchaser's offering raise to Ee retained if Ee would relinquish U membership evidence U animus, since raise was to compensate for loss of contribution in his behalf to U pension fund)

5012-5000—Cont.

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's general reduction of work force from that of predecessor E's, as opposed to failure to hire specific Ees of predecessor E, not unlawful, since not for purpose eliminating U as majority of Ees worked for predecessor where general reduction was pursuant to plan for improved efficiency and economy, implementation of which involved consideration of each applicant's demonstrated work ability and seniority at predecessor E)

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's refusal to hire Ees of predecessor E, not unlawful, since refusal not because of their U activities, notwithstanding they had served as U officers, steward, and on grievance committee, and that they had greater seniority than some Ees hired, in view of E's lack of U animus and fact several Ees of predecessor E who were rejected had no U affiliation and majority of Ees hired had worked for predecessor E)

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **273 NLRB No. 189**
(successor E's refusal to hire former Ees of predecessor because of its desire not to retain them under U agreement, violative)

9012-7000 **Because of known or suspected union activities**

J. D. Landscaping, Corp. **281 NLRB No. 004**
[refusal to employ or consider for employment predecessor's Ees who were U activists, violation]

Rebel Coal Company, Inc., and Richlands Supply Corp. **279 NLRB No. 022**
[single E's refusal to employ Ees because they supported and had joined U, violative]

Eskaton Sunrise Community **279 NLRB No. 012**
[refusal to reemploy U adherents who had left E's employ, assertedly because they were unqualified for vacant positions due to inexperience, unlawful, where E, while declining to reemploy U adherents, hired new Ees for positions in question but presented no evidence that new hires had greater experience than U adherents; and E had previously told U adherents they would be kept on because they were *top of the line* as desired by E]

Leeward Nursing Home **278 NLRB No. 157**
[no violation, where Ees were discharged as result of subcontracting and some Ees were not hired by subcontractor, since subcontracting lawful, subcontractor not named as Respondent, and absent evidence of blackballing of Ees by Respondent E which subcontracted]

Kou Fu, Inc. d/b/a Peng Teng **278 NLRB No. 050**
[buyer's refusal to hire some Ees of seller, unlawful since refusal motivated by their voting for U during election held between signing of contract to buy and sell company and title closing, where buyer knew of Ees' U activities, in view of its U animus as evidenced by threats, promises of benefits to induce Ees to reject U, statements that hiring conditioned on return of U card, and U failed to show Ees would have been rehired absent U activities; notwithstanding fact that U rehired some U adherents]

United Beef Co., Inc. **277 NLRB No. 107**
(E's refusal to rehire 2 Ees because they testified for U at arbitration hearing, and its refusal to hire one of Ees for additional reason that he had been active U steward, violative)

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(E's refusal to hire two Ees of *alter ego* E assertedly because Ee's disabilities would prevent them from performing some of their duties and E had no openings, unlawful since E was motivated by a desire to eliminate U activists and grievants)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**
(refusing to consider applicant for job admittedly because of applicant's U adherence, violative)

Hoboken Shipyards, Inc. **275 NLRB No. 212**
(refusal to hire active shop steward, who had filed several grievances while employed by prior owner, allegedly for refusing to work day shift and refusing overtime work, violative where other Ees who had made such refusals were hired)

Joan Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(discharge of Ee, assertedly because she refused promotion to supervisor and thus had to be let go, violative, since real reason was Ee's U activity, where E was engaged in scheme to coerce Ees into accepting supervisory positions in an effort to preclude pro-U Ees from voting; further, E's failure to rehire Ee some 9 months later because she was associated with the *turmoil* at E's premises, violative, since *turmoil* meant Ee's support of U)

C. D. Draucker d/b/a Redding Industrial Electric **275 NLRB No. 087**
(refusal to reimploy job applicant referred by U through hiring hall, unlawful, where supervisor's effective recommendation that applicant not be reemployed was based on supervisor's experience with applicant in former employment with E at construction project at which applicant, as U steward, engaged in protected U activity of complaining about working conditions, with some complaints resulting in state-OSHA action, all of which irked E and general contractor)

Genwal Coal Co., Inc. **273 NLRB No. 077**
(E's refusal to recall discriminatees, allegedly for overstaying lunch break and selling E's coal to others, during period it had hired several new Ees, violative where E had not rebutted GC's *prima facie* case by showing that newly hired Ees were more able or versatile to perform experienced Ees' mining duties and E's admission that he would not recall them because of their U activities)

Inland Container Corporation **275 NLRB No. 60**
(successor E's utilization in its hiring process of preference for *a demonstrated willingness to work in a nonunion environment,* and *successor E's* refusal to hire any Ees of predecessor because of their U membership, violati ve)

Guarantee Savings and Loan, A Federal Savings and Loan Association **274 NLRB No. 094**
(no violation, since E's refusal to hire applicant was not because of applicant's U activities at his former E. Potential new E only told by former E that applicant was *troublemaker* and he would not rehire him because applicant had quit w/o giving adequate notice)

J. A. Croson Company **274 NLRB No. 031**
(E's failure to hire applicants who responsed to help wanted ads, not unlawful, since decisions not to hire not based on their U affiliation, where initially neither U nor non-U applicants hired, inasmuch as job for which need for Ees had been anticipated was not progressing as rapidly as anticipated, and inasmuch as Ees eventually hired were hired w/o considering their U status)

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's refusal to hire Ee of predecessor E, not unlawful, since refusal not because of her U activities, notwithstanding Ee had been shop steward, financial secretary of U, on negotiating committee, and that she had never been reprimanded or disciplined regarding her work during 27 years with predecessor E, where she had minimal involvement with grievances, Ees of predecessor E with comparable U affiliation were both hired and rejected, and she had been absent for health reasons and upon her return her duties had doubled, thus E believed another individual would be more capable of performing job)

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's refusal to hire Ees of predecessor E, not unlawful, since refusal not because of their U activities, notwithstanding they had served as U officers, steward, and on grievance committee, and that they had greater seniority than some Ees hired, in view of E's lack of U animus and fact several Ees of predecessor E who were rejected had no U affiliation and majority of Ees hired had worked for predecessor E)

E.I. Dupont De Nemours and Company **JD-11-86**
[refusal to hire applicant after layoff, assertedly because she was insubordinate at prior job with same E, violative, since real reason was Ee's persistent U activities and repeated filing of charges with the Bd at prior job where Ee's asserted act of insubordination in protesting overtime and refusing to train Ees was protected activity done in furtherance of her U duties, Ee had 19 years of high quality service with E, and E, in overlooking Ee for hire, hired Ees with little or no experience]

E.I. Du Pont De Nemours & Company **JD-(ATL)-96-84**
(E's refusing to hire applicant, assertedly because Ee appeared too inflexible for E's working conditions, violative, since real reason was Ee's U involvement where E repeatedly questioned Ee during employment interview about his U sympathies, thereby learning that Ee was shop steward and active U supporter at last place of employment, and Ee had excellent work record and scored higher on E's preemployment test than other Ees that were hired)

Food and Commercial Workers, Local 152 v. N.L.R.B. **768 F.2d 1463 (C.A. D.C., July 1985)**
(successor E's failure to hire Ees of predecessor, unlawful, since substantial evidence discriminatorily motivated where criteria established by E for hiring i.e. discipline, health, absenteeism and safety record, applied more strictly to Ees of predecessor E than to other applicants, rule against neopotism impacted disparately against Ees of predecessor E, and only 1/6-1/5 of individuals hired by successor E were Ees of predecessor)

5012-7050 **Of relatives**

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(unlawful discharge of Ee w/lowest seniority and working 1 shift per week when E reinstituted old policy that Ees work minimum of 2 shifts per week and took shift from him and gave it to senior Ee who also worked 1 shift, in view of E's animus, no explanation why E delayed 5 months before implementing decision to return to old shift policy, and knowledge of Ee's U inclination inferred from E's knowledge that Ee's brother, also Ee, was U

5012-7050—Cont.

adherent, smallness of workforce (21 Ees) and supervisor at time of his termination voiced concern over U considerations

5012-7600 Refusal to hire predecessor's employees

J. D. Landscaping, Corp. **281 NLRB No. 004**
[refusal to employ or consider for employment predecessor's Ees who were U activists, violation]

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) **280 NLRB No. 149**
[even if unlawful motive for E's use of independent contractors rather than predecessor's Ee drivers existed, E established nondiscriminatory business reasons for its use of independent contractors, where such use was less expensive and avoided Ee-related paperwork, entirely apart from U considerations]

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) **280 NLRB No. 149**
[trucker E's refusal to provide predecessor's driver Ees with names of potential tractor lessor in need of drivers, not violative where E's truck-finding help to other driver-applicants was limited and E was not acting as hiring agent]

Sewell-Allen Big Star, Inc., No. 3 d/b/a Sewell-Allen Big Star No. 52 **280 NLRB No. 137**
[alleged refusal by E to hire majority of seller's Ees in order to avoid successorship status, and E's resulting refusal to recognize and bargain with U, not unlawful, where E did not hire Ees either because of reasons related to their work, including negative recommendations it received from others, or because Ees did not apply for and seek work with E]

American Stevedoring Company **280 NLRB No. 088**
[refusal of E, who had obtained contract to perform delivery service for retail stores, to hire drivers of contractor who had previously performed this service, unlawful, since refusal was because of drivers' U membership]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**
[E's refusal to hire predecessor's Ees, assertedly because they were not qualified, violative, since real reason was their support for U E did not want to recognize and deal with where E had planned all along not to hire majority of predecessor's Ees, E made predecessor's Ees take employment tests in order to disqualify them while not requiring such of new Ees and many new Ees hired were less experienced than predecessor's Ees]

American Press, Inc. **280 NLRB No. 109**
[successor E did not discriminatorily refuse to hire predecessor's former Ee who refused E's offer because his current place of employment was closer than E's plant was to his home and did not require payment of city income tax required in employment with E]

American Press, Inc. **280 NLRB No. 109**
[successor E unlawfully refused to hire predecessor's Ees, notwithstanding successor's claim that they were not hired because they did not seek employment where Ees asked about employment, responded to E's blind ads, and attempted to apply in person; and since E attempted to conceal from Ees that it was accepting applications, failure to apply was not defense; moreover, Ees who discover E is hiring would be justified in assuming the futility of applying]

American Press, Inc. **280 NLRB No. 109**
[buyer, as successor E, unlawfully refused to hire seller's Ees, in view of statements made by parties involved that buyer intended to operate as non-U shop despite previous U representation of seller's Ees, and that reason they were not hired by buyer was their U affiliation; methods and pattern of buyer's hiring which was designed to conceal from seller's Ees that it was hiring; and different treatment buyer gave seller's Ees by making job offers to nonunit, but not unit, Ees before seller was closed]

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**
[successor E's refusal to hire majority of predecessor's Ees, assertedly because those hired were more qualified, violative, notwithstanding successor E hired some U members, since real reason was Ees' refusal to withdraw from U where supervisor of successor E told some Ees they would be guaranteed employment if they withdrew from U, successor did not articulate any definite standard by which Ees were evaluated for selection and E's refusal to comply with subpoena for empioyment records justified adverse inference that e had unlawful motive]

Kou Fu, Inc. d/b/a Peng Teng **278 NLRB No. 050**
[buyer's refusal to hire some Ees of seller, unlawful since refusal motivated by their voting for U during election held between signing of contract to buy and sell company and title closing, where buyer knew of Ees' U activities, in view of its U animus as evidenced by threats, promises of benefits to induce Ees to reject U, statements that hiring conditioned on return of U card, and U failed to show Ees would have been rehired absent U activities; notwithstanding fact that U rehired some U adherents]

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**
(prima facie case made out for successor's unlawful failure to rehire Ees where: 1) Ees were known U adherents, 2) majority of Ees not rehired were U leaders, 3) disparate treatment as other Ees rehired were guilty of same offenses that successor alleged for not rehiring these Ees, and 4) successor found to have unlawfully refused to bargain with U, which constituted additional evidence of U animus)

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**
(successor E's bribing predecessor's Ees to quit and refusing to rehire them so as to eliminate U majority and bargaining obligation, violative)

Master Mining, Inc. and Neibert Coal Company, Inc. **274 NLRB No. 183**
(E's refusal to hire applicants because of their role in filing grievance against predecessor E violative, where E told one applicant it was not hiring at time it was in process of hiring all of predecessor's workforce and told another applicant that E would not hire any radicals and would kill them if they filed any grievances)

Master Mining, Inc. and Neibert Coal Company, Inc. **274 NLRB No. 183**
(E's refusal to hire applicant, assertedly because of absentee problem with predecessor E, not violative, notwithstanding GC made *prima facie* case, where testimony revealed Ee had history of absenteeism, job Ee was applying for was vitally important and excessive absenteeism could not be tolerated and fact that E continued to investigate absentee record of Ee after it had knowledge of protected activity was compelling evidence that E would not have hired Ee even absent protected activity)

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's general reduction of work force from that of predecessor E's, as opposed to failure to hire specific Ees of predecessor E, not unlawful, since not for purpose eliminating U as majority of Ees worked for predecessor where general reduction was pursuant to plan for improved efficiency and economy, implementation of which involved consideration of each applicant's demonstrated work ability and seniority at predecessor E)

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's refusal to hire Ee of predecessor E, not unlawful, since refusal not because of her U activities, notwithstanding Ee had been shop steward, financial secretary of U, on negotiating committee, and that she had never been reprimanded or disciplined regarding her work during 27 years with predecessor E, where she had minimal involvement with grievances, Ees of predecessor E with comparable U affiliation were both hired and rejected, and she had been absent for health reasons and upon her return her duties had doubled, thus E believed another individual would be more capable of performing job)

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's refusal to hire Ees of predecessor E, not unlawful, since refusal not because of their U activities, notwithstanding they had served as U officers, steward, and on grievance committee, and that they had greater seniority than some Ees hired, in view of E's lack of U animus and fact several Ees of predecessor E who were rejected had no U affiliation and majority of Ees hired had worked for predecessor E)

Thomas Janitorial Service, Inc. **JD-(SF)-60-86**
[where E was successful bidder on contract and failed to contact predecessor's Ees who were U members to ascertain whether they would work below U scale, violative, notwithstanding no U animus and failure of U to respond to E's request for wage scale prior to his making bid. E had no indication Ees would not work at reduced wages but just assumed so leaving his failure to offer employment to be based on U membership which is *inherently destructive* of Ees' statutory rights]

Szabo Food Service, Inc. **JD-434-84**
(successor E's admitted refusal to consider claimants for employment and subsequent refusal to hire them, violative where such refusal was motivated by claimants' U representation under predecessor and by desire to avoid having to recognize U)

N.L.R.B. v. Sherwood Trucking Company **775 F.2d 744 (C.A. 6, Oct. 1985)**
[E's refusal to hire Ees of company that formerly performed work subcontracted to E, assertedly because of former Ees' affiliation with U, not violative where anti-U statements which would have formed basis for concluding that refusal to hire was illegal were made by individual who held no supervisory position with E during relevant period, and motivating factor in E's not hiring Ees was condition attached to E's receiving contract for performing work]

5012-7600—Cont.

Food and Commercial Workers, Local 152 v. N.L.R.B. 768 F.2d 1463 (C.A. D.C., July 1985)

(successor E's failure to hire Ees of predecessor, unlawful, since substantial evidence discriminatorily motivated where criteria established by E for hiring i.e. discipline, health, absenteeism and safety record, applied more strictly to Ees of predecessor E than to other applicants, rule against neopotism impacted disparately against Ees of predecessor E, and only 1/6-1/5 of individuals hired by successor E were Ees of predecessor)

5012-7700 Because of union opposition or favorable recommendation

Glenn Machine Works, Inc. 277 NLRB No. 076

(E's refusal to employ, and U's refusal to refer for employment, two members of U because they were in disfavor with U as result of their involvement in internal U political activities, violative)

5012-7900 Refusal to hire because of lack of union membership

Local No. 980, Automobile Workers (Local 32, Office Employees) 280 NLRB No. 161

[E's advising Ee that in order to continue her employment she would be required to obtain U representation, violative]

United States Steel Corporation 280 NLRB No. 098

[refusing to hire Ees who refused or failed to join U pursuant to U-security clause, violation where E unlawfully recognized U as their representative]

5017 IMPOSITION OF ILLEGAL CONDITIONS OF EMPLOYMENT (SEE ALSO 524-5090)

5017-1400 Abandonment of concerted activities

Educational Broadcasting Corporation d/b/a WNET/Thirteen JD-(NY)-125-85

[violation]

5017-2800 Abandonment of union activities or membership

Premier Maintenance, Inc. 282 NLRB No. 003

[promulgation of rule prohibiting solicitation of U cards in *working areas* and on *working time*, violative of Section 8(a)3), since applied only to U solicitation, absent evidence of interference with production and in view of U animus]

Plateau Coal Sales, Inc. 279 NLRB No. 156

[E's seeking to induce Ees to work w/o U representation and withdrawing offers of employment from its entire work force when Ees refused to work nonU, held violative, since E wanted to avoid recognizing U, and Ees were U members]

Educational Broadcasting Corporation d/b/a WNET/Thirteen JD-(NY)-125-85

[violation]

5017-3500 Prematurely recognized union

United States Steel Corporation 280 NLRB No. 098

[conditioning employment of drivers on membership in U representing warehouse unit, violation where E unlawfully extended contract with U-security clause covering E's warehouse Ees at separate facility to drivers]

5017-4200 Requiring union membership in favored organization

United States Steel Corporation 280 NLRB No. 098

[conditioning employment of drivers on membership in U representing warehouse unit, violation where E unlawfully extended contract with U-security clause covering E's warehouse Ees at separate facility to drivers]

5017-4500 Acceptance of wages and conditions of employment less than those provided for in contract

C.I.M. Mechanical Co., formerly known as Egan Mechanical Co. 275 NLRB No. 100

(E's hiring of non-U Ees at less than multi-E association's contractual wage rather than using U hiring hall and complying with contract pursuant to Sec. 8(f) pre-hire agreement, lawful, since E was in construction industry, and its termination agreement was lawful where E was not member of association multi-E unit and never established permanent, stable work force, and U never attained majority status)

Thomas Janitorial Service, Inc. JD-(SF)-60-86

[where E was successful bidder on contract and failed to contact predecessor's Ees who were U members to ascertain whether they would work below U scale, violative, notwithstanding no U animus and failure of U to respond to E's request for wage scale prior to his making bid. E had no indication Ees would not work at reduced wages but just assumed so leaving his failure to offer employment to be based on U membership which is *inherently destructive* of Ees' statutory rights]

5017-7000 Waiver of seniority rights

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(Ees did not waive right to challenge clause providing U officials with superseniority for puposes of layoff by ratifying agreement containing clause; right at issue herein is right to be free from discrimination that encourages U membership and is not *economic* right under S.Ct's *Metropolitan Edison* decision, such as right to strike or to refuse to cross lawful picket line, in attempt by Ees and U to achieve economic advantage and for which waiver is appropriate because Ee and U interests are presumed to coincide, if they do not, Ees remain free to change their representative)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(Ees did not waive right to challenge clause providing U officials with superseniority for puposes of layoff since, unlike economic rights which are subject to waiver, right at issue herein is one in which U and Ee interests are likely to conflict; under *Gulton* superseniority presumably encourages Ees to support U so as to increase their chances of attaining U office and greater job security; on the other hand, Ees have right not to be coerced into supporting incumbent U and, since superseniority encourages such support, Ees' ability to select representative no longer remains free)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(Bd properly retroactively applied its *Gulton* decision setting forth new rule pertaining to superseniority, where instant case was not of first impression nor abrupt departure from well established practice and, instead, resolved uncertainty created by Bd's earlier decisions; there was no reliance by parties on old rule and given uncertainty created by following cases, reliance thereon would have been calculated risk, and so there was nothing to oppose *statutory interest* in applying new rule; nor was it shown retroactive order will work inordinate hardship upon them)

5020 HARASSMENT OF UNION ADHERENTS

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86

[warning waiter for bringing unordered food to table and asking guests to take it and for letting his busboy serve, lawful]

5020-5000 By employer

Advertiser's Manufacturing Company 280 NLRB No. 128

[verbal and written warnings to U steward, violation since they showed pattern of harassment where being first in lunchroom at breaktime and using outside sidewalk violated no promulgated rule, he was warned for excessive talking, but person he was talking with was not, and his alleged insubordination in telling supervisor to *take a hike* did not compare with obnoxious and obscene language almost routinely directed at supervisors]

T & T Machine Company, Inc. 278 NLRB No. 139

[E asking Ee in presence of another Ee if he were *being bugged* by other Ee about U, and upon Ee's negative reply, staring at other Ee for 15-20 seconds and telling him to shut up, unlawful harassment]

5020-6700 Harassment by employees where employer accountable

Duroyd Manufacturing, Inc. 276 NLRB No. 025

(discharge of Ee, unlawful, since for his U activities, rather than for profanity against E's president and insubordination in view of E's U animus and its other violations, and fact prior use of profanity by Ee against E's president, use of profanity by other Ees had been previously tolerated and harassment of Ee by president)

5023 IMPOSITION OF DISCRIMINATORY WORKING CONDITIONS

5023-1200 Less desirable job or work shifts

J & B Smith Company, Inc. 280 NLRB No. 057

[transferring only Ee who was passing out U cards to most onerous job in plant, violation, notwithstanding allegations of poor performance]

Consolidated Edison Co. of New York, Inc. 280 NLRB No. 039

[transfer of Ee, active participant in dissident U group, to less desirable time and work site, not violative since there was no substantive evidence to explain why E would chose to discriminate against Ee at time of transfer, as Ee had been engaging in his dissident activities for about 5 years w/o recrimination. Ee an experienced inspector, replaced inexperienced inspector on transfer]

Armon Company 279 NLRB No. 138

[assigning senior driver who had signed U card to weed cutting and sweeping tasks after he came in wearing U hat he had been told not to wear, violation]

5023-1200—Cont.

La Reina, Inc. 279 NLRB No. 103
[transferring Ee to graveyard shift in retaliation for initiating U activities in plant, violation]

Michiel's Inc., d/b/a La Saint Jean Dos Pres Restaurant 279 NLRB No. 017
[E's requiring Ees (waiters) to work lunches, violative, where new rule was announced one day after election and E had always accomodated Ees' various schedules before election]

104 West Operating Corp. d/b/a New York Delicatessen 275 NLRB No. 133
(assigning Ee to undesirable shift and duty station, assertedly for his U activities, not unlawful, where E was not aware of Ee's support for U; assignment increased efficiency of E's enterprise; and following change of assignment which lasted only a few weeks, E gave Ee desirable shift that Ee had been asking for)

Pillod of Mississippi, Inc. 275 NLRB No. 117
(E's refusal to transfer U activist out of department that admittedly was giving Ee serious medical problems, violative, where E routinely transferred other Ees from department when they had problems and Ee was transferred into undesirable department only a few days after she issued an *open letter* to Ees in support of U)

Chef's Pantry, Inc. 274 NLRB No. 117
(E's reassigning known U activist from assisting plant supervisor to working on dock, violative where true explanation for reassignment was Ee's connection with U)

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[assigning known U adherent employed as bartender to less desireable banquet work, and later discharging him, assertedly because of complaints by waitresses and by customer, unlawful, where customer's reference to Ee was made in letter containing general complaint about service and other conditions at E's business; letter was dated 4 days after E was removed from work schedule as bartender; and E could not have been seriously concerned about oral complaints against Ee since E neither informed Ee of it nor warned him about it]

Health Care Service-California d/b/a Valley Oaks Health Care Center JD-(SF)-198-85
[changing U supporter's work schedule to time which was less desireable to Ee, assertedly because it was mandated by State law, violative, where E presented no evidence of State law mandating such change and there was no showing of why Ee should not have been allowed to maintain her previous work schedule]

County Respiratory Products, Inc. JD-(NY)-107-85
(imposing mandatory overtime on U supporter who testified at R hearing under threat of discharge when another Ee was asking for the work, violative)

5023-1900 Closer supervision

Star Color Plate Service, Division of Einhorn Enterprises, Inc. 279 NLRB No. 082
[E's more strict supervision of Ees, shortening an Ee's lunch period and issuing written warnings to Ees for various reasons, all because E felt it was *losing control* and needed to instill stricter work rules, violative, since real reason was Ees' U activity where E cracked down only after Ees testified at *R* proceeding]

Superior Warehouse Grocers, Inc. 277 NLRB No. 010

La Reina, Inc. 275 NLRB No. 209
(violation, where Ee at tortilla maker, after testifying contrary to E's interests in Bd proceeding, was supervised more closely, warned about speaking with co-workers, reprimanded for picking dough off floor for reprocessing and quit when ordered to sign warning slip under threat of discharge, where picking up dough which had fallen on floor customary, and E's contention it reprimanded Ee because it believed she had deliberately placed rag in dough to cause E possible liability, rejected)

Kenner Printing Company, Inc. JD-(NY)-32-85
(E's conversion of oral warning system to written one following notification of U's intent to organize E's Ees not inherently destructive of Ees' rights, as alleged, where E's purpose was to document instances of Ee misconduct, and campaign was free of ULPs by E)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza JD-(ATL)-87-84
(E requiring Ee sign time in and out on maintenance work which Ee performed after E acquired knowledge of Ees U involvement, unlawful as step in effectuation of threat of threat to more closely supervise Ee)

5023-3300 More onerous conditions

Beddour, Inc. 281 NLRB No. 084
[no violation by transferring Ee who began wearing U button one week before U election from unit near polling site where objective evidence and Ee's own evaluation did not demonstrate that position to which he was transferred involved more onerous conditions than prior position, and his allegations of *harassment* by new supervisor were not supported by record absent evidence that he was subjected to significantly closer supervision or stricter timekeeping than other unit Ees]

Wayne W. Sell Corporation 281 NLRB No. 082
[E assigning Ee to drive flatbed trucks, thus ceasing to accomodate Ee by assigning him only to drive tank trucks, inasmuch as wearing of speaking and breathing tube necessitated by removal of his larynx caused Ee difficulty with tarping flatbed trucks and with dust from dump trucks, unlawful, since constituted more onerous working conditions, notwithstanding more onerous because of Ee's physical condition and assignment was motivated by U animus in view of timing after unlawful reprimand of Ee and E's unlawful threats to Ee for filing grievances; further, E's contention of business justification rejected where use of tank trucks had increased]

Williamson Piggly Wiggly, Inc. 280 NLRB No. 125
[newly appointed department manager, contrary to previous manager, leaving *to do* lists for Ees, not imposition of more onerous conditions on particular U adherent in department, particularly where she was never disciplined for failing to complete tasks]

Armon Company 279 NLRB No. 158
[assigning senior driver who had signed U card to weed cutting and sweeping tasks after he came in wearing U hat he had been told not to wear, violation]

Bonanza Sirloin Pit 275 NLRB No. 54

National Brands Beverage Division Curtice-Burns, Inc. JD-(NY)-95-86
[imposing more stringent assignment and reporting procedures on Ees because of their U activities, violative]

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza JD-(ATL)-87-84
(E requiring Ee sign time in and out on maintenance work which Ee performed after E acquired knowledge of Ees U involvement, unlawful as step in effectuation of threat of threat to more closely supervise Ee)

5023-4100 Restrictions on coffee breaks

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilaterally discontinuing practice of letting Ees take breaks and lunch periods in loading dock area in retaliation for U support, violation]

5023-6700 Allotment of work

Pierre's Vending Company, Inc. 274 NLRB No. 184
(E's discontinuance of truck repairman's Saturday work (when repairman worked as independent contractor for E) week after serving as U election observer held violative, since repairman's employment as independent contractor for E on Saturdeays was related to his status as full-time repairman and substitute driver-Ee for E during regular work week)

5026 DISCRIMINATION IN TRAINING OPPORTUNITIES

Star Color Plate Service, Division of Einhorn Enterprises, Inc. 279 NLRB No. 082
[E's refusal to provide active U supporter an opportunity to train on machine, which training would have resulted in an increase in pay, violative, where Ee was chief U protagonist and was otherwise fully capable of running machine]

The Trustees of Columbia University in the City of New York 279 NLRB No. 019
[Bd dismissed 8(a)(3) allegation that E unlawfully withdrew non-contractual tuition benefit plan in retaliation for U's successfully pursuing grievance over similar contractually required fund where proof of 8(a)(3) allegation depended on proof of 8(a)(5) allegation that Bd dismissed in deferring to arbitrator's award finding that E did not have to provide both benefits]

5028 FAILURE TO APPLY TERMS OF CONTRACT

Independent Stave Company, Inc. 278 NLRB No. 089
[Ee's refusal to comply with terms of contractual agreement to award prize to winner of Ee contest because winning Ee's grievances were subject of Bd charges, violation]

Edgar Springs, Inc. d/b/a Spring Industries 274 NLRB No. 149
(maintaining and enforcing individual lease equipment agreement with Ee whereby Ee leased certain safety equipment from E at such times as her work was covered by *project agreement* between E and U, which provided that all necessary safety equipment would be provided by E, violative)

5029 ACTIONS AFFECTING EMPLOYMENT CONDITIONS

5029-1200 Remuneration and benefits

5029-1212 Withholding of paychecks

Cassis Management Corp. 281 NLRB No. 174
[E's withholding of 2 weeks' accrued wages from Ee, unlawful, where it was done in furtherance of Ee's unlawful discharge]

Toyota of San Francisco 280 NLRB No. 093
[auto dealer's refusal to pay commissions to striking salesmen for orders placed for cars prior to strike, but delivered by strike replacements or management, unlawful, where pre-strike policy was split of commission between salespersons where order taken and delivery made by different salespersons, and reasonable interpretation of contract in regard to commissions was that if Ee terminated before delivery of car, commission not forfeited]

5029-1218 Failure to implement pension plan

John Wanamaker Philadelphia 279 NLRB No. 140
[E's suspending a customary wage review, refusing to consider and grant annual wage increases and withholding from unit Ees medical, disability and pension and profit-sharing benefits while granting same to non-unit Ees, assertedly because E was negotiating with U over those matters, violative, where E was unlawfully refusing to discuss economic matters with U at bargaining table and was thus engaged in bad faith bargaining]

5029-1220 Denial of participation in profit-sharing plan

John Wanamaker Philadelphia 279 NLRB No. 140
[E's suspending a customary wage review, refusing to consider and grant annual wage increases and withholding from unit Ees medical, disability and pension and profit-sharing benefits while granting same to non-unit Ees, assertedly because E was negotiating with U over those matters, violative, where E was unlawfully refusing to discuss economic matters with U at bargaining table and was thus engaged in bad faith bargaining]

5029-1225 Delay, denial, or withholding of wage increase

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilaterally changing customary effective date of annual increase with resulting lack of traditional increase in hourly workers' holiday pay due to Ees' U activity, violation]

Times Wire & Cable Company 280 NLRB No. 003
[E's failure to grant an annual wage increase during pendency of U election, violative, where E had established policy for at least 3 years prior to election of granting annual wage increases; further, E's contention that it had no choice but to withhold wage increase because of upcoming election, rejected, where evidence clearly showed E had attempted to place the onus for withholding on the U rather than attempting to comply with the law]

John Wanamaker Philadelphia 279 NLRB No. 140
[E's suspending a customary wage review, refusing to consider and grant annual wage increases and withholding from unit Ees medical, disability and pension and profit-sharing benefits while granting same to non-unit Ees, assertedly because E was negotiating with U over those matters, violative, where E was unlawfully refusing to discuss economic matters with U at bargaining table and was thus engaged in bad faith bargaining]

Orval Kent Food Company, Inc. 278 NLRB No. 057
[E's failure to consider its maintenance Ees for or to grant them merit increases, not violative, notwithstanding superintendant's testimony that he would have granted merit increases had U not come into shop, where E did not fail to meet its bargaining obligaton, and withholding of merit increases was for no reason other than parties failure to agree on issue]

National Micronetics, Inc. 277 NLRB No. 095
(delaying promised pay increase and job reclassification because of U campaign, violation)

Texas Bus Lines, Inc. 277 NLRB No. 075
(E's refusal to honor request by outside U currently representing Ees for scheduled wage increase found in contract with Ee committee which had previously represented Ees, not violation where Ee committee was found to have abandoned and disclaimed interest in representing Ees, and any efficacy it had had was displaced by Ees' election of outside U as their representative; further outside U had no standing to enforce contract term which it did not negotiate and whose inception preceded its formal raising of a qcr)

St. Paul's Church Home, Inc. 275 NLRB No. 170
(E's action, after receiving U's recognition demand, announcing and subsequently revoking wage increase because of U activities, unlawful, where E told Ees that wage increase had been recommended and notice was posted on bulletin board about same time announcing that across-the-board wage increase would be made effective shortly; however, Bd did not find that decision to defer consideration of proposed wage increase in wake of U organizing activities pending their outcome or that of an election necessarily violates Act)

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company JD-83-86
[tightening E's policy of pay advances at height of election campaign and refusing U adherent advance, unlawful]

Bowling Green-Warren County Community Hospital Corporation, d/b/a The Medical Center At Bowling Green, Kentucky v. N.L.R.B. 756 F.2d 41 (C.A. 6, Mar. 1985)
(neither 8(a)(1) nor 8(a)(3) violated by E's denial of wage increase to petitioned-for Ee unit while granting it to non-U Ees w/o explanation for such action, since in this type of case, in which either granting or withholding of increase could be found violative, all relevant circumstances should be considered to determine whether E intended to discourage U activity; and here GC stipulated that only reason for disparate treatment was advice of counsel, and there was no evidence contradicting such stipulation)

5029-1226 Evaluation of work

Sealnectro Corporation 280 NLRB No. 015
[giving U adherent *below average* evaluation based primarily on his talking and being out of his work area, unlawful, since such evaluation was given because of Ee's U activity]

Studio S.J.T., Limited 277 NLRB No. 126
(giving Ee false job performance evaluations because she had engaged in U organizing, violative)

Bell Halter, Inc. 276 NLRB No. 136
(evaluation of Ee's job performance as being marginal rather than satisfactory, unlawful, where Ee was known active advocate of U to which E was strongly opposed; unfavorable evaluation after Ee engaged in U activity was substantial departure from prior favorable evaluation when he was not so engaged; downgrading of Ee because of *attitude*, in absence of other explanation, was synonymous with faulting Ee for supporting U; E failed to justify downgrading by specific instances; and supervisor making evaluation had doubtful opportunity to observe Ee whose immediate supervisor considered him satisfactory)

5029-1231 Granting of wage or commission rate increase

A/Z Electric, Inc. 282 NLRB No. 057
[granting wage increases to induce Ees to reject U, unlawful]

Kokomo Tube Company 280 NLRB No. 035
[grant of across board wage increase, unlawful, since granted to undermine U campaign, where announced 1 day after E had obtained knowledge of U activity based on more than rumors, increase received by Ees after U had filed R ptn, and where previouse increases had been tied to E's profits whereas these raises wee not justified by profits]

Leeds Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014
(granting disparate increases to Ees of each facility of joint E who received substantially equivalent evaluations overall, violative, since joint E intended that Ees of one of joint Es' facilities receive substantially lower increases than their counterparts because they selected U to represent them. E intended that dissimilar result occur)

Mid-State Distributing Co., Inc. 276 NLRB No. 172
(increasing commission rate paid drivers, occurring simultaneously with unlawful termination of drivers' helpers, unlawful, where increase was substantial benefit granted drivers at outset of U campaign as incentive for them to work w/o helpers, and it was inferable that increase was granted with same purpose of discouraging U activity as in the case of termination of helpers, thereby tainting increase with such discrimination as well as being independent interference with Ees' rights)

Bowling Green-Warren County Community Hospital Corporation, d/b/a The Medical Center At Bowling Green, Kentucky v. N.L.R.B. 756 F.2d 41 (C.A. 6, Mar. 1985)
(neither 8(a)(1) nor 8(a)(3) violated by E's denial of wage increase to petitioned-for Ee unit while granting it to non-U Ees w/o explanation for such action, since in this type of case, in which either granting or withholding of increase could be found violative, all relevant circumstances should be considered to determine whether E intended to discourage U activity; and here GC stipulated that only reason for disparate treatment was advice of counsel, and there was no evidence contradicting such stipulation)

5029-1275 Reduction

International Hat Company, A Wholly-Owned Subsidiary of Interco Incorporated 281 NLRB No. 053
[setting U activist's new rate of pay for bulk cutting at level which substantially reduced his earnings, violation where E knew it was setting rate too low to maintain Ee's earnings and failed to establish that reduction in earnings would have occurred absent Ee's U activities]

Studio S.J.T., Limited 277 NLRB No. 126
(reducing Ee's pay rate by denying her opportunity to earn additional money because she had engaged in U organizing, violative)

Superior Warehouse Grocers, Inc. 277 NLRB No. 010
(reduction in hours worked in retaliation against Ee for his U sympathies, violative)

5029-1275—Cont.

Bronx Metal Polishing Co., Inc. **276 NLRB No. 031**
(reducing U activist's piecework rate of pay, and thus his earnings, so that he quit, violative as unlawful change in working conditions and as constructive discharge)

5029-1279 Denial of holiday pay

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally changing customary effective date of annual increase with resulting lack of traditional increase in hourly workers' holiday pay due to Ees' U activity, violation]

Programming & Systems, Inc. **275 NLRB No. 157**
(denying Ee (U activist) her holiday pay because she missed the 2 days preceding Thanksgiving (E had rule that teachers absent before or after holiday lose pay for the holiday) violative, since E paid 2 other teachers who were absent on Monday following Thanksgiving weekend. Instance of disparate treatment where E refused to waive its holiday of pay rule with respect to U activist)

5029-1280 Overtime; reduction, denial or change in practice or policy

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. **279 NLRB No. 091**
[E's reduction of overtime to U adherents, unlawful, where prior to U winning election they had consistently been given overtime, and where other Ees continued to be given overtime]

Lone Star Industries, Inc. **279 NLRB No. 078**
[E's changing its 23-year policy for assigning work, including overtime, after strike, from work assignments on basis of seniority to rotation system of assigning work eliminating entirely factor of seniority, violative, since (new) policy in fact had predictable and actual effect of creating conditions after strike ended in which strikers would lose advantages in job assignments they had enjoyed under E's 23-year-old work assignment policy and strike replacements would be beneficiaries of those losses. Once strike ended, entire work force lost valuable rights]

National Micronetics, Inc. **277 NLRB No. 095**
(denying overtime to U activist immediately after E learned he would serve as U election observor, violation)

Book Covers, Inc. **276 NLRB No. 170**
(discharge of Ee for refusing to work overtime as required by contract, violative, as practice was to excuse Ees from working assigned overtime if supervisor presented with reasonable excuse, and excuse which Ee gave, and which lay behind motivation to fire Ee, was that Ee was going to labor board to file charges against E; furthermore, no Ee ever disciplined beyond receiving oral warring before)

Brocal Corp. d/b/a Alert Medical Transport **276 NLRB No. 066**
(relieving U adherent of requirement to have his timecards signed before performing overtime work, violative where such action was done to discourage Ee's U activity)

M. W. Kellogg Constructors, Inc. **273 NLRB No. 134**
(refusing to assign unscheduled overtime work to travelers because they were not members of local U, violative)

County Respiratory Products, Inc. **JD-(NY)-107-85**
(imposing mandatory overtime on U supporter who testified at R hearing under threat of discharge when another Ee was asking for the work, violative)

15th Avenue Iron Works, Inc. **JD-(NY)-141-84**
(reducing overtime of U adherents, violative)

5029-1284 Sick pay; denial, withholding, or change in practice or policy

Texaco, Inc. **273 NLRB No. 164**
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

Van Gas, Inc. **JD-(SF)-33-85**
(changing sick leave policy to require 2 day waiting period for paid sick leave to begin rather than paying from first day Ee sick, unlawful; contention change necessitated because of abuse held pretext where E failed to produce evidence of abuse, in view of U animus and fact policy changed 2 days after U won election)

5029-1287 Change in basis of payment

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. **281 NLRB No. 117**
[utilizing break in service rule to deprive reinstated economic strikers of their prior seniority, treating them as new Ees, and assigning them new hourly wage rate different from that earned before strike, unlawful]

International Hat Company, A Wholly-Owned Subsidiary of Interco Incorporated **281 NLRB No. 053**
[setting U activist's new rate of pay for bulk cutting at level which substantially reduced his earnings, violation where E knew it was setting rate too low to maintain Ee's earnings and failed to establish that reduction in earnings would have occurred absent Ee's U activities]

Toyota of San Francisco **280 NLRB No. 093**
[auto dealer's refusal to pay commissions to striking salesmen for orders placed for cars prior to strike, but delivered by strike replacements or management, unlawful, where pre-strike policy was split of commission between salespersons where order taken and delivery made by different salespersons, and reasonable interpretation of contract in regard to commissions was that if Ee terminated before delivery of car, commission not forfeited]

LeRic Floor Covering, Inc., and Richard E. Fackler d/b/a REF Carpet Service and Installation Alter Egos **JD-79-85**
(no unlawful failure of unionized E to pay contractual wage rates and benefit contributions for part of Ees' hours of work for non-U E, where Es were neither *alter egos* nor joint Es, and Ees' work for non-U E was not a disguise for portion of work for unionized E)

5029-1400 Retirement benefits; denial, withholding, or change in practice or policy

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[lockout of Ees in order to further E's bargaining position after reaching impasse in contract negotiations with U held not equivalent to layoff and, consequently, denial of pension withdrawal benefits to Ees throughout lockout period held not unlawful, since retirement plan, providing for pension withdrawal rights to Ees *laid off temporarily for lack of work*, did not include locked out Ees]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[denial of pension withdrawal benefits during period of scheduled 2-week holiday layoff which was cancelled because lockout occurred contemporaneously with scheduled layoff, not unlawful, where E viewed lockout from its inception as being of indefinite duration; and timing of lockout first working day after U rejected E's latest contract proposal raised inference that purpose of lockout was to place economic pressure on U to accept E's bargaining position and not to overlap with prescheduled layoff so as to deprive Ees of benefits to which they otherwise would have been entitled]

Enterprise Aggregates Corporation **276 NLRB No. 011**
(no violation when E who had paid retirement benefits previously refused to pay these benefits to strikers, in view of failure by GC to make out prima facie case that denial of benefits was based on Ees' protected activities GC relied solely on earlier case against E on same issue in which Bd found that E's refusal to pay benefits was based on E's animosity towards participants in strike. Absent any other evidence, Bd refused to infer same proximate cause in instant case especially in light of passage of more than year from end of strike and E ceasing operations until Ees requested benefits)

5029-2500 Hours

5029-2510 Change in policy regarding observance of hours of work

Thompson's Gas, Inc. and Del-Ro Transports, Inc. **274 NLRB No. 092**
(alleged selective docking of pay by disparate application of grace period allowed for tardiness of Ee who had joined U, filed ULP charge, and cooperated in prosecution of U's ULP charges, not unlawful, where comparison of Ee's time sheets with those of similarily situated Ees showed that E's application of grace period allowance was not selective nor arbitrary but was uniform and consistent; and fact that E's office workers enjoyed different grace period did not evidence discriminatory motive)

Cassidy Cleaning, Inc. **JD-239-86**
[E's shortening of grace period allowed for reporting to work, having economic impact on Ees by imposing loss of half hour's pay for failing to comply with grace period, held violative of 8(a)(1) as well as 8(a)(3), in view of timing of E's action w/i month of U's overwhelming U election victory, coupled with animus displayed on other occasions; patent falsity of E's proffered excuse; and E's prior statement about tightening up on tardiness and attendance in event of U victory]

5029-2525 Change in work schedule

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[scheduling U adherent to work on her regular day off, not unlawful, where day was day before Thanksgiving and expected to be exceptionally busy day]

Consolidated Edison Co. of New York, Inc. **280 NLRB No. 039**
[transfer of Ee, active participant in dissident U group, to less desirable time and work site, not violative since there was no substantive evidence to explain why E would chose to discriminate against Ee at time of transfer, as Ee had been engaging in his dissident activities for about 5 years w/o recrimination. Ee an experienced inspector, replaced inexperienced inspector on transfer]

Michiel's Inc., d/b/a La Saint Jean Des Pres Restaurant **279 NLRB No. 017**
[E's requiring Ees (waiters) to work lunches, violative, where new rule was announced one day after election and E had always accomodated Ees' various schedules before election]

Budget Rent A Car of Washington, Inc. **276 NLRB No. 032**
(giving U activist less favorable work schedule, assertedly to insure success of E's newly instituted operation, violative)

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(changing duties and/or hours of work of known active U supporters, unlawful, where such actions were not consistent with E's historical practice; changes were made immediately following inception of U's organizing campaign; E engaged in 8(a)(1) conduct clearly evidencing U animus; and E failed to rebut GC's *prima facie* case that E would have made changes in absence of Ee U activity)

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(E unlawfully changed known U supporter's hours and also disciplined and suspended her for overextending her break period, where Ee had unblemished disciplinary record, nothing was previously said or done if she was late or absent prior to her U activity, changes and discipline occurred shortly after inception of U organizing activity; warning was given to Ee after E received U's demand for recognition, and E failed to establish that it would have taken some actions in absence of Ee's U activity)

Chicago Rivet & Machine Co. **275 NLRB No. 178**
(transferring leading U adherent from second to first shift resulting in his loss of second shift premium and placing him in position such that he might be forced to choose between his job and his farm, violative where it was of no economic benefit to E but retaliation for Ee's U activities)

Wells Fargo Armored Service Corp. **JD-(SF)-19-86**
[changing U activist's work schedule from day shift to night shift, violation in light of E's U animus]

Health Care Service-California d/b/a Valley Oaks Health Care Center **JD-(SF)-198-85**
[changing U supporter's work schedule to time which was less desireable to Ee, assertedly because it was mandated by State law, violative, where E presented no evidence of State law mandating such change and there was no showing of why Ee should not have been allowed to maintain her previous work schedule]

5029-2550 Reduction

Advertiser's Manufacturing Company **280 NLRB No. 128**
[reducing hours in workweek due to Ees' support of U, violation where E failed to prove economic necessity]

Terraillon Corp. **280 NLRB No. 037**
[reduction of Ee's hours, unlawful, since for his U adherence; E's economic defense rejected where it retained high school student who was part time Ee who had only worked short time, rather than maintaining Ee's hours]

Armon Company **279 NLRB No. 158**
[reducing hours of senior drivers who had signed U card, violation]

Larry Chapman, A Sole Proprietor, d/b/a Farm Boy Food Mart **278 NLRB No. 058**
[reducing Ee's hours, not violation where reduction implemented prior to onset of union activities and was due to Ee's derogatory remarks about E]

BASF Wyandotte Corporation **278 NLRB No. 028**
[reducing U representatives' paid working hours from eight to six or four hours daily, violation where it resulted from E's abrogation of U time clause allowing U representatives to spend four paid hours daily to conduct U business]

Storall Manufacturing Company, Inc. **275 NLRB No. 039**
(reduction in work hours to make good prior warning that E would make it rough on Ees if U came in, violative)

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[progressively reducing hours because of her known U adherence, violation]

Nick Gryfakis and Han Nyunt, A Partnership d/b/a N & H Enterprises d/b/a Abernathy's Restaurant **JD-(SF)-33-86**
[issuing reprimand note to U activist, for complaining about unlawful reduction in her hours, violation]

Continental Garage Management Corp. **JD-(NY)-106-85**

5029-2900 **Health and welfare benefits; denial, withholding, or change in practice or policy**

Toyota of San Francisco **280 NLRB No. 093**
[implementation after strike of health plan for represented Ees which was already in effect for nonrepresented Ees, not unlawful, where motivated by business considerations, rather than anti-U considerations]

John Wanamaker Philadelphia **279 NLRB No. 140**
[E's suspending a customary wage review, refusing to consider and grant annual wage increases and withholding from unit Ees medical, disability and pension and profit-sharing benefits while granting same to non-unit Ees, assertedly because E was negotiating with U over those matters, violative, where E was unlawfully refusing to discuss economic matters with U at bargaining table and was thus engaged in bad faith bargaining]

LeRic Floor Covering, Inc., and Richard E. Fackler d/b/a REF Carpet Service and Installation Alter Egos **JD-79-85**
(no unlawful failure of unionized E to pay contractual wage rates and benefit contributions for part of Ees' hours of work for non-U E, where Es were neither *alter egos* nor joint Es, and Ees' work for non-U E was not a disguise for portion of work for unionized E)

5029-3700 **Bonuses**

5029-3733 Discrimination in regard to

Sahara Datsun, Inc. **278 NLRB No. 148**
[unilaterally discontinuing variable weekly incentive bonuses for three weeks in retaliation for representation ptn, violation]

5029-3767 Withholding of

Southern Maryland Hospital Center **276 NLRB No. 133**
(E's denial of a yearend bonus to all Ees on gounds that it could not afford it and a previous bonus was simply a gift and did not establish past practice, violative, since such denial was in reprisal for Ees' prior U organizing activities where E's profits had not changed at all over the year, E published recruitment advertisements and brochures listing a yearend benefit as a bonus and E told Ees it intended to provide them with a *Christmas gift*)

Storall Manufacturing Company, Inc. **275 NLRB No. 039**
(unilaterally denying Ees their usual Christmas bonus because of their U activities, violative)

Advertisers Manufacturing Company **275 NLRB No. 019**
(E's payment of year-end bonus, assertedly unlawfully discontinued, held to constitute wages and terms and conditions of employment, notwithstanding absence of formula for determining bonus amount or of prior formal pronouncement or fact that amounts varied, where bonus was uninterruptedly paid for 30 years; Ees considered bonus as established benefit and had continued expectation of receiving it; and nonpayment of bonus in proceeding year did not establish that bonus constituted discretionary gift)

Advertisers Manufacturing Company **275 NLRB No. 019**
(while payment of year-end bonus, assertedly unlawfully discontinued, was established condition of employment, it id not constitute accrued bonus, where Ees qualified for its payment if employed at time of distribution, there was no past practice of set time for its distribution, and no Ee leaving employment prior to distribution period had received bonus as earned for work previously performed)

Advertisers Manufacturing Company **275 NLRB No. 019**
(discontinuing payment of year-end bonus, not unlawful, where E's statement that due to split work force as result of strike it would not distribute bonus was too ambiguous to amount to admission that bonus was not being paid because some Ees had engaged in strike, there was no apparent disparate treatment of strikers or favored treatment of nonstrikers, and withholding of bonus payment did not constitute unlawful enhancement of bargaining position evidencing discrimination nor was it inherently destructive of Ees' rights)

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**
[failure to pay Christmas bonus, not violative, since E had paid bonus for first time in prior year which did not establish policy or practice of yearly bonus since bonuses are discretionary in nature, they must be given over significant period of time so that it would be clearly apparent to objectively reasonable E that his grant or denial of benefit at time action taken conforms to status quo]

5029-4300 **Vacation pay, policy or practice**

5029-4300—Cont.

Government Employees (Office Employees, Local No. 2) 278 NLRB No. 055
[U-E's discriminatory and unilateral withholding of scheduled annual leave from Ees participating in strike, violation, since inherently destructive of significant employee rights]

Medallion Kitchens, Inc. 275 NLRB No. 008
(ceasing prior practice of paying accrued vacation and random day benefits to Ees who were not actively employed, which included economic strikers, because of strike, violative; E's contention that it declared moratorim on use of accrued vacation and random days to prevent reduction in production no defense to accrued benefits and denial of payment for such accrued benefits to strikers who had terminated their employment where denial was not due to failure to satisfy contractual preconditions, as contended by E, but because of their striking)

5029-4500 Withdrawal of privileges

Port Plastics, Inc. 279 NLRB No. 050
[E's implementation of change in telephone procedures by no longer permitting Ees to answer personal telephone calls, immediately after U won election, violative]

Auburn Foundry, Inc. 274 NLRB No. 192
(revoking agreement with Ee that, according to past practice he might alter his work schedule, violative where it was due to Ee's filling grievance against his foreman for performing unit work)

Sears, Roebuck and Co. 274 NLRB No. 055
(requiring Ees to take vacation or personal holiday rather than leave w/o pay for time spent attending Bd hearing to assist counsel for GC and charging party, violative, notwithstanding fact that E did not take action to discourage Ees from assisting in presentation)

5029-4800 Grievance procedures

Electronic Data Systems International Corporation 278 NLRB No. 014
[suspension and discharge of Ee who was major solicitor of U authorization cards, not unlawful, since for insubordination rather than for refusal to meet with supervisor w/o witness inasmuch as refusal was not protected under *Weingarten* where meeting was intended for purpose of informing Ee of disciplinary decision already made, and Ee had no reason to believe otherwise, there was no certified or recognized U, and discharge was not in retaliation for U activity where U activity not mentioned in relation to warning to be given at meeting or in connection with previous warnings]

5029-5000 Change in business methods or operations

5029-5050 Subcontracting

Airport Distributors, Inc. 280 NLRB No. 091
[subcontracting unit work and refusing to recall laid off Ees to perform such work, unlawful, in view of E's anti-U animosity, and desire, intent and practice of retaliating against Ees for their U activities; fact that immediately following strike for recognition, E drastically increased subcontracting practice; and E's failure to sustain burden of showing that subcontracting would have been inevitable]

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013

Leeward Nursing Home 278 NLRB No. 157
[no unlawful subcontracting by E where E seriously investigated possibility of subcontracting for economic reasons prior to obtaining knowledge of U activity]

Service Merchandise Company, Inc. 278 NLRB No. 023
[E's discharge of drivers and warehouse Ee who had been driver and subcontracting driving operations, unlawful, where for support of *drivers' association* and threat to seek representation by outside U, in view of E's expressed opposition to outside U, summary nature of discharges, and secrecy of negotiations for subcontracting; contention subcontracting motivated by economic considerations, rejected, where subcontracting resulted in 25% increase in cost even though fewer miles driven over private driver operation]

Griffith-Hope Company 275 NLRB No. 073
(although finding that E violated 8(a)(5) by unilaterally subcontracting unit work, Bd held subcontracting did not violate 8(a)(3) since, while E subcontracted work to avoid paying contractual wage and benefits, its unlawful action was not *inherently destructive* of Ees' Sec. 7 rights, particularly since there was no U animus)

Ausable Communications, Inc. 273 NLRB No. 166
(cable TV company's subcontracting construction work and laying off Ees, unlawful, since in retaliation for U activity, rather than as result of E's policy against performing construction work with its own Ees, where E had known its Ees were engaged in construction work, and in view of precipitous nature of layoffs)

5029-5075 Partial closing of business

Purolator Armored, Inc. v. N.L.R.B. 764 F.2d 1423 (C.A. 7, July 1985)
(notwithstanding operation was losing money, E violated Act by terminating said operation as E was willing to absorb these losses until U won election which shows that economics was not foremost in E's decision, and as U elected as operation's representative was same as one that represented other E units and there was frequent interchange with Ees, the closure had chilling effect on unionism)

5029-5087 Reorganization of work system

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[E's unilateral change from permanent assignment of nurses aides and unit secretaries to certain wing to rotating assignments from one wing to another during strike at its alcohol and drug treatment facility, and continuing policy after end of strike, not violative of Section 8(a)(3), where work no more onerous or different in one wing than other, and after strike system applied equally to strikers and non-strikers; however, change was held violative of Section 8(a)(5)]

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013
[E's unilateral *reclassification of its (motel) desk clerks to supervisory positions, violative, where conduct, coupled with E's other ULPs and coinciding with other violative layoffs effectuated decimation of unit. Evidence discloses no* justifiable reason for such conduct and record evidence suggests there would be 1:1 ratio of supervisors to unit Ees]

Woodline Motor Freight, Inc. 278 NLRB No. 152
[E's change in policy which allowed drivers to choose from available runs on the basis of seniority to requiring drivers to take whatever run was assigned, unlawful, since done in response to Ees' support of U and because of recent issuance of ULP complaint alleging unlawfully reduced hours of work]

5029-6200 Discontinuance of employee benefits

5029-6214 Coffee break

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilaterally discontinuing practice of letting Ees take breaks and lunch periods in loading dock area in retaliation for U support, violation]

5029-6222 Credit cards

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047
(E ordering U adherents to turn in company trucks and gasoline credit cards, unlawful, since for their U activities where business justification advanced for first time at trial and in view of precipitate manner in which action taken)

Thompson's Gas, Inc. and Del-Ro Transports, Inc. 274 NLRB No. 092
(E's imposition of finance charges for personal purchases on E's charge account by Ee who had joined U, filed ULP charges, and cooperated in investigation and prosecution of U's ULP charges, not unlawful, where E's action, directed at Ees who failed to make satisfactory progress in paying off their accounts, treated Ee like other Ees in this regard; and such action constituted legitimate exercise of managerial prerogative and was reasonable business decision which was neither arbitrary nor discriminatory)

5029-6250 Payroll advances

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company JD-83-86
[tightening E's policy of pay adavances at height of election campaign and refusing U adherent advance, unlawful]

5029-6272 Company transportation and/or parking space

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047
(E ordering U adherents to turn in company trucks and gasoline credit cards, unlawful, since for their U activities where business justification advanced for first time at trial and in view of precipitate manner in which action taken)

5029-6274 Disability benefits

Texaco, Inc. 273 NLRB No. 164
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

5029-6287 Disadvantageous change in conditions connected with job

Advertiser's Manufacturing Company **280 NLRB No. 128**
[discontinuing practice of permitting U adherent to drink soda at his work station required for medical reasons, violation as it was in retaliation against Ees for their support of U and that its conduct was motivated solely by antiunion concerns]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[discontinuing receiving clerk's card system due to U activities, violation as it was in retaliation for Ees support of U]

Control Broadcast Company **280 NLRB No. 056**
[changing U activist's working conditions by assigning him less skilled job and split shift for his U activities and testifying at Bd hearing, violation]

Continental Garage Management Corp. **JD-(NY)-106-85**
(imposing more onerous working conditions because of Ees' U activities, violative)

5029-6288 Use of company telephone, photocopying machines, etc.

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally ceasing practice of letting Ees make free local telephone calls and receive telephone calls during working hours, violation]

5029-6300 Loan policy

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. **279 NLRB No. 091**
[E's refusal to give proceeds from bank loan to Ee for whom he had cosigned loan application, unlawful, where refusal was due to intervention of U organizing drive and coming election, and was in direct conflict with past policy of E]

Thompson's Gas, Inc. and Del-Ro Transports, Inc. **274 NLRB No. 092**
(E's imposition of finance charges for personal purchases on E's charge account by Ee who had joined U, filed ULP charges, and cooperated in investigation and prosecution of U's ULP charges, not unlawful, where E's action, directed at Ees who failed to make satisfactory progress in paying off their accounts, treated Ee like other Ees in this regard; and such action constituted legitimate exercise of managerial prerogative and was reasonable business decision which was neither arbitrary nor discriminatory)

15th Avenue Iron Works, Inc. **JD-(NY)-141-84**
(E held to have unlawfully withheld loan from Ee, contrary to past practice, because of Ee's U activities where, upon receiving bank check made out to Ee (which represented proceeds of bank loan to Ee for which E cosigned) E returned check to bank and cancelled the loan in accordance with E's decision to no longer lend money to Ees if U won election)

5029-6400 Rules

Southern Maryland Hospital Center v. N.L.R.B. **801 F.2d 666 (C.A. 4, Sept. 1986)**
[discipline for violation of E's (Hospital's) no solicitation rule *not an ULP*, where E undisputedly showed (1) violation of rule, (2) failed attempt to resolve dispute and possibly, withdraw discipline, and (3) final disciplinary actions in proportion to conduct involved, even though E had allowed some innocuous activity, such as sale of some raffle tickets, Girl Scout cookies and cosmetics by Ees w/o reprisal under E's rule]

5029-6500 Privileges

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[E's institution, shortly before end of strike, of restrictions on smoking and drinking soft drinks and coffee during reporting time at medical facility i.e. time during which patients' records turned over from outgoing to incoming shift, not violative of Sec. 8(a)(3); contention that change discriminatory where did not apply to doctors and retaliatory against striking nurses, rejected, inasmuch as restrictions applied equally to strikers and non-strikers, change not timed to retaliate against strikers since end of strike not w/i control of E, and justified by prevention of staining or burning of medical records]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally discontinuing practice of letting Ees take breaks and lunch periods in loading dock area in retaliation for U support, violation]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[barring leading U activists from parking in front row of parking lot in retaliation for U activities, violation in context of other ULPs harassing them, but insufficient to reach level of unilateral change about which E was obligated to bargain]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally discontinuing practice of allowing Ee who wore U T-shirt to drink soda at his work station for medical reasons, violation but not unlawful unilateral change where it only affected one Ee]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally restricting known U supporters' running of football pools to prework, lunch, and break times while continuing to allow non-U supporters to run pools during working hours, violation but not unlawful unilateral change where it only affected two Ees]

Harold Weinz; et al., A Co-Partnership d/b/a Sands Maid and AMM, Inc. **280 NLRB No. 013**
[E's unilateral elimination of Ees' check cashing privileges, violative, since action came upon heels of U designation as (Ee) bargaining agent and for no proferred business reason]

5029-6800 Participation in discriminatory administration of insurance, pension, and other benefit plans

Mead Packaging **273 NLRB No. 181**
(E's unilateral discontinuance of insurance and pension benefits to U officers on leaves of absence for purpose of holding U office, not violative; granting such benefits to U officers alone under provision of contract would violate 8(a)(3) and 8(b)(2), since granting such benefits to U officers did not further effective administration of E's bargaining agreement where U officers were on U's payroll and acted as representatives of Ees at other Es premises, engaging in engotiations and arbitrations, and generally monitored compliance with U's bargaining agreements and further, granting of such benefits was not available to other Ees on an equal basis)

5029-7500 Discipline

The Acme-Arsena Co., Inc. **276 NLRB No. 144**
(profane and foul language or what is normally considered discourteous conduct while engaged in protected activity does not justify disciplining Ee acting in representative capacity)

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(E unlawfully changed known U supporter's hours and also disciplined and suspended her for overextending her break period, where Ee had unblemished disciplinary record, nothing was previously said or done if she was late or absent prior to her U activity, changes and discipline occurred shortly after inception of U organizing activity; warning was given to Ee after E received U's demand for recognition, and E failed to establish that it would have taken some actions in absence of Ee's U activity)

Quality Rolls, Inc. **JD-189-86**
[E's unilateral change in eliminating progressive system of discipline held not unlawful retaliation for Ee support of U, even though change was detrimental to Ee interests, and occurred only few weeks after election compaign in which E opposed U, where E nevertheless met its burden of showing that E's action would have occurred even in absence of U drive]

Burlington Industries, Inc. **JD-(ATL)-13-85**
(counseling U advocate not unlawful since it was not part of disciplinary process but merely attempt to correct Ee's work performance, notwithstanding permanent record kept of all counseling)

5029-7525 Placing employee on probation

Baddour, Inc. **281 NLRB No. 084**
[giving U activist warning and placing him on probation because he could not get to work because of car trouble, rather than giving him day off w/o pay or vacation day as was customary, violation]

5029-7533 Reprimand or warning

Trover Clinic **280 NLRB No. 002**
[repremanding known U advocate and subsequently discharging her, assertedly because of complaint received concerning Ee's handling of patient's itemized account statement unlawful, where E departed from its customary manner of responding to patients' complaints concerning Ee behavior or work performance by failing to investigate matter and to seek explanation from Ee even though substantial confusion existed among Ees concerning procedure for production of itemized statements, and E did not follow its policy of counseling Ee and giving series of reprimands before reaching discharge stage]

Superior Warehouse Grocers, Inc. **277 NLRB No. 010**

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(issuance of written reprimand admonishing Ee about her poor attitude and work habits, not unlawful, where warning was issued solely because of poor condition in which Ee left her work place when she left for the day and not because of unlawful retaliation for Ee's threat to seek U's assistance in her sechduling dispute with E)

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's warnings to known U activist, assertedly for misuse of plant telephone, not violative where it was E's failure to cooperate, and not misuse on Ee's part, which was responsible for large number of calls Ee made in his unsuccessful attempt to get information about Ees' insurance plan and calls made with approval of supervisor; real reason was warnings resulted from Ee's U activities)

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's issuing warnings w/o cause to six of nine Ees in bargaining unit because they selected U, violative)

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5029-7533—Cont.

Roadway Express, Inc. **274 NLRB No. 052**
(E's issuance of purportedly work-related warning letters to U steward who had filed numerous charges against E with Bd and had testified at Bd hearing, and had also protested E's proposal to institute flexible work week, unlawful, where E viewed steward as U activist and harbored animus toward him and his U and protected activities, letters were issued w/o justification, and in one instance supervisor purposefully sought reason for issuing warning letter to steward)

National Brands Beverage Dividison Curtice-Burns, Inc. **JD-(NY)-95-86**
[issuing disciplinary warnings to Ee because of his U activities, violative]

Italo II Casa Romana Restaurant, Inc. **JD-(SF)-50-86**
[E's establishment of new disciplinary system and its issuance of disciplinary warnings to 3 Ees, violative where E failed to demonstrate that, absent Ees' recent selection of U, it would have taken disciplinary action]

County Respiratory Products, Inc. **JD-(NY)-107-85**
(E's president's issuing disciplinary warning notice to Ee because he believed Ee had signed authorization card and was bringing in U and further threatening to discharge him if he did not sign notice, violative)

5029-8100 Assignment of work; withdrawals of, additions to, etc.

Wayne W. Sell Corporation **281 NLRB No. 082**
[removing Ee's name from dispatch roster after threatening him for grievance activity and assigning him more onerous work, unlawful, since motivated by U animus]

Lone Star Industries, Inc. **279 NLRB No. 078**
[E's changing its 23-year policy for assigning work, including overtime, after strike, from work assignments on basis of seniority to rotation system of assigning work eliminating entirely factor of seniority, violative, since (new) policy in fact had predictable and actual effect of creating conditions after strike ended in which strikers would lose advantages in job assignments they had enjoyed under E's 23-year-old work assignment policy and strike replacements would be beneficiaries of those losses. Once strike ended, entire work force lost valuable rights]

Eskaton Sunrise Community **279 NLRB No. 012**
[refusal to assign shifts desired by U adherents, assertedly due to higher seniority of Ees transferred from another facility of E who filled positions on shifts in question, unlawful, where but for E's scheme to defeat U there would have been no need for transfers in the first place; and E presented no evidence other than self-serving declaration regarding his seniority defense]

T & T Machine Company, Inc. **278 NLRB No. 139**
[sending U supporter home for alleged lack of work rather than, as previously, giving him temporary assignments such as grass cutting or car washing at no reduction in pay, but offering to retain Ee if he *changed sides*, unlawful]

Penn Jersey Paper Co. **275 NLRB No. 064**
(limiting 2 nonunit Ees, who had been performing unit work, to nonunit sweeping job, unlawful, where E's action was prompted by E's learing of 1 Ee's letter to U requesting U action to admit Ee to membership and to obtain *U wage* for him; even apart from any participation by second Ee in writing of letter, E was thereby engaged in protected activity; coercive tendency of E's action was aggravated by threat to discharge both Ees; and E failed to present any legimate and substantial business justification for its action)

Pierre's Vending Company, Inc. **274 NLRB No. 194**
(E's discontinuance of truck repairman's Saturday work (when repairman worked as independent contractor for E) week after serving as U election observer held violative, since repairman's employment as independent contractor for E on Saturdeays was related to his status as full-time repairman and substitute driver-Ee for E during regular work week)

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Lawing Company **JD-83-86**
[E's refusal to offer to let leading U activist to make delivery trips, unlawful, where E exhibited marked U animus and indicated low opinion of Ee because of his U activity, and E's claim that it sought to contact Ee to offer him trips was not credited]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[assigning known U adherent employed as bartender to less desirable banquet work, and later discharging him, assertedly because of complaints by waitresses and by customer, unlawful, where customer's reference to Ee was made in letter containing general complaint about service and other conditions at E's business; letter was dated 4 days after E was removed from work schedule as bartender; and E could not have been seriously concerned about oral complaints against Ee since E neither informed Ee of it nor warned him about it]

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(unlawful discharge of Ee w/lowest seniority and working 1 shift per week when E reinstituted old policy that Ees work minimum of 2 shifts per week and took shift from him and gave it to senior Ee who also worked 1 shift, in view of E's animus, no explanation why E delayed 5 months before implementing decision to return to old shift policy, and knowledge of Ee's U inclination inferred from E's knowledge that Ee's brother, also Ee, was U adherent, smallness of workforce (21 Ees) and supervisor at time of his termination voiced concern over U considerations

Coal Systems, Inc. and W. Julian Scalf Engineering & Construction Co., Inc. **JD-452-84**
(E's reassigning job to another company, found alter ego to first E herein, because Ees had filed contractual grievances against former E, violative)

5029-8400 Revision of absenteeism and tardiness rules

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally instituting more restrictive tardiness policy as result of Ees' support of U, violation]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally instituting new rules as to Ees' taking time-off for personal reasons to penalize Ees for choosing U, violation]

5029-8700 Refusal to grant leave

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[E's denial of Ee's leave request and Ee's request to change shifts with another Ee in order to obtain leave, violative, where E had singled Ee out as U supporter and such permission was freely given to other Ees]

Terrailon Corp. **280 NLRB No. 037**
[E's vice-president revoking approval of Ee's previously authorized vacation, and discharging her when she took vacation as planned, unlawful, since for her U adherence rather than because she was needed for audit during vacation period, where approval of Ee's vacation dates was reaffirmed after audit scheduled, and only withdrawn after U demanded recognition, and Ee had performed her functions in connection with audit prior to requested vacation date]

5029-8900 Transfer or refusal of transfer

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[failure to recall former economic strikers to available positions on machine operating crew and to transfer reinstated former striker to fill out such crew, unlawful, where E decided to bring in outside crew and then attempted to justify its action after the fact by claiming that unreinstated strikers were not qualified]

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place **281 NLRB No. 088**
[transfer of U adherent from housekeeping (cleaning) to laundry at convalescent hospital, unlawful, where purpose was to isolate Ee from other Ees, notwithstanding E's contention transfer was due to Ee's poor work in cleaning, and need for additional help in laundry where Ee had prior experience, since these reasons pretextual where Ee had recently received favorable evaluation and wage increase, Ee was open U supporter, and transfer took place soon after E learned of her U activities, and further E had told Ee not to attend 2 Ee meetings]

Saulsetre Corporation **280 NLRB No. 015**
[transfer of Ee who was inspector to smaller department where he could influence fewer Ees, unlawful, since for his U activities of handing out U authorization cards and literature]

Raytheon Missile System Division, Raytheon Company **279 NLRB No. 035**
[E's transfer of compensation assistant in E's industrial relations department to position in production control department, not violative where Ee had current legitimate access to confidential labor relations information at time her pro-U sympathy first became known to E; E's decision to transfer her was predicated on more than conjecture, but rather on reasonable apprehension, based on her pro-U activity, that she might compromise confidential labor relations information]

United States Steel Corporation **279 NLRB No. 004**
[E's refusal to hire Ee laid off from one of its facilities to work at another of its facilities, unlawful, since for his activities as U grievance chairman where his supervisor's reference to grievance chairman as *troublemaker* when speaking to foreman at facility to which he had applied for transfer connotated his activity of filing grievances, and this characterization was relied upon in rejecting Ees request for transfer. Use of word alone, not violative, but must look at context in which used]

Eskaton Sunrise Community **279 NLRB No. 012**
[refusal to assign shifts desired by U adherents, assertedly due to higher seniority of Ees transferred from another facility of E who filled positions on shifts in question, unlawful, where but for E's scheme to defeat U there would have been no need for transfers in the first place; and E presented no evidence other than self-serving declaration regarding his seniority defense]

Safelite, Division of Lear Siegler, Inc. **277 NLRB No. 080**
(E's layoff of, refusal to transfer and refusal to recall 6 Ees to new plant located only a few miles from old plant, assertedly for reasons of operational

5029-8900—Cont.

efficiency, violative, since real reason was Ees' U affiliation where E attempted to mislead U representing Ees at old plant that there were no plans to open new plant, E made clear when it announced opening of new plant that it would be *non-union* and no U activity would be tolerated and after E laid off 6 Ees, it immediately hired 6 new inexperienced Ees for new plant)

Safelite, Division of Lear Siegler, Inc. **277 NLRB No. 080**
(E's refusal to transfer and recall 4 Ees to new plant located only a few miles from old plant, violative, notwithstanding Ees were laid off from old plant for nondiscriminatory reasons, where E's unlawful motive was demonstrated by statements that it wished to keep U out of new plant, E promised to increase wages at new plant if Ees abandoned U and E gave absolutely no reasons for its failure to transfer Ees to new plant)

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(transfer of U activist to special research project which was tedious and produced eye fatigue and headaches and was thus regarded as less desirable than her previous work, violative)

Pillod of Mississippi, Inc. **275 NLRB No. 117**
(E's refusal to transfer U activist out of department that admittedly was giving Ee serious medical problems, violative, where E routinely transferred other Ees from department when they had problems and Ee was transferred into undesirable department only a few days after she issued an *open letter* to Ees in support of U)

United Artists Eastern Theatres, Operating Valentine Theatre **275 NLRB No. 025**
(telling white Ees who were U supporters that E would transfer them to a part of town where they would be a distinct minority, violative)

The Kent Corporation **275 NLRB No. 023**
(E's transferring U advocate out of his department, assertedly for warnings that were over year old, violative where E directed transfer shortly after it observed Ee a known U activist, pick up 10 or 12 election notices from Bd agent and take those notices into work)

Florsheim Shoe Shops, Inc. **275 NLRB No. 015**
(transfer of shoe salesman and shop steward to less desirable sales location, violative where E failed to rebut GC's prima facie case of unlawful motivation; Bd found that statistics E stated it used in deciding to transfer Ee covered time period *after* it made its decision)

Felbro, Inc. **274 NLRB No. 186**
(eliminating interdepartmental transfers in response to Ees' U activity violative, where E's past practice was to allow Ees to freely transfer from department to department)

South Nassau Communities Hospital **274 NLRB No. 179**
(transfer of U activist who was nurse at hospital to different unit, not unlawful, since transfer was because of difficulties in working relationship with supervisor where E judged situation was not going to improve, had reached personal level, and caused great deal of stress, after Ee had failed to inform supervisor of patient's death, assumed duties belonging to supervisor, challenged supervisor's decision regarding vacation leave, and E's past practice was to transfer Ees where personality conflicts had arisen either among Ees or between E and supervisor)

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(E unlawfully transferred driver from short haul to long haul runs for engaging in protected activity of complaining about E's interpretation of contract regarding payment of certain fee by drivers; transfer which is discriminatorily motivated is unlawful regardless of whether transfer adversely affects wages or other working conditions of Ee)

Pacific Bell **JD-(SF)-113-86**
[transfer of Ee, allegedly because of her good faith attempts to invoke seniority provisions of contract, not unlawful, since Ee was not engaged in concerted activity because she was not in unit covered by contract she was invoking, and because invocation of contract by her as non-unit Ee was not integrally related to collective action]

The Evening News Association **JD-24-86**
[refusal to transfer and promote Ee to accomodate her desire to continue to work for her present supervisor when during reorganization he was transferred to new position, not unlawful, since refusal was for business reasons rather than for Ee's U activities, where another Ee had been performing duties of secretary to individual who held position to which Ee's supervisor being transferred; further, to accomodate Ee's desire would require redistribution of clerical responsibilities, and Ee had never previously applied for promotions that were available, nor been promised promotion]

5029-9700 Change in job duties or in job classifications

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[E's unilateral reassignment of duty of recording patients' temperatures, pulse rates and respirations from unit secretaries to nurses aides upon beginning of strike and continuing policy after end of strike, not violative of Section 8(a)(3), since change applied to both strikers and non-strikers, and was justified by nurses aides greater availability at early morning hour which allowed recordation prior to doctors' rounds; however, change was violative of Section 8(a)(5)]

Wayne W. Sell Corporation **281 NLRB No. 082**
[E assigning Ee to drive flatbed trucks, thus ceasing to accomodate Ee by assigning him only to drive tank trucks, inasmuch as wearing of speaking and breathing tube necessitated by removal of his larynx caused Ee difficulty with tarping flatbed trucks and with dust from dump trucks, unlawful, since constituted more onerous working conditions, notwithstanding more onerous because of Ee's physical condition and assignment was motivated by U animus in view of timing after unlawful reprimand of Ee and E's unlawful threats to Ee for filing grievances; further, E's contention of business justification rejected where use of tank trucks had increased]

Harold Weinz; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**
[E's unilateral *reclassification of its (motel) desk clerks to supervisory positions, violative, where conduct, coupled with E's other ULPs and coinciding with other violative layoffs effectuated decimation of unit. Evidence discloses no* justifiable reason for such conduct and record evidence suggests there would be 1:1 ratio of supervisors to unit Ees]

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(changing duties and/or hours of work of known active U supporters, unlawful, where such actions were not consistent with E's historical practice; changes were made immediately following inception of U's organizing campaign; E engaged in 8(a)(1) conduct clearly evidencing U animus; and E failed to rebut GC's *prima facie* case that E would have made changes in absence of Ee U activity)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-84-86**
[assigning known U adherent employed as bartender to less desirable banquet work, and later discharging him, assertedly because of complaints by waitresses and by customer, unlawful, where customer's reference to Ee was made in letter containing general complaint about service and other conditions at E's business; letter was dated 4 days after E was removed from work schedule as bartender; and E could not have been seriously concerned about oral complaints against Ee since E neither informed Ee of it nor warned him about it]

5029-9800 Denial of union representation at interview with employer

Exxon Shipping Company **JD-(NY)-86-85**
]*Weingarten* rights to U representation at interview with E apply when (1) interview is investigatory i.e. designed to elicit answers to work related questions which might affect Ees or unit, and (2) Ee reasonably fears that discipline might result from interview. Main focus of analysis turns on Bd's perception of state of mind of interviewee and reasonableness of same, rather than purpose of E in conducting interview. Further, regardless of original purpose of interview, when E goes beyond such purpose and questions Ee about misconduct, *full panoply of protections accorded Ee under Weingarten may be applicable*)

5029-9900 Other

Harold Weinz; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**
[E's unilateral elimination of Ees' check cashing privileges, violative, since action came upon heels of U designation as (Ee) bargaining agent and for no proferred business reason]

Independent Stave Company, Inc. **278 NLRB No. 089**
[Ee's refusal to comply with terms of contractual agreement to award prize to winner of Ee contest because winning Ee's grievances were subject of Bd charges, violation]

5030 DUES CHECKOFF REVOCATIONS

United States Postal Service **280 NLRB No. 169**
[E's and U's refusing to honor Ees' revocations of dues-checkoffs, violative where checkoff authorizations were revoked by operation of law when U membership ceased to exist by virtue of effective resignation from membership]

5034 ACTIONS AFFECTING SENIORITY

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[E's change in policy which allowed drivers to choose from available runs on the basis of seniority to requiring drivers to take whatever run was assigned, unlawful, since done in response to Ees' support of U and because of recent issuance of ULP complaint alleging unlawfully reduced hours of work]

5034-3300 Reduction of, or failure to grant seniority

Rockwood & Company and W. H. Gonyea Trust No. 1—17 d/b/a Timber Products Co. **281 NLRB No. 117**
[utilizing break in service rule to deprive reinstated economic strikers of their prior seniority, treating them as new Ees, and assigning them new hourly wage rate different from that earned before strike, unlawful]

5034-3300—Cont.

Airport Distributors, Inc. — **280 NLRB No. 091**

[whether or not Ee quit or was merely on leave of absence, E's denial of reinstatement of Ee's seniority date upon his return to work, unlawful, where E stated that seniority date was denied because Ee and fellow Ees sought U representation]

Lone Star Industries, Inc. — **279 NLRB No. 078**

[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

5034-6700 Discriminatory seniority policy

Coal Systems, Inc. and W. Julian Sculf Engineering & Construction Co., Inc. — **JD-452-84**

(issuing new seniority list which imposed lower standings on Ees reassigned to another company, found alter ego to first E herein, because Ees had filed contractual grievances, against former E, violative)

5034-6740 Strike seniority

N.L.R.B. v. Harrison Ready Mix Concrete, Inc. — **770 F.2d 78 (C.A. 6, Aug. 1985)**

(placing strikers who abandoned strike below replacements and Ees who did not strike on seniority list, upon their reinstatement, not unlawful, since, in absence of specific and detailed findings by Bd of E's *inherently destructive* conduct, E neither intended nor caused any discrimination between strikers and nonstrikers or any destructive impact upon strike or U activity)

5034-6750 Superseniority

Goodyear Tire and Rubber Company — **278 NLRB No. 098**

[granting super-seniority to Executive Board members and Treasure of U for their terms of office for shift preference, surplus and layoff, and maintaining super-seniority clause with respect to Executive Board members and Treasurer of U, violative, where they had no responsibilities requiring on-the-job presence to further administration of bargaining agreement]

Goodyear Tire and Rubber Company — **278 NLRB No. 098**

[according U's Executive Board member super-seniority under bargaining agreement with respect to shift preference and thereby causing Ee to be removed from first shift and placed on second shift, violative where Executive Board Member had no responsibility requiring on-the-job presence to further administration of bargaining agreement]

Telford & Doolen, Inc. — **277 NLRB No. 112**

(layoff of U steward who was accorded superseniority under contract, not unlawful, where no other job was available that he was qualified to fill; steward had no seniority in E's other department and, under contract, was not entitled to bump anyone in that department in order to retain his job; and no Bd precedent exists which accords steward lawful superseniority extending beyond his department or seniority roster)

Dravo Corporation, Dravo Marine Equipment Company — **276 NLRB No. 128**

(C dismissed where record insufficient to establish that U's vice-president and members of U's negotiating team were entitled to *contractual superseniority*, since they did not perform steward-like on-the-job grievance processing or contract administration; majority of negotiating meetings involved bargaining over such matters as contract concessions and subcontracting out work)

Automobile Workers, Local No. 1309 (International Harvester Company) — **JD-18-86**

[retaining pyrometer steward pursuant to U's invocation of superseniority clause of contract, not unlawfully discriminatory as to two Ees who were not allowed to bump steward from sole remaining pyrometer position but laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers — **746 F.2d 143 (C.A. 2, Oct. 1984)**

(in considering propriety of Bd's *Gulton* rule pertaining to superseniority provisions and their enforcement by E and U, ct reviewed history of Bd's treatment of superseniority provisions in its prior decisions and affirmed Bd's decision herein that E and U unlawfully enforced superseniority provision causing layoff of Ees with greater seniority than U officials who were retained under superseniority clause)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers — **746 F.2d 143 (C.A. 2, Oct. 1984)**

(however ct might have decided superseniority matter at issue herein, Bd's formulation of new superseniority rule in its *Gulton* decision, after reconsidering *Limpco* line of cases was reasonable in allowing superseniority for layoff purposes only if U officials needed to be present at workplace; Bd is entitled to change its mind, so long as new general standard is applicable to all litigants)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers — **746 F.2d 143 (C.A. 2, Oct. 1984)**

(in affirming Bd's *Gulton* rule allowing enforcement of superseniority clause for layoff purposes only if U officials needed to be on job, ct held S.Ct's *Campbell* decision did not require different result; even if *Campbell*, in which S.Ct held veterans' retention of seniority under Selective Service Act did not invalidate superseniority of U officials over veterans during layoff, had been decided under NLRA, *Gulton* decision would not be inconsistent with *Campbell* since no reason existed to believe U officials therein did not meet *Gulton's* on job criteria)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers — **746 F.2d 143 (C.A. 2, Oct. 1984)**

(ct held Bd's superseniority line of cases proceed from premise that superseniority encourages workers to be good U members so that they might increase their chances of being selected for positions afforded superseniority; such premise, drawn from Bd's experience in labor relations, is reasonable and therefore should not be rejected by reviewing ct; nor does reasonableness of premise depend on whether U officials afforded superseniority are appointed by U hierarchy or are elected by U members)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers — **746 F.2d 143 (C.A. 2, Oct. 1984)**

(superseniority accorded U's recording secretary for layoff purposes held not justified under *Gulton* where secretary had neither significant representational nor contract administration duties requiring her presence in workplace; her duties were essentially clerical outside plant; and her maintenance of plant bulletin board took relatively little time and could be accomplished with only minor inconvenience of occasional trip to plant)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers — **746 F.2d 143 (C.A. 2, Oct. 1984)**

(superseniority accorded sergeant-at-arms held not justified under *Gulton* where his duties involved only regulating U meetings and did not entail representational or contract administration duties at or away from plant; nor did his position on U fair practices committee justify grant of superseniority since it was awarded not because of that position but because of his status as U official; Bd could plainly find that his layoff would not seriously interfere with his duties as executive board member)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers — **746 F.2d 143 (C.A. 2, Oct. 1984)**

(Ees did not waive right to challenge clause providing U officials with superseniority for puposes of layoff by ratifying agreement containing clause; right at issue herein is right to be free from discrimination that encourages U membership and is not *economic* right under S.Ct's *Metropolitan Edison* decision, such as right to strike or to refuse to cross lawful picket line, in attempt by Ees and U to achieve economic advantage and for which waiver is appropriate because Ee and U interests are presumed to coincide; if they do not, Ees remain free to change their representative)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers — **746 F.2d 143 (C.A. 2, Oct. 1984)**

(Ees did not waive right to challenge clause providing U officials with superseniority for puposes of layoff since, unlike economic rights which are subject to waiver, right at issue herein is one in which U and Ee interests are likely to conflict; under *Gulton* superseniority presumably encourages Ees to support U so as to increase their chances of attaining U office and greater job security; on the other hand, Ees have right not to be coerced into supporting incumbent U and, since superseniority encourages such support, Ees' ability to select representative no longer remains free)

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 — **776 F.2d 745 (C.A. 7, Nov. 1985)**

[grant of superseniority to U officer who performed steward-like duty on intermittent occasions as substitute, but whose primary duty did not involve performance of steward-like duties or on-the-job contract administration functions, violative]

5034-6760 Motive determinative

Garrett Railroad Car & Equipment, Inc. 275 NLRB No. 151
(recalling Ee (economic striker) out of seniority after strike's end, violative, since such treatment of Ee was disprate. E's action was not shown to be for some legitimate business reason or purpose and assessed in background of E's ULPs was inherently destructive of Ee Section 7 rights. Record provided sufficient evidence of E's singling out Ee striker who wanted to abandon strike (E had learned) and rendered this Ee-striker favorable disparate treatment some 3 weeks after strike ended)

N.L.R.B. v. Harrison Ready Mix Concrete, Inc. 770 F.2d 78 (C.A. 6, Aug. 1985)
(placing strikers who abandoned strike below replacements and Ees who did not strike on seniority list, upon their reinstatement, not unlawful, since, in absence of specific and detailed findings by Bd of E's *inherently destructive* conduct, E neither intended nor caused any discrimination between strikers and nonstrikers or any destructive impact upon strike or U activity)

5034-6780 Not unlawful per se

Lone Star Industries, Inc. 279 NLRB No. 078
[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

5040 REFUSAL TO PROMOTE

Products Unlimited Corp. 280 NLRB No. 041
[refusal to promote visible U adherent, unlawful, since for U activities rather than for absenteeism, where adherent had greater seniority, and directly related experience particularly supervisory which Ee selected lacked, and selected Ee had only marginally better attendance record when days on which U adherent was snowed in were considered as they were in regard to selectee, and Ee selected had recently been warned for use of abusive language]

The Evening News Association JD-24-86
[refusal to transfer and promote Ee to accomodate her desire to continue to work for her present supervisor when during reorganization he was transferred to new position, not unlawful, since refusal was for business reasons rather than for Ee's U activities, where another Ee had been performing duties of secretary to individual who held position to which Ee's supervisor being transferred; further, to accomodate Ee's desire would require redistribution of clerical responsibilities, and Ee had never previously applied for promotions that were available, nor been promised promotion]

5046 EVICTION FROM COMPANY HOUSING

Cassis Management Corp. 281 NLRB No. 174
[eviction of superintendent of E's apartment building from his rent-free apartment held not separate violation but merged into his unlawful discharge, where apartment was integral part of Ee's compensation, and its use, as incident of wages and benefits, was lost as result of unlawful discrimination; and such loss was to be compensated through usual backpay proceedings with restoration of his employment benefits]

5050 DEMOTION

Resistance Technology, Inc. 280 NLRB No. 117
[demotion and pay reduction of Ee *group leader*, violation where Ee had been U observer at election, received no warning concerning work, supervisor stated demotion was due to U activity, and E advanced no lawful reason]

Superior Warehouse Grocers, Inc. 277 NLRB No. 010

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186
(reduction of Ee's position and job responsibilities from designation as temporary manager, not unlawful, even though Ee's U sympathies were motivating factor for E's action, where E would have reassigned Ee even absent protected conduct, since Ee admitted he wanted to return to former position because earnings as temporary manager were insufficient to justify extra responsibilities and risk of losing qualifying papers for former position; and Ee's wages did not increase as temporary manager, and he retained existing wage rate upon returning to former position)

Crest Floors & Plastics, Inc. 274 NLRB No. 185
(demoting leadman/foreman because of concern about his having a leadership role in facility after it went nonU violative where leadman had requested conference with E's president about what would happen after contract expired and had been observed meeting with U representatives in parking lot; exception that ALJ failed to apply *Wright Line* causation test overruled where E's unsupported claims of leadman's insubordination and lack of production failed to counter GC's prima facie case)

5053 TRANSFER

Baddour, Inc. 281 NLRB No. 084
[transferring U activist prior to election from position in which he had virtually unlimited access to all areas to position in which he was limited to one specific area, violation where E failed to adequately explain transfer to position in which Ee had no experience when experienced temporary Ees were available]

Baddour, Inc. 281 NLRB No. 084
[no violation by transferring Ee who began wearing U button one week before U election from unit near polling site where objective evidence and Ee's own evaluation did not demonstrate that position to which he was transferred involved more onerous conditions than prior position, and his allegations of *harassment* by new supervisor were not supported by record absent evidence that he was subjected to significantly closer supervision or stricter timekeeping than other unit Ees]

J & B Smith Company, Inc. 280 NLRB No. 057
[transferring only Ee who was passing out U cards to most onerous job in plant, violation, notwithstanding allegations of poor performance]

Consolidated Edison Co. of New York, Inc. 280 NLRB No. 039
[transfer of Ee, active participant in dissident U group, to less desirable time and work site, not violative since there was no substantive evidence to explain why E would chose to discriminate against Ee at time of transfer, as Ee had been engaging in his dissident activities for about 5 years w/o recrimination. Ee an experienced inspector, replaced inexperienced inspector on transfer]

La Reina, Inc. 279 NLRB No. 103
[transferring Ee to graveyard shift in retaliation for initiating U activities in plant, violation]

Medallion Kitchens, Inc. 277 NLRB No. 175
[where E closed production plant and reopened new plant 175 miles away, E need not offer economic strikers who were unlawfully denied reinstatement at old plant positions at new plant since transfer of Ees from old to new plant not guaranteed but rather all interested Ees were required submit applications to be considered for employment at new plant]

The Meadows East Inc. 275 NLRB No. 181
(no violation by transferring Ees to day shift to provide closer supervision of their activities after investigation confirmed that they slept and played cards on night shift and otherwise contributed to shift's morale problems; E was not even aware of their U activities at that time)

Chicago Rivet & Machine Co. 275 NLRB No. 178
(transferring leading U adherent from second to first shift resulting in his loss of second shift premium and placing him in position such that he might be forced to choose between his job and his farm, violative where it was of no economic benefit to E but retaliation for Ee's U activities)

Florsheim Shoe Shops, Inc. 275 NLRB No. 015
(transfer of shoe salesman and shop steward to less desirable sales location, violative where E failed to rebut GC's prima facie case of unlawful motivation; Bd found that statistics E stated it used in deciding to transfer Ee covered time period *after* it made its decision)

Pacific Bell JD-(SF)-113-86
[transfer of Ee, allegedly because of her good faith attempts to invoke seniority provisions of contract, not unlawful, since Ee was not engaged in concerted activity because she was not in unit covered by contract she was invoking, and because invocation of contract by her as non-unit Ee was not integrally related to collective action]

5056 LOCKOUT

5056-0100 Generally

Challenge-Cook Brothers of Ohio, Inc. 282 NLRB No. 002
[E's lock out of Ees held not equivalent to layoff since shutdown of plant for lack of profitable work cannot be equated to lockout which is used to bring economic pressure to bear in support of E's bargaining position; thus, layoff has economic purpose whereas lockout has strategic objectives in bargaining]

Harter Equipment, Inc. 280 NLRB No. 071
[in finding E's use of temporary Ees during lawful lockout not violative, Bd held it lacks authority to function as arbiter of sort of economic weapons parties can use in making bargaining demands since S.Ct has defined E's conduct as less than inherently destructive and has recognized legitimacy of business justifications involved, thereby striking fixed balance in favor of permitting use of temporary Ees after lawful lockout and limiting Bd's use of qualitative balance test to exceptional cases involving conduct inherently destructive of Ee rights]

5056-0175 Employer's motivation or intention

National Gypsum Company, Inc. Gold Bond Building Products Division 281 NLRB No. 096
[E did not violate Sections 8(a)(3) and (1), absent specific proof of anti-U motivation, where it used temporary Ees in order to engage in business operations during lawful lockout initiated for purpose of bringing pressure to bear in support of legitimate bargaining position]

5056-0175—Cont.

Transportation By La Mar, Inc., Ready Transportation Co., Inc., La Mar Googer and Jerome Butler **281 NLRB No. 079**
[E's hiring temporary replacements after it had lawfully locked out its U-represented Ees, lawful, where absent specific proof of anti-U motivation it acted for legitimate business purpose of fulfilling customers' orders]

B-Bar-B, Inc. **281 NLRB No. 036**
[E's hiring temporary replacements after it had lawfully locked out its U-represented Ees, lawful, where, absent specific proof of anti-U motivation, it acted for legitimate business purpose of fulfilling customers' orders]

Georgia-Pacific Corporation, Crossett Division **281 NLRB No. 002**
[E continuing production during lawful lockout in face of impending strike with non-unit temporary replacements, not unlawful, since intended to bring pressure to bear in support of legitimate bargaining position, in view of economic justification for continuing operations, and absent U animus or tendency to discourage U membership]

Harter Equipment, Inc. **280 NLRB No. 071**
[in finding E's use of temporary Ees during lawful lockout not violative, Bd held use of temporary Ees had only comparatively slight effort on Ee rights, and E's effort to remain in operation after lawful lockout was not *inherently destructive* nor per se violation of Act w/o inquiry into E's motivation; fact that E was protagonist in locking out Ees did not warrant inferring any greater impact on Ee rights from subsequent use of temporary Ees; and distinction as to effects between lawful *offensive* and *defensive* economic weaponry no longer exists]

Harter Equipment, Inc. **280 NLRB No. 071**
[Bd held hiring of temporary Ees in order to operate business during lawful lockout to bring economic pressure in support of legitimate bargaining position, not unlawful, where use of temporary Ees (1) is measure reasonably adapted to achievement of legitimate E interest, and (2) has only comparatively slight adverse effect on protected Ee rights; and Bd need not require more proof of E's legitimate purpose nor engage in balancing E interests against Ee rights to find violation, even absent independent proof of unlawful E motivation; *Inland Trucking Co.*, 179 NLRB 350, overruled]

Harter Equipment, Inc. **280 NLRB No. 071**
[E's use of temporary Ees during lawful lockout, not violative, where E's conduct had *comparatively slight* effect on Ee rights, and E presented evidence of *legitimate and substantial business justification*; E does not violate 8(a)(3) and (1) absent specific proof of anti-U motivation by using temporary Ees in order to engage in business during lawful lockout, including lockout instigated for sole purpose of bringing economic pressure to bear in support of legitimate bargaining position; *Inland Trucking Co.*, 179 NLRB 350, overruled]

5056-1200 Use of temporary replacements

5056-1201 Generally

Harter Equipment, Inc. **280 NLRB No. 071**
[E's use of temporary Ees during lawful lockout, not violative, where E's conduct had *comparatively slight* effect on Ee rights, and E presented evidence of *legitimate and substantial business justification*; E does not violate 8(a)(3) and (1) absent specific proof of anti-U motivation by using temporary Ees in order to engage in business during lawful lockout, including lockout instigated for sole purpose of bringing economic pressure to bear in support of legitimate bargaining position; *Inland Trucking Co.*, 179 NLRB 350, overruled]

5056-1233 Own nonunit personnel

Georgia-Pacific Corporation, Crossett Division **281 NLRB No. 002**
[E continuing production during lawful lockout in face of impending strike with non-unit temporary replacements, not unlawful, since intended to bring pressure to bear in support of legitimate bargaining position, in view of economic justification for continuing operations, and absent U animus or tendency to discourage U membership]

5056-1267 Newly hired temporary employees

National Gypsum Company, Inc. Gold Bond Building Products Division **281 NLRB No. 096**
[E did not violate Sections 8(a)(3) and (1), absent specific proof of anti-U motivation, where it used temporary Ees in order to engage in business operations during lawful lockout initiated for purpose of bringing pressure to bear in support of legitimate bargaining position]

Transportation By La Mar, Inc., Ready Transportation Co., Inc., La Mar Googer and Jerome Butler **281 NLRB No. 079**
[E's hiring temporary replacements after it had lawfully locked out its U-represented Ees, lawful, where absent specific proof of anti-U motivation it acted for legitimate business purpose of fulfilling customers' orders]

B-Bar-B, Inc. **281 NLRB No. 036**
[E's hiring temporary replacements after it had lawfully locked out its U-represented Ees, lawful, where, absent specific proof of anti-U motivation, it acted for legitimate business purpose of fulfilling customers' orders]

Harter Equipment, Inc. **280 NLRB No. 071**
[in finding E's use of temporary Ees during lawful lockout not violative, Bd held use of temporary Ees reasonably served precisely same purpose served by lockout of bringing economic pressure to bear in support of legitimate bargaining position; exercising right to lockout in bargaining dispute does not necessitate foregoing option to secure business earnings any more than exercising right to strike requires Ees to forego attempts to secure income by temporary alternative employment, strike benfits, or unemployment compensation]

Harter Equipment, Inc. **280 NLRB No. 071**
[in finding E's use of temporary Ees during lawful lockout not violative, Bd held use of temporary Ees had only comparatively slight effort on Ee rights, and E's effort to remain in operation after lawful lockout was not *inherently destructive* nor per se violation of Act w/o inquiry into E's motivation; fact that E was protagonist in locking out Ees did not warrant inferring any greater impact on Ee rights from subsequent use of temporary Ees; and distinction as to effects between lawful *offensive* and *defensive* economic weaponry no longer exists]

Harter Equipment, Inc. **280 NLRB No. 071**
[in finding E's use of temporary Ees during lawful lockout not violative, Bd considered impact of lockout and use of temporary Ees on lockout Ees' right to bargain collectively, right to strike, and right to belong to U and held that, in every instance, use of *temporary* Ees meant no threat to permanent Ee status of locked out Ees since U and individual members were able to relieve their adversity by accepting E's less favorable terms and returning to work]

Harter Equipment, Inc. **280 NLRB No. 071**
[Bd held hiring of temporary Ees in order to operate business during lawful lockout to bring economic pressure in support of legitimate bargaining position, not unlawful, where use of temporary Ees (1) is measure reasonably adapted to achievement of legitimate E interest, and (2) has only comparatively slight adverse effect on protected Ee rights; and Bd need not require more proof of E's legitimate purpose nor engage in balancing E interests against Ee rights to find violation, even absent independent proof of unlawful E motivation; *Inland Trucking Co.*, 179 NLRB 350, overruled]

Harter Equipment, Inc. **280 NLRB No. 071**
[in finding E's use of temporary Ees during lawful lockout not violative, Bd held it lacks authority to function as arbiter of sort of economic weapons parties can use in making bargaining demands since S.Ct has defined E's conduct as less than inherently destructive and has recognized legitimacy of business justifications involved, thereby striking fixed balance in favor of permitting use of temporary Ees after lawful lockout and limiting Bd's use of qualitative balance test to exceptional cases involving conduct inherently destructive of Ee rights]

5056-1600 In support of legitimate bargaining position

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[lockout of Ees in order to further E's bargaining position after reaching impasse in contract negotiations with U held not equivalent to layoff and, consequently, denial of pension withdrawal benefits to Ees throughout lockout period held not unlawful, since retirement plan, providing for pension withdrawal rights to Ees *laid off temporarily for lack of work*, did not include locked out Ees]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[E's lock out of Ees held not equivalent to layoff since shutdown of plant for lack of profitable work cannot be equated to lockout which is used to bring economic pressure to bear in support of E's bargaining position; thus, layoff has economic purpose whereas lockout has strategic objectives in bargaining]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[denial of pension withdrawal benefits during period of scheduled 2-week holiday layoff which was cancelled because lockout occurred contemporaneously with scheduled layoff, not unlawful, where E viewed lockout from its inception as being of indefinite duration; and timing of lockout first working day after U rejected E's latest contract proposal raised inference that purpose of lockout was to place economic pressure on U to accept E's bargaining position and not to overlap with prescheduled layoff so as to deprive Ees of benefits to which they otherwise would have been entitled]

Harter Equipment, Inc. **280 NLRB No. 071**
[in finding E's use of temporary Ees during lawful lockout not violative, Bd held use of temporary Ees reasonably served precisely same purpose served by lockout of bringing economic pressure to bear in support of legitimate bargaining position; exercising right to lockout in bargaining dispute does not necessitate foregoing option to secure business earnings any more than exercising right to strike requires Ees to forego attempts to secure income by temporary alternative employment, strike benfits, or unemployment compensation]

Harter Equipment, Inc. **280 NLRB No. 071**
[Bd held hiring of temporary Ees in order to operate business during lawful lockout to bring economic pressure in support of legitimate bargaining position, not unlawful, where use of temporary Ees (1) is measure reasonably

5056-1600—Cont.

adapted to achievement of legitimate E interest, and (2) has only comparatively slight adverse effect on protected Ee rights; and Bd need not require more proof of E's legitimate purpose nor engage in balancing E interests against Ee rights to find violation, even absent independent proof of unlawful E motivation; *Inland Trucking Co.*, 179 NLRB 350, overruled]

Harter Equipment, Inc. **280 NLRB No. 071**
[E's use of temporary Ees during lawful lockout, not violative, where E's conduct had *comparatively slight* effect on Ee rights, and E presented evidence of *legitimate and substantial business justification*; E does not violate 8(a)(3) and (1) absent specific proof of anti-U motivation by using temporary Ees in order to engage in business during lawful lockout, including lockout instigated for sole purpose of bringing economic pressure to bear in support of legitimate bargaining position; *Inland Trucking Co.*, 179 NLRB 350, overruled]

5056-2000 In support of legitimate business position

Transportation By La Mar, Inc., Ready Transportation Co., Inc., La Mar Googer and Jerome Butler **281 NLRB No. 079**
[E's hiring temporary replacements after it had lawfully locked out its U-represented Ees, lawful, where absent specific proof of anti-U motivation it acted for legitimate business purpose of fulfilling customers' orders]

B-Bar-B, Inc. **281 NLRB No. 036**
[E's hiring temporary replacements after it had lawfully locked out its U-represented Ees, lawful, where, absent specific proof of anti-U motivation, it acted for legitimate business purpose of fulfilling customers' orders]

5056-3200 Lockout limited to union members unlawful

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. **JD-(NY)-34-86**
[violation, where E, in absence of strike threat by U, locked out Ees who signed U authorization cards and accompanied U representative when demand for recognition was made, but permitted persons who did not support U to continue to work]

5059 SHUTDOWN OR TERMINATION OF OPERATIONS

Strawsine Manufacturing Co., Inc., et al. **280 NLRB No. 063**
[E's closing of plant, termination of Ees and relocation in another state, assertedly because dire economic reasons compelled such decision, violative, since real reason was E's desire to rid itself of U where E's other plants were losing much more money than plant which was closed, E made no effort to sell plant after closure in order to improve economic condition and E otherwise misrepresented closing of plant to U and secretly relocated facility]

5059-3300 Partial termination

B & P Trucking, Inc. **279 NLRB No. 092**
[shutting down trucking portion of operations and discharging all drivers, violation since reason was E's wish to avoid unionization, rather than trucking operation's lack of profitability]

Desota, Inc. **278 NLRB No. 114**
[closing plant, laying off Ees, and transferring work to E's other facilities, not unlawfully discriminatory, where E's sole reason was economy and efficiency resulting from reduction of excess capacity and effect of chilling unionism at other plants was not readily foreseeable]

5059-5000 Resumption of operations

Inland Container Corporation **275 NLRB No. 60**
(E held successor notwithstanding 2 1/2 month hiatus between closing of predecessor and commencement of successor E's operations, where hiatus may have been necessary at least inpart because of E's discriminatory hiring policies and plant renovations; however, renovations E made were insufficient to negotiate *substantial continuity* of employing enterprise as new machinery was introduced and work done did not alter machinery's fundamental character but was in nature of long overdue repairs)

5060 RELOCATION OF OPERATIONS

Strawsine Manufacturing Co., Inc., et al. **280 NLRB No. 063**
[E's closing of plant, termination of Ees and relocation in another state, assertedly because dire economic reasons compelled such decision, violative, since real reason was E's desire to rid itself of U where E's other plants were losing much more money than plant which was closed, E made no effort to sell plant after closure in order to improve economic condition and E otherwise misrepresented closing of plant to U and secretly relocated facility]

5062 SUSPENSION

Link Manufacturing Co. **281 NLRB No. 028**
[suspension of Ee for failing to report for work, unlawful, where E knew or suspected Ee was leading U adherent whom E subjected to unlawful threats, interrogation, and promises; other Ees who missed work were not disciplined; E threatened and reproached Ee for defying E by voting in election; E's explanation that Ee's attitude changed considerably indicated discriminatory motive; and it was only after onset of U and Ee's voting in election that E found Ee's attendance record intolerable]

Local No. 980, Automobile Workers (Local 32, Office Employees) **280 NLRB No. 161**
[U, in role as E, violated Act by suspending Ee for distributing leaflets which asked for U members' support in Ee's efforts to obtain contract]

Woodcliff Lake Hilton Inn, Inc. **279 NLRB No. 146**
[E's suspending U advocate for 1 day, assertedly for playing guitar on duty and being absent from work station violation where E had condoned guitar playing in past, Ee was absent from work station on legitimate business, and E had not followed its own progressive disciplinary system]

Woodcliff Lake Hilton Inn, Inc. **279 NLRB No. 146**
[E's suspending of known U supporter, assertedly for being late for work, violative where other Ees had not been suspended for some offense and E had not followed its own progressive disciplinary system]

La Reina, Inc. **279 NLRB No. 103**
[strictly enforcing clothing rule and issuing written reprimand and one-day suspension for failure to comply on day after election, violation where rule had formerly been leniently enforced]

Hoechton Garment Company, A Subsidiary of Spencer Industries, Inc. **279 NLRB No. 081**
[suspending Ee for abusing leave of absence granted to care for sick child, violation, notwithstanding Ee was seen across street from plant observing handbilling during leave, in view of E's knowledge of Ee's U support, lack of precedent for disciplining leave violation, E's failure to discipline Ee for violating leave to return to plant to pick up paycheck or to establish that Ee obtained leave by false pretenses or acted inconsistently with caring for sick child, and E's motivation to discipline Ee on basis of complaints voiced by anti-U Ees]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[suspension and discharge of Ee-driver, assertedly for failure to make deliveries to customer who complained to E, and for Ee's attitude and intrusive behavior at customer's location, unlawful, where E was known outstanding U advocate and leader of Ees; asserted misconduct by Ee consisted of single day's conduct over 8-year exemplary work history; E was partly responsible for Ee's reaction at customer's location because of faulty loading and failure to support Ee at the time; and past discharges for misconduct required history of poor attitude or conduct of aggravated nature]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[three-day suspension of U adherent, not violation, notwithstanding it was overdue and did not occur until Ee wore U T-shirt to work, where it was pursuant to E's attendance-control policy, which was nondiscriminatorily enforced, and Ee's U adherence was well known before he wore U T-shirt]

Arlington Hotel Company, Inc. **278 NLRB No. 007**
[three-day suspension of U activist for failing to complete assigned duties, not violation, where it was pursuant to E's threat to discipline Ee on receipt of fifth warning]

Alamo Cement company **277 NLRB No. 108**
(suspension of Ee for violating unlawful no-solicitation, no distribution rule, unlawful)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(suspension of Ee at end of meeting with E who had called Ee into his office for purpose of delivering disciplinary writeup concerning her poor attendance, not unlawful, where suspension was in response to Ee's insubordinate conduct during meeting, which led to E's exasperated decision to suspend Ee pending consultation with higher authority on what next step to take)

Comfort & Company, Inc. **275 NLRB No. 082**
(suspension of U supporter for excessive absenteeism and tardiness, justified and lawful)

The Mead Corporation-Publishing Paper Division-Escanaba **275 NLRB No. 052**
(3-day suspension of U steward for insubordination in refusing to comply with E's *forceover* order to continue working additional shift in order to make emergency repairs on machine, lawful, since, contrary to ALJ, Bd found his refusal to work overtime was unprotected insubordination legitimately subject to discipline; further, there was no proof of anti-U discrimination and E had legitimate need to force Ees to perform emergency repair work)

University of Richmond **274 NLRB No. 182**
(suspending known U leader three days, not violative, since Ee would have been suspended for absence from her work station w/o permission during busiest part of her workday and for her loud and abusive behavior during and after the resulting interview by E regardless of her U activities)

5062—Cont.

Taft Broadcasting Company, WBRC–TV **274 NLRB No. 038**
(suspension of U's business manager for questioning right of E to polygraph members of bargaining unit concerning problem of property destruction and questioning whether others including representatives of E might also have had access to property and motive for destroying it, violative)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd considered S.Ct's *Metropolitan Edison* decision from standpoint of U's waiver of U officials' Sec. 7 rights to extent they have affirmative duty to prevent illegal work stoppages, U's lawful bargaining away of statutory protection accorded U officials, insufficiency of general no-strike clause to constitute waiver, relevance of arbitration decisions in establishing waiver, and establishment of waiver by circumstances surrounding bargaining relationship as well as by language of agreement itself)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(in finding E's disparate disciplinary suspension of U stewards for violating no-strike provision requiring U to disavow publicly unlawful strike and take affirmative action to end strike not unlawful, Bd held nothing in S.Ct's *Metropolitan Edison* decision indicates requirement for specificity with reqard to naming of U officials as opposed to specificity requirement regarding what affirmative action can be expected of U to end unlawful strike; and in *Metropolitan Edison* unlike here, no-strike clause was merely general clause imposing no obligation on U, and U officials took conscientious steps to end walkout)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd held that, with regard to specificity requirement for naming of U officials as opposed to specificity regarding what affirmative action can be expected of U in event of unlawful strike, it has long been established that U, like an E, acts through its agents and it would be radical departure from longstanding precedent to hold that U's contractual or other obligations must be explicitly designated as responsibility of specified officials or agents)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(imposition of disparate disciplinary suspensions on U stewards for violating no-strike provision, not unlawful, where U assumed duty to prevent unlawful strikes and thereby waived steward's statutory rights; while S.Ct in *Metropolitan Edison* found affirmative action cannot be required unless such requirement is bargained for, it merely held general *no-strike* clause was not enough to constitute waiver and left open what contractual language would suffice; here, contract unequivocally imposed duty to end unlawful strike, and stewards did not fulfill their contractual obligations even under most narrow construction of contract)

Wells Fargo Armored Service Corp. **JD-(SF)-19-86**
[suspending Ee two business days after E received U request that Ees at location in question be considered accretion to existing unit and notice that Ee was U steward and U executive committee member, violation where E's contention that Ee misappropriated and copied three confidential company documents was unsupported by evidence; second suspension, immediately afterwards, for failure to comply with E's no-beard policy, violation where E had let Ee work for three months w/o complying]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**
[suspending Ee, violation where it was due to Ee's publicizing E's alleged ULPs and labor relations in newspaper article rather than his allegedly threatening and abusive manner toward E]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**
[suspending waiter two weeks for failure to appear at breakfast, lawful where Ee admittedly violated long standing company rule]

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
]*suspension* of Ee employed as delivery driver and acting as shop steward, not unlawful, notwithstanding E's U animus toward U generally and Ee specifically, where Ee, upon being advised by E of requirement for municipality's fitness to drive certificate, could have obtained certificate very same day *suspension* occurred; instead, Ee insisted on route change to which he was not entitled and chose to go to U; nor was Ee in any hurry to return to work in view of conflict between his job herein and with another E, and his delay in reporting to work after obtaining certificate)

Local Union 1392, Electrical Workers v. N.L.R.B. (Indiana & Michigan Electric Co.) **786 F.2d 733 (C.A. 6, Mar. 1986)**
[where E imposing more severe disciplinary suspensions on U stewards for violating no-strike provision, not unlawful where contractual language showed U intent for its officials to attempt to prevent unauthorized work stoppages, and this language constituted *clear and unmistakable waiver* of officials right to be free from selective discipline]

5065 TERMINATION OF INDEPENDENT CONTRACTOR EMPLOYMENT

La Salle Investment Co., Ltd., d/b/a Cafe La Salle **280 NLRB No. 043**
[contention that termination of independent contractor performing janitorial services in building of one of respondent Es herein was so related to his status as Ee of another respondent E that there was violation of 8(a)(3), rejected, where termination resulted from Ee's loss of keys to building he was servicing, which was characterized as *last straw* precipitating termination of his janitorial services; *Senfiner Volkswagon*, 273 NLRB No. 24, inapplicable]

5067 LAYOFF

Desota, Inc. **278 NLRB No. 114**
[closing plant, laying off Ees, and transferring work to E's other facilities, not unlawfully discriminatory, where E's sole reason was economy and efficiency resulting from reduction of excess capacity and effect of chilling unionism at other plants was not readily foreseeable]

5067-0100 Generally

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[E's lock out of Ees held not equivalent to layoff since shutdown of plant for lack of profitable work cannot be equated to lockout which is used to bring economic pressure to bear in support of E's bargaining position; thus, layoff has economic purpose whereas lockout has strategic objectives in bargaining]

5067-0500 For not being union member

M. W. Kellogg Constructors, Inc. **273 NLRB No. 134**
(laying off travelers, violative where they were selected because they were not members of local U as shown by E's informing some Ees that E was laying off travelers because of local U's policy; fact GC did not show supervisory satisfaction with some travelers and fact they were plumbers doing pipefitting work did not render layoffs of some travelers lawful where they had worked for E some months w/o termination for cause, and E did not testify as to why they were laid off and did not distinguish plumbers from pipefitters in layoff selections)

King Kullen Grocery Co., Inc. **JD-NY-35-85**
(no unlawful layoff of Ee because he was not member of and referred by U, as alleged, where under contract E could hire Ees off the street after U failed to supply job applicant w/i forty-eight hours of receiving notice of job opening, E knew when it hired Ee that he was not member of or referred by U, and Ee was still on probabtion and could be discharged for any reason)

5067-1200 For union or other protected activity

Northwind Maintenance and Painting Co., Inc. **281 NLRB No. 048**
[laying off two crews of Ees immediately after learning of involvement with U, failing to recall crew whose members had signed U authorization cards, and replacing them with new hires, violation]

Link Manufacturing Co. **281 NLRB No. 028**
[layoff of Ees, several of whom had signed U cards and engaged in U activities, held unlawful w/o regard to specific knowledge on E's part of pro-U activities of particular Ees, where E, upon being apprised of filing of election ptn, effected layoffs in order to purge itself of possible U supporters, thereby reacting to advent of U in nature of *power display*]

Wilco Business Forms, Inc. **280 NLRB No. 154**
[sudden layoff of U adherent w/o prior notice followed by General Manager's comment, when U adherent was laid off, *I guess you can see through that*, violative, since evidence supported inference that protected U organizing activities of Ees was *motivating factor* in E's decision to lay off Ee]

Resistance Technology, Inc. **280 NLRB No. 117**
[mass layoff of Ees violative in view of U animus, E's prior assurance that there would be no layoffs, suddenness and timing of layoffs, and failure of E to prove its contention that layoffs were economically necessary, where nature and level of work remained unchanged, E instituted overtime following layoffs, and E recalled substantially all laid-off Ees after U lost election]

Central Broadcast Company **280 NLRB No. 056**
[laying off U activists for U activities and testifying at Bd hearing, violation]

Central Broadcast Company **280 NLRB No. 056**
[permanently laying off all unit members who had signed U authorization cards, violation]

Central Broadcast Company **280 NLRB No. 056**
[U supporter on sick leave w/o E's objection not voluntary quit where she was negotiating with E for protection against fellow Ee when permanently laid off by E; also, E had previously constructively discharged her by subjecting her to intolerable working conditions where a fellow Ee had so threatened her that she had to call security guard and police]

Central Broadcast Company **280 NLRB No. 056**
[permanent layoff of U supporter, violation notwithstanding fact he was returned to same job when he accepted telegraphic job offer E made three

5067-1200—Cont.

days later for different job at minimum wage; whether he missed any work days due to layoff was unknown]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks **279 NLRB No. 121**
[supervisor ordering Ee to punch out when Ee announced he would attend U meeting, informing Ee *I don't like you. I don't want you here no more* constituted unlawful layoff]

La Reina, Inc. **279 NLRB No. 103**
[selecting U supporters for layoff and refusing to recall them when hiring new Ees, violation]

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **279 NLRB No. 082**
[layoff of two Ees, assertedly because of slack work caused by machine breakdown, violative, since real reason was Ees' U activity where Ees were laid off immediately after E received *R* ptn, E knew Ees were active U supporters, layoff was precipitous and E had never before laid off Ees when a machine had broken down]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[laying off Ees who complained to management about use of non-U labor to perform unit work while unit members were not working and followed up complaint with grievance, because of alleged reorganization, violation]

T & T Machine Company, Inc. **278 NLRB No. 139**
[sending U supporter home for alleged lack of work rather than, as previously, giving him temporary assignments such as grass cutting or car washing at no reduction in pay, but offering to retain Ee if he *changed sides*, unlawful]

Dayton Auto Electric, Inc. **278 NLRB No. 080**
[layoff of Ees unlawful, notwithstanding decrease in sales and repeated entreaties from its bankers and accountant for E to reduce work force, where E did little to reduce work force until U entered picture, despite high turnover which would have allowed E to reduce work force by attrition]

Quality Aluminum Products, Inc. **278 NLRB No. 049**
[layoff of Ees for signing and passing out U cards, attending U meeting, and wearing U buttons, violation]

Studio S.J.T., Limited **277 NLRB No. 126**
(layoff of at least 4 Ees in order to rid E of remaining U organizer, violative)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(layoff of Ee unlawful and held to be constructive discharge, since for U activites, where E after the fact attempted to capitalize on Ee's wife's illness to state on layoff slip *voluntary quit* to care for wife, in order to preclude any obligation to recall Ee, E had previously made disparaging remarks about U and hired new Ees rather than recall Ee)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(layoff of U adherent, unlawful, since for his U advocacy rather than for lack of work or Bd's work deficiencies, where several weeks of work remained on project where Ee was working, newly hired Ees were retained in preference to Ee, and Ee was once recalled to same job where alleged work deficiences justifying his layoff were noted)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(layoff of U adherent out of seniority contrary to company policy, unlawful)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(accelerated layoff of Ees before date on which layoff was scheduled, not unlawful, where E was face-to-face with immediate cessation of cash flow on date of layoff which was motivated by legetimate business judgement to immediately curtail future payroll obligations and operational expenses during cash flow crisis)

Upcilt, Inc. **276 NLRB No. 065**
(layoff and failure to recall Ees who posted U posters and discussed U organization, unlawful, since for their U activities, notwithstanding E's contention action was because of attendance records, where E failed to show attendance or work deficiencies of some Ees laid off, Ees were not told at time of layoff they were selected for layoff because of attendance problems, and new Ees were hired immediately after layoffs)

Superior Container, Inc. **276 NLRB No. 055**
(layoff of Ees assertedly for economic reasons, unlawful, since E failed to show it would have terminated Ees in absence of their U activities, where E's economic justification for layoff was pretext in view of fact that remaining work force worked overtime shortly after layoff and E then hired new Ees w/o first recalling terminated Ees; E testified that savings were not important in his decision, and that he did not follow prior practice; and E contradicted himself in explaining overtime)

Limpert Brothers, Inc. **276 NLRB No. 037**
(layoff of Ees, assertedly because of slack work and business losses, violative, where Ees were laid off only one day after E obtained knowledge of U activity, E informed several Ees that reason for layoff was U activity and layoff was precipitous, occurring w/o any warning to Ees)

Webb Furniture Enterprises, Inc. **275 NLRB No. 180**
(layoff of Ee who had singed U literature twice, unlawful, notwithstanding he was one among many Ees who signed U literature. E's contention layoff was because of his absenteeism, rejected, where another Ee who did not sign U literature and who had higher absenteeism record than Ee was retained, and in view of E's knowledge of Ee's U activities, and its U animus)

Webb Furniture Enterprises, Inc. **275 NLRB No. 180**
(E's contention that layoff of Ee was for absenteeism and lack of versatility in job performance, rather than for his U activities, rejected, and layoff held unlawful, notwithstanding Ee had second worse absenteeism in his department, absent evidence retained Ees alleged to be more versatile than laid off Ee were in fact more versatile, or that E relied on their relative abilities in retaining them over Ee)

John J. Hudson, Inc. **275 NLRB No. 123**
(layoff of three Ees who had signed U authorization cards, not violative, notwithstanding it occurred three days after supervisor informed manager of Ees' organizing efforts and one day after supervisor told Ee who was wearing U button that Ees were killing themselves by trying to organize, since layoff was according to seniority, U had not filed one grievance or ULP charge in twenty-seven years it had represented E's Ees at another facility, and supervisor's statement did not establish requisite U animus where it was made after manager responsible for labor relations at both facilities had told supervisor to lay Ees off)

Pullman Power Products Corporation **275 NLRB No. 112**
(layoff of Ees, who had been active in replacing U steward, for poor workmanship and because some of Ees were *troublemakers*, not unlawful, notwithstanding that layoff occurred after E's superintendent met with Ees, since each of critical aspects of meeting was susceptible to two different meanings, one lawful and other unlawful, and record taken as whole gave insufficient basis for Bd to choose unlawful meaning over lawful meaning)

Aluminum Technical Extrusions, Inc. **274 NLRB No. 199**
(permanent layoff of Ees, assertedly because E had lost a major customer violative, since real reason was Ees' U activity where Ees were laid off w/i hours after E learned of their U activity, layoff procedure was departure from E's past practice, E replaced Ees w/i a week after the layoff and failed to provide any documentation or corroboration in support of its business defense)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(U's requesting Ee to lay off Ee because of his activities on behalf of rival U, and E's compliance with U's request, unlawful, where Ee would not have been laid off but for U's request)

Electrical Workers, Local Union No. 596 (Lylloth G. Woodall, an Individual) **274 NLRB No. 196**
(permanently laying off U adherent not violative, where she would have been laid off even in absence of her protected activities, which included filing of ULP charges, in view of Ee writing check for vacation pay in gross amount w/o deductions and not including vacation pay in W-2 form which placed E in noncompliance with regulations of taxing and regulatory agents)

I. A. R. Electric, Inc. **274 NLRB No. 099**
(E's layoff of Ee, assertedly because of Ee's efforts to compel foreman to enforce contract terms for benefit of Ees on job, not violative where layoff was result of *bona fide* reduction in force)

Trans Tech Electric, Inc. **274 NLRB No. 089**
(violation where E laid Ee off for concerted activity of complaining that certain work should be done by members of his and his fellow Ees' U and for putting pressure on E by getting the U involved in the matter)

Thompson's Gas, Inc. and Del-Ro Transports, Inc. **274 NLRB No. 092**
(intermittent layoffs, assertedly for lack of work, of Ee who had joined U, filed ULP charges, and cooperated in prosecution of U's ULP charges, not unlawful, where layoffs occurred during seasonal summer decline in business and E's strained financial condition; fact that E was not laid off in past summers was not significant because of change in Ee's work status since then)

C. M. Carpenter, A Sole Proprietor, d/b/a Carpenter Trucking **274 NLRB No. 046**
(layoff of U adherent who was leader in organization drive and who was to be U steward, lawful, notwithstanding E's animus against U adherent, where at time he was laid off adherent had worked only 5 days in 2 weeks, there was lack of business, and in view of fact adherent was next to bottom of seniority list, and E's policy in case of layoff was that Ees last hired were first to go)

Pittsburgh Coal Works **274 NLRB No. 011**
(layoff of most active U supporters, assertedly for economic reasons, violative where E hired new Ee instead of recalling fully qualified U supporter,

5067-1200—Cont.

when laying Ees off, E followed neither seniority nor ability and qualifications of Ees; one result of layoffs, transfers, and recalls was that all known anti-U Ees were retained but all of most active U organizers were eliminated; in absence of discriminatory motivation E would not have laid off any Ees)

Ausable Communications, Inc. **273 NLRB No. 166**
(cable TV company's subcontracting construction work and laying off Ees, unlawful, since in retaliation for U activity, rather than as result of E's policy against performing construction work with its own Ees, where E had known its Ees were engaged in construction work, and in view of precipitous nature of layoffs)

Safety & Security Systems, Inc. **JD-(SF)-85-86**
[laying off U leader, violation, notwithstanding E's economic problems, where Ees with less ability and seniority were retained, E had committed ULPs against other U adherents, and management had specific plan to discriminate against U adherents]

Youngstown Hospitality Co., d/b/a Howard Johnson's Motor Lodge **JD-3-86**
[layoff of all Ees who attended U meetings violation, where general manager observed Ees attending meetings, evidence did not show layoffs were economically necessary, and E hired new Ees after layoffs w/o offering full reinstatement to laid off Ees]

SFTT The Santa Fe Trail Transportation Company/ BN transport **JD-377-85**
[laying off Ees in reprisal for strikes at E's other facilities, violation]

Gallati Cartage of Michigan, Inc. **JD-311-85**
(laying off Ee when he refused to sign either form consenting to reduction in his wage rate and benefits, or form consenting to his layoff w/o regard to his seniority rights, violative where he refused to sign either form because of his belief that by signing forms he would be relinquishing his rights under bargaining contract)

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
(inclusion of U adherents in layoff during normal seasonal layoffs, assertedly contrary to seniority practices in past when Ees herein were retained, not unlawful, notwithstanding E's U animus and suspicious timing of layoffs shortly after election, where lesser seniority of retained Ee had little significance under circumstances herein; recall of less senior Ees before recalling Ees herein was based on past practice; and acceptance of GC's argument against E's reasons for recalling Ees other than Ees herein would require ALJ and Bd to improperly substitute their judgment for management's)

Dawson Carbide Industries, Inc. **782 F.2d 64 (C.A. 6, Jan. 1986)**
[layoff of Ees due to U activities rather than economic necessity, violation since, even if Ees would have been laid off anyway, acceleration of layoff was unlawful]

5067-1900 For grievance participation or activity

Unico Replacement Parts, Inc. **281 NLRB No. 046**
[layoff of Ee because of grievance he filed and U representaive's prosecution thereof, unlawful, as was layoff of another Ee in retaliation for U representative's efforts on behalf of grieving Ee]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[laying off Ees who complained to management about use of non-U labor to perform unit work while unit members were not working and followed up complaint with grievance, because of alleged reorganization, violation]

Emeryville Trucking, Inc. **278 NLRB No. 153**
[truck lessor's causing layoff of drivers that it jointly employed with common carrier in retaliation for having to pay grievance award that was made pursuant to bargaining agreement between drivers' U and common carrier, violative]

Emeryville Trucking, Inc. **278 NLRB No. 153**
[truck lessor's causing layoff of driver for his having aided other drivers in filing of grievances under bargaining agreement between U and its joint E common carrier, violative]

Dale Energy Corporation **JD-202-85**
(layoff of Ees by E who was debtor-in-possession unlawful, notwithstanding E's financial difficulties, since motivation for layoffs was to reach U committeeman who filed grievances, where E told U committeeman he had caused layoffs, and all Ees but committeeman recalled w/i week)

Coal Systems, Inc. and W. Julian Sealf Engineering & Construction Co., Inc. **JD-452-84**
(lay off of Ees by company, found alter ego of predecessor E herein, and its refusal to recall them because they had filed contractual grievances against predecessor E, violative)

5067-2500 To avoid dealing with union

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. **280 NLRB No. 021**
[E's layoff of Ees from business it was terminating unlawful where it immediately began new business, held to be alter ego of teminated business, and induced laid off Ees to become Ees of new company under non-U conditions]

Safelite, Division of Lear Siegler, Inc. **277 NLRB No. 080**
(E's layoff of, refusal to transfer and refusal to recall 6 Ees to new plant located only a few miles from old plant, assertedly for reasons of operational efficiency, violative, since real reason was Ees' U affiliation where E attempted to mislead U representing Ees at old plant that there were no plans to open new plant, E made clear when it announced opening of new plant that it would be *non-union* and no U activity would be tolerated and after E laid off 6 Ees, it immediately hired 6 new inexperienced Ees for new plant)

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos **277 NLRB No. 39**
(layoff of Ees, not unlawful, where layoff was result of E's cessation of operations after its bank account was garnisheed by U trust fund to satisfy judgment for E's failure to make contributions to fund; remarks of vice-president of E and its alleged alter ego to U's business agent that *E had tried to do it U and it did not work, and now they were going to do it another way* equivocal and insufficient to establish U animus)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(layoff of U adherents indefinitely with advice to file for unemployment compensation constituted unlawful discharge where E quickly recalled less senior Ees laid off at same time and its unsupported claim of U adherents' decline in production failed to counter prima facie showing that E was motivated by U adherents' concern with prospects for new U contract in face of E's statement it was going non-U and their pro-U orientation)

Purolator Armored, Inc. v. N.L.R.B. **764 F.2d 1423 (C.A. 7, July 1985)**
(notwithstanding operation was losing money, E violated Act by terminating said operation as E was willing to absorb these losses until U won election which shows that economics was not foremost in E's decision, and as U elected as operation's representative was same as one that represented other E units and there was frequent interchange with Ees, the closure had chilling effect on unionism)

5067-3700 Discrimination in selection in economic lay-off

Delta Data Systems Corp. **279 NLRB No. 169**

American Model & Pattern, Inc. **277 NLRB No. 018**
(selecting two U supporters for layoff out of seniority, assertedly for economic reasons, violative, where E had past proactice of following seniority and reasons given for selecting these two Ees were shifting and contradictory)

Roskin Brothers, Inc. **274 NLRB No. 053**
(E's selection of Ees for layoff who were all U card signers, assertedly because E was facing severe financial difficulties, violative, notwithstanding that E's proffered economic defense was not pretextual, since real reason was Ees' U activity where the day after E gained knowledge of who was involved with the U, 8 U card signers were laid off, two of the least senior Ees were not laid off and E's reasons about why certain Ees were selected for layoff were vague and tentative)

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**
[retaining pyrometer steward pursuant to U's invocation of superseniority clause of contract, not unlawfully discriminatory as to two Ees who were not allowed to bump steward from sole remaining pyrometer position but laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

Acar Machine & Tool Co., Inc. **JD-240-85**
(laying off chief U organizer who was senior to retained Ee contrary to past practice, violative)

N.L.R.B. v. Southern Florida Hotel and Motel Association, et al. **751 F.2d 1571 (C.A. 11, Feb. 1985)**
(laying off returning strikers shortly after their return under contract clause allowing E to lay off unqualified Ees, violative where Es' purpose was to retaliate against Ees for striking and to weaken U as shown by Es' choosing strikers for layoff w/o consulting personnel records or investigating their past performance)

5067-5800 Of reinstated or still striking economic strikers

5067-5800—Cont.

N.L.R.B. v. Southern Florida Hotel and Motel Association, et al. 751 F.2d 1571 (C.A. 11, Feb. 1985)

(laying off returning strikers shortly after their return under contract clause allowing E to lay off unqualified Ees, violative where Es' purpose was to retaliate against Ees for striking and to weaken U as shown by Es' choosing strikers for layoff w/o consulting personnel records or investigating their past performance)

5067-8300 **Pursuant to union demand because of employees' lack of union membership**

Dubose Masonry, Inc. 279 NLRB No. 125

[discharge of non-U bricklayers while U bricklayers were standing around at jobsite, violative, since GC presented *prima facie* case where evidence was sufficient to support inference that Ees lack of U membership was motivating factor in E's decision to terminate. E's assertion that non-U bricklayers were laid off because of decline in work at jobsite was unsupported]

Montgomery Elevator Company 278 NLRB No. 122

[E demoting and terminating Ee at U's request, unlawful, where for Ee's non-membership in U; contention Ee laid off since there were no *helper* positions available when he was returned to that status pursuant to agreement with U that Ees who failed mechanics test while working as mechanic with temporary permit be returned to *helper* status for 1 year, rejected, in view of disparate treatment of Ee and timing of termination soon after meeting of U's representative with E]

M. W. Kellogg Constructors, Inc. v. N.L.R.B. 806 F.2d 1435 (C.A. 9, Dec. 1986)

[ct denies enforcement of Bd decision tha

5073 DISCHARGE

5073 DISCHARGE

5073-0100 **Generally**

Quality Rolls, Inc. JD-189-86

[evidence developed in course of undercover investigation of Ees designed to develop facts to support discharges which would weaken U's strength among remaining workforce cannot be used to exonerate E from charge of unlawful discrimination]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86

[even if E does not have specific knowledge of individual Ee's U activities but nevertheless discharges such Ees because other Ees engaged in U activities, discharge is unlawful since E violates Act where, notwithstanding actual conduct of Ee, it lays off such Ee because of belief or suspicion; moreover, where E engages in pattern of discriminatory conduct against Ee groups because many, even though not all, of them engaged in U activity, discrimination suffered by all Ees as result of E conduct is unlawful]

5073-1100 **What constitutes discharge**

5073-1101 Generally

Rapid Armored Truck Corp. 281 NLRB No. 057

[*test for determining whether E's statement or actions constitute discharge depends upon whether they would reasonably lead Ees to believe that they had been discharged. Events must be viewed through Ee's eyes, in light of circumstances known to them at time*]

Brenal Electric, Inc. JD-(NY)-21-84

[Ees discharged rather than quit, where they were informed by E after U's demand for recognition *if they wanted to put him out of business they had succeeded. that he was closing his doors, but that Ees could stay until Friday,* and after hearing these statements one Ee turned in his beeper and keys and walked out and other Ees followed; Ees could reasonably believe that they were discharged, especially where Ee who turned in beeper and keys had previously been asked by E to turn in tools and keys]

5073-1114 Constructive discharge

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[Es' reporting of undocumented alien workers to INA in retaliation for their U activities after U won election held constructive discharge where such reporting was sole cause of INA investigation and workers' departure from country, and this result was foreseen by Es]

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer 281 NLRB No. 161

[to establish constructive discharge, GC must prove two elements, first, that E imposed intolerable work conditions compelling the Ee to leave the job and second, that E imposed the conditions because of Ee's U activity; here, while E's threat to Ees that it expected to close shop was a threat violative of 8(a)(1), it does not rise to the level of constituting intolerable working conditions regardless of Ee's insecurity since it is only a threat of some future action which may or may not be carried]

Williamson Piggly Wiggly, Inc. 280 NLRB No. 125

[Ee who was U adherent, and leader of group of Ees at one of E's stores who went to E's headquarters to complain about new work schedule and what they asserted to be theft from store by manager, was unlawfully constructively discharged where during interview as to why he had taken other Ees to E's headquarters, Ee was told his brother had resigned, and that his opportunities for employment with other Es would be better if he resigned rather than be discharged and he would have been fired if he hadn't resigned]

Central Broadcast Company 280 NLRB No. 056

[U supporter on sick leave w/o E's objection not voluntary quit where she was negotiating with E for protection against fellow Ee when permanently laid off by E; also, E had previously constructively discharged her by subjecting her to intolerable working conditions where a fellow Ee had so threatened her that she had to call security guard and police]

Central Broadcast Company 280 NLRB No. 056

[changing U supporter's job from live on-air announcing to pushing buttons to play taped announcements and reducing his compensation found unlawful constructive discharge of him as announcer]

Central Broadcast Company 280 NLRB No. 056

[refusing to communicate with U supporter and failing to put his sales talks on air as advertisements constituted unlawful constructive discharge from part-time sales job]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[reinstatement to position with diminished hours, drop in income, less desirable assignments and less desirable equipment, held improper; no tolling of backpay, and inasmuch as these changes are directly attributable to his unlawful discharge, his quitting E's employ w/o having another job was not willful loss of earnings but is constructive discharge]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. 279 NLRB No. 073

[Ees who refused to go to work for company which had purchased E were unlawfully constructively discharged, where E had refused to bargain with U, declared it was going to go non-U, and Ees would lose benefits, since their employment conditioned on abandonment of their rights guaranteed by Act]

Woodline Motor Freight, Inc. 278 NLRB No. 152

[U adherent who resigned was constructively discharged, where he was offered full time employment at one of E's trucking facilities the closure of which was purportedly imminent, given warning, and finally offered employment at distant facility if he would redomicile at distant facility, and when he accepted and moved, received no dispatches whereas other drivers were given runs]

Olympic Limousine Service, Inc. 278 NLRB No. 133

[E's cancellation of second shift, assertedly for economic reasons, which decision had effect of forcing main U supporter to quit since he went to scho. . days, violative, where E had recently instituted second shift and had told Ees it was working well, there was no decline in E's business to justify decision and E had shown animus towards U supporter]

Studio S.J.T., Limited 277 NLRB No. 126

(causing changes in Ee's working conditions, including reduction in 25 percent of her work, putting her under constant surveillance, harassing her and telling her she could not talk with others about nonbusiness matters, thereby forcing her to resign, held constructive discharge and violative where burdens were imposed on Ee because of her U organizing activities)

Cascade Painting Company, Inc. 277 NLRB No. 103

(Ees held contructively discharged where they quit their jobs because Ea had announced that they were going to operate non-U, and Ees did not want to lose their U benefits; by declaring that they were going non-U, Ea forced Ees to either quit or forego further representation by U, and a choice of such character may not be validly imposed upon Ees)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047

(layoff of Ee unlawful and held to be constructive discharge, since for U activites, where E after the fact attempted to capitalize on Ee's wife's illness to state on layoff slip *voluntary quit* to care for wife, in order to preclude any obligation to recall Ee, E had previously made disparaging remarks about U and hired new Ees rather than recall Ee)

Superior Warehouse Grocers, Inc. 277 NLRB No. 010

(Ee's refusal to accept reassignment that had been made undesirable by reducing his hours of work so that he chose to quit held constructive discharge and unlawful where E designed scheme in retribution for his having signed U card)

Bronx Metal Polishing Co., Inc. 276 NLRB No. 031

(reducing U activist's piecework rate of pay, and thus his earnings, so that he quit, violative as unlawful change in working conditions and as constructive discharge)

5073-1114—Cont.

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(known active U supporter who quit when her duties and hours of work were markedly changed held to have been unlawfully constructively discharged, where evidence established direct causal connection between discriminatory motivated changes in Ee's duties and hours and quitting of her employment; E engaged in systematic course of conduct punishing Ees because of their U activities and forcing Ees to quit; and this is expecially so, considering unlawful 8(a)(1) conduct by E clearly evidencing U animus)

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(E unlawfully constructively discharged Ee by scheduling Ee for work, assertedly pursuant to new policy, when she was unable to do so, where policy was applied to Ee after she was specifically identified as U supporter; application of policy was inconsistent; E demonstrated animus toward Ees supporting U: and E's defense that it imposed same requirement as to all other Ees failed to rebut GC's *prima facie* case)

South Nassau Communities Hospital **274 NLRB No. 179**
(no unlawful constructive discharge of U adherent but rather she resigned rather than be transferred after receiving unlawful warning, since transfer was due to personality conflict with supervisor and did not violate Act, nor did unlawful warning she received make circumstances so difficult as to force her resign)

South Nassau Communities Hospital **274 NLRB No. 179**
]*there are two elements necessary to establish constructive discharge: (1) burdens imposed on Ee must cause change in working conditions so difficult or unpleasant as to force him to resign, and (2) it must be shown that those burdens were imposed because of Ee's U activities*)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(no constructive discharge of Ee found where, although E had declared that he would force returning strikers to quit, neither government-required inspection of Ee's work nor effort to increase her productivity so that she could move on to more remunerative piece work constituted a change in working conditions *so difficult or unpleasant as to force resignation* of Ee)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(threatening, abusing and physically assaulting returning striker and humiliating him by initiation of condition over which he had no control constituted unlawful constructive discharge)

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-380-85**
[Ees held to have been unlawfully constructively discharged when they rejected offers of jobs which were conditioned on their acceptance of loss of contractual fringe benefits]

Wells Fargo Armored Service Corp. **JD-(SF)-19-86**
[violation where E showed intent to make employment relationship so unpleasant and intolerable that resignation was only reasonable response by twice suspending U activist, putting him on night shift, threatening to discharge him for failure to comply with no-beard policy and hiring new Ee to fill position for which fellow U activist was qualified]

Engineering Tube Specialties, Inc. **JD-245-85**
(Ee was constructively discharged where E refused to continue accomodating Ee's hours to needs of her children, after Ee had refused to solicit Ees to vote against U, thus resulting in Ee's resignation; E's business justification of increased business and need for hours different from her current hours, pretextual)

N.L.R.B. v. Auto Fast Freight, Inc. **793 F.2d 1126 (C.A. 9, July 1986)**
[giving Ees choice between resigning U membership and continuing to work so that they were forced to resign when they refused to relinquish U membership, violation]

5073-1117 Discharge for cause

Inner City Broadcasting Corporation **281 NLRB No. 162**
[discharge of radio news announcer allegedly because she refused to sign Ee ptn which sought ouster of U, not unlawful, where discharge was part of E's response to decline in audience ratings, and E's discharge was for failure to improve her on-the-air performance]

Evans St. Clair, Inc. **278 NLRB No. 065**
[discharging U leader for insubordination and threat of physical violence, not violation where threat was perceived as such by supervisor, relied on as discharge grounds, and was made w/o *culpable provocation* by supervisor, who had no obligation to withdraw from conversation with Ee about U meeting, and whose calling Ee *boy* was not so extreme as to excuse Ee's conduct]

Building Material & Dump Truck Drivers, Local Union No. 420, Teamsters (Mike Sullivan and Associates) **273 NLRB No. 170**
(discharge of business agent not violative, even if he was discharged, in part, because of his refusal to accept reduced amount of backpay in prior Bd proceeding, where U demonstrated that business agent would have been discharged, in any event, because of his failure to properly carry out his assigned duties and responsibilities as business agent)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, where there was no disparate application of concededly valid rule; and there were no other indicia of discriminatory intent)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, where there was no disparate application of valid rule even though Ee had solicited for Ee dinner while on working time in sight of E's managers' where dinner was isolated event sponsored and promoted by E itself, E is free to utilize its Ees' paid time for whatever legal activity it chooses, and Ees are not entitled to use medium of communication simply because E is using it)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, not withstanding contention that, if GC was permitted to demonstrate that management officials had themselves at various times used working time to distribute pro-company literature, such showing would entitle U's adherents to *equal time*, since Bd cases do not demonstrate existence of rule favoring or enforcing doctrine of *equal time* for U's)

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[discharge of U activist, not violation where as probationary Ee he had continuing unsatisfactory work performance]

5073-1128 Eviction from work by fellow employees

5073-1128-5000 Acquiescence by employer

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(violation by discriminatory discharge of returning ULP striker for not keeping low profile vis-a-vis other Ees, as directed, where nonstriker abused striker but was not even disciplined therefor)

5073-1142 Impression of discharge conveyed to employee and acquiesced in by employer equivalent to discharge

Rapid Armored Truck Corp. **281 NLRB No. 057**
[E asking strikers, who entered E's premises to receive paychecks from previous week, to turn in their company identification cards and uniforms since viewed through eyes of Ees request had purpose of discharge; further it constituted discharge of all strikers, notwithstanding not all strikers were asked to turn in identification cards and uniforms, especially in view of E's prior threat of discharge]

5073-1156 Notice of termination to unreplaced economic strikers

Woodlawn Hospital **274 NLRB No. 123**
(E's letter to U representing Ees on strike which informed U that Ees were discharged, held effective notice to Ees; contention that E must give actual notice to Ees themselves, rejected, since U was acting as agent of Ees; knowledge of discharge is imputed to Ees, where letter contained clear notice that strikers were discharged and where U asserted itself an agent of Ees by responding to letter on behalf of Ees as collective-bargaining agent; further, it is particularly appropriate in a strike situation, that a U be deemed to have broad authority to make and receive offers and proposals on behalf of strikers)

5073-1163 Notice of termination to employees in layoff status

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. **281 NLRB No. 117**
[terminating recall rights of Ees on layoff status at commencement of economic strike, pursuant to implementation of rule treating Ees after break in service as new Ees, unlawful, where laid off Ees included those who became economic strikers by manifesting their intent to join strike by engaging in picketing]

Link Manufacturing Co. **281 NLRB No. 028**
[change of Ee layoffs from temporary to permanent held unlawful attempt to prevent their being eligible to vote in election and generally to discourage U activities, where E's evidence was not susceptible to any interpreation which would explain change in nature of layoffs; and only event that did

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occur between announcement of temporary layoffs and their change into permanent was E's receipt of election ptn]

Link Manufacturing Co. **281 NLRB No. 028**
[conversion of Ee's layoff from temporary to permanent, not unlawful, where evidence suggested he was terminated for fighting with fellow Ee for which he was treated no differently than non-U Ees involved in fights; GC never alleged that Ee's termination was unlawfully motivated, and the only notification to Ee showed he was permanently laid off; and, unlike unlawful change from temporary to permanent of other Ees' layoffs, there was no significant intervening U-related cause, such as E's receipt of election ptn, occurring between Ee's layoff and his termination]

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(termination of laid off Ees, unlawful where, contrary to E's assertion that Ees were in preferential pool to be hired when E's economic condition improved, E notified Ees that layoff was a permanent termination; and E's lack of logical explanation for terminating Ees, coupled with E's unlawful activity in opposing U's organizing effort, led to conclusion that termination was part of E's continuing effort to discourage Ee support for U and to dissipate its strength in unit)

5073-1170 Pretext

Carpenters Local 925; et al. (Charlene Seier, an Individual) **279 NLRB No. 145**
[pretextual discharge cases should be viewed as those in which *—defense of business justification is wholly w/o merit*]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[finding of unlawful suspension and discharge of Ee supported by fact that E seized upon customer's complaint about Ee's failure to make delivery to rid itself of Ee who E knew would continue to be strong U advocate and spokesman on Ees' behalf; and, in order to build case against Ee, E disregarded Ee's effort to invoke grievance procedure which should have been available to him]

The Acme-Arsena Co., Inc. **276 NLRB No. 144**
(discharge of U steward assertedly for various valid reasons, unlawful, where steward was never previously warned or disciplined for reasons E gave for discharging him, all of which were merely grossly exaggerated pretext advanced by E to conceal its unlawful motive of discharging steward for engaging in protected activity of complaining to E about work jurisdiction and safety matters)

Mobile Concrete, Inc. **JD-453-84**
(discharge of U adherent, assertedly because, contrary to instructions, he obtained his paycheck before end of workday on payday and continued to use personal radio in his truck after such use by plant drivers was banned, violative where E seized on minor insubordinations as pretext to sever pro-U Ee in circumstances in which it would not have severed neutral or anti-U Ee)

N.L.R.B. v. Bliss and Laughlin Steel Company, Inc. **754 F.2d 229 (C.A. 7, Feb. 1985)**
(discharge of Ee, assertedly because he refused to review and sign contract on behalf of E and thus was insubordinate, violative, since real reason was his U activity and testimony adverse to E at Bd hearing where E was trying to *set up* Ee by having him sign contract in an attempt to prove he was a supervisor and pretextual nature of E's action was shown by fact that after Ee refused to sign contract, E did not attempt to have any other employee perform any official act upon it)

5073-1184 Transfer to subcontractor

Handy Andy Associates, Inc. **277 NLRB No. 029**
(discharge of Ees pursuant to E's decision to subcontract work, not violative where E demonstrated that sole basis for decision was predicated on economic or other legitimate business considerations)

5073-2200 For engaging in protected activity

The Lewis Grocer Company **282 NLRB No. 019**
[discharge of driver Ee, who was U supporter, assertedly for filing ULP charge against E and his protected activities, not violative, where real reason was his DOT violations]

Local No. 980, Automobile Workers (Local 32, Office Employees) **280 NLRB No. 161**
[U, in role as E, violated Act by discharging secretary for her statements quoted in newspaper article concerning her contract dispute with U and her suspension for protected activity, where article was generally factual and any inaccuracies were not malicious]

Heck's Inc. **280 NLRB No. 055**
[discharging leading U organizer on whose behalf U had filed ULP charge with Bd, violation, notwithstanding she had been issued three written warnings for breach of company policy, where discharge was closely related in time to her U and Bd-related activities and E had shown animus against her by unlawfully transferring her to another job]

B & P Trucking, Inc. **279 NLRB No. 092**
[shutting down trucking portion of operations and discharging all drivers, violation since reason was E's wish to avoid unionization, rather than trucking operation's lack of profitability]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[discharging U adherent, violation notwithstanding his insubordination and falsification of employment application, since Ee was good worker, falsification had nothing to do with his discharge, and E had previously violated 8(a)(1)]

Sahara Datsun, Inc. **278 NLRB No. 148**
[discharge of two U organizers same day E received U ptn for election signed by one of them, violation]

Port East Transfer, Inc. **278 NLRB No. 125**
[discharge of Ee unlawful, where for writing pro-U graffiti on E's restroom wall since such writing protected. Discharge was for content of writing, and not for defacing E's property, inasmuch as it was common for Ees to write graffiti on restroom walls, no other Ee had been disciplined, and writings of discharged E were not *so malicious, defamatory, or insubordinate as to lose protection of the Act*]

Marion Steel Company, Inc. **278 NLRB No. 127**
[discharging known in-plant leader of U drive for his *bad attitude* in verbally assaulting supervisor and management by asking supervisor if he wanted to sign U card and making vulgar comment about supervisor's going back to work if U came in, violation, since *bad attitude* was euphemism for pro-U activities in context of Ee's open pro-U activities in context of Ee's open pro-U activities, which had resulted in his being placed in isolated job under close supervision to prevent his discussing U with other Ees . . being warned to stop his U activities]

North Vernon Forge, Inc. **278 NLRB No. 106**
[discharge of rehired probationary Ee because Ee complained about his job assignment to his supervisor and to U making him alleged unsatisfactory probationary Ee, held violative since attempts by Ee to enforce provisions of existing collective bargaining agreement, even though agreement was ambiguous as to Ee's rights, are protected concerted activity under Act, as long as Ee's interpretations of agreement had reasonable basis]

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. **278 NLRB No. 102**
[discharge of 3 U committeemen who participated in wildcat strike and appeared on picket line, violation, since E singled them out for disparate treatment because of their U office, where there was no evidence that they engaged in strike leadership activities, similarly situated Ees were not disciplined, and E knew that two of the committeemen had urged other Ees to return to work and unless E capitulated on grievance held not threatened to cause strike]

Arlington Hotel Company, Inc. **278 NLRB No. 007**
[discharging U activist for undercharging customer by falsifying meal ticket, not violation, since, even if U activities were a motive, E met its *Wright Line* burden where Ee failed to clarify any question about E's discontinuation of *freebies*, and supervisor making discharge decision lacked personal U animus, was not treating Ee disparately, as he was new on job, and was ignorant of Ee's identity when he started investigating matter]

Reeves Brothers, Inc. **277 NLRB No. 153**
[discharge of Ee, assertedly for being in polling area at U election, violative since Ee had right to access to polling area and real reason for discharge was Ee's U sympathies and activities]

United States Postal Service **277 NLRB No. 156**
(discharge of U activist, violation where supervisor, in consulting E's attorney about the discharge, discussed not only Ee's unprotected reporting of E's building code violations to city but also his statements that Ees were underpaid and he was unionizing them and E would not have discharged Ee for unprotected activity alone)

MacDonald Miller Company **277 NLRB No. 079**
(discharge of Ee, allegedly for his U activities and U stewardship and interest in enforcing contractual term according his job higher wages, not violation, since E showed no U animus and acted in accordance with such contractual term in transferring Ee's job to other U members already making such higher wages, leaving Ee w/o a job and E w/o obligation to retain him)

Dave Castellino & Sons **277 NLRB No. 050**
(termination of Ee for refusal to work in response to demonstrators' picket line at E's jobsite, unlawful, where Ee made common cause with protected activity of demonstrators, herein found to be statutory Ees, protesting against E's alleged failure to comply with statutory duty and contractual commitment to provide work force composed of 50 percent of area residents, and fact that ee's action was motivated by fear of personal bodily injury was irrelevant)

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Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(giving preference in hiring to applicant who was willing to accede to E's anti-U posture, where discharging all but one Ee who supported U w/i 6 months after election, unlawful, especially in view of E's other violations including creating impression of surveillance and interrogation)

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(E's discharge of U activist, based on good faith belief that he had engaged in unprotected act of defacing E's facility with obscene graffiti, not violative)

Park Manor Nursing Home, Inc. **277 NLRB No. 028**
(E's discharge of U activist, assertedly for failing to obtain supervisory permission before leaving building, violative where real reason for discharge was her cooperation in investigation of U's charge in Bd case, her membership on U's negotiating committee, and her informing Bd that E was responsible for revocation ptn)

Malta Construction Company **276 NLRB No. 171**
(discharging Ee for refusing to remove U insignia from his company hardhat, violative where E failed to establish any special circumstances based on legitimate production or safety reasons to justify prohibition)

Malta Construction Company **276 NLRB No. 171**
(discharge of U advocate for interfering with other Ee's work, violative where E did not previously discipline him as it justifiably could have done as result of his known work habits but, rather, tolerated him as Ee until he talked U on job)

The Acme-Arsena Co., Inc. **276 NLRB No. 144**
(discharge of Ee assertedly for his behavior while acting as U steward, unlawful, where E failed to show it would have discharged Ee in absence of his protected activity of complaining to E about work jurisdiction and safety matters; even assuming Ee's threat to contact IRS to investigate E's books was not connected to his U activity, E failed to show it would have discharged him for such threat alone; and Ee's discourteous behavior or use of obscene language during protected activity was not so egregious as to remove him from Act's protection)

The Acme-Arsena Co., Inc. **276 NLRB No. 144**
(discharge of U steward assertedly for various valid reasons, unlawful, where steward was never previously warned or disciplined for reasons E gave for discharging him, all of which were merely grossly exaggerated pretext advanced by E to conceal its unlawful motive of discharging steward for engaging in protected activity of complaining to E about work jurisdiction and safety matters)

Garland Coal & Mining Co. **276 NLRB No. 102**
(discharge of chairman of grievance and safety committees for insubordination for refusing to sign E's memorandum threatening discharge if committees' members interfered in any activity outside their own unit, unlawful, where chairman's conduct did not remove him from protection of Act, since his refusal to sign did not impede or disrupt productivity in any way; refusal took place in private and not in front of other Ees; authority of supervisors involved was not publicly undermined; and there was no claim official's conduct exceeded acceptable bounds of conduct)

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(discharge of Ee, unlawful, where ALJ specifically discredited testimony of supervisor who effected discharge, and even assuming Ee's testimony was not credible, E failed to rebut GC's prima facie case which showed that Ee was a strong U activist, E had knowledge of Ee's activity and possessed U animus; and particularly noteworthy were statements by company officials that Ee's co-worker had been terminated for handing out U cards, and that any Ee who distributed or signed U card would be discharged)

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(discharge of Ee active on behalf of U, unlawful, where supervisors admitted to Ee and to other Ees that Ee was fired for handing out U cards; such admissions established that E knew of Ee's U activity and that E harbored type of anti-U animus that would motivate it to discharge Ee, and also established causal connection between U activity and discharge; and E failed to adduce any evidence with regard to reason for discharge or to show that there was valid nondiscriminatory reason for discharge)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**
(discharging Ees for their *disloyalty* in participating in U activities and voting in U election, violative)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**
(discharging Ees for refusing to cross picket line of unlawfully laid off Ees to go to work, violative)

McLane/Western, Inc. **276 NLRB No. 063**
(on ct remand, Bd held E had not shown it maintained rule requiring discharge of Ee for eating some demonstrably unsalvable goods and had not established *Wright Line* defense to alleged unlawful discharge for U activity, where past instances of stealing resulting in terminations did not involve taking of demonstrably unsalvable goods; Ee ate broken cracker from case in such condition goods were customarily thrown out; E's manager saw and had full opportunity to inspect damaged case; and management's reaction to incident belies its claim it had hard-and-fast rule unequivocally requiring Ee's discharge)

Technicolor Government Services, Inc. **276 NLRB No. 041**
(discharging U steward for distributing to E's Ees application forms for employment with another E, who was bidder in competition for E's position as service contractor found unlawful where activity was concerted, protected U activity that was not disruptive and did not breach any existing rule of E)

Power-Seal Corporation **276 NLRB No. 036**
(violation where E, who was aware of U organizing campaign in plant, discharged Ees he thought would vote for U)

Pottsville Bleaching and Dyeing Company **275 NLRB No. 175**
(discharging U activist for allegedly insubordinate reaction to being disciplined for talking on job, violative, since only U activist of three Ees involved was disciplined, and his reaction thereto, although not submissive, was not insubordinate)

Programming & Systems, Inc. **275 NLRB No. 157**
(precipitous discharge of *only* U activist still in E's employ w/o any plausible explanation either at time of discharge or at hearing, violative, where Ee, despite her seniority and satisfactory performance, was only teacher discharged after Christmas recess and E was shown to be vehemently opposed to unionization of its teachers)

Confect & Company, Inc. **275 NLRB No. 082**
(discharge, after hearing, of U supporter, who was one of Ees who had filed charges against E and representative of charging party designated to be present throughout hearing, violative where E had condoned his absenteeism and tardiness until U campaign began, had wanted to promote him to lead position, had displayed anti-U campaign, had withdrawn its offer to solve Ee's tardiness problem by transferring him to another shift, and had concededly talked with him about his suspension and discharge in presence of E's comptroller in order to have a witness)

Cuamano Brothers, Inc. d/b/a Ethnic Produce **275 NLRB No. 038**
(violation where on same day U demanded recognition from E's president two Ees, who with third Ee and encouragement of supervisor had gone to U hall and signed U authorization cards, were told by supervisor that E's president was angry and upset about demand for recognition and was discharging them)

Advance Development & Manufacturing Corporation **275 NLRB No. 036**
(discharge of Ees, assertedly for their lunch break practices, violative, where E discharged Ees in reaction to receipt of U letter demanding recognition and in order to frustrate U's efforts to achieve recognition)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(layoff of U adherents indefinitely with advice to file for unemployment compensation constituted unlawful discharge where E quickly recalled less senior Ees laid off at same time and its unsupported claim of U adherents' decline in production failed to counter prima facie showing that E was motivated by U adherents' concern with prospects for new U contract in face of E's statement it was going non-U and their pro-U orientation)

Bartels & Shores Chemical Company **274 NLRB No. 159**
(discharge of U adherent violative, where E had prior knowledge of his U activities, timing of discharge occurred one work day after Ees had arranged to contact U, E demonstrated U animus shortly after his termination in calling another Ee, the remaining U advocate, to office and inviting him to quit, and E focused its wrath on the two Ees who asked for U)

Roadway Express, Inc. **274 NLRB No. 052**
(discharge of U steward, who had received numerous purportedly work-related warning letters and 5-day suspension prior to discharge, unlawful where, while there was no dual motive because there was no business justification, GC demonstrated that E considered steward, who had filed numerous charges with Bd and had testified at Bd hearing, and had also protested E's proposed flexible work week, as U activist and harbored animus toward him and his U activities; and E did not meet burden of demonstrating that same action would have been taken irrespective of steward's conduct)

Radisson Muehlebach Hotel **273 NLRB No. 183**
(discharging Ee allegedly for asking supervisors if they had seen newspaper article stating that E had not remitted any money to the U for past three months, violative, where real reason was Ee's support of U where her support had been unknown to E until she revealed it by her question, and E had clearly shown U animus by its ULPs since decertification election, objections to which were still pending)

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) **JD-(NY)-97-96**
[no unlawful discharge and refusal to reinstate Ee and conditioning of his reinstatement upon U's consent because of Ee's concerted activities where E terminated him for refusing to accept his assigned load, his sole pre-dis-

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charge activity was filing of EEOC charge, of which E was unaware, and his sole involvement with U dissident group was to ask for their help after discharge]

Roadmaster Corporation **JD-(ATL)-18-86**

[discharging non-U Ee who was working during strike for telling her boyfriend, a former U steward and striker, the name of a crossover Ee, i.e., Ee who crossed the picket line to work during the strike, violation notwithstanding contention that information was confidential since E acted on belief that Ee was assisting the strike, a concerted, protected activity]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**

[E's numerous unlawful interrogations, solicitation of informants, impressions of surveillance, and timing of discharges, all w/in 11 days after receipt of U's R ptn, held to make obvious fact that motivation for Ees' discharges was their U activities]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**

[discharging Ee who directed stream of invective, profanity and abuse at E, lawful, notwithstanding E's prior unlawful threats and suspension for publicizing E's alleged ULPs and labor relations in newspaper article]

Hinz Store Fixtures & Construction Co., Inc. **JD-(SF)-191-85**

[E's trying to force Ee to accept its position that he voluntarily quit, and discharging him for trying to secure E's compliance with bargaining agreement, violation]

Educational Broadcasting Corporation d/b/a WNET/Thirteen **JD-(NY)-125-85**

[discharge, allegedly for inability to work closely with another Ee, violation, since real reason was Ee's filing and pursuing grievance, where Ee had reasonable and honest belief in entitlement to relief under U contract]

The Fred B. Nebra Company **JD-337-85**

(discharge of Ee who spoke to supervisor about performing unit work under U contract, unlawful)

Onan Corporation, A Division of Onan Corporation **JD-(ATL)-11-85**

(suspension and discharge of Ee for refusing to comply with E's demand that he remove T-shirt with U insignia and other U paraphenalia from his work place, violative, since Ee's action was not insubordinate or proper basis for discipline in view of discrimination inherent in E's demand)

The Kroger Company **JD-(ATL)-23-85**

(discharging and thereafter refusing to reinstate Ees because of their participation in strike, violative)

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**

(discharge of Ee, who was U steward and filed charges against E with Bd and, while out on disability, continued to visit shop to function as U steward, unlawful, where E showed animus towards Ee for his protected activities; E's actions, shortly afer filing of charges, to have Ee *tone down* his activities in investigating charges and as U steward showed E desired to retaliate against Ee for his activities relating to charges and function as U steward; and E failed to establish that Ee was *stealing time* by failing to put in full day's work)

Hyde Park Community Hospital **JD-62-85**

(discharging Ee in retaliation for his filing grievance, through U, for overtime, violative)

Harry Rosenblatt & Sons **JD-(SF)-50-85**

(discharge of Ee who engaged in U organizing activities and prevailed upon management to meet with Ees at behest of aggrieved fellow Ees, allegedly for poor performance due to outside job, unlawful)

W-W Masonary, Inc. **JD-486-84**

(discharge of job steward, assertedly for poor productivity and performance, violative where action of steward in complaining to E concerning its alleged violation of bargaining agreement was precipitating cause of discharge and absent steward's participation in dispute, E would not have fired him)

Mobile Concrete, Inc. **JD-453-84**

(discharge of U adherent, assertedly because, contrary to instructions, he obtained his paycheck before end of workday on payday and continued to use personal radio in his truck after such use by plant drivers was banned, violative where E seized on minor insubordinations as pretext to sever pro-U Ee in circumstances in which it would not have severed neutral or anti-U Ee)

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**

[discharge violation, since it was for U activities rather than poor work performance because Ee's difficulty in supervising second shift resulted from defective products, over which he had no control, and he was not warned of alleged poor quality and productivity of his work]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**

[discharge of U activist, violation, notwithstanding claim of his poor performance and desire to do only one kind of work that would not justify full time employment, where evidence showed he performed other work, received no complaints or warnings about any aspect of his work, and was given pay raise and bonus three weeks before discharge]

N.L.R.B. v. Jefferson Electric Company, a Division of Litton Systems, Inc. **783 F.2d 679 (C.A. 6, Feb. 1986)**

[discharging Ee for actively campaigning for U, violative]

JMC Transport, Inc. v. N.L.R.B. **776 F.2d 612 (C.A. 6, Nov. 1985)**

[where Ee's extremely hostile and abusive outbursts while engaged in protesting E's change in pay policy clearly could be seen as unprotected in context in which discharge is based on specific allegedly unprotected conduct, ct held E's failure to fire Ee for his abusive conduct defeated E's contention that Ee's conduct was unprotected; in context in which E had not found conduct so disruptive as to justify discharge at the time, ct declined to impose post hoc classification of unprotected conduct]

N.L.R.B. v. E. I. DuPont De Nemours **750 F.2d 524 (C.A. 6, Dec. 1984)**

(discharge of U activist, allegedly because multiple positions on his machine broke simultaneously, violative where overhaul of his machine because of poor operation, which was due a month before, did not occur until after his discharge, and where other Ees who had also had simultaneous multiple breaks of positions on their machines had not even been reprimanded)

N.L.R.B. v. Vought Corporation - MLRS Systems Division **788 F.2d 1378 (C.A. 8, Apr. 1986)**

[discharge of Ee who was chairman of inplant U organizing committee, handed out U literature and authorization cards, and wore U insignia, unlawful, since discharge for protected activity rather than for abusive profane language towards supervisor when given written warning, since Ee's conduct not so indefensible as to forfeit protection of Act and was justifiably provoked by E's repeated violations of his rights]

Lemon Drop Inn, Inc. v. N.L.R.B. **752 F.2d 323 (C.A. 8, Jan. 1985)**

(discharge of Ee violative where he had previously been considered good Ee, E had exhibited U animus by its threat to shut down business in response to U organizing, E's exlanation for Ee's discharge was pretextual)

Lemon Drop Inn, Inc. v. N.L.R.B. **752 F.2d 323 (C.A. 8, Jan. 1985)**

(discharge of Ee violative where E demonstrated its U animus by threatening retaliatory shutdown in response to organization of Ees, E had knwoledge of Ee's involvement with U, Ee was fired 5 days after having observed election and record supported ALJ's additional finding that E's economic justification for laying off Ee was pretextual)

N.L.R.B. v. Technicolor Government Services, Inc. **795 F.2d 916 (C.A. 11, Aug. 1986)**

[discharging U steward for distributing to E's Ees application forms for employment with another E, who was bidder in competition for E's position as service contractor, violative since activity was concerted and protected]

5073-2400 For refusing to join or support favored union

R. H. Cole Truck Service **JD-295-86**

Las Vegas Paving Corp. **JD-(SF)-49-86**

[layof of Ees for refusing to join U, violative; further, E's contention that Ees forfeited right to backpay by engaging in post-layoff misconduct, rejected, since Ees engaged only in use of various non-threatening gestures and vulgarity directed at Ees who remained at work]

5073-3000 For not renouncing union membership or not engaging in antiunion activities

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 234**

(E, by its withdrawal of U recognition and refusal to abide by contract, in effect unlawfully discharged U Ee who refused to work for non-U shop)

N.L.R.B. v. Oberle-Jordre Company, Division of The Bishopric Products Company **777 F.2d 1119 (C.A. 6, Nov. 1985)**

[discharge of U member, unlawful, since motivating factor was his continued affiliation with U, where E's interrogation of Ee regarding withdrawal from U was accompanied by explicit promises of employment conditioned on Ee's responses to interrogation]

5073-3300 For striking or during strike

5073-3325 Non-ULP strike

Rapid Armored Truck Corp. **281 NLRB No. 057**

[E's discharge of and refusal to reinstate strikers, not unlawful, since their conduct unprotected, where strikers' objective was to compel E to recognize and bargain with U which was ineligible for certification because of its policy of admitting both guard and non-guard Ees to membership and picketing was also violative of Section 8(b)(7)(C)]

5073-3350 Pursuant to no-strike agreement

United Parcel Service, Inc. **273 NLRB No. 205**
(suspension and discharge of U stewards for participation in strike which was in violation of no strike agreement, not unlawful, notwithstanding contention actions discriminatory because of U office these individuals held as other strikers not similarly disciplined, where U stewards went beyond simple participation and provided leadership to rank-and-file Ees by relaying messages from U business agent, picketing in more than one location, and explaining strike to television reporters)

Nicholas, Inc. and Nicholas, Inc., Debtor in Possession **JD-(NY)-31-86**
[in cases arising before amendments to Bankruptcy Act effective, E, debtor-in-possession, lawfully discharged Ees for striking in violation of no-strike provision in contract where strike occurred during interim period of E petitioning court approval to reject contract and prior to court granting petition, and E continued to abide by terms of contract during this period, thus affirming contract]

N.L.R.B. v. Deauville Hotel **751 F.2d 1562 (C.A. 11, Feb. 1985)**
(discharge of Ee for picketing in violation of no-strike clause renewed in contract agreed upon after economic strike, not unlawful where U had reasonable time to notify its members, including dischargee, of new contract with no-strike clause; dischargee was in fact notified, reported for work, and joined picketers only when mistakenly informed by U steward that the contract had not been singed; U was obligated to heed no-strike clause and prevent unlawful strikers and neither U nor Ee was excused from honoring said clause)

N.L.R.B. v. Southern Florida Hotel and Motel Association, et al. **751 F.2d 1571 (C.A. 11, Feb. 1985)**
(enforcing no-strike clause by discharging returning economic strikers who began picketing three days after ratification of contract and end of strike, not violative, since, judged by objective standard, reasonable time for parties to *cool off* had passed since agreement on contract and for U to notify Ees of agreement and of strike's ends where Ees had ratified contract, ratification had been publicized, existence of no-strike clause in contract was known, and U officials failed towarn picketers when they came to U hall that violation of no-strike clause could result in discharge)

5073-3375 ULP strike

Gatliff Business Products, Inc. and KBD Service Corporation **276 NLRB No. 060**
(discharging Ees for refusing to cross picket line of unlawfully laid off Ees to go to work, violative)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(discharge of Ees who struck in protest against E's discharge of fellow Ee for U activity, violative; discharge of other Ees who joined ULP strike and picket line next day, also violative, notwithstanding that they may never have been told directly that they were discharged, since E repeatedly told strikers that anyone who had walked out was fired or considered to have quit)

Tectonic Industries, Inc. **JD-(NY)-100-84**
(strike held ULP strike where E, but its unilateral action in changing conditions and terms of employment, secured what it had been unable to secure at bargaining table, i.e. total control over E's operations and therefore did not enter into negotiations with sincere desire to reach agreement, and failure to do so was due to E's pattern of bargaining in bad faith)

5073-4500 For not accepting offer of supervisory position

Joan Faust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(discharge of Ee, assertedly because she refused promotion to supervisor and thus had to be let go, violative, since real reason was Ee's U activity, where E was engaged in scheme to coerce Ees into accepting supervisory positions in an effort to preclude pro-U Ees from voting; further, E's failure to rehire Ee some 9 months later because she was associated with the *turmoil* at E's premises, violative, since *turmoil* meant Ee's support of U)

5073-4600 For filing grievances or participating in grievance or arbitration proceedings

D.H. Martin Petroleum Co. **280 NLRB No. 058**

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**
[discharging driver, violation, where, notwithstanding he falsified trip card, he would not have been discharged but for his numerous successful grievances costly to E]

Advance Manufacturing Corp. **JD-9-86**
[discharge of U steward, unlawful, since in retaliation for U committeeman's objection to E's violation of contract and filing grievance, rather than for poor work performance for which steward had been warned, where at time of his discharge steward's personnel file contained no reprimands inasmuch as under E's reprimand system his reprimands had been removed, discharge was precipitous, and absent evidence steward's mistakes were wholly or partially responsible for cost overruns on one project cited by E, or his mistakes were as great as another E's on another project]

Educational Broadcasting Corporation d/b/a WNET/Thirteen **JD-(NY)-125-85**
[discharge, allegedly for inability to work closely with another Ee, violation, since real reason was Ee's filing and pursuing grievance, where Ee had reasonable and honest belief in entitlement to relief under U contract]

Gallati Carriage of Michigan, Inc. **JD-311-85**
(discharge of Ee, in reprisal for filing grievance over cut in wages and benefits, violative)

5073-4700 For refusing to accept nonunion working conditions

Plateau Coal Sales, Inc. **279 NLRB No. 156**
[E's seeking to induce Ees to work w/o U representation and withdrawing offers of employment from its entire work force when Ees refused to work nonU, held violative, since E wanted to avoid recognizing U, and Ees were U members]

Castricone Contractors, Inc. **JD-(NY)-80-85**
(discharge of Ee who joined U after starting work and when he gave E his U papers was told by E that Ee *could either finish off the day or go home now — there were other people in U laid off that are not working*, violative as E member of E association that signed contract with U and Ee discharged because E would have had to pay Ee contract wage)

5073-5200 Per se violation in application of discriminatorily promulgated plant rule

N.L..R.B. v. Malta Construction Company **806 F.2d 1009 (C.A. 11, Dec. 1986)**
[discharge of Ee for *deliberate interference with production and refusing work assignment, followinstructions* during U campaign when Ee refused to remove U sticker from his E supplied hard hat when Ee was on his water break assisting fellow Ee who had a stuck front-end loader, held violative, since GC proved existence of presumptively invalid rule banning U insignia on hard hats and E did not prove any special circumstance to justify its rule. Ee had never been warned or disciplined for his behavior prior to his taking about U]

5073-5300 For refusing to work assigned hours

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(discharge of painter at apartment building, who was U adherent and filed charges, for failure to work, on usual day off in order to accomplish urgently needed painting, not violative, since discharge would have taken place absent protected activity, inasmuch as work on that day necessary and in view of previous poor quality and slowness of Ee's work)

5073-5400 For refusal to accept unlawful conditions

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(discharging ULP striker who was reinstated to different job while replacement continued to occupy her former position because she insisted upon proper reinstatement, violative)

15th Avenue Iron Works, Inc. **JD-(NY)-141-84**
(discharging Ee because he disobeyed E's instructions to not come to the shop to vote, violative)

5073-5500 Forced resignation

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[Ee who was U adherent, and leader of group of Ees at one of E's stores who went to E's headquarters to complain about new work schedule and what they asserted to be theft from store by manager, was unlawfully constructively discharged where during interview as to why he had taken other Ees to E's headquarters, Ee was told his brother had resigned, and that his opportunities for employment with other Es would be better if he resigned rather than be discharged and he would have been fired if he hadn't resigned]

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
(request for Ees' resignations by E who never gave them option of remaining with E nor told them that if they did not resign they would only be suspended held to constitute discharge in and of itself, since request for resignation was merely giving Ees a choice of quitting or being fired)

5073-6000 Familial or other close relationship

Retail Delivery Systems, Inc. **JD-(NY)-15-86**
[termination of Ee (dropping him from casual list) because of U activities carried on by his brother, violative]

5073-6600 Mass discharge

5073-6600—Cont.

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**

[while in typical *Wright Line* case GC must demonstate E's awareness of pro-U acts or sentiments of individual Ees, GC can proceed on theory that E ordered general layoffs for purpose of discouraging U activity even if not all pro-U Ees are directly effected; E's general retaliation against workforce can discourage exercise of Sec. 7 rights just as effectively as adverse action taken against only known U supporters]

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**

[pre-election mass discharge of Ees assertedly because of economic necessity held violative of 8(a)(1) as well as 8(a)(3) where E, in face of warnings to reduce costs, hired additional Ees and incurred other avoidable business expenses; only logical reason for discharges was to impose chilling effect on Ees about to vote for U representation; such chilling effect was implemented by E's other unlawful conduct; and asserted economic basis for discharges was not credited in view of E's business expenditures]

B & P Trucking, Inc. **279 NLRB No. 092**

[shutting down trucking portion of operations and discharging all drivers, violation since reason was E's wish to avoid unionization, rather than trucking operation's lack of profitability]

Electronic Data Systems International Corporation **278 NLRB No. 014**

[discharge of 10 Ees, who engaged in unprotected work stoppage of a few minutes which was spontaneous reaction to discharge of supervisor, but not in protest of impact of discharge on employment, unlawful, notwithstanding unprotected nature of work stoppage and fact took place 9 months after U organizing campaign, in view of E's superficial investigation, previous good record of dischargees, severity of discipline in relationship to misconduct, disparity of treatment between U adherents and other Ees]

Hunter Douglas, Inc. **277 NLRB No. 123**

(discharge of Ees on second shift, which E believed to be focus of U activity, unlawful, since E failed to demonstrate same action would have taken place absent protected activity, notwithstanding Es contention it eliminated shift due to shift's lower productivity, greater management availability on first shift, reduction in indirect costs and security considerations, in view of abruptness of layoff and fact E deviated from previous layoff policy by eliminating entire shift rather than overall reduction of Ees from all shifts based on individual seniority and qualifications)

Joseph A. Perry d/b/a Holiday Inn-Glendale **277 NLRB No. 145**

(mass discharge of Ees, assertedly because of insubordination and because E received a bad hotel inspection, violative, since real reason was Ees' U activity where Ees were discharged w/i 2 days of E's knowledge thereof, E gave shifting reasons, threatened Ees with reprisals for U activity and unlawfully interrogated Ees)

Activ Industries, Inc. **277 NLRB No. 040**

(in adopting ALJ's conclusion that E unlawfully terminated more than third of its work force, Bd emphasized that it was E's mass discharge, and not its selection of Ees for discharge that was unlawful; accordingly, GC was not required to show correlation between each Ee's U activity and his or her discharge)

Activ Industries, Inc. **277 NLRB No. 040**

(mass discharge of Ees because of U activities, comprising third of work force, unlawful, where discharges occurred only 9 days after U organizing campaign began; shortly before discharge all but 1 of Ees involved received average to excellent job evaluations; supervisor admitted he chose some Ees for discharge because of their *U activism*; and E, while intervening to prevent discharge of some Ees, nevertheless deferred to supervisor's recommendation on discharging Ees whose work performance or behavior E was not familiar with; and Ee overheard another supervisor's statement that U was reason for discharges)

Cassidy Cleaning, Inc. **JD-239-86**

[discharge of large number of Ees comprising nearly 30 percent of work force, unlawful, in view of E's display of blatant anti-U hostility toward U's organizing drive, discharges being effective w/i days of overwhelming U victory in election, prior admission by supervisor that E was going to fire lot of people because of election outcome, and U activities of Ees, as individuals and as group, on company premises in sight of supervisors]

Cassidy Cleaning, Inc. **JD-239-86**

[it is not essential for GC to establish that each and every member of group of Ees allegedly discharged for U activities was U activist, since anyone removed in course of discriminatorily motivated housecleaning is discriminatee, even if not personally engaged in U activities; moreover, in view of large number voting in favor of U, there was statistical chance that large percentage of Ees voted for U and that anyone discharged was U supporter]

Quality Rolls, Inc. **JD-189-86**

[multiple discharges which included prominent U supporters, based on findings made by undercover investigative agent concerning Ees' conduct on unsupervised shift, unlawful, where investigation was sham calculated to provide foundation for elimination of sole remaining members of U negotiating committee, in view of E's ongoing unprecidented bent toward discharges and willingness to sacrifice large segment of skilled workforce in face of large backlog and heavy demand on basis of unconfirmed accusations of third party undercover agent]

5073-7100 Pursuant to unlawful no-solicitation rule

Harry M. Stevens, Inc., A/K/A Harry M. Stevens Services, Inc. **277 NLRB No. 031**

(discharge of Ee, assertedly because he solicited U cards on working time, violative, where Ee had not yet commenced his assigned work, he was discharged in the absence of a valid no-solicitation/no-distribution rule and E made no showing that Ee had interfered with production)

Pillod of Mississippi, Inc. **275 NLRB No. 117**

(discharge of Ee, assertedly because she attempted to distribute U literature on work time, disrupted company meetings and falsified employment application violative, since real reason was her U activity where E enforced no-distribution rule in discriminatory manner, Ee was engaged in protected activity of supporting U at company meetings and E seized on false employment data as mere pretext to discharge as E did not act on information until after Ee defended U)

N.L..R.B. v. Malta Construction Company **806 F.2d 1009 (C.A. 11, Dec. 1986)**

[discharge of Ee for *deliberate interference with production and refusing work assignment, followinstructions* during U campaign when Ee refused to remove U sticker from his E supplied hard hat when Ee was on his water break assisting fellow Ee who had a stuck front-end loader, held violative, since GC proved existence of presumptively invalid rule banning U insignia on hard hats and E did not prove any special circumstance to justify its rule. Ee had never been warned or disciplined for his behavior prior to his taking about U]

5073-7200 To avoid dealing with union

Fox-Art Theatres, Inc. **278 NLRB No. 115**

[discharge of movie projectionist, unlawful, since solely because of his U membership, where he had had good work record for 12 years, and was considered *great operator* by his manager, but was told he was no longer employed by E because *this is not U house anymore*]

Service Merchandise Company, Inc. **278 NLRB No. 023**

[E's discharge of drivers and warehouse Ee who had been driver and subcontracting driving operations, unlawful, where for support of *drivers' association* and threat to seek representation by outside U, in view of E's expressed opposition to outside U, summary nature of discharges, and secrecy of negotiations for subcontracting; contention subcontracting motivated by economic considerations, rejected, where subcontracting resulted in 25% increase in cost even though fewer miles driven over private driver operation]

Mar-Kay Cartage, Inc. and Contemporary Delivery Systems, Inc. **277 NLRB No. 152**

(layoff and termination of Ees prior to E's shutdown and formation of new company held to be alter ego of disbanded company, for purpose of avoiding dealing with U, unlawful)

Dextra Industries, Inc. **273 NLRB No. 204**

(violation where E refused to negotiate new agreement with U and thereafter terminated its shop Ees to avoid its bargaining obligation with U)

Lynco Millwork & Manufacturing Co. **JD-166-86**

[discharging maintenance Ee, violation since E eliminated maintenance position rather than face possibility of having position included in unit pursuant to unit clarification ptn filed by U]

N.L.R.B. v. Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **785 F.2d 46 (C.A. 2, Mar. 1986)**

[successor's discharing predecessor's Ees because of their U membership and replacing them with non-U Ees, violation]

5073-7300 To legitimatize unlawful discharge of other employee(s)

Quality Rolls, Inc. **JD-189-86**

[discharge of Ees at same time that prominent U supporters were unlawfully discharged assertedly for improper conduct on job also unlawful where termination of U supporters would only have air of legitimacy if more culpable Ees herein were also included in discharges]

5073-8000 Pursuant to union demand because of employees opposition to union officer

Penn Yan Express, Inc. **274 NLRB No. 057**

(discharging Ee because he had supported losing candidate in U election and winner had given E reason to believe that he might cause problems if he were kept on, violative; finding of unlawful motivation was based on crediting of dischargee's testimony that he was discharged so that E could avoid U problems and crediting of defeated candidate's testimony to same effect where it was undenied)

5073-8200 Pursuant to union demand because employee-member did not comply with union rules

Naftali Deutsch and Alexander Coler d/b/a C–D Investment Co. **279 NLRB No. 090**

[District Council's action, and E's acquiescence, in reinstating two duly appointed stewards and causing discharge of steward appointed by U officer w/o authority to do so and in violation of hiring hall rules, not unlawful where District Council was preserving integrity of contractually prescribed referral practice, and discharge of steward appointed w/o proper authority was necessary to effective performance of its representative function]

5073-8300 Pursuant to union demand because of employees' lack of union membership or membership in particular local

Dubose Masonry, Inc. **279 NLRB No. 125**

[discharge of non-U bricklayers while U bricklayers were standing around at jobsite, violative, since GC presented *prima facie* case where evidence was sufficient to support inference that Ees lack of U membership was motivating factor in E's decision to terminate. E's assertion that non-U bricklayers were laid off because of decline in work at jobsite was unsupported]

Montgomery Elevator Company **278 NLRB No. 122**

[E demoting and terminating Ee at U's request, unlawful, where for Ee's non-membership in U; contention Ee laid off since there were no *helper* positions available when he was returned to that status pursuant to agreement with U that Ees who failed mechanics test while working as mechanic with temporary permit be returned to *helper* status for 1 year, rejected, in view of disparate treatment of Ee and timing of termination soon after meeting of U's representative with E]

Greg Construction Co. **277 NLRB No. 163**

(discharge of Ees to avoid paying wage rate in U contract, rather than because U demanded discharges because they were not U members, not unlawful)

Waterfront Service Co., Inc. **JD-171-86**

5073-8500 Pursuant to union demand because of employees intra-union troublemaking

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) **JD-(NY)-97-86**

[no unlawful discharge and refusal to reinstate Ee and conditioning of his reinstatement upon U's consent because of Ee's concerted activities where E terminated him for refusing to accept his assigned load, his sole pre-discharge activity was filing of EEOC charge, of which E was unaware, and his sole involvement with U dissident group was to ask for their help after discharge]

5073-8600 Pursuant to union demand because of employee's dues delinquency

Dillingham Tug & Barge Corporation **278 NLRB No. 019**

[discharging Ee at U's request for failing to pay dues when Ee had no dues obligation, violation]

5073-8700 To discourage support for disfavored union

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**

[discharge of Ees who signed authorization cards for the one of competing Us with which E least preferred to deal, unlawful, where GC established that Ees were active on behalf of U and that E was aware of their U sympathies as evidenced by its interrogations of Ees and efforts to have them sign authorization cards for favored U, E's multiplicity of contradictory reasons for discharge and inability to pinpoint or substantiate misconduct relied upon for some discharges]

5073-9200 As result of discriminatory enforcement of rule

Harry M. Stevens, Inc., A/K/A Harry M. Stevens Services, Inc. **277 NLRB No. 031**

(discharge of Ee, assertedly because he solicited U cards on working time, violative, where Ee had not yet commenced his assigned work, he was discharged in the absence of a valid no-solicitation/no-distribution rule and E made no showing that Ee had interfered with production)

Restaurant Corporation of America v. N.L.R.B. **801 F.2d 1390 (C.A. D.C., Sept. 1986)**

[discharge of Ees held not unlawful enforcement of valid no-solicitation rule, notwithstanding Bd's finding of instances of non-U solicitation that occurred during work time, where Bd's and ALJ's observations of non-U solicitations could not substitute for requisite finding that U and non-U solicitations had substantially equivalent potentials for disruption of work]

5073-9360 As result of plant relocation or closure

Strawbine Manufacturing Co., Inc., et al. **280 NLRB No. 063**

[E's closing of plant, termination of Ees and relocation in another state, assertedly because dire economic reasons compelled such decision, violative, since real reason was E's desire to rid itself of U where E's other plants were losing much more money than plant which was closed, E made no effort to sell plant after closure in order to improve economic condition and E otherwise misrepresented closing of plant to U and secretly relocated facility]

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**

[discharge of 38 Ees and refusal to rehire them as positions became available, violative, since E discharged Ees assertedly because it sold business but was found herein to be single E and alter egos with new E, thus, U's contract remained in effect in regard to all aspects of employment relationship]

5073-9600 As result of change in operations

Leeward Nursing Home **278 NLRB No. 157**

[no violation, where Ees were discharged as result of subcontracting and some Ees were not hired by subcontractor, since subcontracting lawful, subcontractor not named as Respondent, and absent evidence of blackballing of Ees by Respondent E which subcontracted]

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**

(unlawful discharge of Ee w/lowest seniority and working 1 shift per week when E reinstituted old policy that Ees work minimum of 2 shifts per week and took shift from him and gave it to senior Ee who also worked 1 shift, in view of E's animus, no explanation why E delayed 5 months before implementing decision to return to old shift policy, and knowledge of Ee's U inclination inferred from E's knowledge that Ee's brother, also Ee, was U adherent, smallness of workforce (21 Ees) and supervisor at time of his termination voiced concern over U considerations

5075 PREFERENTIAL REINSTATEMENT

Mid-State Distributing Co., Inc. **276 NLRB No. 172**

(preferential rehiring of unlawfully terminated Ee over more senior Ees and granting him preference in method of pay thereafter, unlawful, where senior Ees had engaged in prominent U activities on picket line and on election day, while rehired Ee had openly declared to E his support of E rather than of U)

Gaso Pumps, Inc. **274 NLRB No. 076**

(no violation by E informing Ees that in event of strike they may be permanently replaced w/o at same time informing them of their preferential reinstatement rights unless statement may be fairly understood as threat of reprisal or is explicitly coupled with such threats)

5079 REFUSAL TO REINSTATE

5079-1400 Following lay-off

Airport Distributors, Inc. **280 NLRB No. 091**

[subcontracting unit work and refusing to recall laid off Ees to perform such work, unlawful, in view of E's anti-U animosity, and desire, intent and practice of retaliating against Ees for their U activities; fact that immediately following strike for recognition, E drastically increased subcontracting practice; and E's failure to sustain burden of showing that subcontracting would have been inevitable]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**

(layoff of Ee unlawful and held to be constructive discharge, since for U activites, where E after the fact attempted to capitalize on Ee's wife's illness to state on layoff slip *voluntary quit* to care for wife, in order to preclude any obligation to recall Ee, E had previously made disparaging remarks about U and hired new Ees rather than recall Ee)

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**

(alter ego E's failure to offer employment to 3 Ees who had been laid off by predecessor E, violative, notwithstanding 2 of Ees were offered and accepted positions with third E that resulted in loss of seniority to both Ees, since alter ego failed to abide by bargaining agreement that precluded Ees' loss of seniority)

Weyerhaeuser Company **274 NLRB No. 130**

(failure to recall and reinstate economic strikers on reopening plant - closed down for nonstrike related economic conditions - 2 years after it shut down and 18 months after strike ended, not violative, because failure to recall not attributable to replacements or to strike related reduction in work but to contract provision in work but to contract provision which stated that Ee shall be considered terminated and seniority lost if on layoff for 12 months, and when strike ended economic strikers joined nonstrikers on layoff status and there position is no different than other Ees just because they were economic strikers)

5079-2800 Non-ULP strikers

5079-2801 Generally

Medallion Kitchens, Inc. **277 NLRB No. 175**
[economic strikers should not be equated to laid-off Ees because economic strikers enjoy statutory right to reinstatement with no time limit set on exercise of reinstatement rights]

Zartic, Inc. **277 NLRB No. 171**
[permanently replacing strikers by failing to go to preferential recall list and hiring new Ees, violation that prolonged strike and converted it to ULP strike]

5079-2813 Where replaced

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[E's failure to reinstate former economic striker after rescinding temporary job offer, not unlawful, where temporary job, which Ee was to be given, was filled by individual who normally filled that position; and E is not required to provide another job for former striker if, through no fault of E, proffered position no longer exists]

Service Electric Company **281 NLRB No. 107**
[in instant case, even under terms of settlement agreement, it was striking Ees---not E---who had burden of taking initiative in order to trigger (E's) reinstatement obligation]

Brookhurst Professional Building, Inc., Number Three d/b/a Browning Manor Convalescent Hospital **279 NLRB No. 172**
[no unlawful refusal to reinstate economic strikers where E had hired permanent replacements, U never made unconditional offer for its striking members to return to work where it attached conditions to its offer, and E asked strikers to register, rather than to *apply* as it usually understood, for preferential hiring list]

Hansen Brothers Enterprises **279 NLRB No. 098**
[economic strikers are entitled to immediate reinstatement upon unconditional offer to return to work, provided their positions have not been filled by permanent replacements or there was no business justification; thus, where striker replacements are only temporary, offer to return to work which demands no more than discharge of those replacements is appropriate]

Hansen Brothers Enterprises **279 NLRB No. 098**
[Bd noted that it did not read S.Ct's *Belknap* decision, 463 U.S. 491, as converting E's vague statements to economic strikers' replacements concerning their permanent Ee status into offer of permanent employment for purpose of determining strikers' reinstatement rights; *Belknap* did not hold that E need no longer promise replacements permanent employment to render them permanent; rather, it held that to avoid civil liability to replacements if replaced pursuant to Bd order or settlement agreement providing for reinstatement of strikers, E may promise replacements permanent employment subject to such conditions subsequent]

Hansen Brothers Enterprises **279 NLRB No. 098**
[although U's offer on behalf of economic strikers to return to work, coupled with demand that all strikers be immediately reinstated and striker replacements be discharged, was conditional, Bd held E unlawfully refused to reinstate strikers since replacements were temporary and U's offer was therefore appropriate, where E's communications to strikers concerning reemployment rights and to replacements concerning their permanent Ee status were noncommital, and its statements showing own intent to permanently employ replacements, failed to satisfy E's burden of showing *mutual* understanding between itself and replacements that they were permanent]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's failure to reinstate former economic striker, unlawful, notwithstanding former striker's statement that he was happily employed at another E, absent evidence job former striker currently held was substantially equivalent to job he had held at E and that it constituted regular, rather than part-time or temporary employment]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's failure to recall former economic striker after his replacement left not justified by contentions that former striker had obtained regular and substantial employment with another E, or that his replacement possessed skills not possessed by former striker which allowed E to use replacement in enlarged work capacity, absent evidence that former strikers employment with other E was actually equivalent, or that changes in operations during strike warranted need for skills greater than those E required at beginning of strike, or that replacement was hired because he possessed those skills]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's failure to recall former economic striker who had repaired auto engines when his replacement left, not unlawful, since justified by substantial business reasons in view of changed nature of its engine repair operations to emphasis on work on different type of engines, and inability of former striker to perform this type of work]

Pacific Mutual Door Company **278 NLRB No. 120**
[where E retained control over Ees leased to it by joint E and Ees began work of unreinstated drivers on permanent basis after unreinstated drivers unconditionally requested reinstatement, Bd found that jobs of unreinstated drivers were not eliminated and that E in essence hired new Ees instead of reinstating two economic strikers after their unconditional request for reinstatement; thus, E's matured reinstatement obligation to strikers was not obviated by E's contract with joint E that leased drivers to E and E's failure to reinstate strikers on date of contract, violative]

U.S. Mineral Products Co. **276 NLRB No. 022**
(permanently replaced economic strikers' entitlement to reinstatement is limited to being put on preferential hiring list with E not being required to reinstate economic striker unless and until his former job or its equivalent comes open by termination or expansion. However, once striker accepts permanent employment elsewhere, he ceases to be Ee of E and is no longer entitled to reinstatement rights)

Medallion Kitchens, Inc. **275 NLRB No. 008**
(E's refusal to reinstate economic strikers upon their unconditional offer to return to work, violative notwithstanding they had been replaced by new hires, since replacements were only temporary where E told them it was only offering them work until strike was over)

Medallion Kitchens, Inc. v. N.L.R.B. **806 F.2d 185 (C.A. 8, Nov. 1986)**
[E's failure to reinstate economic strikers upon their offer to return to work, unlawful, where replacements for strikers were hired with understanding their employment was until strikers returned to work, and later statements held not to change replacements' temporary status]

Arlington Hotel Company, Inc. v. N.L.R.B. **785 F.2d 249 (C.A. 8, Mar. 1986)**
[failure of E to offer economic strikers reinstatement to jobs they were qualified for though not same or substantially equivalent to prestrike position, violative, as E had policy of cross-training and developing multiple capabilities for its Ees and did, in fact, transfer new Ees into positions that unreinstated strikers qualified for; therefore, E's recall policy clearly discriminated against unreinstated strikers in favor of new job applicants and Ees -- including permanent striker replacements -- already on payroll]

5079-2819 To former or substantially equivalent position

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[termination of economic striker assertedly because he refused proffered job, unlawful, where he refused job due to medical reasons resulting from prior surgery, and proffered job was not substantially equivalent employment since job involved work on shift different from that which Ee worked prior to strike, and temporary position to which he was recalled did not provide same benefits as those received by full time Ees]

Carter-Glogau Laboratories, Inc. **280 NLRB No. 049**
[E's failure to promote or transfer reinstated economic strikers to unit positions they occupied prior to strike, not unlawful, where there was no evidence that reinstated strikers were *not* reinstated originally to substantially equivalent positions; *Harvey Engineering Corp.*, 270 NLRB 1290, is inapposite, and GC failed to carry burden of proving E failed to satisfy its obligations under *Laidlaw* (171 NLRB 1366)]

Highlands Hospital Corporation, Inc., d/b/a Highlands Regional Medical Center **278 NLRB No. 160**
[E did not unlawfully refuse to reinstate non-unit Ees who stated they would not, and did not, work during strike by unit Ees, where vacant positions for which Ees may or may not have been qualified were not substantially equivalent to their former jobs; and vacant unit jobs which Ees claimed they were qualified to fill, but in which they had no experience, were similarly not substantially equivalent; and GC offered no explanation as to why Ees had superior demand on such unit positions than unit Ees still awaiting recall]

Highlands Hospital Corporation, Inc., d/b/a Highlands Regional Medical Center **278 NLRB No. 160**
[E did not unlawfully refuse to reinstate non-unit Ee, who stated she would not, and did not work, during strike by unit Ees, to vacant position, where position was listed as occasional job averaging less than 16 hours per week employment and it had no job benefits; such part-time job is not substantially equivalent to full-time job]

Medallion Kitchens, Inc. **277 NLRB No. 175**
[jobs were not substantially equivalent where hours, duties, and authority were same though pay and benefits less and jobs should have been offered to unreinstated economic strikers as E unilaterally set wages and benefits after strike ended and after unconditional offer to return made by strikers]

U.S. Mineral Products Co. **276 NLRB No. 022**
(permanently replaced economic strikers' entitlement to reinstatement is limited to being put on preferential hiring list with E not being required to reinstate economic striker unless and until his former job or its equivalent comes open by termination or expansion. However, once striker accepts

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permanent employment elsewhere, he ceases to be Ee of E and is no longer entitled to reinstatement rights)

U.S. Mineral Products Co. **276 NLRB No. 022**
]*substantially equivalent* employment includes *same shift*; and had economic striker refused any but first shift (striker's prior work shift) she would not have lost her status on preferential hiring list)

U.S. Mineral Products Co. **276 NLRB No. 022**
(no limitation on length of time economic striker has reinstatement rights and burden on E to contact economic strikers who have asked for reinstatement when openings occur)

Coastside Scavenger Company **273 NLRB No. 198**
(existence of temporary job is not equivalent of vacancy to which striker should have been reinstated)

Coastside Scavenger Company **273 NLRB No. 198**
(temporary nature of job *is* critical factor in determining whether it is *substantially equivalent* to what position a striker had held)

The Kroger Company **JD-(ATL)-23-85**
(discharging and thereafter refusing to reinstate Ees because of their participation in strike, violative)

Arlington Hotel Company, Inc. v. N.L.R.B. **785 F.2d 249 (C.A. 8, Mar. 1986)**
[failure of E to offer economic strikers reinstatement to jobs they were qualified for though not same or substantially equivalent to prestrike position, violative, as E had policy of cross-training and developing multiple capabilities for its Ees and did, in fact, transfer new Ees into positions that unreinstated strikers qualified for; therefore, E's recall policy clearly discriminated against unreinstated strikers in favor of new job applicants and Ees -- including permanent striker replacements -- already on payroll]

5079-2825 Except as new employees

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[utilizing break in service rule to deprive reinstated economic strikers of their prior seniority, treating them as new Ees, and assigning them new hourly wage rate different from that earned before strike, unlawful]

5079-2831 Unconditional offer to return to work

Aluminum Welding & Machine Works, Inc. **282 NLRB No. 062**
[E's refusal to reinstate economic striker, violative, notwithstanding E's contention that faster work of new Ee constituted justification for refusal to reinstate striker where striker had made unconditional offer to return, job for which he was qualified was available, and E instead hired new Ee]

Georjan, Inc. and/or Fort Mason Enterprises, Inc. and/or Latrobe Speedway **281 NLRB No. 129**
[failure to reinstate strikers after they gave unconditional offer to return to work, violative]

Service Electric Company **281 NLRB No. 107**
[in instant case, even under terms of settlement agreement, it was striking Ees---not E---who had burden of taking initiative in order to trigger (E's) reinstatement obligation]

Hansen Brothers Enterprises **279 NLRB No. 098**
[although U's offer on behalf of economic strikers to return to work, coupled with demand that all strikers be immediately reinstated and striker replacements be discharged, was conditional, Bd held E unlawfully refused to reinstate strikers since replacements were temporary and U's offer was therefore appropriate, where E's communications to strikers concerning reemployment rights and to replacements concerning their permanent Ee status were noncommital, and its statements showing own intent to permanently employ replacements, failed to satisfy E's burden of showing *mutual* understanding between itself and replacements that they were permanent]

Pacific Mutual Door Company **278 NLRB No. 120**
[where E retained control over Ees leased to it by joint E and Ees began work of unreinstated drivers on permanent basis after unreinstated drivers unconditionally requested reinstatement, Bd found that jobs of unreinstated drivers were not eliminated and that E in essence hired new Ees instead of reinstating two economic strikers after their unconditional request for reinstatement; thus, E's matured reinstatement obligation to strikers was not obviated by E's contract with joint E that leased drivers to E and E's failure to reinstate strikers on date of contract, violative]

Hitacount Corp., A Subsidiary of S.C.M. Corporation **278 NLRB No. 104**
[E held not obliged to reinstate economic strikers where their offer to return to work was conditional on immediate reinstatement of all strikers; anyway, E was, in no position to reinstate all strikers because of impact strike had on its business, the hiring of permanent replacements, and other factors; fact that E thereafter offered to recall all strikers over period of time did not prove that unconditional offer to return to work was made in first place or serve to impose on E obligation to treat conditional offer as if it were unconditional]

Hitacount Corp., A Subsidiary of S.C.M. Corporation **278 NLRB No. 104**
[E held to have honored economic striker's unconditional offer to return to work in timely fashion where striker first responded to E's offer of reinstatement that she intended to return to night shift which at the time was not operational; then when E reinstated night shift E inadvertently neglected to notify striker of vacancy on night shift but quickly remedied inadvertentency by hiring striker when she applied for night shift job]

Zartic, Inc. **277 NLRB No. 171**
[permanently replacing strikers by failing to go to preferential recall list and hiring new Ees, violation that prolonged strike and converted it to ULP strike]

Zartic, Inc. **277 NLRB No. 171**
[refusing to allow U card signer to return to work with other strikers who had stayed out due to fear and refusing to recall her when it recalled other Ee who had signed recall list at same time she had, violation]

Dublin Town, Ltd. **JD-(NY)-11-85**
(E's failure to reinstate Ee (whether as ULP striker or economic striker after Ee made unconditional request for reinstatement violative, where no bona fide permanent replacement was hired)

Embossing Printers, Inc. **JD-19-85**
(economic strikers rejection of unconditional offer of reinstatement (offer held unconditional notwithstanding it included strikers accepting unilateral changes to their health benefits as these changes were found to be lawful) converted their status to voluntary quits)

5079-2834 Failure to follow seniority

Lone Star Industries, Inc. **279 NLRB No. 078**
[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

Pacific Mutual Door Company **278 NLRB No. 120**
[E's offer of reinstatement to two economic strikers were neither invalid, conditional nor discriminatory, notwithstanding facts that offers were made seriation, not by seniority, and directly to Ees; fact that reinstatement offers were made to less than all eligible former strikers at onetime did not render each offer invalid; thus, rejection of E's reinstatement offers to eligible strikers tolled their backpay and satisfied E's reinstatement obligation with respect to alleged ULPs]

Indiana Desk Company, Inc. **276 NLRB No. 165**
(no violation where E did not follow seniority in offering jobs to economic strikers, but rather offered jobs to Ees who held the same jobs before strike and in event of unavailability or declination by that Ee it then offered job to most qualified other striking Ee)

5079-2837 Under terms of strike settlement agreement

Hotel Holiday Inn De Isla Verde **278 NLRB No. 147**
[upon ct remand, Bd deferred to strike settlement agreement restricting conditions of reemployment of economic strikers allegedly discharged for misconduct, and vacated its order requiring reinstatement where at time of settlement, there was no finding strikers had been unlawfully discharged and, thus, they did not have legal right to remedy nor did E have legal obligation to provide remedy; here, in return for meeting on some middle ground, E voluntarily offered to reinstate strikers, and both E and U voluntarily offered to forgo any adjudication rights they might have had]

Hotel Holiday Inn De Isla Verde **278 NLRB No. 147**
[in deferring, pursuant to ct remand, to strike settlement agreement restricting conditions of reemployment of economic strikers allegedly discharged for misconduct, and vacating its order requiring reinstatement, Bd, in addition to its stated reasons for so holding, based deferral on absence of evidence or allegation that settlement was entered into fraudulently or under duress]

Gaso Pumps, Inc. **274 NLRB No. 076**
(E's insisting to impasse on, and subsequently unilaterally implementing, strike settlement proposal limiting reinstatement rights of striking Ees to 6 months after termination of strike, violative, where U had never agreed to settlement agreement during negotiations and E had not shown that legitimate and substantial business justifications existed for its limitations on strikers' reinstatement rights; Ees may not be deprived of statutory rights in the absence of a clear and unmistakable waiver of those rights)

5079-2874 Not unlawful if legitimate and substantial business justification

Aluminum Welding & Machine Works, Inc. **282 NLRB No. 062**
[E's refusal to reinstate economic striker, violative, notwithstanding E's contention that faster work of new Ee constituted justification for refusal to

5079-2874—Cont.

reinstate striker where striker had made unconditional offer to return, job for which he was qualified was available, and E instead hired new Ee]

Weyerhaeuser Company — 274 NLRB No. 130
(failure to recall and reinstate economic strikers on reopening plant - closed down for nonstrike related economic conditions - 2 years after it shut down and 18 months after strike ended, not violative, because failure to recall not attributable to replacements or to strike related reduction in work but to contract provision in work but to contract provision which stated that Ee shall be considered terminated and seniority lost if on layoff for 12 months, and when strike ended economic strikers joined nonstrikers on layoff status and there position is no different than other Ees just because they were economic strikers)

Gaso Pumps, Inc. — 274 NLRB No. 076
(E's insisting to impasse on, and subsequently unilaterally implementing, strike settlement proposal limiting reinstatement rights of striking Ees to 6 months after termination of strike, violative, where U had never agreed to settlement agreement during negotiations and E had not shown that legitimate and substantial business justifications existed for its limitations on strikers' reinstatement rights; Ees may not be deprived of statutory rights in the absence of a clear and unmistakable waiver of those rights)

Medallion Kitchens, Inc. v. N.L.R.B. — 806 F.2d 185 (C.A. 8, Nov. 1986)
[*E who refused to reinstate economic strikers violates Act unless he shows that his action was based on legitimate and substantial business justifications. Burden of proof is on E*]

5079-2875 Not unlawful absent discriminatory motivation

Ralphs Grocery Company — JD-(SF)-111-86
[E's layoff and refusal to reinstate Ees who refused to cross primary picket line established by U in course of dispute with E involving another bargaining unit, not unlawful, since not for Ees' protected activity, where work performed by laid off Ees was transferred to another location, fact transfer of work coincided with strike happenstance, and laid off Ees had no contractual right to work at other location which was in different unit, and absent evidence of unlawful motivation of E or deviation from its usual practices]

5079-2881 Disqualified by strike misconduct

Guy F. Atkinson d/b/a Bingham-Willamette Company — 279 NLRB No. 037
[E's refusal to reinstate two former economic strikers, both of whom had served as U steward, and one of whom had been picket captain, not unlawful, since justified by their strike misconduct of throwing eggs at vehicles and beating on van of non-striking Ee, and hitting non-striking Ee in face; fact non-striker who assaulted and threatened picket stating he had gun, and whose friend took picket's possessions, was given only two day suspension did not constitute unlawful disparate treatment, since his conduct did not render non-striker unfit for futher employment in view of his prompt apology and offer of restitution]

Keco Industries, Inc. — 276 NLRB No. 167
(E's refusal to reinstate former striker who carried gun in vicinity of plant entrance used by non-striking Ees, not unlawful, since former striker's conduct would reasonably tend to coerce or intimidate Ees in exercise their Section 7 rights)

Keco Industries, Inc. — 276 NLRB No. 167
(refusal to reinstate former striker, not unlawful, where former striker had struck non-striking Ee in face, banged fist on winshield of car and called another non-striking Ee who was in car *scab*, and made offensive, obscene remarks to woman personnel manager)

Keco Industries, Inc. — 276 NLRB No. 167
(refusal to reinstate former striker, not unlawful, where former striker slashed tire of truck on loading dock at E on fifth day of strike)

Keco Industries, Inc. — 276 NLRB No. 167
(refusal to reinstate former striker, not unlawful, where former striker threw rock at car transporting non-striking Ees)

National Council of Young Israel d/b/a Shalom Nursing Home — 276 NLRB No. 118
(ex-striker who joined with other pickets who were black in calling replacement Ees *nigger*, not barred from reinstatement, since participation in incident, taken in overall context, would not lead to such strained relations with other Ees were she permitted to return to work)

National Council of Young Israel d/b/a Shalom Nursing Home — 276 NLRB No. 118
(ex-striker who asked Ee who was in wheelchair *Why don't you get up and walk?* and told supervisor whose sister was amputee that her sister *had a peg leg*, and screamed at Ee whose husband had died suddenly near picket line *We got one. We killed some white trash.* not barred from reinstatement, since conduct isolated and racist remark may well have been precipitated by unfair accusation that she was cause of heart attack that lead to death of Ee's husband near picket line)

National Council of Young Israel d/b/a Shalom Nursing Home — 276 NLRB No. 118
(ex-striker properly excluded from preferential hiring list for reinstatement, absent evidence to refute report that while picketing, w/o provocation, he hit Ee with stick and told him *he would end up in pine box* as this was an assault with threat that Ee would be killed)

MGM Grand Hotel — 275 NLRB No. 146
(calling nonstriker *scab* is not type of strike misconduct that justifies refusal of reinstatement)

Catalytic, Inc. — 275 NLRB No. 016
(discharge of striking Ee for misconduct, violative, where misconduct consisted of brief telephone call to nonstriking Ee's home which wife answered and striker said *you G-d damned bitch* and hung up, as this call, though unlawful under State law, was neither coercive nor intimidating, nor was there any evidence that striker knew of other calls made to residence or participated in any plan of harassment)

Bacardi Corporation — JD-157-85
(no violation for not reinstating economic striker who threw stone that struck Ee's vehicle and did $35 damage)

Middlesex Builders Inc. — JD-(NY)-33-85
(refusal to reinstate most active U supporters, violative where E failed to prove their alleged strike misconduct duringeconomic strike and was shown to have stated that he intended to get rid of them)

5079-2900 **Preconditions to reinstatement**

Richmond Recording Corporation d/b/a PRC Recording Company — 280 NLRB No. 077
[E's response to U's unconditional offer of ULP strikers to return to work was that it would reemploy them only as work became available and then only under unlawfully implemented terms and conditions of employment, violative, and backpay starts from day of offer to return to work]

Histacount Corp., A Subsidiary of S.C.M. Corporation — 278 NLRB No. 104
[E held to have honored economic striker's unconditional offer to return to work in timely fashion where striker first responded to E's offer of reinstatement that she intended to return to night shift which at the time was not operational; then when E reinstated night shift E inadvertently neglected to notify striker of vacancy on night shift but quickly remedied inadvertentency by hiring striker when she applied for night shift job]

U.S. Mineral Products Co. — 276 NLRB No. 022
(permanently replaced economic strikers' entitlement to reinstatement is limited to being put on preferential hiring list with E not being required to reinstate economic striker unless and until his former job or its equivalent comes open by termination or expansion. However, once striker accepts permanent employment elsewhere, he ceases to be Ee of E and is no longer entitled to reinstatement rights)

Abe Ochs, An Individual, d/b/a Kingform Cap Company — JD-188-85
(conditioning offer of reinstatement upon Ee's agreeing not to discuss the U upon returning to work and to withdraw pending ULP charges, violative)

5079-4200 **ULP strikers**

5079-4201 Generally

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. — 803 F.2d 1333 (C.A. 4, Oct. 1986)
[refusal to reinstate striker whose prior work performance was deficient and included customer complaints, 16 reprimands, fights with other Ees, and ptn signed by 13 Ees following strike requesting that Ee not be reinstated, not unlawful, notwithstanding contention that E tolerated Ee's poor work performance in past and waited to discharge him until after his participation in strike, absent evidence of improper motive for refusal to reinstate where Ee's participation in strike was no more than other striking Ees and no other Ee engaging in same type or level of activity was discharged]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor — 785 F.2d 195 (C.A. 7, Mar. 1986)
[when a strike starts as or becomes a ULP strike, striking Ees are entitled to immediate reinstatement whenever they so request regardless of whether permanent strike replacements have been hired]

5079-4217 Where replaced

Richmond Recording Corporation d/b/a PRC Recording Company — 280 NLRB No. 077
[E's response to U's unconditional offer of ULP strikers to return to work was that it would reemploy them only as work became available and then only under unlawfully implemented terms and conditions of employment, violative, and backpay starts from day of offer to return to work]

5079-4217—Cont.

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[no imposition on part of U of *all or none* condition or waiver of U's unconditional offer to return to work where objecting to E's unlawful reinstatement procedure of taking ULP strikers as work became available (piecemeal) rather than discharging replacements, U said Ees would not return piecemeal]

Workroom For Designers, Inc. and Sidney H. Sizelman, an Individual 274 NLRB No. 115

(failure to reinstate ULP strikers when replacements were still performing strikers' former jobs and reinstatement of striker to another job than her former job while that job was being performed by a replacement, violative)

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 782 F.2d 7 (C.A. 1, Jan. 1986)

[E's refusal to dismiss replacements hired for strikers after conversion of economic strike to ULP strike, and reinstate strikers, unlawful]

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 782 F.2d 7 (C.A. 1, Jan. 1986)

[E ordered to place former strikers replaced during economic phase of strike which subsequently converted to ULP strike, on preferential hiring list; E's contention order punitive and abuse of Bd's discretion since more expansive than violation, rejected, where Bd found both precise violation of Sec. 8(a)(3) for refusing to reinstate strikers replaced after conversion of strike to ULP strike, and a general violation of Secs. 8(a)(3) and (1) in its general disregard of reinstatement rights of all ULP strikers; nor did fact no violation of Ees' preferential hiring rights had yet occured render order inappropriate]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor 785 F.2d 195 (C.A. 7, Mar. 1986)

[successor E's refusal to reinstate striking Ees of predecessor E who had been replaced, violative, and successor held liable for predecessor's ULP which converted strike to ULP strike, since successor purchased business with knowledge of predecessor's ULP; further, successor's contention that ULP charge against predecessor had originally been dismissed and thus it had no notice of potential reinstatement liability, rejected, since it assumed the risk that the actions may later be found unlawful]

5079-4219 To former or substantially equivalent position

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[offer of reinstatement phrased as a question such as *If (E) offered you your job back with backpay, would you take it?* not invalid. However, offer must still indicate availability of former (job) or comparable position. E's offer, in instant case, did not convey that there was job immediately available. Question put to Ee as to whether he would return to work if offered reinstatement does not present specific, unequivocal offer of reinstatement]

5079-4230 Unconditional offer to return to work

Rapid Armored Truck Corp. 281 NLRB No. 057

[former strikers who stated to E we *would like to return to work* or *we would like our jobs back* made unconditional offers to return to work; however, former strikers who asked what *the chances were of returning to work* did not make unconditional offers to return to work]

Brookhurst Professional Building, Inc., Number Three d/b/a Browning Manor Convalescent Hospital 279 NLRB No. 172

[no unlawful refusal to reinstate economic strikers where E had hired permanent replacements, U never made unconditional offer for its striking members to return to work where it attached conditions to its offer, and E asked strikers to register, rather than to *apply* as it usually understood, for preferential hiring list]

Tectonic Industries, Inc. JD-(NY)-100-84

(U's statement that ULP strikers would return to work as a group held not to constitute conditional offer to return to work)

Dublin Town, Ltd. JD-(NY)-11-85

(E's failure to reinstate Ee (whether as ULP striker or economic striker after Ee made unconditional request for reinstatement violative, where no bona fide permanent replacement was hired)

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[whether offer to return to work was conditional or unconditional is question of fact for Bd to determine. Bd's finding deemed *conclusive if supported by substantial evidence on the record as a whole*]

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[burden of proof to show that offer to return to work was other than unconditional is on E]

5079-4283 Disqualified by strike misconduct

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[ULP striker forfeited rights to reinstatement and backpay by throwing nails on main driveway to plant notwithstanding guard and nonstriking Ees first threw nails beside picketing strikers' cars]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[where group of pickets carrying baseball-bat-sized sticks approached and surrounded car of nonstriker which frightened driver so that car lurched forward and struck picket who, in turn, struck car with her stick, as did other pickets, and as car propelled her off to driver's side struck car again, Bd found that pickets did more than just block car's ingress and their misconduct would reasonably tend to intimidate Ee; therefore, discharge of picket not violative]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[throwing rocks at nonstriking Ees' vehicles grounds for not reinstating strikers]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[dropping nails in pathway of cars entering on exiting plant, grounds for refusing reinstatement]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[throwing bottle of paint and striking supervisor's car gounds for refusing reinstatement]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[stabbing at tire with ice pick grounds for refusing reinstatement notwithstanding tire was not damaged]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[post discharge conduct of breaking glass in roadway grounds for lawfully refusing reinstatement. Backpay runs until time of this conduct and not when wrongfully discharged by E]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[picket showing nail to management official and then tossing nail under tire which then penetrated tire sufficient misconduct so as to preclude reinstatement. Cf *Newport News Shipbuilding and Dry Dock Co.* 265 NLRB No. 104, where placing single nail on roadway which was retrieved prior to causing any damage and there was no malice in act was held not so serious misconduct as to warrant discharge]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[striker who followed delivery van from plant onto interstate highway and drove in a reckless manner by zigzagging in front of van and applying his brakes lost his right to reinstatement]

Washington Materials, Inc., t/a Buffalo Concrete; et al. 276 NLRB No. 040

(E's refusal to reinstate striker, assertedly because he had participated in assault upon nonstriking Ee, violative, where striker was not actually involved in assault but rather simply told one of E's drivers who witnessed assault by another striker not to *get on the radio*, which was an ambiguous statement and could not show that striker acted in concert with striker engaged in serious misconduct)

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[misconduct of striking Ee directed against patrons or customers of E, or others seeking to enter (E's) premises for business purposes, is equivalent of misconduct against fellow Ees]

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[denial of reinstatement and backpay to ULP strikers for misconduct--spitting at non-striker, damaging non-striker's car, forcibly restraining non-striker from entering premises, telling potential patients that it was unsafe to enter premises, telling patients inside premises it was unsafe and forcibly preventing patient from entering premises]

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. 803 F.2d 1333 (C.A. 4, Oct. 1986)

[Es' refusal to reinstate ex-striker, who assumed responsibility for beating non-striker by another striker, and by warning witness to beating not to call for medical aid or police striker associated himself with perpetrator in this criminal act]

5079-4291 Availability for work

Radio Electric Service Company **278 NLRB No. 078**
[Bd left to compliance stage determination of validity of E's claim that ULP striker was deceased and that, consequently, any reinstatement order regarding striker would be inappropriate, where Bd had no basis for determining validity of E's claim]

5079-4500 Following discharge

Olympic Limousine Service, Inc. **278 NLRB No. 133**
[Ee is entitled to reinstatement, notwithstanding he pled guilty to assault against supervisor at plant after he was unlawfully discharged, where assault was not pre-planned, action was provoked by supervisor screaming profanities at him and E had allowed other non-Ees to enter premises w/o questioning them and thus, conduct was not so egregious so as to deny him reinstatement]

The Gateway Theatre Corporation d/b/a Senator Threatre, Capitol Hill Cinemas **277 NLRB No. 186**
[discharges of Ee about whose work there had been no complaint, unlawful, since motivated by E's U animus, notwithstanding E's offer to rehire Ee and Ee's refusal because he did not wish to cross picket line, inasmuch as E's offer was not to retain Ee, but to rehire him and does not detract from fact E discharged Ee for no valid reason]

15th Avenue Iron Works, Inc. **JD-(NY)-141-84**
(unlawful refusal to reinstate found since E's letter was not valid unconditional reinstatement offer where it stated that *a position* was available, asked if Ee were interested w/o identifying position and gave Ee 48 hours from receipt of letter to contact E; offer was not specific, unconditional and unequivocal and did not give Ee sufficient time to make up his mind)

5079-4900 Strikers in unprotected strike

Rapid Armored Truck Corp. **281 NLRB No. 057**
[E's discharge of and refusal to reinstate strikers, not unlawful, since their conduct unprotected, where strikers' objective was to compel E to recognize and bargain with U which was ineligible for certification because of its policy of admitting both guard and non-guard Ees to membership and picketing was also violative of Section 8(b)(7)(C)]

5079-5600 Following leave of absence

Judy Hornby Designs, Inc. **279 NLRB No. 168**
[E's refusal to immediately reinstate Ee when she asked to return to work, not unlawful, since not because of her solicitation for U, but rather Ee, on short notice, voluntarily decided to take off whole month of December, after being refused permission by E to work 3 days a week during December; nor did E's limiting its efforts to contact Ee concerning her return to work to day telephone calls rather than also writing and calling in evening constitute lack of good faith effort to contact Ee]

5079-7000 Following sick leave

La Reina, Inc. **279 NLRB No. 103**
[conditioning U activist's return to work on supplying doctor's certificate and them discharging her, violation where E had been told that Ee had not seen a doctor while ill, and E had previously discriminatorily laid her off]

5079-8600 Following quit

The Gateway Theatre Corporation d/b/a Senator Threatre, Capitol Hill Cinemas **277 NLRB No. 186**
[Ee voluntarily quit, rather than was unlawfully discharged, where he left E's employ for temporary position with another E and U planned to refer him back to E; E's lawful termination of its relationship with U and unlawful discharge of other Ees who had been referred by U did not constitute discrimination against Ee]

Embossing Printers, Inc. **JD-19-85**
(economic strikers rejection of unconditional offer of reinstatement (offer held unconditional notwithstanding it included strikers accepting unilateral changes to their health benefits as these changes were found to be lawful) converted their status to voluntary quits)

5080 RECLASSIFICATION OF EMPLOYEES

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**
[E's unilateral *reclassification of its (motel) desk clerks to supervisory positions, violative, where conduct, coupled with E's other ULPs and coinciding with other violative layoffs effectuated decimation of unit. Evidence discloses no* justifiable reason for such conduct and record evidence suggests there would be 1:1 ratio of supervisors to unit Ees]

5081 WITHDRAWAL OR ELIMINATION OF JOB POSTING OR CLASSIFICATION

Brocal Corp. d/b/a Alert Medical Transport **276 NLRB No. 066**
(abolishing job classification (aides) and terminating all Ees in classification, violative, notwithstanding Dept. of Welfare who was E's biggest customer changed its regulations to eliminate requirement for aides, since E knew most of aides were pro-U, did not attempt to transfer them into other positions for which they were qualified and for which there was shortage of applicants)

5084 FAILURE TO OR DELAY IN RECALL

5084-3300 Laid-off employee

Airport Distributors, Inc. **280 NLRB No. 091**
[subcontracting unit work and refusing to recall laid off Ees to perform such work, unlawful, in view of E's anti-U animosity, and desire, intent and practice of retaliating against Ees for their U activities; fact that immediately following strike for recognition, E drastically increased subcontracting practice; and E's failure to sustain burden of showing that subcontracting would have been inevitable]

La Reina, Inc. **279 NLRB No. 103**
[selecting U supporters for layoff and refusing to recall them when hiring new Ees, violation]

Ro-Lab Rubber Co., Inc. **279 NLRB No. 057**
[E's failure to recall Ee prior to other Ees violated 8(a)(3), where warnings to Ee would have been given in absence of U activity and that Ee was recalled when sufficient work and application of E's criteria for recall warranted]

Safelite, Division of Lear Siegler, Inc. **277 NLRB No. 080**
(E's layoff of, refusal to transfer and refusal to recall 6 Ees to new plant located only a few miles from old plant, assertedly for reasons of operational efficiency, violative, since real reason was Ees' U affiliation where E attempted to mislead U representing Ees at old plant that there were no plans to open new plant, E made clear when it announced opening of new plant that it would be *non-union* and no U activity would be tolerated and after E laid off 6 Ees, it immediately hired 6 new inexperienced Ees for new plant)

Safelite, Division of Lear Siegler, Inc. **277 NLRB No. 080**
(E's refusal to transfer and recall 4 Ees to new plant located only a few miles from old plant, violative, notwithstanding Ees were laid off from old plant for nondiscriminatory reasons, where E's unlawful motive was demonstrated by statements that it wished to keep U out of new plant, E promised to increase wages at new plant if Ees abandoned U and E gave absolutely no reasons for its failure to transfer Ees to new plant)

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos **277 NLRB No. 39**
(no violation, where E, alleged to be alter ego of another Respondent E, failed to recall Ees laid off by other E in accordance with their seniority with other E, or honor bargaining contract between other Respondent E and U, since it was held not to be alter ego, nor did it alone meet Bd's jurisdictional standards)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(failure to recall laid off Ee assertedly for variety of reasons, unlawful, where E perceived Ee to be prime instigator of U's organizing activity prior to layoff; E recalled other Ees with less experience and seniority in Ee's line of work; and E's reliance on damage to equipment purportedly caused by Ee was of doubtful validity in view of E's lack of reaction to alleged incident which belied importance E now attached thereto)

Uptilt, Inc. **276 NLRB No. 065**
(layoff and failure to recall Ees who posted U posters and discussed U organization, unlawful, since for their U activities, notwithstanding E's contention action was because of attendance records, where E failed to show attendance or work deficiencies of some Ees laid off, Ees were not told at time of layoff they were selected for layoff because of attendance problems, and new Ees were hired immediately after layoffs)

Laidlaw Waste Systems of Michigan, Inc. **275 NLRB No. 150**
(failure to recall laid off Ee who was newly transferred to facility because he had not joined local U purusuant to U-security clause, violative where Ee had not been allowed 30-day grace period in which to join U)

Coamano Bros., Inc. **275 NLRB No. 119**
(E's failure to recall Ee from layoff, not violative where E did not hire any Ee to fill position vacated by discharge of Ee)

Genwal Coal Co., Inc. **275 NLRB No. 077**
(E's refusal to recall discriminatees, allegedly for overstaying lunch break and selling E's coal to others, during period it had hired several new Ees, violative where E had not rebutted GC's *prima facie* case by showing that newly hired Ees were more able or versatile to perform experienced Ees' mining duties and E's admission that he would not recall them because of their U activities)

Marko Contractors, Inc. **275 NLRB No. 63**
(writing Ee letter stating that E's work demands in foreseeable future were such that Ee would not be recalled and that Ee had been terminated violative where Ee was only Ee not recalled, and E told another Ee that

5084-3300—Cont.

reason was that E had heard he had something to do with the U, that he had started it)

Inland Container Corporation **275 NLRB No. 60**
(successor E's utilization in its hiring process of preference for *a demonstrated willingness to work in a nonunion environment,* and *successor E's* refusal to hire any Ees of predecessor because of their U membership, violati ve)

Storall Manufacturing Company, Inc. **275 NLRB No. 039**
(refusal to recall laid off Ee, contrary to E's past practice, because of Ee's distribution of U literature, position on U grievance committee, and participation in strike, violative)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(layoff of U adherents indefinitely with advice to file for unemployment compensation constituted unlawful discharge where E quickly recalled less senior Ees laid off at same time and its unsupported claim of U adherents' decline in production failed to counter prima facie showing that E was motivated by U adherents' concern with prospects for new U contract in face of E's statement it was going non-U and their pro-U orientation)

Weyerhaeuser Company **274 NLRB No. 130**
(failure to recall and reinstate economic strikers on reopening plant - closed down for nonstrike related economic conditions - 2 years after it shut down and 18 months after strike ended, not violative, because failure to recall not attributable to replacements or to strike related reduction in work but to contract provision in work but to contract provision which stated that Ee shall be considered terminated and seniority lost if on layoff for 12 months, and when strike ended economic strikers joined nonstrikers on layoff status and there position is no different than other Ees just because they were economic strikers)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**
(E deviated from past practice in sending letters to 4 laid off Ees suggesting that they seek employment elsewhere because there was no reason to believe they would be recalled. Since three of four Ees were among most prominent U adherents, Bd could reasonably view letters as evidence of E's anti-U animus)

5084-5000 Replaced economic strikers when replacement leaves

U.S. Mineral Products Co. **276 NLRB No. 022**
(no limitation on length of time economic striker has reinstatement rights and burden on E to contact economic strikers who have asked for reinstatement when openings occur)

5084-5700 Economic strikers

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[failure to recall former economic strikers to available positions on machine operating crew and to transfer reinstated former striker to fill out such crew, unlawful, where E decided to bring in outside crew and then attempted to justify its action after the fact by claiming that unreinstated strikers were not qualified]

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[terminating recall rights of Ees on layoff status at commencement of economic strike, pursuant to implementation of rule treating Ees after break in service as new Ees, unlawful, where laid off Ees included those who became economic strikers by manifesting their intent to join strike by engaging in picketing]

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[termination of economic striker assertedly because he refused proffered job, unlawful, where he refused job due to medical reasons resulting from prior surgery, and proffered job was not substantially equivalent employment since job involved work on shift different from that which Ee worked prior to strike, and temporary position to which he was recalled did not provide same benefits as those received by full time Ees]

Lone Star Industries, Inc. **279 NLRB No. 078**
[notwithstanding no prior preemployment physical exam policy and only instituted after economic strike ended, and notwithstanding it has been applied to recalled strikers, but not all of replacement Ees have undergone physicals, no violations over instituting physical exam policy or failure to reinstate recalled striker who failed exam, even though physician said illness treatable and posed no threat to his ability to perform job, since policy of E is that all Ees will take physical, policy bore no indication of discriminatory intent, E also discharged striker replacement who had same illness and policy was reasonable response to potential liability]

Foote & Davies, Inc. **278 NLRB No. 012**
[E's failure to recall sympathy striker to positions as they were vacated through attrition, assertedly because other Ees recalled had superior rights, violative, since real reason was Ee's engaging in sympathy strike where Ee made unconditional offer to return to work before vacancies occurred, Ee was not advised of openings even though he had more seniority than Ees recalled according to E's own seniority system and practice and E advanced no legitimate business reason for not recalling Ee]

Medallion Kitchens, Inc. **277 NLRB No. 175**
[economic strikers should not be equated to laid-off Ees because economic strikers enjoy statutory right to reinstatement with no time limit set on exercise of reinstatement rights]

U.S. Mineral Products Co. **276 NLRB No. 022**
(to job classification they held at time they commenced striking and vacancies in these positions, violative)

Weyerhaeuser Company **274 NLRB No. 130**
(failure to recall and reinstate economic strikers on reopening plant - closed down for nonstrike related economic conditions - 2 years after it shut down and 18 months after strike ended, not violative, because failure to recall not attributable to replacements or to strike related reduction in work but to contract provision in work but to contract provision which stated that Ee shall be considered terminated and seniority lost if on layoff for 12 months, and when strike ended economic strikers joined nonstrikers on layoff status and there position is no different than other Ees just because they were economic strikers)

Brady-Stannard Motor Co., Inc. **273 NLRB No. 178**
(Bd found that after impasse wages paid to striker replacements was consistent with E's final offer to U to continue expired contract for 1 year where Bd looked at *actual* earnings received by replacements over 6 month period and it showed they were equal to or lower than what strikers earned in similar period in prior year notwithstanding wage package of replacements different from strikers. Therefore, no violation by offering replacements higher wage formula but where actual wages same, because it was, in effect, offering same contract to replacements as one that expired and which was offered to U)

Greater Detroit Heating and Cooling, Inc. **JD-116-85**
(E's failure to reinstate strikers to their jobs as vacancies arose after they made unconditional offer to return to work, violative)

Arlington Hotel Company, Inc. v. N.L.R.B. **785 F.2d 249 (C.A. 8, Mar. 1986)**
[failure of E to offer economic strikers reinstatement to jobs they were qualified for though not same or substantially equivalent to prestrike position, violative, as E had policy of cross-training and developing multiple capabilities for its Ees and did, in fact, transfer new Ees into positions that unreinstated strikers qualified for; therefore, E's recall policy clearly discriminated against unreinstated strikers in favor of new job applicants and Ees -- including permanent striker replacements -- already on payroll]

N.L.R.B. v. Southern Florida Hotel and Motel Association, et al. **751 F.2d 1571 (C.A. 11, Feb. 1985)**
(no violation by refusing to recall economic strikers where their positions had been eliminated for bona fide economic reason, replacements for them had not been hired, and non-strikers occupying similar positions had been permanently transferred to other jobs)

5090 UNION SECURITY REQUIREMENTS

5090-0100 Generally

Donald Dean d/b/a D.C. Construction Company **276 NLRB No. 097**
(fact that E discriminates to encourage U membership on basis of its own perception of its obligations to U imposes no automatic liability upon U where E's action is *not* taken under compulsion of exclusive hiring arrangement or pursuant to U request)

5090-0167 Purpose of proviso

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) **278 NLRB No. 052**
[first proviso of 8(a)(3), subjecting statutory guarantees against employment discrimination to agreement requiring membership in U as condition of employment by tender of periodic dues and fees, must be literally observed and strictly limited in its restriction of Ees' normal exercise of their Sec. 7 right to refrain from membership or support of a U]

5090-5000 Prerequisites for validity of union-security requirements

5090-5033 Majority status of contracting union at time of execution

Matlack, Inc. **278 NLRB No. 036**
[E unlawfully refused to bargain with U representing majority of its Ees, rendered unlawful assistance to another U not having such representation, and discriminated in hire and tenure of Ees by entering into and maintaining U security contract with other U and by requiring Ees to join latter U and pay specified initiation fees and dues]

5090-5033—Cont.

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(E and assisted U unlawfully entered into, maintained, and enforced U security contract covering Ees at E's new facility at time that U, having been recognized at time that Ees had not yet been hired, did not represent uncoerced majority of Ees)

Ryder/P.I.E. Nationwide **275 NLRB No. 084**
(E's and U's execution of contract, found violative of 8(a)(2) and 8(b)(1)(A) because U did not have valid majority in Ee unit at time contract was executed, held not violative of 8(a)(3) or 8(b)(2) since contract did not have U-security provision)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(E violated 8(a)(3) and U violated 8(b)(2) by including U security clause in contract which they had unlawfully entered into, and thereafter by enforcing it, where U did not represent uncoerced majority either because it never obtained authorization cards from majority of Ees or because, if it did, authorization cards may have been poisoned by dues deduction forms furnished to applicants to fill out even before E's operations had begun and by accompanying statements made by U's agents that applicants had to join U)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. **764 F.2d 182 (C.A. 3, June 1985)**
(E's recognizing and entering into contract containing U security with U purusuant to card check, and that U's accepting recognition and entering into contract, violative, since, at time above events took place, there was real qcr where another U had on file with Bd a valid R ptn known to E at time it recognized former U; further, former U's defense that it had no knowledge of latter U's R ptn at time it initiated card check, rejected)

5090-5077 30-day grace period requirement

5090-5077-2000 **Full 30 days**

Laidlaw Waste Systems of Michigan, Inc. **275 NLRB No. 150**
(failure to recall laid off Ee who was newly transferred to facility because he had not joined local U purusuant to U-security clause, violative where Ee had not been allowed 30-day grace period in which to join U)

5090-6700 Execution or maintenance of invalid union-security agreement

5090-6720 Contract with assisted union

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. **282 NLRB No. 001**
[executing contract with U security clause, violation where U did not represent uncoerced majority, E knew that its contract with U representing other of its Ees arguably covered them, and E enforced U-security clause by soliciting initiation fees and dues for U]

Matlack, Inc. **278 NLRB No. 036**
[E unlawfully refused to bargain with U representing majority of its Ees, rendered unlawful assistance to another U not having such representation, and discriminated in hire and tenure of Ees by entering into and maintaining U security contract with other U and by requiring Ees to join latter U and pay specified initiation fees and dues]

Safeway Stores, Inc. **276 NLRB No. 099**
(E and U violated 8(a)(3) and 8(b)(2), respectively, where E maintained U-security clause in invalid agreement with unlawfully assisted U, pursuant to which E deducted U dues w/o obtaining dues deduction authorization forms from Ees, and U actually or constractively received such dues deductions)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(E and assisted U unlawfully entered into, maintained, and enforced U security contract covering Ees at E's new facility at time that U, having been recognized at time that Ees had not yet been hired, did not represent uncoerced majority of Ees)

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. **275 NLRB No. 182**
(E's applying illegal prehire agreement containing U security clause to unlawfully assisted U and discriminating against other job applicants by hiring only applicants referred by U, violative)

Ryder/P.I.E. Nationwide **275 NLRB No. 084**
(E's and U's execution of contract, found violative of 8(a)(2) and 8(b)(1)(A) because U did not have valid majority in Ee unit at time contract was executed, held not violative of 8(a)(3) or 8(b)(2) since contract did not have U-security provision)

5090-6722 While question of representation pending

Metropolitan Teletronics Corp. **279 NLRB No. 134**
[grant of recognition to and execution of contract containing U security clause with one of two Us which had represented Ees transferred from two closed plants, not violation where Ees from plant who were formerly represented by recognized U constituted 63 percent of merged work force and Ees from other closed plant represented by other U denied recognition constituted no more than 5 percent of work force recognized]

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. **764 F.2d 182 (C.A. 3, June 1985)**
(E's recognizing and entering into contract containing U security with U purusuant to card check, and that U's accepting recognition and entering into contract, violative, since, at time above events took place, there was real qcr where another U had on file with Bd a valid R ptn known to E at time it recognized former U; further, former U's defense that it had no knowledge of latter U's R ptn at time it initiated card check, rejected)

5090-8300 Illegal enforcement of valid union- security agreement

5090-8307 Extension of contract to nonconsenting employees

United States Steel Corporation **280 NLRB No. 098**
[including U-security clause in pre-hire agreement with U, violation where E offered unlawful recognition to u representing existing unit to which the Ees were unlawfully accreted]

Harte & Company, Inc. **278 NLRB No. 128**
[no violation, where E and U agreed to extend bargaining agreement with security clause in effect at former facility to E's newly purchased facility, since new facility was essentially extension of E's old operation where new plant produced same products using same machinery, Ees performed essentially same functions. Contention move not mere relocation since it took too long for substantial percentage of transferees to arrive at new plant, rejected, since transferees constituted more than 40% of new work force on date transfer process *substantially completed*, and 8 month period to complete transfer operations not unreasonable herein]

5090-8314 Discharge for reasons other than nonpayment of fees and dues

Charles A. Drescher & Son, Inc. and Drescher Paper Box **JD-205-86**
[violation by discharging Ee for 3 days for sole purpose of preventing his having to join U pursuant to U-security clause in mistaken belief that hiatus would start a second non-U 31-day period in U-security clause]

5090-8317 Discharge for nonpayment of dues

Helmsley-Spear, Inc. **275 NLRB No. 043**
(E did not violate 8(a)(3) where, in discharging Ee pursuant to U demand allegedly because of dues delinquency, E had no reasonable grounds to believe, prior to discharge, that U's demand was not lawfully motivated or that U failed to properly notify Ee of dues delinquency)

5090-8350 Unauthorized deduction of union dues

Rainey Security Agency, Inc. **274 NLRB No. 041**
(in determining that E violated 8(a)(1) and 8(a)(3) by presenting job applicants with dues deduction forms and telling them they had to join U, ALJ relied on *totality of circumstances*, including coercive implications of inclusion of check-off forms in job application process, unconvincing state of record as to authorization cards gathered by U president, and indications that E's officials were seeking to choose U to represent Ees; and Bd's full statutory powers encompass authority to sever bargaining relationship with an unstable foundation as found herein, in order to afford Ees complete and unhampered freedom of choice)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(E violated 8(a)(1) and 8(a)(3) by presenting job applicants with dues deduction forms during application process and telling them that they had to join U, where U did not represent uncoerced majority either because it never obtained authorization cards from majority of Ees or because, if it did, authorization cards may have been poisoned by dues deduction forms furnished to applicants to fill out even before E's operations had begun and by accompanying statements made by E's agents that applicants had to join U)

5090-8396 Union membership terminated without discriminatee receiving adequate notice and opportunity to comply

Helmsley-Spear, Inc. **275 NLRB No. 043**
(E did not violate 8(a)(3) where, in discharging Ee pursuant to U demand allegedly because of dues delinquency, E had no reasonable grounds to believe, prior to discharge, that U's demand was not lawfully motivated or that U failed to properly notify Ee of dues delinquency)

6700 INDICIA OF INTENT TO ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP

6701 GENERALLY

6701—Cont.

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)

(improper motivation need not be demonstrated by direct evidence but may be inferred from all circumstances and must be upheld if it is reasonable in light of proven facts)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)

(while GC must usually show that E knew about individual Ee's U activities before Bd may conclude E violated Sec. 8(a)(3), GC may also prevail by showing E ordered general layoffs for purpose of discouraging U activities of some. This theory is viable even though some Ees who actually opposed U were laid off with their pro-U counterparts, or if all pro-U Ees not laid off. Focus is on E's motivation in ordering extensive layoffs, rather than upon pro-U or anti-U status of particular Ees)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)

(E's decision to have mass layoff w/i hours after becoming aware of U's organizational effort suports Bd's inference of improper motivation)

6705 ADVANCE INDICATION OF INTENTION TO DISCHARGE

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

[announcement of intent to discharge or otherwise retaliate against Ee for engaging in protected activity held especially persuasive evidence that discharge of Ee was unlawfully motivated]

6708 ANTIUNION ATTITUDE OF EMPLOYER

6708-0100 Generally

Airport Distributors, Inc. 280 NLRB No. 091

[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of E's animus toward U and its supporters, and awareness of Ee's U support and his strike and picketing activity]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)

[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and inadequate, and new Ees were hired two months after discharges]

6708-0150 Antiunion background alone insufficient to sustain finding of discrimination

Shoreline South Intermediate Care, Inc.; Inland Pacific, Inc. 276 NLRB No. 095

(GC's contention that E, who took over facility of former E, operated only non-U facilities supported finding that E did not retain Ees of former E because of their U affiliation, rejected; such conclusion is not warranted since there is no such *per se* rule of law nor was such conclusion supported by facts herein)

6708-3700 Antiunion conduct found in prior Board decisions

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer 276 NLRB No. 117

Bronx Metal Polishing Co., Inc. 276 NLRB No. 031

(anti-U conduct found in prior Bd decisions involving same parties and similar issues bolstered such finding herein)

6708-5000 Antiunion conduct and remarks subsequent to discrimination

Pioneer Hotel and Gambling Hall, Inc. 276 NLRB No. 072

(discharge of Ee active on behalf of U, unlawful, where supervisors admitted to Ee and to other Ees that Ee was fired for handing out U cards; such admissions established that E knew of Ee's U activity and that E harbored type of anti-U animus that would motivate it to discharge Ee, and also established causal connection between U activity and discharge; and E failed to adduce any evidence with regard to reason for discharge or to show that there was valid nondiscriminatory reason for discharge)

Brudevor, Inc. JD-(SF)-57-86

[discharge of known U adherent, not unlawful, notwithstanding supervisors' subsequent statements that discharge was for U activity, where supervisors played no part in discharge nor was there evidence to suggest that they were in position to know actual reason for discharge; and because of family relationship with 1 supervisor, Ee knew that supervisor was simply expressing his own opinion concerning discharge]

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)

[individual demonstrations of E's anti-U motivation, together with ULPs, support finding of anti-U motivation where all laid-off Ees had signed U authorization cards, those deemed U leaders were not recalled, E listed most of laid-off Ees as potentially voting for U, and chief operating officer said Ees were laid off for U activities and told former Ee he would be considered for employment after U campaign died down]

6708-5600 Antiunion conduct and remarks at time of discrimination

Limpert Brothers, Inc. 276 NLRB No. 037

(layoff of Ees, assertedly because of slack work and business losses, violative, where Ees were laid off only one day after E obtained knowledge of U activity, E informed several Ees that reason for layoff was U activity and layoff was precipitous, occurring w/o any warning to Ees)

6708-6200 Antiunion conduct and remarks prior to discrimination

Port Plastics, Inc. 279 NLRB No. 050

[discharge of Ee, assertedly for refusal to follow E's rule regarding telephone contact with E's suppliers, violative, since real reason was Ee's U activity where animus was shown by E's unilateral change in working conditions after U won election and E's refusal to meet with Ee as U steward, rule was not contained in E's Ee-handbook and E in fact had no blanket rule prohibiting Ee contacts with suppliers]

Kou Fu, Inc. d/b/a Peng Teng 278 NLRB No. 050

[buyer's refusal to hire some Ees of seller, unlawful since refusal motivated by their voting for U during election held between signing of contract to buy and sell company and title closing, where buyer knew of Ees' U activities, in view of its U animus as evidenced by threats, promises of benefits to induce Ees to reject U, statements that hiring conditioned on return of U card, and U failed to show Ees would have been rehired absent U activities; notwithstanding fact that U rehired some U adherents]

Service Merchandise Company, Inc. 278 NLRB No. 023

[E's discharge of drivers and warehouse Ee who had been driver and subcontracting driving operations, unlawful, where for support of *drivers' association* and threat to seek representation by outside U, in view of E's expressed opposition to outside U, summary nature of discharges, and secrecy of negotiations for subcontracting; contention subcontracting motivated by economic considerations, rejected, where subcontracting resulted in 25% increase in cost even though fewer miles driven over private driver operation]

Joseph A. Perry d/b/a Holiday Inn-Glendale 277 NLRB No. 145

(mass discharge of Ees, assertedly because of insubordination and because E received a bad hotel inspection, violative, since real reason was Ees' U activity where Ees were discharged w/i 2 days of E's knowledge thereof, E gave shifting reasons, threatened Ees with reprisals for U activity and unlawfully interrogated Ees)

Hedaya Brothers, Inc. 277 NLRB No. 093

(E's implementation of new warning system for lateness and absenteeism following election between rival Us, violative, where unlawful motive was shown by statements to Ees threatening discharge for striking, plant closure and telling Ees that to choose either U was futile, E unlawfully discharged supporter of rival U pursuant to new system and E implemented new system in precipitate manner and it was applied inconsistently)

Superior Warehouse Grocers, Inc. 277 NLRB No. 010

(discharge of Ee unlawful where E knew of his U sympathies as evidenced by E's post-discharge statements, E gave conflicting reasons to Ee at time of discharge, E gave no explanation as to reason for discharge at hearing, and E demonstrated extreme U animus)

Genwal Coal Co., Inc. 275 NLRB No. 077

(E's refusal to recall discriminatees, allegedly for overstaying lunch break and selling E's coal to others, during period it had hired several new Ees, violative where E had not rebutted GC's *prima facie* case by showing that newly hired Ees were more able or versatile to perform experienced Ees' mining duties and E's admission that he would not recall them because of their U activities)

Cassidy Cleaning, Inc. JD-239-86

[E's display of anti-U hostility w/i days of U election victory prior to discharges]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)

[operations manager's statements that he would run any U representative out and that e had threatened to close facility in face of unionization could be viewed as one element supporting GC's case of unlawful discharge notwithstanding they were isolated and made five months before discharge]

6710 CONTRASTING TREATMENT

6710—Cont.

Superior Container, Inc. **276 NLRB No. 056**
(no disparate treatment found in discharge of Ee, previously reinstated as consequence of ULP proceeding, for violating Ee's absentee policy where, although it appeared discipline should have been of lesser degree if misconduct was first offense, dischargee was not *new* Ee since he was reinstated with all rights, benefits, and privileges he previously enjoyed; GC failed to produce evidence to support his burden of proving disparate treatment; and assuming E overreacted, was unreasonable, or even arbitrary, it is well-established that E may discharge Ee for good reason, bad reason, or no reason)

6710-0100 Generally

Quality Rolls, Inc. **JD-189-86**
[while discipline of principal U organizer on heels of election contributed to suspicion as to nature of action by E who demonstrated propensity to discriminate, and while issue was not w/o doubt, ALJ held that, absent convincing proof of disparate treatment, suspension and subsequent discharge of U leader was not unlawful]

6710-2500 Of discriminatee and other employees

Premier Maintenance, Inc. **282 NLRB No. 003**
[discharge of Ee, unlawful, since for his U activity, rather than for not calling in when he would be absent, where E did not advance Ee's absence as reason for refusal to reemploy him, but rather informed Ee that his charge before NLRB would have to be resolved before he could be rehired, and E in past had not discharged Ees for first failure to call in]

Baddour, Inc. **281 NLRB No. 084**
[discharging Ee for alleged insubordination in remarking, when asked to work overtime, *Fuck it. I am leaving*, violation, where other Ees who used similar language in conversing with supervisors and were insubordinate merely received warnings]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[verbal and written warnings to U steward, violation since they showed pattern of harassment where being first in lunchroom at breaktime and using outside sidewalk violated no promulgated rule, he was warned for excessive talking, but person he was talking with was not, and his alleged insubordination in telling supervisor to *take a hike* did not compare with obnoxious and obscene language almost routinely directed at supervisors]

Airport Distributors, Inc. **280 NLRB No. 091**
[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of absence of similar treatment of other Ees]

Products Unlimited Corp. **280 NLRB No. 041**
[discharge of U adherent, unlawful, since for her U activities rather than for initial refusal to turn off her radio when requested to do so by her supervisor, where E at first suspended Ee, then subsequently contrary to usual policy, discharged her with no investigation, Ees had previously been permitted to play radios if volume did not disturb other Ees and other Ees had radios on at time U adherent was requested to turn hers off]

Yaohan of California, Inc. **280 NLRB No. 032**
[discharge of Ee after he approached E and pressed him about getting second wage increase, unlawful where, following Ee's discharge, another Ee argued with E about getting wage increase but was not terminated for such conduct]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[finding of unlawful suspension and discharge of Ee, who was outstanding U advocate and leader of Ees, supported by fact that, contrary to treatment of past allegations by customers of improper Ee conduct, Ee, disciplined assertedly for same reason, was never provided opportunity to respond in writing to specification of his improper conduct, and his 8-year exemplary history, noted by E representatives' references to Ee as excellent worker and as having working record of good quality, was not given its due weight]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[finding of unlawful suspension and discipline of Ee, assertedly for improper performance of job, supported by fact that E failed to warn Ee about imposition of such discipline, and that manner in which discharge interview was conducted was not warranted by E's practice with other Ees accused of misconduct]

Port East Transfer, Inc. **278 NLRB No. 125**
[discharge of Ee unlawful, where for writing pro-U graffiti on E's restroom wall since such writing protected. Discharge was for content of writing, and not for defacing E's property, inasmuch as it was common for Ees to write graffiti on restroom walls, no other Ee had been disciplined, and writings of discharged E were not *so malicious, defamatory, or insubordinate as to lose protection of the Act*]

Hedaya Brothers, Inc. **277 NLRB No. 093**
(discharge of Ee, assertedly because of high absenteeism, violative, since real reason was Ee's support of rival U where Ee received many warnings only after Bd conducted election between competing Us, E's implementation of new warning system was violative of 8(a)(3) and warning system was applied in disparate manner)

Book Covers, Inc. **276 NLRB No. 170**
(discharge of Ee for refusing to work overtime as required by contract, violative, as practice was to excuse Ees from working assigned overtime if supervisor presented with reasonable excuse, and excuse which Ee gave, and which lay behind motivation to fire Ee, was that Ee was going to labor board to file charges against E; furthermore, no Ee ever disciplined beyond receiving oral warring before)

Duroyd Manufacturing, Inc. **276 NLRB No. 025**
(discharge of Ee, unlawful, since for his U activities, rather than for profanity against E's president and insubordination in view of E's U animus and its other violations, and fact prior use of profanity by Ee against E's president, use of profanity by other Ees had been previously tolerated and harassment of Ee by president)

Hoboken Shipyards, Inc. **275 NLRB No. 212**
(refusal to hire active shop steward, who had filed several grievances while employed by prior owner, allegedly for refusing to work day shift and refusing overtime work, violative where other Ees who had made such refusals were hired)

Webb Furniture Enterprises, Inc. **275 NLRB No. 180**
(layoff of Ee who had singed U literature twice, unlawful, notwithstanding he was one among many Ees who signed U literature. E's contention layoff was because of his absenteeism, rejected, where another Ee who did not sign U literature and who had higher absenteeism record than Ee was retained, and in view of E's knowledge of Ee's U activities, and its U animus)

Programming & Systems, Inc. **275 NLRB No. 157**
(denying Ee (U activist) her holiday pay because she missed the 2 days preceding Thanksgiving (E had rule that teachers absent before or after holiday lose pay for the holiday) violative, since E paid 2 other teachers who were absent on Monday following Thanksgiving weekend. Instance of disparate treatment where E refused to waive its holiday of pay rule with respect to U activist)

Garrett Railroad Car & Equipment, Inc. **275 NLRB No. 151**
(recalling Ee (economic striker) out of seniority after strike's end, violative, since such treatment of Ee was disprate. E's action was not shown to be for some legitimate business reason or purpose and assessed in background of E's ULPs was inherently destructive of Ee Section 7 rights. Record provided sufficient evidence of E's singling out Ee striker who wanted to abandon strike (E had learned) and rendered this Ee-striker favorable disparate treatment some 3 weeks after strike ended)

Pilled of Mississippi, Inc. **275 NLRB No. 117**
(discharge of Ee, assertedly because he took company property home w/o authorization, violative, since real reason was his U activity where other Ees regularly took home company property w/o discipline and E knew Ee was active U supporter)

Pilled of Mississippi, Inc. **275 NLRB No. 117**
(E's refusal to transfer U activist out of department that admittedly was giving Ee serious medical problems, violative, where E routinely transferred other Ees from department when they had problems and Ee was transferred into undesirable department only a few days after she issued an *open letter* to Ees in support of U)

Confort & Company, Inc. **275 NLRB No. 082**
(E's refusal to pay Ee, who was serving as U's representative at Bd hearing, for holiday and day after because he was absent from work to be present at hearing, not violative, since E's action was pursuant to contract and past practice, and Ee was not present at hearing day before holiday for purpose of testifying under subpeona)

Maritz Communications Company, A Wholly Owned Subsidiary of Maritz, Inc. **274 NLRB No. 016**
(purchaser's failure to hire Ee of seller, not unlawful, since due to loss of work rather than U affiliation; contention that purchaser was motivated by U affiliation rather than business considerations evidenced by disparate treatment, rejected, inasmuch as Ee retained had more familiarity with certain equipment; nor did purchaser's offering raise to Ee retained if Ee would relinquish U membership evidence U animus, since raise was to compensate for loss of contribution in his behalf to U pension fund)

Robins Federal Credit Union **273 NLRB No. 165**
(in finding discharge of Ee acting as loan officer at E-credit union for violating E's written policy prohibiting issuance of loans to loan officer's relatives not unlawful, ALJ held that, assuming relevance of disparate treatment of supervisor, who resigned after being afforded opportunity to do so at her request, was of questionable relevance as it occurred substantially after Ee's discharge; but assuming its relevance, it was supportive of E's position that it regarded violation of its policy as dischargeable offense)

Federal Armored Express, Inc. **JD-200-86**
[suspension and discharge of Ee who was driver-guard for armored car company, and posted U notices, unlawful, since for his U activities rather than for loss of his drivers license, in view of E's antiU statements and where E had given other drivers who had lost licenses jobs that did not require license. E hired new drivers rather than reinstate Ee even after notified of restoration of his driving privileges]

6710-2500—Cont.

New Galax Mirror Corporation JD-475-84
(warning leading U adherent and subsequently discharging him, assertedly for abusive statements made to another Ee in violation of company rules, violative, since real reason was Ee's U activity where warning was simply a pretext to coverup E's hostility towards a known U supporter and other Ees were not similarly disciplined for similar or worse conduct)

N.L.R.B. v. J. Coty Messenger Service, Inc. ———F.2d——— (C.A. 2, May 1985)
[company records indicated that other Ees with worse attendance were not terminated]

N.L.R.B. v. Bliss and Laughlin Steel Company, Inc. 754 F.2d 229 (C.A. 7, Feb. 1985)
(discharge of Ee, assertedly because he was late for work, violative, since real reason was Ee's U activity where Ee was extremely active U organizer, Ee was in fact not late for work on day he was discharged and E's tardiness program was highly discretionary and applied to Ee in disparate manner)

6710-5000 Of union and nonunion employees or applicants for employment

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilaterally restricting known U supporters' running of football pools to prework, lunch, and break times while continuing to allow non-U supporters to run pools during working hours, violation but not unlawful unilateral change where it only affected two Ees]

Benmit Division, U.S. Tubular, Inc. 280 NLRB No. 083
[discharging U supporter for failure to call in that he would be absent but not even disciplining non-U supporter for poor absenteeism record, disparate]

Dubose Masonry, Inc. 279 NLRB No. 125
[discharge of non-U bricklayers while U bricklayers were standing around at jobsite, violative, since GC presented *prima facie* case where evidence was sufficient to support inference that Ees lack of U membership was motivating factor in E's decision to terminate. E's assertion that non-U bricklayers were laid off because of decline in work at jobsite was unsupported]

T & T Machine Company, Inc. 278 NLRB No. 139
[inference of unlawful motivation in E's layoff of 4 members of U in-house organizing committee not dispelled by E's failure to layoff other Ees who openly favored U, nor would inference be dispelled if E had laid off Ees who had no involvement with U]

F & C Transfer Co., Inc. 277 NLRB No. 071
(E's payment of higher wages and contribution to pension fund only for those Ees in unit who were members of U, unlawful. Further, since contract on its face applied to both bonded and nonbonded Ees (only bonded Ees could become members of U), parol evidence may not be used to establish U represents only bonded Ees)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 067
(giving preference in hiring to applicant who was willing to accede to E's anti-U posture, where discharging all but one Ee who supported U w/i 6 months after election, unlawful, especially in view of E's other violations including creating impresion of surveillance and interrogation)

Leeds Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014
(granting disparate increases to Ees of each facility of joint E who received substantially equivalent evaluations overall, violative, since joint E intended that Ees of one of joint Es' facilities receive substantially lower increases than their counterparts because they selected U to represent them. E intended that dissimilar result occur)

Mad West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center 276 NLRB No. 146
(prima facie case made out for successor's unlawful failure to rehire Ees where: 1) Ees were known U adherents, 2) majority of Ees not rehired were U leaders, 3) disparate treatment as other Ees rehired were guilty of same offenses that successor alleged for not rehiring these Ees, and 4) successor found to have unlawfully refused to bargain with U, which consituted additional evidence of U animus)

Mad West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center 276 NLRB No. 146
(where substantial majority of Ees not rehired were U leaders, strong circumstantial evidence of U animus is present, though evidence probative and not dispositive, notwithstanding successor retained some U Ees)

Inland Container Corporation 275 NLRB No. 60
(successor E's utilization in its hiring process of preference for *a demonstrated willingness to work in a nonunion environment*, and *successor E's* refusal to hire any Ees of predecessor because of their U membership, violati ve)

E.I. Du Pont De Nemours & Company JD-(ATL)-96-84
(E's refusing to hire applicant, assertedly because Ee appeared too inflexible for E's working conditions, violative, since real reason was Ee's U involvement where E repeatedly questioned Ee during employment interview about his U sympathies, thereby learning that Ee was shop steward and active U supporter at last place of employment, and Ee had excellent work record and scored higher on E's preemployment test than other Ees that were hired)

Bowling Green-Warren County Community Hospital Corporation, d/b/a The Medical Center At Bowling Green, Kentucky v. N.L.R.B. 756 F.2d 41 (C.A. 6, Mar. 1985)
(neither 8(a)(1) nor 8(a)(3) violated by E's denial of wage increase to petitioned-for Ee unit while granting it to non-U Ees w/o explanation for such action, since in this type of case, in which either granting or withholding of increase could be found violative, all relevant circumstances should be considered to determine whether E intended to discourage U activity; and here GC stipulated that only reason for disparate treatment was advice of counsel, and there was no evidence contradicting such stipulation)

Food and Commercial Workers, Local 152 v. N.L.R.B. 768 F.2d 1463 (C.A. D.C., July 1985)
(successor E's failure to hire Ees of predecessor, unlawful, since substantial evidence discriminatorily motivated where criteria established by E for hiring i.e. discipline, health, absenteeism and safety record, applied more strictly to Ees of predecessor E than to other applicants, rule against neopotism impacted disparately against Ees of predecessor E, and only 1/6-1/5 of individuals hired by successor E were Ees of predecessor)

6710-7500 Of striking and nonstriking employees or returning strikers and replacements

6710-7500 Of striking and nonstriking employees or returning strikers and replacements

Cartridge Actuated Devices, Inc. 282 NLRB No. 066
[discharge of strikers for engaging in violent conduct and causing substantial damage to vehicles crossing picket line, unlawful, since E failed to discipline nonstriking Ees who engaged in similar conduct; Bd disagreed with view that striker's behavior of kicking vehicle was type of impulsive behavior that can be expected in course of lengthy and tense strike]

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[E's institution, shortly before end of strike, of restrictions on smoking and drinking soft drinks and coffee during reporting time at medical facility i.e. time during which patients' records turned over from outgoing to incoming shift, not violative of Sec. 8(a)(3); contention that change discriminatory where did not apply to doctors and retaliatory against striking nurses, rejected, inasmuch as restrictions applied equally to strikers and non-strikers, change not timed to retaliate against strikers since end of strike not w/i control of E, and justified by prevention of staining or burning of medical records]

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[E's unilateral reassignment of duty of recording patients' temperatures, pulse rates and respirations from unit secretaries to nurses aides upon beginning of strike and continuing policy after end of strike, not violative of Section 8(a)(3), since change applied to both strikers and non-strikers, and was justified by nurses aides greater availability at early morning hour which allowed recordation prior to doctors' rounds; however, change was violative of Section 8(a)(5)]

Guy F. Atkinson d/b/a Bingham-Willamette Company 279 NLRB No. 037
[E's refusal to reinstate two former economic strikers, both of whom had served as U steward, and one of whom had been picket captain, not unlawful, since justified by their strike miscoaduct of throwing eggs at vehicles and beating on van of non-striking Ee, and hitting non-striking Ee in face; fact non-striker who assaulted and threatened picket stating he had gun, and whose friend took picket's possessions, was given only two day suspension did not constitute unlawful disparate treatment, since his conduct did not render non-striker unfit for futher employment in view of his prompt apology and offer of restitution]

Brady-Stannard Motor Co., Inc. 273 NLRB No. 178
(Bd found that after impasse wages paid to striker replacements was consistent with E's final offer to U to continue expired contract for 1 year where Bd looked at *actual* earnings received by replacements over 6 month period and it showed they were equal to or lower than what strikers earned in similar period in prior year notwithstanding wage package of replacements different from strikers. Therefore, no violation by offering replacements higher wage formula but where actual wages same, because it was, in effect, offering same contract to replacements as one that expired and which was offered to U)

6710-7500—Cont.

N.L.R.B. v. Harrison Ready Mix Concrete, Inc. 770 F.2d 78 (C.A. 6, Aug. 1985)
(placing strikers who abandoned strike below replacements and Ees who did not strike on seniority list, upon their reinstatement, not unlawful, since, in absence of specific and detailed findings by Bd of E's *inherently destructive* conduct, E neither intended nor caused any discrimination between strikers and nonstrikers or any destructive impact upon strike or U activity)

6710-8700 Of steward and other strikers or employees

Orleans International, Inc. 274 NLRB No. 169
(discharge of U steward, unlawful, since not for driving with expired license or for involvement in automobile accident but rather for his repeated filing and pursuing grievances and performance of other duties as steward, bringing intra-U charges against individual who was E's agent, his ardent bargaining positions and demands, and activities on behalf of dissident U group, where discharge was five and a half weeks after accident, discharges of other Ees in similar circumstances had been for significantly greater offenses, and in view of E's demonstrated U animus)

United Parcel Service, Inc. 273 NLRB No. 205
(suspension and discharge of U stewards for participation in strike which was in violation of no strike agreement, not unlawful, notwithstanding contention actions discriminatory because of U office these individuals held as other strikers not similarly disciplined, where U stewards went beyond simple participation and provided leadership to rank-and-file Ees by relaying messages from U business agent, picketing in more than one location, and explaining strike to television reporters)

Indiana & Michigan Electric Company 273 NLRB No. 193
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd considered S.Ct's *Metropolitan Edison* decision from standpoint of U's waiver of U officials' Sec. 7 rights to extent they have affirmative duty to prevent illegal work stoppages, U's lawful bargaining away of statutory protection accorded U officials, insufficiency of general no-strike clause to constitute waiver, relevance of arbitration decisions in establishing waiver, and establishment of waiver by circumstances surrounding bargaining relationship as well as by language of agreement itself)

Indiana & Michigan Electric Company 273 NLRB No. 193
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd held that, with regard to specificity requirement for naming of U officials as opposed to specificity regarding what affirmative action can be expected of U in event of unlawful strike, it has long been established that U, like an E, acts through its agents and it would be radical departure from longstanding precedent to hold that U's contractual or other obligations must be explicitly designated as responsibility of specified officials or agents)

Indiana & Michigan Electric Company 273 NLRB No. 193
(imposition of disparate disciplinary suspensions on U stewards for violating no-strike provision, not unlawful, where U assumed duty to prevent unlawful strikes and thereby waived steward's statutory rights; while S.Ct in *Metropolitan Edison* found affirmative action cannot be required unless such requirement is bargained for, it merely held general *no-strike* clause was not enough to constitute waiver and left open what contractual language would suffice; here, contract unequivocally imposed duty to end unlawful strike, and stewards did not fulfill their contractual obligations even under most narrow construction of contract)

Local Union 1392, Electrical Workers v. N.L.R.B. (Indiana & Michigan Electric Co.) 786 F.2d 733 (C.A. 6, Mar. 1986)
[where E imposing more severe disciplinary suspensions on U stewards for violating no-strike provision, not unlawful where contractual language showed U intent for its officials to attempt to prevent unauthorized work stoppages, and this language constituted *clear and unmistakable waiver* of officials right to be free from selective discipline]

6713 DELAY IN DISCIPLINARY ACTION

6713-3300 After knowledge of facts relied upon to justify discipline

United States Postal Service 275 NLRB No. 074
(discharge of Ee who was mail carrier, unlawful, since for his threat to file grievance, rather than for his failure to notify E on third day of absence from work whether he would be at work next day, or for his poor work performance and customers complaints regarding him, where no rule or policy required Ees absent for less than week to notify E if they succeeded in obtaining substitute, which Ee had done, thus E had no rational reason to expect Ee to call, and Ee had condoned Ee's work deficiencies for approximately two months prior to discharge)

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. 803 F.2d 1333 (C.A. 4, Oct. 1986)
[refusal to reinstate striker whose prior work performance was deficient and included customer complaints, 16 reprimands, fights with other Ees, and ptn signed by 13 Ees following strike requesting that Ee not be reinstated, not unlawful, notwithstanding contention that E tolerated Ee's poor work performance in past and waited to discharge him until after his participation in strike, absent evidence of improper motive for refusal to reinstate where Ee's participation in strike was no more than other striking Ees and no other Ee engaging in same type or level of activity was discharged]

6713-6700 After knowledge of offense relied upon to justify discipline

The Gateway Theatre Corporation d/b/a Senator Theatre, Capitol Hill Cinemas 277 NLRB No. 186
[discharges of Ees, unlawful, since for affiliation with U, notwithstanding Ees' repeated violations of rules regarding tardiness, unauthorized persons in work area, and leaving job, in view of E's U animus and condonation of Ees' infractions]

Quality Rolls, Inc. JD-189-86
[failure of management to take corrective action at time of discovery of Ee misconduct on job reflected disinterest in counselling or preventive action and indicated interest in developing evidence which would support severe discipline such as discharge]

6715 DEPARTURE FROM ESTABLISHED PROCEDURES AND STANDARDS

6715-0100 Generally

Pullman Power Products Corporation 275 NLRB No. 112
(layoff criteria that E applied was consistent with past practice regarding layoffs, and consistency with past practice undercuts suspicions that layoffs were for unlawful reasons)

6715-1000 Bonus practice

Brocal Corp. d/b/a Alert Medical Transport 276 NLRB No. 066
(giving Ees turkeys shortly before election (held December 30), violative; contention that turkeys were Christmas bonus as was past practice, rejected, as E did not have such past practice)

Advertisers Manufacturing Company 275 NLRB No. 019
(E's payment of year-end bonus, assertedly unlawfully discontinued, held to constitute wages and terms and conditions of employment, notwithstanding absence of formula for determining bonus amount or of prior formal pronouncement or fact that amounts varied, where bonus was uninterruptedly paid for 30 years; Ees considered bonus as established benefit and had continued expectation of receiving it; and nonpayment of bonus in proceeding year did not establish that bonus constituted discretionary gift)

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)
[failure to pay Christmas bonus, not violative, since E had paid bonus for first time in prior year which did not establish policy or practice of yearly bonus since bonuses are discretionary in nature, they must be given over significant period of time so that it would be clearly apparent to objectively reasonable E that his grant or denial of benefit at time action taken conforms to status quo]

6715-2000 Discharge procedure

Airport Distributors, Inc. 280 NLRB No. 091
[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of deviation from customary policy of investigating accidents]

Products Unlimited Corp. 280 NLRB No. 041
[discharge of U adherent, unlawful, since for her U activities rather than for initial refusal to turn off her radio when requested to do so by her supervisor, where E at first suspended Ee, then subsequently contrary to usual policy, discharged her with no investigation, Ees had previously been permitted to play radios if volume did not disturb other Ees and other Ees had radios on at time U adherent was requested to turn hers off]

Yuchan of California, Inc. 280 NLRB No. 032
[discharge of Ee, assertedly for cause, unlawful, where Ee was discharged abruptly prior to end of his work-week, just 1 day following his solicitation for U inside E's store; and discharge was contrary to E's policy of giving warning prior to discharging an Ee]

Tower Clinic 280 NLRB No. 002
[repremanding known U advocate and subsequently discharging her, assertedly because of complaint received concerning Ee's handling of patient's itemized account statement unlawful, where E departed from its customary manner of responding to patients' complaints concerning Ee behavior or work performance by failing to investigate matter and to seek explanation from Ee even though substantial confusion existed among Ees concerning procedure for production of itemized statements, and E did not follow its policy of counseling Ee and giving series of reprimands before reaching discharge stage]

6715-2000—Cont.

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[finding of unlawful suspension and discharge of Ee supported by fact that E seized upon customer's complaint about Ee's failure to make delivery to rid itself of Ee who E knew would continue to be strong U advocate and spokesman on Ees' behalf; and, in order to build case against Ee, E disregarded Ee's effort to invoke grievance procedure which should have been available to him]

Cassidy Cleaning, Inc. **JD-239-86**
[wholesale termination of Ees which was unprecedented in company's history]

United States Postal Service **JD-203-86**
[discharge of probationary Ee who slipped at work, hurt his back, and was unable to work for several days, unlawful, since for filing grievance over denial of light work after being cleared for such duty and after receiving conflicting information from E's Ee relations department which said there was no light duty available for probationary Ees but that compensation unit would pay him, and compensation unit informed him he would not be paid because cleared for light duty, where not policy of E to terminate probationary Ees who lost time due to injury, and E only discharged after giving notice U would be utilized to secure his rights]

United States Postal Service (North Jersey Facility) **JD-(NY)-105-85**

6715-2500 Layoff procedure

T & T Machine Company, Inc. **278 NLRB No. 139**
[sending U supporter home for alleged lack of work rather than, as previously, giving him temporary assignments such as grass cutting or car washing at no reduction in pay, but offering to retain Ee if he *changed sides*, unlawful]

Hunter Douglas, Inc. **277 NLRB No. 123**
(discharge of Ees on second shift, which E believed to be focus of U activity, unlawful, since E failed to demonstrate same action would have taken place absent protected activity, notwithstanding E's contention it eliminated shift due to shift's lower productivity, greater management availability on first shift, reduction in indirect costs and security considerations, in view of abruptness of layoff and fact E deviated from previous layoff policy by eliminating entire shift rather than overall reduction of Ees from all shifts based on individual seniority and qualifications)

Jonas Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(layoff of U adherent out of seniority contrary to company policy, unlawful)

American Model & Pattern, Inc. **277 NLRB No. 018**
(selecting two U supporters for layoff out of seniority, assertedly for economic reasons, violative, where E had past proactice of following seniority and reasons given for selecting these two Ees were shifting and contradictory)

Pullman Power Products Corporation **275 NLRB No. 112**
(E was under no obligation to use seniority of Ees as criterion in selection process for layoff where record did not reveal that seniority had been used in past for layoff selection)

Aluminum Technical Extrusions, Inc. **274 NLRB No. 199**
(permanent layoff of Ees, assertedly because E had lost a major customer violative, since real reason was Ees' U activity where Ees were laid off w/i hours after E learned of their U activity, layoff procedure was departure from E's past practice, E replaced Ees w/i a week after the layoff and failed to provide any documentation or corroboration in support of its business defense)

Thompson's Gas, Inc. and Del-Ro Transports, Inc. **274 NLRB No. 092**
(intermittent layoffs, assertedly for lack of work, of Ee who had joined U, filed ULP charges, and cooperated in prosecution of U's ULP charges, not unlawful, where layoffs occurred during seasonal summer decline in business and E's strained financial condition; fact that E was not laid off in past summers was not significant because of change in Ee's work status since then)

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
(inclusion of U adherents in layoff during normal seasonal layoffs, assertedly contrary to seniority practices in past when Ees herein were retained, not unlawful, notwithstanding E's U animus and suspicious timing of layoffs shortly after election, where lesser seniority of retained Ee had little significance under circumstances herein; recall of less senior Ees before recalling Ees herein was based on past practice; and acceptance of GC's argument against E's reasons for recalling Ees other than Ees herein would require ALJ and Bd to improperly substitute their judgment for management's)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**
(E's substantial deviation from past practices can be indicia of anti-U animus)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**
(E deviated from past practice in sending letters to 4 laid off Ees suggesting that they seek employment elsewhere because there was no reason to believe they would be recalled. Since three of four Ees were among most prominent U adherents, Bd could reasonably view letters as evidence of E's anti-U animus)

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[layoff procedure differed from that in prior years as to layoff list being neat rather than messy, layoff speech being made by chief operating officer rather than superintendent, letters explaining layoff being handed out for first time, and, most significantly, layoffs being called permanent, rather than temporary, meaning that laid off Ees could not vote in U election]

6715-3000 Disciplinary policy

Wayne W. Sell Corporation **281 NLRB No. 082**
[issuing 2 letters of reprimand to driver for failing to call E's dispatch office prior to his departure from E's facility and for failure to inform dispatch office of overload he had delivered, unlawful, since motivated by Ee's grievance activity in view of E's unlawful threats to Ee for his grievance filing, and fact prior to issuing these 2 letters to Ee w/i few days of each other, E had issued only 4 letters of reprimand in last 5 years]

Sealectro Corporation **280 NLRB No. 015**
[discharge of Ee unlawful since for U adherence rather than for poor attendance and failure to notify E when he was not coming into work, in view of E's departure from usual discipline system, E's U animus, fact rule regarding reporting absences had not been consistently enforced, and that *uncooperative attitude* which was given as reason for discharge at hearing, but was not given at time of discharge, raises inference that real reason was pretext]

Re-Lab Rubber Co., Inc. **279 NLRB No. 087**
[E's instituting and administering harsher disciplinary policy after its discovery of U's organizing activity, violative]

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**
[discharging grievant for dishonesty for theft of time discriminatory where other Ees had not been discharged for that offense]

Book Covers, Inc. **276 NLRB No. 170**
(discharge of Ee for refusing to work overtime as required by contract, violative, as practice was to excuse Ees from working assigned overtime if supervisor presented with reasonable excuse, and excuse which Ee gave, and which lay behind motivation to fire Ee, was that Ee was going to labor board to file charges against E; furthermore, no Ee ever disciplined beyond receiving oral warring before)

South Nassau Communities Hospital **274 NLRB No. 179**
(issuance of warnings and 1 day suspension for alleged violation of hospital's no solicitation rule to U activist who gave another Ee U pamphlet and to Ee who received pamphlet, unlawful, since for U activities of Ee who gave out pamphlet, where issuance of suspension simultaneously with warning with only cursory investigation was departure from E's usual disciplinary procedure, and in view of disparate enforcement of no solicitation rule and E's U animus)

Kansas City Terminal Elevator Company **274 NLRB No. 010**
(E's imposing 3-day suspension on its Ee, U activist and shop steward, because Ee had been playing cards during scheduled working time, but during lull in production process, violative, since suspension letter received by Ee indicated that conduct for which Ee was suspended was first offense-Ee had been guilty of safety related offense but E did not consider card playing in same category-which according to E's *progressive disciplinary system* should have been cause only for written disciplinary warning)

Italo II Casa Romana Restaurant, Inc. **JD-(SF)-50-86**
[E's establishment of new disciplinary system and its issuance of disciplinary warnings to 3 Ees, violative where E failed to demonstrate that, absent Ees' recent selection of U, it would have taken disciplinary action]

6715-4000 Enforcement of plant rules

6715-4025 Imposition of more stringent rules

National Brands Beverage Dividison Curtice-Burns, Inc. **JD-(NY)-95-86**
[imposing more stringent assignment and reporting procedures on Ees because of their U activities, violative]

David Clements Co., Inc. **JD-388-85**
[E's institution of rules regarding punching in and out, safety glasses, progressive discipline for absence or tardiness, smoking, leaving work areas and production standards unlawful, since in retaliation for Ees' U activity where instituted day after E received U's pin and in view of unlawful statement of E's owner prior to announcement of rule *if Ees wanted E to be run like a big company, E would be run like a big company*]

Fun-Sy Productions, Inc. **JD-(NY)-49-85**
(discharge of Ee, assertedly because of lateness, violative, since real reason was Ee's U activity where discharge occurred shortly after E gained knowledge of U campaign, E tolerated Ee's lateness in past and discharge was made pursuant to unlawful new lateness rule promulgated by E in response to Ees' U activity)

6715-4050 Consistent enforcement rebuts discrimination

Southwire Company 277 NLRB No. 043

6715-5500 **Allotment of work**

Woodline Motor Freight, Inc. 278 NLRB No. 152
[E's change in policy which allowed drivers to choose from available runs on the basis of seniority to requiring drivers to take whatever run was assigned, unlawful, since done in response to Ees' support of U and because of recent issuance of ULP complaint alleging unlawfully reduced hours of work]

Pierre's Vending Company, Inc. 274 NLRB No. 184
(E's discontinuance of truck repairman's Saturday work (when repairman worked as independent contractor for E) week after serving as U election observer held violative, since repairman's employment as independent contractor for E on Saturdeays was related to his status as full-time repairman and substitute driver-Ee for E during regular work week)

6715-6000 **Leave practice**

Programming & Systems, Inc. 275 NLRB No. 157
(denying Ee (U activist) her holiday pay because she missed the 2 days preceding Thanksgiving (E had rule that teachers absent before or after holiday lose pay for the holiday) violative, since E paid 2 other teachers who were absent on Monday following Thanksgiving weekend. Instance of disparate treatment where E refused to waive its holiday of pay rule with respect to U activist)

6715-7000 **Recall after layoff**

Acer Machine & Tool Co., Inc. JD-240-85
(refusing to recall discriminatorily laid off Ee, while other Ees had been working overtime, contrary to past practice and Ee handbook, violative)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)
(E deviated from past practice in sending letters to 4 laid off Ees suggesting that they seek employment elsewhere because there was no reason to believe they would be recalled. Since three of four Ees were among most prominent U adherents, Bd could reasonably view letters as evidence of E's anti-U animus)

6715-9000 **Reporting requirement in case of illness**

Premier Maintenance, Inc. 282 NLRB No. 003
[discharge of Ee, unlawful, since for his U activity, rather than for not calling in when he would be absent, where E did not advance Ee's absence as reason for refusal to reemploy him, but rather informed Ee that his charge before NLRB would have to be resolved before he could be rehired, and E in past had not discharged Ees for first failure to call in]

6723 DISCRIMINATORY TREATMENT OF OTHER EMPLOYEES

T & T Machine Company, Inc. 278 NLRB No. 139
[inference of unlawful motivation in E's layoff of 4 members of U in-house organizing committee not dispelled by E's failure to layoff other Ees who openly favored U, nor would inference be dispelled if E had laid off Ees who had no involvement with U]

The Gateway Theatre Corporation d/b/a Senator Theatre, Capitol Hill Cinemas 277 NLRB No. 186
[Ee voluntarily quit, rather than was unlawfully discharged, where he left E's employ for temporary position with another E and U planned to refer him back to E; E's lawful termination of its relationship with U and unlawful discharge of other Ees who had been referred by U did not constitute discrimination against Ee]

Lands Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014
(granting disparate increases to Ees of each facility of joint E who received substantially equivalent evaluations overall, violative, since joint E intended that Ees of one of joint Es' facilities receive substantially lower increases than their counterparts because they selected U to represent them. E intended that dissimilar result occur)

Quality Rolls, Inc. JD-189-86
[discharge of Ees at same time that prominent U supporters were unlawfully discharged assertedly for improper conduct on job also unlawful where termination of U supporters would only have air of legitimacy if more culpable Ees herein were also included in discharges]

Dale Energy Corporation JD-202-85
(layoff of Ees by E who was debtor-in-possession unlawful, notwithstanding E's financial difficulties, since motivation for layoffs was to reach U committeeman who filed grievances, where E told U committeeman he had caused layoffs, and all Ees but committeeman recalled w/i week)

6725 DISPROPORTIONATE NUMBER OF UNION'S MEMBERS IN GROUP DISCRIMINATED AGAINST

Mod West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center 276 NLRB No. 146
(prima facie case made out for successor's unlawful failure to rehire Ees where: 1) Ees were known U adherents, 2) majority of Ees not rehired were U leaders, 3) disparate treatment as other Ees rehired were guilty of same offenses that successor alleged for not rehiring these Ees, and 4) successor found to have unlawfully refused to bargain with U, which constituted additional evidence of U animus)

Mod West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center 276 NLRB No. 146
(where substantial majority of Ees not rehired were U leaders, strong circumstantial evidence of U animus is present, though evidence probative and not dispositive, notwithstanding successor retained some U Ees)

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)
[individual demonstrations of E's anti-U motivation, together with ULPs, support finding of anti-U motivation where all laid-off Ees had signed U authorization cards, those deemed U leaders were not recalled, E listed most of laid-off Ees as potentially voting for U, and chief operating officer said Ees were laid off for U activities and told former Ee he would be considered for employment after U campaign died down]

6725-2500 **Discriminatory basis for reinstating strikers**

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077
[E's response to U's unconditional offer of ULP strikers to return to work was that it would reemploy them only as work became available and then only under unlawfully implemented terms and conditions of employment, violative, and backpay starts from day of offer to return to work]

Arlington Hotel Company, Inc. v. N.L.R.B. 785 F.2d 249 (C.A. 8, Mar. 1986)
[failure of E to offer economic strikers reinstatement to jobs they were qualified for though not same or substantially equivalent to prestrike position, violative, as E had policy of cross-training and developing multiple capabilities for its Ees and did, in fact, transfer new Ees into positions that unreinstated strikers qualified for; therefore, E's recall policy clearly discriminated against unreinstated strikers in favor of new job applicants and Ees -- including permanent striker replacements -- already on payroll]

6725-5000 **Only union members discharged**

The Well-Bred Loaf, Inc. 280 NLRB No. 036
[discharge of all known U activists except for two U turncoats, violation]

6730 FAILURE TO DISCIPLINE SAME EMPLOYEE FOR EARLIER CONDUCT OF SAME CHARACTER AS THAT RELIED ON

Ann's Laundry & Dry Cleaners, Inc. 276 NLRB No. 026

Duroyd Manufacturing, Inc. 276 NLRB No. 025
(discharge of Ee, unlawful, since for his U activities, rather than for profanity against E's president and insubordination in view of E's U animus and its other violations, and fact prior use of profanity by Ee against E's president, use of profanity by other Ees had been previously tolerated and harassment of Ee by president)

6733 FAILURE TO GIVE BOARD EXPLANATION FOR DISCHARGE

Superior Warehouse Grocers, Inc. 277 NLRB No. 010
(discharge of Ee unlawful where E knew of his U sympathies as evidenced by E's post-discharge statements, E gave conflicting reasons to Ee at time of discharge, E gave no explanation as to reason for discharge at hearing, and E demonstrated extreme U animus)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186

6735 FAILURE TO TELL EMPLOYEE AT TIME OF DISCHARGE REASON THEREFOR

Cassis Management Corp. 281 NLRB No. 174

Florsheim Shoe Store Company 279 NLRB No. 133
[discharge of Ee who was member of U while working for this e in another state, not violative, notwithstanding Ee fired abruptly (only 1-1/2 hours after starting on job) and no justification given for discharge since no showing of U animus on part of E nor had E prevented former U members from working at its nonU stores]

6735—Cont.

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[finding of unlawful suspension and discharge of Ee who was outstanding U advocate and leader of Ees supported by fact that only reason given to Ee for discipline was his failure to perform work properly, and he was never informed that his attitude and asserted boisterous and intrusive behavior at customer's place of business was central to E's decision to terminate him]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[finding of unlawful suspension and discharge of Ee supported by fact that E made no real effort to find out what happened regarding incident for which Ee was disciplined, E never gave Ee fair opportunity to defend himself, and there was curious lack of communication regarding reasons for discipline]

Northern District of Connecticut Iron Workers Local Union No. 15, Joint Apprenticeship Committee (Bruce Gilbert, an Individual) **278 NLRB No. 131**
[violation, where U through its participation in Joint Apprentice Committee (JAC) discharged apprentice coordinator since discharge was for his intra-U activities, where he and 1 member of JAC had been rivals in campaigns for U office, and that member had appointed two other members of JAC while he was U president, in view of timing of discharge which took place when composition of committee was about to change, committee failed to specify reason for discharge and abruptness of discharge]

Uptilt, Inc. **276 NLRB No. 065**
(layoff and failure to recall Ees who posted U posters and discussed U organization, unlawful, since for their U activities, notwithstanding E's contention action was because of attendance records, where E failed to show attendance or work deficiencies of some Ees laid off, Ees were not told at time of layoff they were selected for layoff because of attendance problems, and new Ees were hired immediately after layoffs)

Tom Wignall, Jr. and Billie Williams d/b/a Lorilia Coal Company **275 NLRB No. 186**

Programming & Systems, Inc. **275 NLRB No. 157**
(precipitous discharge of *only* U activist still in E's employ w/o any plausible explaination either at time of discharge or at hearing, violative, where Ee, despite her seniority and satisfactory performance, was only teacher discharged after Christmas recess and E was shown to be vehemently opposed to unionization of its teachers)

6738 FAILURE TO WARN EMPLOYEE PRIOR TO DISCIPLINE

Cassis Management Corp. **281 NLRB No. 174**

Wilco Business Forms, Inc. **280 NLRB No. 154**
[sudden layoff of U adherent w/o prior notice followed by General Manager's comment, when U adherent was laid off, *I guess you can see through that*, violative, since evidence supported inference that protected U organizing activities of Ees was *motivating factor* in E's decision to lay off Ee]

Toyota of San Francisco **280 NLRB No. 093**
[discharge of auto salesman who was steward, not unlawful, notwithstanding discharge abrupt and w/o immediate warning, where he was poorest producer, had failed to make guaranteed draw for several months, absent disparate treatment and in view of fact Ee was inactive steward]

Yaohan of California, Inc. **280 NLRB No. 032**
[discharge of Ee, assertedly for cause, unlawful, where Ee was discharged abruptly prior to end of his work-week, just 1 day following his solicitation for U inside E's store; and discharge was contrary to E's policy of giving warning prior to discharging an Ee]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[finding of unlawful suspension and discipline of Ee, assertedly for improper performance of job, supported by fact that E failed to warn Ee about imposition of such discipline, and that manner in which discharge interview was conducted was not warranted by E's practice with other Ees accused of misconduct]

The Acme-Arsena Co., Inc. **276 NLRB No. 144**
(discharge of U steward assertedly for various valid reasons, unlawful, where steward was never previously warned or disciplined for reasons E gave for discharging him, all of which were merely grossly exaggerated pretext advanced by E to conceal its unlawful motive of discharging steward for engaging in protected activity of complaining to E about work jurisdiction and safety matters)

Tom Wignall, Jr. and Billie Williams d/b/a Lorilia Coal Company **275 NLRB No. 186**

Pierre's Vending Company, Inc. **274 NLRB No. 184**
(discharge of Ee, U activist, because of his *incompetence and incompatibility* violative, since Ee had 10-year record of no discipline with E; general manager discharged Ee approximately 1 week after Ee became openly involved in U organizing activities, received wage increase 2 months before discharge and incidents that allegedly served as basis for discharge were not brought to Ee's attention at time they occurred)

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
(E's failure to investigate Ee's conduct relied on by E for discharging him, assertedly because of lateness and absences, and to warn Ee that his absence record was not satisfactory, held indication of intent to discriminatorily discharge U adherent)

N.L..R.B. v. Malta Construction Company **806 F.2d 1009 (C.A. 11, Dec. 1986)**
[discharge of Ee for *deliberate interference with production and refusing work assignment, followinstructions* during U campaign when Ee refused to remove U sticker from his E supplied hard hat when Ee was on his water break assisting fellow Ee who had a stuck front-end loader, held violative, since GC proved existence of presumptively invalid rule banning U insignia on hard hats and E did not prove any special circumstance to justify its rule. Ee had never been warned or disciplined for his behavior prior to his taking about U]

6740 FALSE EXPLANATION INDICATES ANTIUNION MOTIVE

Stoffer Brothers **JD-269-86**
[where stated motive for discharge is found to be false, another motive unlawful in nature can be inferred; and such inference was warranted herein by surrounding circumstances]

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods **JD-(SF)-101-86**
[absent direct evidence, trier of fact may infer from total circumstances that motive for discharge was desire to eliminate U adherents; if stated motive is found false, inference is that there is another motive E desires to conceal and that such motive is unlawful]

6740-5000 Pretext

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[although ALJ found E's proferred reason for discharge of Ee, i.e., insubordination, was wholly pretextual and real reason for discharge was Ee's U support, Bd still applies *Wright Line* analysis in all cases alleging violations of 8(a)(3) and (1); however, because finding of pretext necessarily means that E's reasons did not exist or were not relied on, inference of wrongful motive is left intact and discharge is unlawful]

Carpenters Local 925; et al. (Charlene Seier, an Individual) **279 NLRB No. 145**
[pretextual discharge cases should be viewed as those in which *—defense of business justification is wholly w/o merit*]

Elal Realty Management Inc. **279 NLRB No. 002**
[discharge of Ees and refusal to rehire them by successor E, violative, since reason was Ees' U membership and E's desire to work with non-U Ees where E gave patently false reasons for discharge which justified inference of anti-U motive; further, bargaining order is appropriate for successor E since U made demand to bargain and all Ees are ordered reinstated, thus, successor E employs majority of prior workforce]

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(discharge of active U adherent assertedly for not reporting for work for several days after he had been given permission to absent himself from work, unlawful, in view of extensive U activity known to E who strenuously opposed such activity, counterfeit defense giving rise to inference of unlawful motivation, and absence of any effort to seek explanation from Ee)

B & W Machine & Welding Company **JD-(SF)-107-86**
[discharge of Ees, unlawful, where E's various asserted lawful reasons for discharges were not shown to be reasonably based on any facts or rational basis, and E seized upon various incidents as excuse or afterthought to decision to be rid of leading U supporters]

Cassidy Cleaning, Inc. **JD-239-86**
[assertion of false reason for discharging Ee is, in and of itself, strong evidence that real reason was illegal]

N.L.R.B. v. J. Coty Messenger Service, Inc. **———F.2d——— (C.A. 2, May 1985)**
[varying explanations for discharge suggest that reasons were pretextual]

6740-5050 Raised for first time at Board hearing

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(E ordering U adherents to turn in company trucks and gasoline credit cards, unlawful, since for their U activities where business justification advanced for first time at trial and in view of precipitate manner in which action taken)

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**

6743 GOOD EMPLOYMENT RECORD OF DISCRIMINATEE

6743-0900 Absence of complaints

6743-0900—Cont.

Ducane Heating Corporation 273 NLRB No. 175
(discharge of Ee, assertedly because of substandard production, violative, since real reason was Ee's testimony at Bd hearing against E and his active U support where Ee had excellent work record and E did not find fault with E's production until after he gave testimony at Bd hearing)

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)

6743-4500 Favorable comment

6743-4533 By supervisors

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place 281 NLRB No. 008
[transfer of U adherent from housekeeping (cleaning) to laundry at convalescent hospital, unlawful, where purpose was to isolate Ee from other Ees, notwithstanding E's contention transfer was due to Ee's poor work in cleaning, and need for additional help in laundry where Ee had prior experience, since these reasons pretextual where Ee had recently received favorable evaluation and wage increase, Ee was open U supporter, and transfer took place soon after E learned of her U activities, and further E had told Ee not to attend 2 Ee meetings]

Distron, A Division of Burger King Corporation 279 NLRB No. 029
[finding of unlawful suspension and discharge of Ee, who was outstanding U advocate and leader of Ees, supported by fact that, contrary to treatment of past allegations by customers of improper Ee conduct, Ee, disciplined assertedly for same reason, was never provided opportunity to respond in writing to specification of his improper conduct, and his 8-year exemplary history, noted by E representatives' references to Ee as excellent worker and as having working record of good quality, was not given its due weight]

Fox-Art Theatres, Inc. 278 NLRB No. 115
[discharge of movie projectionist, unlawful, since solely because of his U membership, where he had had good work record for 12 years, and was considered *great operator* by his manager, but was told he was no longer employed by E because *this is not U house anymore*]

Activ Industries, Inc. 277 NLRB No. 040
(in finding mass discharge of Ees unlawful because of U activity, Bd relied on fact that all but one of Ees involved had received average to excellent job evaluations shortly before discharge)

Gateway Concrete Forming Services, Inc. 274 NLRB No. 032
(discharge of Ee, U steward, allegedly because of his unsatisfactory work at his laboring job, violative where E seemed to like Ee's work *fine*, and discharge occurred 4 months after Ee's employment began, but only 10 days after Ee filed grievance over his layoff. Record showed principle moving cause of discharge was Ee's filing of his grievance, a protected activity)

6743-6300 Long service with employer

Fox-Art Theatres, Inc. 278 NLRB No. 115
[discharge of movie projectionist, unlawful, since solely because of his U membership, where he had had good work record for 12 years, and was considered *great operator* by his manager, but was told he was no longer employed by E because *this is not U house anymore*]

E.I. Dupont De Nemours and Company JD-11-86
[refusal to hire applicant after layoff, assertedly because she was insubordinate at prior job with same E, violative, since real reason was Ee's persistent U activities and repeated filing of charges with the Bd at prior job where Ee's asserted act of insubordination in protesting overtime and refusing to train Ees was protected activity done in furtherance of her U duties, Ee had 19 years of high quality service with E, and E, in overlooking Ee for hire, hired Ees with little or no experience]

6743-8100 Promotions and wage increases or promises thereof

Beverly Enterprises - Indiana, Inc. d/b/a Fountainview Place 281 NLRB No. 008
[transfer of U adherent from housekeeping (cleaning) to laundry at convalescent hospital, unlawful, where purpose was to isolate Ee from other Ees, notwithstanding E's contention transfer was due to Ee's poor work in cleaning, and need for additional help in laundry where Ee had prior experience, since these reasons pretextual where Ee had recently received favorable evaluation and wage increase, Ee was open U supporter, and transfer took place soon after E learned of her U activities, and further E had told Ee not to attend 2 Ee meetings]

Yuohan of California, Inc. 280 NLRB No. 032
[discharge of Ee, assertedly for poor performance, unlawful, where during his tenure of employment Ee was given wage increase and increased hours and responsibilities, and had never received any written warnings]

Pierre's Vending Company, Inc. 274 NLRB No. 104
(discharge of Ee, U activist, because of his *incompetence and incompatibility* violative, since Ee had 10-year record of no discipline with E; general manager discharged Ee approximately 1 week after Ee became openly involved in U organizing activities, received wage increase 2 months before discharge and incidents that allegedly served as basis for discharge were not brought to Ee's attention at time they occurred)

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)
[discharge of U activist, violation, notwithstanding claim of his poor performance and desire to do only one kind of work that would not justify full time employment, where evidence showed he performed other work, received no complaints or warnings about any aspect of his work, and was given pay raise and bonus three weeks before discharge]

6745 INVESTIGATION OF EMPLOYEE'S CONDUCT

Health Enterprises of America, Inc., d/b/a Miami Health Care Center 282 NLRB No. 033
[notwithstanding U adherent violated rule against patient abuse, discharge violative as real reasons were U activities and filing lawsuit against E, in view of spurious investigation and disparate discipline accorded discriminatee for violating rule]

Airport Distributors, Inc. 280 NLRB No. 091
[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of deviation from customary policy of investigating accidents]

Benmit Division, U.S. Tubular, Inc. 280 NLRB No. 083
[failing to investigate Ee's not calling in that he would be absent before discharging him]

Products Unlimited Corp. 280 NLRB No. 041
[discharge of U adherent, unlawful, since for her U activities rather than for initial refusal to turn off her radio when requested to do so by her supervisor, where E at first suspended Ee, then subsequently contrary to usual policy, discharged her with no investigation, Ees had previously been permitted to play radios if volume did not disturb other Ees and other Ees had radios on at time U adherent was requested to turn hers off]

Gull, Inc. 279 NLRB No. 127
[E failed to rebut GC's prima facie case that discharge of Ees, assertedly for engaging in slowdown, was discriminatory where E, in course of his investigation subsequent to 1 discriminatee's alleged *admission* of involvement in slowdown failed to question Ee about it nor questioned other Ees allegedly involved or their supervisor; also E did not refer to incident in personnel file or in discharging Ee who purportedly made admission; and E did not even establish that slowdown actually occurred]

Distron, A Division of Burger King Corporation 279 NLRB No. 029
[finding of unlawful suspension and discharge of Ee supported by fact that E made no real effort to find out what happened regarding incident for which Ee was disciplined, E never gave Ee fair opportunity to defend himself, and there was curious lack of communication regarding reasons for discipline]

South Nassau Communities Hospital 274 NLRB No. 179
(issuance of warnings and 1 day suspension for alleged violation of hospital's no solicitation rule to U activist who gave another Ee U pamphlet and to Ee who received pamphlet, unlawful, since for U activities of Ee who gave out pamphlet, where issuance of suspension simultaneously with warning with only cursory investigation was departure from E's usual disciplinary procedure, and in view of disparate enforcement of no solicitation rule and E's U animus)

Quality Rolls, Inc. JD-189-86
[multiple discharges which included prominent U supporters, based on findings made by undercover investigative agent concerning Ees' conduct on unsupervised shift, unlawful, where investigation was sham calculated to provide foundation for elimination of sole remaining members of U negotiating committee, in view of E's ongoing unprecidented bent toward discharges and willingness to sacrifice large segment of skilled workforce in face of large backlog and heavy demand on basis of unconfirmed accusations of third party undercover agent]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[discharge of known U adherent assertedly because she abused sick leave, unlawful, where sudden urgency of E in wanting Ee on job w/o making any effort to contact Ee suggested that E did not care whether Ee had legitimate reason for reporting to work late or whether she was in fact abusing leave; and failure of E to conduct full and fair investigation of alleged Ee misconduct was evidence of discriminatory intent, which was especially true where E, as here, manifested U hostility]

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. JD-(NY)-24-85
(E's failure to investigate Ee's conduct relied on by E for discharging him, assertedly because of lateness and absences, and to warn Ee that his absence record was not satisfactory, held indication of intent to discriminatorily discharge U adherent)

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)
[discharge of salesmen, unlawful, since motivated by his U organizing activities and not because of his swearing at another Ee, where E did not ask Ee for his version of incident; E's attempt to justify discharge with background

6745—Cont.

evidence of customer complaints of excessive agressiveness against salesman, rejected, where he had been successful salesman and had never been disciplined prior to discharge, nor had any salesman who had been successful been disciplined for agressiveness]

6750 OFFER OF REINSTATEMENT ILLEGALLY CONDITIONED

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) JD-(NY)-97-86

[no unlawful conditioning by E of Ee's reinstatement upon U's consent or unlawful refusal by U to consent to reinstatement due to Ee's concerted activities]

6750-2500 Surrender of previous rights and privileges

Rikal West, Inc. 274 NLRB No. 170

(offer of reinstatement to discriminatee *not unconditional* where by terms of reinstatement discriminatee would admit his or her guilt of E's violative rules and accept discipline eminating therefrom since, such admission and its consequences would not have placed discriminatee in status quo ante)

Tectonic Industries, Inc. JD-(NY)-100-84

(E's offers of reinstatement to ULP strikers, made subject to strikers' accepting conditions of employment which had been changed unilaterally by E and/or accepting positions when they became available, did not satisfy E's obligation to strikers who had made unconditional offer to return to work)

Embossing Printers, Inc. JD-19-85

(economic strikers rejection of unconditional offer of reinstatement (offer held unconditional notwithstanding it included strikers accepting unilateral changes to their health benefits as these changes were found to be lawful) converted their status to voluntary quits)

6750-7500 Requiring examination

Lone Star Industries, Inc. 279 NLRB No. 078

[notwithstanding no prior preemployment physical exam policy and only instituted after economic strike ended, and notwithstanding it has been applied to recalled strikers, but not all of replacement Ees have undergone physicals, no violations over instituting physical exam policy or failure to reinstate recalled striker who failed exam, even though physician said illness treatable and posed no threat to his ability to perform job, since policy of E is that all Ees will take physical, policy bore no indication of discriminatory intent, E also discharged striker replacement who had same illness and policy was reasonable response to potential liability]

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)

[where ct determined that Ee's postsettlement discharge was unlawful, settlement agreement set aside, and remand to Bd to determine whether E committed presettlement violation by requiring same Ee who was unlawfully discharged to submit to psychiatric examination before returning to work after leave taken due to stress related to Ee's involvement in U organizing campaign]

6758 CHANGE OF PRIOR ATTITUDE TOWARD EMPLOYEE

Pierre's Vending Company, Inc. 274 NLRB No. 184

(discharge of Ee, U activist, because of his *incompetence and incompatibility* violative, since Ee had 10-year record of no discipline with E; general manager discharged Ee approximately 1 week after Ee became openly involved in U organizing activities, received wage increase 2 months before discharge and incidents that allegedly served as basis for discharge were not brought to Ee's attention at time they occurred)

6760 PRIOR QUESTIONING OR WARNING

6760-1400 Questioning employee concerning union

Heck's Inc. 277 NLRB No. 098

(discharge of Ee unlawful since discharge was because E suspected Ee supported U, where discharge was preceeded by interrogation of Ee about her own and other's U sympathies, and absent evidence of lawful reason to discharge to rebut prima facie case)

6760-8600 Threats of discharge or layoff, etc.

F & C Transfer Co., Inc. 277 NLRB No. 071

(discharge of Ee, unlawful, since for U activities rather than for carrying unauthorized passenger in E's truck or for involvement in auto accident which E contended impacted its insurance coverage, where Ee had been threatened previously with discharge if he joined U and discharge took place after E had received checkoff authorization, in view of E's expressed anti-U sentiments, no written rule against unauthorized passengers, fact no other Ees disciplined for carrying unauthorized passengers, accident occured one and half year previously and Ee was cleared of any wrong doing)

6765 REINSTATEMENT AFTER DISCHARGE

The Well-Bred Loaf, Inc. 280 NLRB No. 036

[reinstatements shortly after discharges for alleged poor work contradicted alleged motivation]

Rikal West, Inc. 274 NLRB No. 170

(offer of reinstatement to discriminatee *not unconditional* where by terms of reinstatement discriminatee would admit his or her guilt of E's violative rules and accept discipline eminating therefrom since, such admission and its consequences would not have placed discriminatee in status quo ante)

6768 REPLACEMENT OF DISCRIMINATEE

6768-1400 Additions to staff from which discriminatee was laid off for alleged lack of work

The Well-Bred Loaf, Inc. 280 NLRB No. 036

[alleged slack work contradicted by hiring of new Ees contemporaneously with discharges and reinstatement of Ees soon after discharges]

Quality Millwork Corp. and Its Alter Ego Quality Door Co. 276 NLRB No. 069

6768-2800 After layoff for slack work

Northwind Maintenance and Painting Co., Inc. 281 NLRB No. 048

[hiring new Ees as replacements is patent evidence that attributing layoff to contract cancellation was pretext]

Uptilt, Inc. 276 NLRB No. 065

(layoff and failure to recall Ees who posted U posters and discussed U organization, unlawful, since for their U activities, notwithstanding E's contention action was because of attendance records, where E failed to show attendance or work deficiencies of some Ees laid off, Ees were not told at time of layoff they were selected for layoff because of attendance problems, and new Ees were hired immediately after layoffs)

Aluminum Technical Extrusions, Inc. 274 NLRB No. 199

(permanent layoff of Ees, assertedly because E had lost a major customer violative, since real reason was Ees' U activity where Ees were laid off w/i hours after E learned of their U activity, layoff procedure was departure from E's past practice, E replaced Ees w/i a week after the layoff and failed to provide any documentation or corroboration in support of its business defense)

6768-4200 By inexperienced person

E.I. Dupont De Nemours and Company JD-11-86

[refusal to hire applicant after layoff, assertedly because she was insubordinate at prior job with same E, violative, since real reason was Ee's persistent U activities and repeated filing of charges with the Bd at prior job where Ee's asserted act of insubordination in protesting overtime and refusing to train Ees was protected activity done in furtherance of her U duties, Ee had 19 years of high quality service with E, and E, in overlooking Ee for hire, hired Ees with little or no experience]

6768-5600 By new man

Northwind Maintenance and Painting Co., Inc. 281 NLRB No. 048

[hiring new Ees as replacements is patent evidence that attributing layoff to contract cancellation was pretext]

Buckley Belt Service, Inc., d/b/a Buckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066

[using U and non-U rehires to perform unit work w/o recalling laid off unit Ees who had engaged in protected U activity indicated discriminatory motive]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047

(layoff of Ee unlawful and held to be constructive discharge, since for U activites, where E after the fact attempted to capitalize on Ee's wife's illness to state on layoff slip *voluntary quit* to care for wife, in order to preclude any obligation to recall Ee, E had previously made disparaging remarks about U and hired new Ees rather than recall Ee)

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)

[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and inadequate, and new Ees were hired two months after discharges]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)

[discharges not justified by E's financial woes where discharged Ees were replaced w/i two months]

6768-7000 By nonunion employee

6768-7000—Cont.

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[using U and non-U rehires to perform unit work w/o recalling laid off unit Ees who had engaged in protected U activity indicated discriminatory motive]

6773 SHORTAGE OF LABOR AT TIME OF LAYOFF

Steffer Brothers **JD-269-86**
[discharge of U supporters unlawful, in view of timing of discharges closely after E learned of filing of R ptn at time that E's continuing need for Ees prompted hiring of replacements]

6780 RETENTION OR REINSTATEMENT OF OTHER EMPLOYEE GUILTY OF SAME OFFENSE

Mid West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**
(prima facie case made out for successor's unlawful failure to rehire Ees where: 1) Ees were known U adherents, 2) majority of Ees not rehired were U leaders, 3) disparate treatment as other Ees rehired were guilty of same offenses that successor alleged for not rehiring these Ees, and 4) successor found to have unlawfully refused to bargain with U, which constituted additional evidence of U animus)

6780-5000 Retention of non-union employee guilty of same offense for which discharge was made

H. Treffinger Repair Services, Inc. **281 NLRB No. 085**
[discharge of known U adherents assertedly because of threat made to, or because of engaging in fight or horseplay with, anti-U Ee, unlawful, where latter was not disciplined for engaging in purported fight; E admitted having U animus, made no investigation but relied on anti-U Ee's version of what happened, and took shifting positions in explaining discharges; and E effected discharges over shop supervisor's protests]

6783 DISREGARD OF SENIORITY

Airport Distributors, Inc. **280 NLRB No. 091**
[whether or not Ee quit or was merely on leave of absence, E's denial of reinstatement of Ee's seniority date upon his return to work, unlawful, where E stated that seniority date was denied because Ee and fellow Ees sought U representation]

Products Unlimited Corp. **280 NLRB No. 041**
[refusal to promote visible U adherent, unlawful, since for U activities rather than for absenteeism, where adherent had greater seniority, and directly related experience particularly supervisory which Ee selected lacked, and selected Ee had only marginally better attendance record when days on which U adherent was snowed in were considered as they were in regard to selectee, and Ee selected had recently been warned for use of abusive language]

Lone Star Industries, Inc. **279 NLRB No. 078**
[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

Foots & Davies, Inc. **278 NLRB No. 012**
[E's failure to recall sympathy striker to positions as they were vacated through attrition, assertedly because other Ees recalled had superior rights, violative, since real reason was Ee's engaging in sympathy strike where Ee made unconditional offer to return to work before vacancies occurred, Ee was not advised of openings even though he had more seniority than Ees recalled according to E's own seniority system and practice and E advanced no legitimate business reason for not recalling Ee]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(layoff of U adherent, unlawful, since for his U advocacy rather than for lack of work or Bd's work deficiencies, where several weeks of work remained on project where Ee was working, newly hired Ees were retained in preference to Ee, and Ee was once recalled to same job where alleged work deficiences justifying his layoff were noted)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(layoff of U adherent out of seniority contrary to company policy, unlawful)

Indiana Dusk Company, Inc. **276 NLRB No. 163**
(no violation where E did not follow seniority in offering jobs to economic strikers, but rather offered jobs to Ees who held the same jobs before strike and in event of unavailability or declination by that Ee it then offered job to most qualified other striking Ee)

Garrett Railroad Car & Equipment, Inc. **275 NLRB No. 151**
(recalling Ee (economic striker) out of seniority after strike's end, violative, since such treatment of Ee was disprate. E's action was not shown to be for some legitimate business reason or purpose and assessed in background of E's ULPs was inherently destructive of Ee Section 7 rights. Record provided sufficient evidence of E's singling out Ee striker who wanted to abandon strike (E had learned) and rendered this Ee-striker favorable disparate treatment some 3 weeks after strike ended)

Pullman Power Products Corporation **275 NLRB No. 112**
(E was under no obligation to use seniority of Ees as criterion in selection process for layoff where record did not reveal that seniority had been used in past for layoff selection)

Rankin Brothers, Inc. **274 NLRB No. 053**
(E's selection of Ees for layoff who were all U card signers, assertedly because E was facing severe financial difficulties, violative, notwithstanding that E's proffered economic defense was not pretextual, since real reason was Ees' U activity where the day after E gained knowledge of who was involved with the U, 8 U card signers were laid off, two of the least senior Ees were not laid off and E's reasons about why certain Ees were selected for layoff were vague and tentative)

Acar Machine & Tool Co., Inc. **JD-240-85**
(laying off chief U organizer who was senior to retained Ee contrary to past practice, violative)

6785 LACK OF APPARENT REASON OR ADEQUATE EXPLANATION FOR ACTION

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**
[successor E's refusal to hire majority of predecessor's Ees, assertedly because those hired were more qualified, violative, notwithstanding successor E hired some U members, since real reason was Ees' refusal to withdraw from U where supervisor of successor E told some Ees they would be guaranteed employment if they withdrew from U, successor did not articulate any definite standard by which Ees were evaluated for selection and E's refusal to comply with subpoena for employment records justified adverse inference that e had unlawful motive]

Programming & Systems, Inc. **275 NLRB No. 157**
(precipitous discharge of *only* U activist still in E's employ w/o any plausible explaination either at time of discharge or at hearing, violative, where Ee, despite her seniority and satisfactory performance, was only teacher discharged after Christmas recess and E was shown to be vehemently opposed to unionization of its teachers)

Pierre's Vending Company, Inc. **274 NLRB No. 184**
(discharge of Ee, U activist, because of his *incompetence and incompatibility* violative, since Ee had 10-year record of no discipline with E; general manager discharged Ee approximately 1 week after Ee became openly involved in U organizing activities, received wage increase 2 months before discharge and incidents that allegedly served as basis for discharge were not brought to Ee's attention at time they occurred)

East Central Communications, Inc. **JD-116-86**
[discharge of Ee, assertedly for abuse of paid sick leave rule, unlawful, in view of E's knowledge of Ee's vigorous U activity, timing of discharge shortly before election, E's failure to follow own 3-warning rule in disciplining Ee or to credibly explain why it had failed to do so, and fact that, if it had followed its rules, maximum discipline would have been issuance of warning for first offense; and E thereby seized upon infraction as excuse to mask discharge of Ee because of his U activity and to discourage similar activity among its Ees]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and inadequate, and new Ees were hired two months after discharges]

6788 SHIFT OF GROUND IN EXPLAINING EMPLOYER'S ACTION

Raynor Motel Corporation d/b/a Holiday Inn East **281 NLRB No. 092**

Airport Distributors, Inc. **280 NLRB No. 091**
[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of shifting and mutually inconsistent accounts of reasons for and circumstances of discharge]

6788—Cont.

Soulectro Corporation 280 NLRB No. 015
[discharge of Ee unlawful since for U adherence rather than for poor attendance and failure to notify E when he was not coming into work, in view of E's departure from usual discipline system, E's U animus, fact rule regarding reporting absences had not been consistently enforced, and that *uncooperative attitude* which was given as reason for discharge at hearing, but was not given at time of discharge, raises inference that real reason was pretext]

Donald Dean d/b/a D.C. Construction Company 276 NLRB No. 097
(E unlawfully failed to reemploy Ee who was laid off job for nondiscriminatory reasons, where E conducted job under its own perception that U limitations blocked hire and continued employment of Ee; supervisor made statements which, on their face, were direct admissions that E withheld employment of Ee because of his lack of U membership; and E's claims that Ee was not rehired because his work was inadequate were shifting and implausible)

St. Paul's Church Home, Inc. 275 NLRB No. 170

M.B.M. Transportation Inc. JD-206-86
[discharge of Ee who discussed organizing U with Ees and also working conditions, and hours and rates of pay, unlawful, where E displayed anti-U animus and knew of Ee's organizing activities; discharge was timed shortly after Ee commenced such activities and shortly before scheduled Ee meeting at his home; and E offered series of shifting reasons for discharge, many of which surfaced after Ee's discharge, and all of which were w/o credible corroboration]

Statewide Industrial Catering, Inc. JD-(NY)-139-85
[discharge of 2 U adherents, violative where E gave shifting reasons for discharges, two supervisors who were key to case did not testify, and E demonstrated U animus]

6788-5000 Conflicting reasons or inconsistent theories

Harold Weiss; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013

Joseph A. Perry d/b/a Holiday Inn-Glendale 277 NLRB No. 145
(mass discharge of Ees, assertedly because of insubordination and because E received a bad hotel inspection, violative, since real reason was Ees' U activity where Ees were discharged w/i 2 days of E's knowledge thereof, E gave shifting reasons, threatened Ees with reprisals for U activity and unlawfully interrogated Ees)

American Model & Pattern, Inc. 277 NLRB No. 018
(selecting two U supporters for layoff out of seniority, assertedly for economic reasons, violative, where E had past proactice of following seniority and reasons given for selecting these two Ees were shifting and contradictory)

Superior Warehouse Grocers, Inc. 277 NLRB No. 010
(discharge of Ee unlawful where E knew of his U sympathies as evidenced by E's post-discharge statements, E gave conflicting reasons to Ee at time of discharge, E gave no explanation as to reason for discharge at hearing, and E demonstrated extreme U animus)

United Artists Eastern Theatres, Operating Valentine Theatre 275 NLRB No. 025
(discharge of Ee, assertedly because of unsatisfactory work, violative, since real reason was Ee's participation in R proceeding and his U activity where Ee was told he would be promoted if he dropped the U and E gave inconsistent reasons to support discharge; further, E's contention that Ee's admission to accepting gratuities from patrons in violation of E's rules was conduct sufficient to deny reinstatement, rejected, since there was no evidence this was dischargeable offense and E was willing to overlook such behavior in exchange for Ee's forgoing U activity)

Ben Susan Restaurant Corp. d/b/a The Blue Note JD-(NY)-92-86
[discharge of pro-union Ees violative, where E's proferred reasons were contradictory and unsupported]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[discharge of known U adherent, assertedly for entering and engaging in improper behavior in unauthorized area at E's facility, unlawful, where E told Ee he was being discharged for economic reasons, and then at hearing stipulated it did not discharge any Ees for economic reasons and asserted for first time that discharge was because of E's improper behavior]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)
[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and inadequate, and new Ees were hired two months after discharges]

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)
[argument in ct that Ees were poor workers inconsistent with E's letter and speech to Ees stating that they were laid off for economic reasons, not misconduct]

6790 STATEMENT MADE BY EMPLOYER CONCERNING DISCHARGE

6790-3300 After discharge

Yaohan of California, Inc. 280 NLRB No. 032
[discharge of Ee, assertedly for cause, unlawful, where supervisor linked discharge with U organizing activities by making statement following discharge to fellow Ee that *I know something's going on. We cannot afford to join the U right now.*]

Distron, A Division of Burger King Corporation 279 NLRB No. 029
[pre-hearing admission of supervisor that reason for Ee's suspension and discharge was his U activity entitled to substantial weight, even though supervisor may not have been privy to E's decisional process, where supervisor served extensive years with E in supervisory capacity, and E failed to obtain from supervisor timely information regarding events leading to disciplining of Ee, which only supervisor could supply]

D & D Distribution Company, A Division of D & D Sewing Company 277 NLRB No. 097
(E's statement to Ee immediately after discharge of Ee assertedly for tardiness that reason for discharge was not really Ee's lateness but that it was more because of his attitude toward E that was not liked held not only to show that Ee's attendance record was not cause of discharge but also supported inference that Ee's protected concerted activities were cause of Ee's termination since, when attitude is given as reason for discharge, it has often been viewed as synonymous with U or concerted activity)

Activ Industries, Inc. 277 NLRB No. 040
(in finding mass discharge of Ees unlawful, Bd relied on supervisor's admission that he chose Ees for discharge because they were involved in *U activism*, and fact that an Ee overheard supervisor's statement that U was reason for discharge)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(supervisor's statement to Ee that E had to discharge another Ee because of his U activities held not admission against interest by E where there was no proof that supervisor was privy to reasons for discharge or that he was offering more than surmise; however, statement reasonably reflected understanding by E's agent that E might, and probably did, fire Ee for his U activities and, as such, statement has some relevance and weight reflecting E's state of mind with respect to discharges for U activities)

Pullman Power Products Corporation 275 NLRB No. 112
(E's characterization, at ULP hearing, of alleged discriminatees as *troublemakers* did not necessarily mean that E regarded them as such because of U activity; rather, remark could have easily referred to Ees' harassment of travelers and other workers, and record provided insufficient basis for choosing one interpretation over another)

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[E's belief that Ee was U supporter inferred from fact that Ee worked with known chief U organizer, E made diligent effort to learn who were U organizers, and E acknowledged to Ee after Ee's discharge that E was sorry but someone had informed E that Ee was U organizer]

6790-6700 Prior to or at time of discharge

Power-Seal Corporation 276 NLRB No. 036
(E's remark to supervisor and telling discharges at exit interview that he could not risk having Ees around in view of all the U talk)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186
(inexplicably evasive statements made by E to Ees when terminated)

Cassidy Cleaning, Inc. JD-239-86
[supervisor's statement to Ees immediately after election won by U that E was going to fire lot of people because of outcome of election]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[discharge of known U adherent, assertedly for entering and engaging in improper behavior in unauthorized area at E's facility, unlawful, where E told Ee he was being discharged for economic reasons, and then at hearing stipulated it did not discharge any Ees for economic reasons and asserted for first time that discharge was because of E's improper behavior]

6793 TIMING OF DISCRIMINATORY ACTION

6793-1200 After employer gained knowledge of union activity

Kokomo Tube Company 280 NLRB No. 035
[grant of across board wage increase, unlawful, since granted to undermine U campaign, where announced 1 day after E had obtained knowledge of U activity based on more than rumors, increase received by Ees after U had

6793-1200—Cont.

filed R ptn, and where previouse increases had been tied to E's profits whereas these raises wee not justified by profits]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[timing of discharge of outstanding U advocate and leader of Ees less than 4 months after U lost election supported finding that discharge was unlawful]

Sahara Datsun, Inc. **278 NLRB No. 148**
[discharge of two U organizers same day E received U ptn for election signed by one of them, violation]

Joseph A. Perry d/b/a Holiday Inn-Glendale **277 NLRB No. 145**
(mass discharge of Ees, assertedly because of insubordination and because E received a bad hotel inspection, violative, since real reason was Ees' U activity where Ees were discharged w/i 2 days of E's knowledge thereof, E gave shifting reasons, threatened Ees with reprisals for U activity and unlawfully interrogated Ees)

Dr. Frederick Davidowitz, and Dr. Martin Goldberg; P.C. **277 NLRB No. 110**
(discharge of dentist who was U adherent, unlawful, since asserted reasons for discharge: poor production, attitude; violating rules by keeping patients waiting; held pretextual in view of E knowledge of U activity to be inferred from rumor mill, relied on in past by E; timing, discharge took place 1 week after U meeting where dentist had declared support of and following period of his intense solicitation for U; further, writeups in personnel file did not contribute to discharge decision as other dentists had approximate same number of write-ups over equivalent period and not discharged)

National Micronetics, Inc. **277 NLRB No. 095**
(denying overtime to U activist immediately after E learned he would serve as U election observor, violation)

Limpert Brothers, Inc. **276 NLRB No. 037**
(layoff of Ees, assertedly because of slack work and business losses, violative, where Ees were laid off only one day after E obtained knowledge of U activity, E informed several Ees that reason for layoff was U activity and layoff was precipitous, occurring w/o any warning to Ees)

Aluminum Technical Extrusions, Inc. **274 NLRB No. 199**
(permanent layoff of Ees, assertedly because E had lost a major customer violative, since real reason was Ees' U activity where Ees were laid off w/i hours after E learned of their U activity, layoff procedure was departure from E's past practice, E replaced Ees w/i a week after the layoff and failed to provide any documentation or corroboration in support of its business defense)

Roskin Brothers, Inc. **274 NLRB No. 053**
(E's selection of Ees for layoff who were all U card signers, assertedly because E was facing severe financial difficulties, violative, notwithstanding that E's proffered economic defense was not pretextual, since real reason was Ees' U activity where the day after E gained knowledge of who was involved with the U, 8 U card signers were laid off, two of the least senior Ees were not laid off and E's reasons about why certain Ees were selected for layoff were vague and tentative)

Steffer Brothers **JD-269-86**
[discharge of U supporters unlawful, in view of timing of discharges closely after E learned of filing of R ptn at time that E's continuing need for Ees prompted hiring of replacements]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[E's numerous unlawful interrogations, solicitation of informants, impressions of surveillance, and timing of discharges, all w/in 11 days after receipt of U's R ptn, held to make obvious fact that motivation for Ees' discharges was their U activities]

Castriconе Contractors, Inc. **JD-(NY)-80-85**
(discharge of Ee who joined U after starting work and when he gave E his U papers was told by E that Ee *could either finish off the day or go home now — there were other people in U laid off that are not working*, violative as E member of E association that signed contract with U and Ee discharged because E would have had to pay Ee contract wage)

Fan-Sy Productions, Inc. **JD-(NY)-49-85**
(discharge of Ee, assertedly because of lateness, violative, since real reason was Ee's U activity where discharge occurred shortly after E gained knowledge of U campaign, E tolerated Ee's lateness in past and discharge was made pursuant to unlawful new lateness rule promulgated by E in response to Ees' U activity)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**
(E's decision to have mass layoff w/i hours after becoming aware of U's organizational effort suports Bd's inference of improper motivation)

6793-2500 Coincidence with critical period in union movement

Activ Industries, Inc. **277 NLRB No. 040**
(mass discharge of Ees because of U activities, comprising third of work force, unlawful, where discharges occurred only 9 days after U organizing campaign began; shortly before discharge all but 1 of Ees involved received average to excellent job evaluations; supervisor admitted he chose some Ees for discharge because of their *U activism*; and E, while intervening to prevent discharge of some Ees, nevertheless deferred to supervisor's recommendation on discharging Ees whose work performance or behavior E was not familiar with; and Ee overheard another supervisor's statement that U was reason for discharges)

Robins Federal Credit Union **273 NLRB No. 165**
(although sequence of events, particularly timing of discharge of Ee on eve of election and method by which Ee was summarily dismissed gave rise to suspicion as to whether E terminated Ee because of her U activities, mere suspicion is not sufficient to support finding of violation)

6793-2511 At height of union membership or organizational drive

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**

M.B.M. Transportation Inc. **JD-206-86**
[discharge of Ee who discussed organizing U with Ees and also working conditions, and hours and rates of pay, unlawful, where E displayed anti-U animus and knew of Ee's organizing activities; discharge was timed shortly after Ee commenced such activities and shortly before scheduled Ee meeting at his home; and E offered series of shifting reasons for discharge, many of which surfaced after Ee's discharge, and all of which were w/o credible corroboration]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and inadequate, and new Ees were hired two months after discharges]

6793-2517 Following demand for recognition

Terraillon Corp. **280 NLRB No. 037**
[E's vice-president revoking approval of Ee's previously authorized vacation, and discharging her when she took vacation as planned, unlawful, since for her U adherence rather than because she was needed for audit during vacation period, where approval of Ee's vacation dates was reaffirmed after audit scheduled, and only withdrawn after U demanded recognition, and Ee had performed her functions in connection with audit prior to requested vacation date]

Ballou Brick Co. **277 NLRB No. 009**
(discharge of 13 Ees, assertedly because E's inventory was so great as to eliminate the need for production, violative, since real reason was Ees' U activity where E at no time halted production after the discharges, offered no records to support its economic defense and discharges occurred shortly after E had received U's demand for recognition)

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(E's action, after receiving U's recognition demand, announcing and subsequently revoking wage increase because of U activities, unlawful, where E told Ees that wage increase had been recommended and notice was posted on bulletin board about same time announcing that across-the-board wage increase would be made effective shortly; however, Bd did not find that decision to defer consideration of proposed wage increase in wake of U organizing activities pending their outcome or that of an election necessarily violates Act)

David Clements Co., Inc. **JD-388-85**
[E's institution of rules regarding punching in and out, safety glasses, progressive discipline for absence or tardiness, smoking, leaving work areas and production standards unlawful, since in retaliation for Ees' U activity where instituted day after E received U's ptn and in view of unlawful statement of E's owner prior to announcement of rule *if Ees wanted E to be run like a big company, E would be run like a big company*]

6793-2533 Following election of union

Port Plastics, Inc. **279 NLRB No. 050**
[E's implementation of change in telephone procedures by no longer permitting Ees to answer personal telephone calls, immediately after U won election, violative]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(giving preference in hiring to applicant who was willing to accede to E's anti-U posture, where discharging all but one Ee who supported U w/i 6 months after election, unlawful, especially in view of E's other violations including creating impression of surveillance and interrogation)

Leeds Cablevision, Inc. and Cablevision Company, Inc. **277 NLRB No. 014**
(granting disparate increases to Ees of each facility of joint E who received substantially equivalent evaluations overall, violative, since joint E intended that Ees of one of joint Es' facilities receive substantially lower increases

6793-2533—Cont.

than their counterparts because they selected U to represent them. E intended that dissimilar result occur)

Cassidy Cleaning, Inc. **JD-239-86**
[timing of discharges w/i days of overwhelming U victory in election]

Quality Rolls, Inc. **JD-189-86**
[while discipline of principal U organizer on heels of election contributed to suspicion as to nature of action by E who demonstrated propensity to discriminate, and while issue was not w/o doubt, ALJ held that, absent convincing proof of disparate treatment, suspension and subsequent discharge of U leader was not unlawful]

Purolator Armored, Inc. v. N.L.R.B. **764 F.2d 1423 (C.A. 7, July 1985)**
(notwithstanding operation was losing money, E violated Act by terminating said operation as E was willing to absorb these losses until U won election which shows that economics was not foremost in E's decision, and as U elected as operation's representative was same as one that represented other E units and there was frequent interchange with Ees, the closure had chilling effect on unionism)

6793-2544 Following identification of principal organizers

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **279 NLRB No. 082**
[layoff of two Ees, assertedly because of slack work caused by machine breakdown, violative, since real reason was Ees' U activity where Ees were laid off immediately after E received *R* ptn, E knew Ees were active U supporters, layoff was precipitous and E had never before laid off Ees when a machine had broken down]

Dr. Frederick Davidowitz, and Dr. Martin Goldberg; P.C. **277 NLRB No. 110**
(discharge of dentist who was U adherent, unlawful, since asserted reasons for discharge: poor production, attitude; violating rules by keeping patients waiting; held pretextual in view of E knowledge of U activity to be inferred from rumor mill, relied on in past by E; timing, discharge took place 1 week after U meeting where dentist had declared support of and following period of his intense solicitation for U; further, writeups in personnel file did not contribute to discharge decision as other dentists had approximate same number of write-ups over equivalent period and not discharged)

6793-2555 Following union organizational meeting or other union action (strike, obtaining settlement agreement, etc.)

Airport Distributors, Inc. **280 NLRB No. 091**
[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of timing of discharge of Ee who participated in strike activity w/i 2 weeks of strike-settling recognition agreement]

Quality Aluminum Products, Inc. **278 NLRB No. 049**

6793-2566 Following unsuccessful election

Hedaya Brothers, Inc. **277 NLRB No. 093**
(discharge of Ee, assertedly because of high absenteeism, violative, since real reason was Ee's support of rival U where Ee received many warnings only after Bd conducted election between competing Us, E's implementation of new warning system was violative of 8(a)(3) and warning system was applied in disparate manner)

Hedaya Brothers, Inc. **277 NLRB No. 093**
(E's implementation of new warning system for lateness and absenteeism following election between rival Us, violative, where unlawful motive was shown by statements to Ees threatening discharge for striking, plant closure and telling Ees that to choose either U was futile, E unlawfully discharged supporter of rival U pursuant to new system and E implemented new system in precipitate manner and it was applied inconsistently)

Jefferson Electric Company, A Division of Litton Systems, Inc. **274 NLRB No. 104**
(discharge of Ee, assertedly because of her refusal to work with cleaning fluid, violative, since real reason was her U activities where Ee had previously been excused from working with cleaning fluid because of her sensitivity to the fumes with no mention of disciplinary action, other Ees were allowed to transfer out of department where cleaning fluid was located because of allergic reactions w/o mention of discipline, and Ee was discharged subsequent to her U activities and w/i days after certification of election results, which U lost)

IBP, Inc. **JD-221-85**
(discharge of Ee who was U adherent in U organizing campaign and election, not unlawful, since discharge was pursuant to lawful warnings under E's progressive disciplinary policy regarding tardiness and took place one month after U lost election, and absent U animus, commission of other ULPs by E or disparate treatment)

6793-2588 Imminence of representation election

ARA Leisure Services, Inc. v. N.L.R.B. **782 F.2d 456 (C.A. 4, Jan. 1986)**
[discharge of helpers of *tableheads* i.e. vendors who sold novelties items at concessions at sports arena, by E which operated concessions under lease arrangement, unlawful, since *tableheads* held supervisors in employ of E rather than independent contractors, and in view of E's U animus and fact discharges took place two weeks before election, notwithstanding specific knowledge by e of U sympathies of only 4 out of 18 helpers, since E had general knowledge of U support among novelty helpers, E's contention that termination of *tableheads* required discharge of helpers also, rejected]

6793-5000 Coincidence with other unfair labor practices

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(giving preference in hiring to applicant who was willing to accede to E's anti-U posture, where discharging all but one Ee who supported U w/i 6 months after election, unlawful, especially in view of E's other violations including creating impression of surveillance and interrogation)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(discharge of Ee after he had been placed on probation assertedly for poor productivity, unlawful, in view of E's knowledge of Ee's leading role in U organizing, extent and severity of E's other ULPs, conceded hostility to U, implausibility of E's reasons for discharge, and fact that E seized upon disagreement with Ee about his production as opportunity to immediately accomplish Ee's separation which E had first tried to do by coercing Ee into quitting by placing him on probation)

McLean Roofing Company **276 NLRB No. 093**
(discharge of U advocates, assertedly for drinking and stealing, violative where discharge occurred shortly after E's expressions of U animus, interrogations, threats, and identification of discharged Ees as U organizers)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[E's numerous unlawful interrogations, solicitation of informants, impressions of surveillance, and timing of discharges, all w/in 11 days after receipt of U's R ptn, held to make obvious fact that motivation for Ees' discharges was their U activities]

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[discharge of Ees held unlawful where evidence of Ees' U activities, E's widespread 8(a)(1) conduct, express demonstration of U animus, and active curiosity in Ees' organizing activties was sufficient to establish prima facie case of unlawful motivation for discharges; and, since E's asserted reasons for discharges were pretextual, E failed to meet its *Wright Line* burden]

N.L.R.B. v. J. Coty Messenger Service, Inc. **———F.2d——— (C.A. 2, May 1985)**
[E's interrogation, threats, and promises provide substantial evidence of E's anti-U animus, and viewed together with other factors support finding that Ee was fired because of U activities]

6793-5040 Discipline of other employees for union activity

Programming & Systems, Inc. **275 NLRB No. 157**
(discharge of teacher-U adherent because she did not have baccalaureate degree as required by state regulations violative where discharge undertaken in attempt to vindicate the discharge of another E, U adherent. Effect of lack of qualifications left to compliance stage)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[even if E does not have specific knowledge of individual Ee's U activities but nevertheless discharges such Ees because other Ees engaged in U activities, discharge is unlawful since E violates Act where, notwithstanding actual conduct of Ee, it lays off such Ee because of belief or suspicion; moreover, where E engages in pattern of discriminatory conduct against Ee groups because many, even though not all, of them engaged in U activity, discrimination suffered by all Ees as result of E conduct is unlawful]

6793-5060 Interrogation

Robins Federal Credit Union **273 NLRB No. 165**
(in finding discharge of Ee acting as loan officer at E-credit union for violating E's written policy prohibiting issuance of loans to loan officer's relatives not unlawful, ALJ held unlawful interrogation by single supervisor of a fellow Ee following Ee's discharge, unaccompanied by threats, not sufficient to prove animus toward U by E)

N.L.R.B. v. Oberle-Jordre Company, Division of The Bishopric Products Company **777 F.2d 1119 (C.A. 6, Nov. 1985)**
[discharge of U member, unlawful, since motivating factor was his continued affiliation with U, where E's interrogation of Ee regarding withdrawal from U was accompanied by explicit promises of employment conditioned on Ee's responses to interrogation]

6793-7500 Following conspicuous union activity of discriminatees

6793-7512 Active solicitation for union

Yashan of California, Inc. **280 NLRB No. 032**
[discharge of Ee, assertedly for cause, unlawful, where Ee was discharged abruptly prior to end of his work-week, just 1 day following his solicitation for U inside E's store; and discharge was contrary to E's policy of giving warning prior to discharging an Ee]

Dr. Frederick Davidowitz, and Dr. Martin Goldberg; P.C. **277 NLRB No. 110**
(discharge of dentist who was U adherent, unlawful, since asserted reasons for discharge: poor production, attitude; violating rules by keeping patients waiting; held pretextual in view of E knowledge of U activity to be inferred from rumor mill, relied on in past by E; timing, discharge took place 1 week after U meeting where dentist had declared support of and following period of his intense solicitation for U; further, writeups in personnel file did not contribute to discharge decision as other dentists had approximate same number of write-ups over equivalent period and not discharged)

Activ Industries, Inc. **277 NLRB No. 087**
(E issuing disciplinary letter to Ee for allegedly harassing another Ee, unlawful, since E issued letter to discipline Ee for conversation solely because that conversation concerned unionization, and notwithstanding letter issued to discipline Ee for single conversation, in which Ee alleged to have made obscene remarks, where Ee told he was being disciplined for several conversations with other Ee about U, none of which lost protected status)

Pillod of Mississippi, Inc. **275 NLRB No. 117**
(E's refusal to transfer U activist out of department that admittedly was giving Ee serious medical problems, violative, where E routinely transferred other Ees from department when they had problems and Ee was transferred into undesirable department only a few days after she issued an *open letter* to Ees in support of U)

Pierre's Vending Company, Inc. **274 NLRB No. 184**
(discharge of Ee, U activist, because of his *incompetence and incompatibility* violative, since Ee had 10-year record of no discipline with E; general manager discharged Ee approximately 1 week after Ee became openly involved in U organizing activities, received wage increase 2 months before discharge and incidents that allegedly served as basis for discharge were not brought to Ee's attention at time they occurred)

6793-7525 Adverse testimony in representation proceeding

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **279 NLRB No. 082**
[E's more strict supervision of Ees, shortening an Ee's lunch period and issuing written warnings to Ees for various reasons, all because E felt it was *losing control* and needed to instill stricter work rules, violative, since real reason was Ees' U activity where E cracked down only after Ees testified at *R* proceeding]

6793-7535 Wearing union insignia or button

Quality Aluminum Products, Inc. **278 NLRB No. 049**

Southern California Edison Company **274 NLRB No. 167**
(wearing of button with *Stick Your Retro* written on it, protected, where saying not obscene, message had little significance to outsider so public image of E not injured and message was clearly related to pending negotiations)

N.L..R.B. v. Malta Construction Company **806 F.2d 1009 (C.A. 11, Dec. 1986)**
[discharge of Ee for *deliberate interference with production and refusing work assignment, followinstructions* during U campaign when Ee refused to remove U sticker from his E supplied hard hat when Ee was on his water break assisting fellow Ee who had a stuck front-end loader, held violative, since GC proved existence of presumptively invalid rule banning U insignia on hard hats and E did not prove any special circumstance to justify its rule. Ee had never been warned or disciplined for his behavior prior to his taking about U]

6793-7563 Processing of grievances

United States Steel Corporation **279 NLRB No. 004**
[E's refusal to hire Ee laid off from one of its facilities to work at another of its facilities, unlawful, since for his activities as U grievance chairman where his supervisor's referance to grievance chairman as *troublemaker* when speaking to foreman at facility to which he had applied for transfer connotated his activity of filing grievances, and this characterization was relied upon in rejecting Ees request for transfer. Use of word alone, not violative, but must look at context in which used]

6793-7575 Leadership in union movement

Able Bus, Inc. **279 NLRB No. 076**
[discharge of bus driver after ordering his replacement off bus, not unlawful, since not motivated by his campaigning for office of U steward on platform adverse to E, where election took place over 3 months prior to discharge, he was defeated by wide margin, and had in intervening period violated safety rule in regard to his bus for which his suspension was to start next day]

6793-7581 Filing grievance

Gateway Concrete Forming Services, Inc. **274 NLRB No. 032**
(discharge of Ee, U steward, allegedly because of his unsatisfactory work at his laboring job, violative where E seemed to like Ee's work *fine*, and discharge occurred 4 months after Ee's employment began, but only 10 days after Ee filed grievance over his layoff. Record showed principle moving cause of discharge was Ee's filing of his grievance, a protected activity)

United States Postal Service **JD-203-86**
[discharge of probationary Ee who slipped at work, hurt his back, and was unable to work for several days, unlawful, since for filing grievance over denial of light work after being cleared for such duty and after receiving conflicting information from E's Ee relations department which said there was no light duty available for probationary Ees but that compensation unit would pay him, and compensation unit informed him he would not be paid because cleared for light duty, where not policy of E to terminate probationary Ees who lost time due to injury, and E only discharged after giving notice U would be utilized to secure his rights]

6793-7589 Acting as union election observer

Pierre's Vending Company, Inc. **274 NLRB No. 184**
(E's discontinuance of truck repairman's Saturday work (when repairman worked as independent contractor for E) week after serving as U election observer held violative, since repairman's employment as independent contractor for E on Saturdeays was related to his status as full-time repairman and substitute driver-Ee for E during regular work week)

6795 UNUSUAL SURROUNDING CIRCUMSTANCES

6795-1500 Formality and summary nature of dismissal

Cassis Management Corp. **281 NLRB No. 174**
[discharge of Ee serving as superintendent of E's apartment building, assertedly because Ee's wife operated sewing *factory* in their apartment, unlawful, where no warning or reason was given Ee for discharge; it was unlikely E would have summarily discharged Ee because of wife's sewing activity which E himself had taken advantage of and which E last discussed with Ee 3 months previously; and unconvincing nature of E's evidence of discrimination buttressed evidence of discrimination]

Airport Distributors, Inc. **280 NLRB No. 091**
[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of abruptness of E's action w/o confronting Ee with vehicle's condition]

Service Merchandise Company, Inc. **278 NLRB No. 023**
[E's discharge of drivers and warehouse Ee who had been driver and subcontracting driving operations, unlawful, where for support of *drivers' association* and threat to seek representation by outside U, in view of E's expressed opposition to outside U, summary nature of discharges, and secrecy of negotiations for subcontracting; contention subcontracting motivated by economic considerations, rejected, where subcontracting resulted in 25% increase in cost even though fewer miles driven over private driver operation]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**

Robins Federal Credit Union **273 NLRB No. 165**
(although sequence of events, particularly timing of discharge of Ee on eve of election and method by which Ee was summarily dismissed gave rise to suspicion as to whether E terminated Ee because of her U activities, mere suspicion is not sufficient to support finding of violation)

6795-2000 Cover up and making a record

Health Enterprises of America, Inc., d/b/a Miami Health Care Center **282 NLRB No. 033**
[notwithstanding U adherent violated rule against patient abuse, discharge violative as real reasons were U activities and filing lawsuit against E, in view of spurious investigation and disparate discipline accorded discriminatee for violating rule]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[finding of unlawful suspension and discharge of Ee supported by fact that E seized upon customer's complaint about Ee's failure to make delivery to rid itself of Ee who E knew would continue to be strong U advocate and spokesman on Ees' behalf; and, in order to build case against Ee, E disregarded Ee's effort to invoke grievance procedure which should have been available to him]

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(E's use of recommendation to abolish position of Ee, herein found to have been unlawfully constructively discharged, held effort to conceal earlier unlawful conduct)

Quality Rolls, Inc. **JD-189-86**
[multiple discharges which included prominent U supporters, based on findings made by undercover investigative agent concerning Ees' conduct on

6795-2000—Cont.

unsupervised shift, unlawful, where investigation was sham calculated to provide foundation for elimination of sole remaining members of U negotiating committee, in view of E's ongoing unprecidented bent toward discharges and willingness to sacrifice large segment of skilled workforce in face of large backlog and heavy demand on basis of unconfirmed accusations of third party undercover agent]

6795-6000 Seeking employee's resignation

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**

(informing Ee that supervisor with whom she had close working relationship had been discharged and that if she wanted to, she could quit or stay on, not violative, since no request that Ee quit, nor could one reasonably conclude E was suggesting Ee quit because of U activity)

6795-8000 Suddenness of employer's decision

Wilco Business Forms, Inc. **280 NLRB No. 154**

[sudden layoff of U adherent w/o prior notice followed by General Manager's comment, when U adherent was laid off, *I guess you can see through that,* violative, since evidence supported inference that protected U organizing activities of Ees was *motivating factor* in E's decision to lay off Ee]

Toyota of San Francisco **280 NLRB No. 093**

[discharge of auto salesman who was steward, not unlawful, notwithstanding discharge abrupt and w/o immediate warning, where he was poorest producer, had failed to make guaranteed draw for several months, absent disparate treatment and in view of fact Ee was inactive steward]

Yaohan of California, Inc. **280 NLRB No. 032**

[discharge of Ee, assertedly for cause, unlawful, where Ee was discharged abruptly prior to end of his work-week, just 1 day following his solicitation for U inside E's store; and discharge was contrary to E's policy of giving warning prior to discharging an Ee]

Florsheim Shoe Store Company **279 NLRB No. 133**

[discharge of Ee who was member of U while working for this e in another state, not violative, notwithstanding Ee fired abruptly (only 1-1/2 hours after starting on job) and no justification given for discharge since no showing of U animus on part of E nor had E prevented former U members from working at its nonU stores]

Northern District of Connecticut Iron Workers Local Union No. 15, Joint Apprenticeship Committee (Bruce Gilbert, an Individual) **278 NLRB No. 131**

[violation, where U through its participation in Joint Apprentice Committee (JAC) discharged apprentice coordinator since discharge was for his intra-U activities, where he and 1 member of JAC had been rivals in campaigns for U office, and that member had appointed two other members of JAC while he was U president, in view of timing of discharge which took place when composition of committee was about to change, committee failed to specify reason for discharge and abruptness of discharge]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**

(E ordering U adherents to turn in company trucks and gasoline credit cards, unlawful, since for their U activities where business justification advanced for first time at trial and in view of precipitate manner in which action taken)

Programming & Systems, Inc. **275 NLRB No. 157**

(precipitous discharge of *only* U activist still in E's employ w/o any plausible explaination either at time of discharge or at hearing, violative, where Ee, despite her seniority and satisfactory performance, was only teacher discharged after Christmas recess and E was shown to be vehemently opposed to unionization of its teachers)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. **761 F.2d 1175 (C.A. 6, May, 1985)**

(E's decision to have mass layoff w/i hours after becoming aware of U's organizational effort suports Bd's inference of improper motivation)

8300 AFFIRMATIVE DEFENSES TO CHARGES OF DISCRIMINATION

8301 GENERALLY

8301-4000 Act permits discharge for any reason other than union activity

Salem Leasing Corporation v. N.L.R.B. **774 F.2d 85 (C.A. 4, Oct. 1985)**

[as there is no cross reference in Sec. 8(a)(3), as there is in Sec. 8(a)(1), to Sec. 7 organizational rights, ct reluctant to read a *concerted activity* requirement into Section 8(a)(3)]

8301-6000 Mixed motives; other grounds immaterial if encouragement or discouragement was also purpose

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. **778 F.2d 8 (C.A. 6, Dec. 1985)**

[once GC has demonstrated that Ee's protected activity was substantial or motivating factor in E's adverse action against Ee, E may then avoid liability if it can prove by preponderance of evidence that there were independent, legitimate reasons for its decision; thus, in mixed or dual motive cases, where there is both anti-U animus and nondiscriminatory reason for adverse action, burden of proof shifts to E to prove that adverse action would have occurred in any event for valid reasons]

8301-8000 Valid cause for discrimination no defense

8301-8025 8(a)(3) not sustained where lawful and illegal motive may be equally inferred

Pierre's Vending Company, Inc. **274 NLRB No. 184**

(notwithstanding that E's cessation of U activist's Saturday work was violative, warning notice, based on customer complaint concerning Ee's serving vending machine at customer's facility and later discharge for his *sloppy work habits and misconduct,* not violative, since Ee's work was not satisfactory and E showed that action of warning and subsequent discharge of Ee would have taken place even in absence of mechanic's U activity)

8301-8087 Inference of discrimination not overcome

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center **276 NLRB No. 146**

(prima facie case made out for successor's unlawful failure to rehire Ees where: 1) Ees were known U adherents, 2) majority of Ees not rehired were U leaders, 3) disparate treatment as other Ees rehired were guilty of same offenses that successor alleged for not rehiring these Ees, and 4) successor found to have unlawfully refused to bargain with U, which constituted additional evidence of U animus)

8304 DISCRIMINATEE'S ACCEPTANCE OF OTHER EMPLOYMENT PRIOR TO TIME FOR RECALL OR EMPLOYMENT

American Press, Inc. **280 NLRB No. 109**

[successor E did not discriminatorily refuse to hire predecessor's former Ee who refused E's offer because his current place of employment was closer than E's plant was to his home and did not require payment of city income tax required in employment with E]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**

[*what constitutes regular and substantially equivalent employment is determined not by merchanistic application of literal language of statute, but rather through objective appraisal of several factors, both tangible and intangible, including desire and intent of Ee concerned. E's belief, however honest or reasonable, that striker has obtained regular and equivalent employment is not sufficient ot meet burden*]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**

[E's failure to reinstate former economic striker, unlawful, notwithstanding former striker's statement that he was happily employed at another E, absent evidence job former striker currently held was substantially equivalent to job he had held at E and that it constituted regular, rather than part-time or temporary employment]

Lone Star Industries, Inc. **279 NLRB No. 078**

[E's obvious failure to discharge its burden in establishing that Ee had obtained comparable employment as basis for excluding him from possible recall made E's action violative, since E disqualified for reinstatement those Ees it deemed on basis of *insufficient information* to have obtained comparable employment where basis was whether Ee was employed in *same type of job, with competitor,* but no further check as to wages, benefits, job assignments, etc.]

8305 NO VACANCY

Medallion Kitchens, Inc. **277 NLRB No. 175**

[existence of *temporary* jobs is not equivalent of vacancy to which strikers should have been reinstated]

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**

(E's claim of no vacancy rejected where real reason was applicants' grievance activities under *alter ego* E)

S. Rosenthal and Company, Inc. d/b/a Rosenthal-Kaufmann Lithograph Company **276 NLRB No. 068**

(where E, pursuant to past practice, had extended part-time Ees' probationary period so as to have more time to assess their qualifications and find full-time positions for them, its discharging them when U demanded strict compliance with contract provision requiring that they be included in the bargaining unit or be discharged, not violative, since U effectively ended

8305—Cont.

their probationary period and E discharged them because it had no full-time positions open rather than because of anti-U animus or discrimination)

8307 BUSINESS MANAGEMENT CONSIDERATIONS

8307-0100 Generally

Carpenters Local 925; et al. (Charlene Seier, an Individual) 279 NLRB No. 145
[pretextual discharge cases should be viewed as those in which ---*defense of business justification is wholly w/o merit*]

Taylor & Gaskin, Inc. 277 NLRB No. 065
(in adopting ALJ's finding that E violated 8(a)(4) and (1) when it refused to rehire laid-off Ee because he had filed ULP charge against E, Bd disagreed with ALJ's statement that *Wright Line* does not apply to cases where there is finding that *asserted legitimate business reason* for adverse action was pretextual)

8307-0150 Economic necessity does not justify ULP

Westinghouse Electric Corporation 278 NLRB No 061
[fact E's unilateral mid-term changes in Ees' terms and conditions of employment were prompted by economic rather than discriminatory considerations is immaterial if E did not bargain about those changes. Defense that refusal to bargain did not take place in context of overall subjective, bad faith may be available when charge is violation of Section 8(a)(3) of Act, but it is no defense to 8(a)(5) allegation]

8307-1100 Complete cessation of business

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos 278 NLRB No. 091
[discharge of 38 Ees and refusal to rehire them as positions became available, violative, since E discharged Ees assertedly because it sold business but was found herein to be single E and alter egos with new E, thus, U's contract remained in effect in regard to all aspects of employment relationship]

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos 277 NLRB No. 39
(layoff of Ees, not unlawful, where layoff was result of E's cessation of operations after its bank account was garnisheed by U trust fund to satisfy judgment for E's failure to make contributions to fund; remarks of vice-president of E and its alleged alter ego to U's business agent that *E had tried to do it U and it did not work, and now they were going to do it another way* equivocal and insufficient to establish U animus)

8307-1200 Subcontracting

Leeward Nursing Home 278 NLRB No. 157
[no violation, where Ees were discharged as result of subcontracting and some Ees were not hired by subcontractor, since subcontracting lawful, subcontractor not named as Respondent, and absent evidence of blackballing of Ees by Respondent E which subcontracted]

Service Merchandise Company, Inc. 278 NLRB No. 023
[E's discharge of drivers and warehouse Ee who had been driver and subcontracting driving operations, unlawful, where for support of *drivers' association* and threat to seek representation by outside U, in view of E's expressed opposition to outside U, summary nature of discharges, and secrecy of negotiations for subcontracting; contention subcontracting motivated by economic considerations, rejected, where subcontracting resulted in 25% increase in cost even though fewer miles driven over private driver operation]

Handy Andy Associates, Inc. 277 NLRB No. 029
(discharge of Ees pursuant to E's decision to subcontract work, not violative where E demonstrated that sole basis for decision was predicated on economic or other legitimate business considerations)

Confort & Company, Inc. 275 NLRB No. 082
(simultaneous subcontracting out, reduction in overtime, and enforced use of discretionary vacation, allegedly because of U campaign, not violative where they were due to economic market conditions in the industry and unpredictable nature of E's business)

Continental Garage Management Corp. JD-(NY)-106-85
(contention that E had arranged to subcontract unit work and hired Ees to perform it only temporarily belied by backdating of subcontractor's proposals)

8307-2200 Reorganization

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013
[E's unilateral *reclassification of its (motel) desk clerks to supervisory positions, violative, where conduct, coupled with E's other ULPs and coinciding with other violative layoffs effectuated decimation of unit. Evidence discloses no* justifiable reason for such conduct and record evidence suggests there would be 1:1 ratio of supervisors to unit Ees]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066
[laying off Ees who complained to management about use of non-U labor to perform unit work while unit members were not working and followed up complaint with grievance, because of alleged reorganization, violation]

Kona 60 Minute Photo 277 NLRB No. 092
(although prima facie case was established that Ee was terminated because of her U activity, inference of unlawful motivation for discharge was rebutted by evidence establishing that well before learning of organizational activity among Ees, E had prepared shop reorganization plan at which time E planned to terminate Ee after taking advantage of her services to train her replacement; and Ee was terminated after E determined that Ee was of no assistance in training replacement)

The Evening News Association JD-24-86
[refusal to transfer and promote Ee to accomodate her desire to continue to work for her present supervisor when during reorganization he was transferred to new position, not unlawful, since refusal was for business reasons rather than for Ee's U activities, where another Ee had been performing duties of secretary to individual who held position to which Ee's supervisor being transferred; further, to accomodate Ee's desire would require redistribution of clerical responsibilities, and Ee had never previously applied for promotions that were available, nor been promised promotion]

8307-2800 Discontinuance of department, operation, or shift for economic reasons

ABS Industries, Inc. 275 NLRB No. 145
[parent company's having subsidiary sell impacter operation and shut down plant, not violation where subsidiary had already ceased 80 percent of operations due to lack of market, and other subsidiary to which impacter operation was sold was more efficient and needed more sales; moreover parent company had normal relations with U at subsidiary plant, was also selling non-U plants, and was only one of many Es in its industry drastically affected by recession]

Desota, Inc. 278 NLRB No. 114
[closing plant, laying off Ees, and transferring work to E's other facilities, not unlawfully discriminatory, where E's sole reason was economy and efficiency resulting from reduction of excess capacity and effect of chilling unionism at other plants was not readily foreseeable]

Purolator Armored, Inc. v. N.L.R.B. 764 F.2d 1423 (C.A. 7, July 1985)
(notwithstanding operation was losing money, E violated Act by terminating said operation as E was willing to absorb these losses until U won election which shows that economics was not foremost in E's decision, and as U elected as operation's representative was same as one that represented other E units and there was frequent interchange with Ees, the closure had chilling effect on unionism)

8307-2850 Not real reason

Wilco Business Forms, Inc. 280 NLRB No. 154

B & P Trucking, Inc. 279 NLRB No. 092
[shutting down trucking portion of operations and discharging all drivers, violation since reason was E's wish to avoid unionization, rather than trucking operation's lack of profitability]

Olympic Limousine Service, Inc. 278 NLRB No. 133
[E's cancellation of second shift, assertedly for economic reasons, which decision had effect of forcing main U supporter to quit since he went to school days, violative, where E had recently instituted second shift and had told Ees it was working well, there was no decline in E's business to justify decision and E had shown animus towards U supporter]

Hunter Douglas, Inc. 277 NLRB No. 123
(discharge of Ees on second shift, which E believed to be focus of U activity, unlawful, since E failed to demonstrate same action would have taken place absent protected activity, notwithstanding E's contention it eliminated shift due to shift's lower productivity, greater management availability on first shift, reduction in indirect costs and security considerations, in view of abruptness of layoff and fact E deviated from previous layoff policy by eliminating entire shift rather than overall reduction of Ees from all shifts based on individual seniority and qualifications)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza JD-(ATL)-87-84
(unlawful discharge of Ee w/lowest seniority and working 1 shift per week when E reinstituted old policy that Ees work minimum of 2 shifts per week and took shift from him and gave it to senior Ee who also worked 1 shift, in view of E's animus, no explanation why E delayed 5 months before implementing decision to return to old shift policy, and knowledge of Ee's U inclination inferred from E's knowledge that Ee's brother, also Ee, was U adherent, smallness of workforce (21 Ees) and supervisor at time of his termination voiced concern over U considerations

8307-3500 Efficiency drive

8307-3500—Cont.

ABS Industries, Inc. 275 NLRB No. 145
[parent company's having subsidiary sell impacter operation and shut down plant, not violation where subsidiary had already ceased 80 percent of operations due to lack of market, and other subsidiary to which impacter operation was sold was more efficient and needed more sales; moreover parent company had normal relations with U at subsidiary plant, was also selling non-U plants, and was only one of many Es in its industry drastically affected by recession]

Murray Sandblast and Paint, Inc. JD-276-85
(supervisor's announcing to Ees that E was going to implement stricter sanctions for Ee absenteeism and tardiness, not violative where GC did not show that U's (R) ptn was factor in announcement of absence/tardiness crackdown and it was shown crackdown was for more efficient production and less customer complaints)

8307-3600 Protection of confidential labor relations matters

Raytheon Missile System Division, Raytheon Company 279 NLRB No. 035
[E's transfer of compensation assistant in E's industrial relations department to position in production control department, not violative where Ee had current legitimate access to confidential labor relations information at time her pro-U sympathy first became known to E; E's decision to transfer her was predicated on more than conjecture, but rather on reasonable apprehension, based on her pro-U activity, that she might compromise confidential labor relations information]

8307-3900 Introduction of new equipment, production process or work shift

Central Broadcast Company 280 NLRB No. 056
[automation of radio station no defense to discharge of all announcers who had signed U authorization cards while retaining nonsigners where E did not have financial condition necessitating automation, did not decide to automate until it received U representation ptn, and abandoned automation w/i days of its institution, returning to its prior format with more announcers than before]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda 279 NLRB No. 089
[E's failure to recall former economic striker who had repaired auto engines when his replacement left, not unlawful, since justified by substantial business reasons in view of changed nature of its engine repair operations to emphasis on work on different type of engines, and inability of former striker to perform this type of work]

8307-4200 Poor productivity

W-W Masonary, Inc. JD-486-84
(discharge of job steward, assertedly for poor productivity and performance, violative where action of steward in complaining to E concerning its alleged violation of bargaining agreement was precipitating cause of discharge and absent steward's participation in dispute, E would not have fired him)

8307-4250 Not real reason

Mid-State Distributing Co., Inc. 276 NLRB No. 172
(termination of drivers' helpers assertedly because of their low productivity, unlawful, in view of helpers' significant U activity; timing of terminations to recently initiated U activity; substantial increase in sales at time of terminations; and inconsistencies in evidence detracting from E's position and indicating pretext which was reinforced by absence of layoffs during prior slack periods)

Ducane Heating Corporation 273 NLRB No. 175
(discharge of Ee, assertedly because of substandard production, violative, since real reason was Ee's testimony at Bd hearing against E and his active U support where Ee had excellent work record and E did not find fault with E's production until after he gave testimony at Bd hearing)

8307-4500 Suitability of probationary employee

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. 275 NLRB No. 204
(discharge of probationary part-time Ee at store acquired by E from former owner, assertedly for limited availability for work and slow performance, not unlawful, where Ee's assertion of contractual rights to obtain additional hours from former E was no basis for imputing retaliatory motivation on E's actions some 3 months later, in view of absence of U animus or of wholesale termination of U members following change of ownership, removal of supervisor having fractious relationship with Ee from his evaluation, and other supervisors' unfavorable comments about Ee's performance)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. 275 NLRB No. 204
(discharge of probationary Ee who had insisted upon right to U representation at disciplinary meeting with E and who had filed grievances concerning her assignment dispute with E, not unlawful, since discharge was well-grounded in legitimate business interests where Ee had extreme-poor attendance record; Ee had repeated disagreements with work schedule because of restrictions on her availability, and she exhibited unacceptable work habits during short time she had been working for E)

United States Postal Service JD-203-86
[discharge of probationary Ee who slipped at work, hurt his back, and was unable to work for several days, unlawful, since for filing grievance over denial of light work after being cleared for such duty and after receiving conflicting information from E's Ee relations department which said there was no light duty available for probationary Ees but that compensation unit would pay him, and compensation unit informed him he would not be paid because cleared for light duty, where not policy of E to terminate probationary Ees who lost time due to injury, and E only discharged after giving notice U would be utilized to secure his rights]

8307-4900 Shortage of essential materials or equipment

8307-4950 Not real reason

Mid-State Distributing Co., Inc. 276 NLRB No. 172
(layoff of longhaul driver assertedly because of lack of sufficient number of vehicles, and because of common carrier cost decline, unlawful, in view of Ee's U activity, E's knowledge thereof and its U animus, circumstances of timing during U campaign, and fact that asserted business condition was not significant change justifying layoff since, under vehicle leasing arrangement, E continued using vehicle which driver had operated at favorable cost)

8307-5200 Overstaffing

Maritz Communications Company, A Wholly Owned Subsidiary of Maritz, Inc. 274 NLRB No. 016
(purchaser's failure to hire Ee of seller, not unlawful, since due to loss of work rather than U affiliation; contention that purchaser was motivated by U affiliation rather than business considerations evidenced by disparate treatment, rejected, inasmuch as Ee retained had more familiarity with certain equipment; nor did purchaser's offering raise to Ee retained if Ee would relinquish U membership evidence U animus, since raise was to compensate for loss of contribution in his behalf to U pension fund)

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. 766 F.2d 812 (C.A. 3, July 1985)
(E's layoff of Ees, not violative, notwithstanding E's U animus and coincidence between layoff and U organizational campaign, where there was no deviation from past practice of layoffs in face of economic conditions)

8307-5250 Not real reason

Wilco Business Forms, Inc. 280 NLRB No. 154
[no hiring freeze and E hired Ee one week before layoff]

8307-8000 Absorption or elimination of work duties

MacDonald Miller Company 277 NLRB No. 079
(discharge of Ee, allegedly for his U activities and U stewardship and interest in enforcing contractual term according his job higher wages, not violation, since E showed no U animus and acted in accordance with such contractual term in transferring Ee's job to other U members already making such higher wages, leaving Ee w/o a job and E w/o obligation to retain him)

Baker Manufacturing Company v. N.L.R.B. 759 F.2d 1219 (C.A. 5, May 1985)
(precipitous discharge of toolroom attendant, allegedly because her position had been abolished to reduce overhead, violative where it occurred soon after E learned she was among Ees who were organizing U and told them they could leave if they did not like his management; further, although she was good worker, E did not place her in position occupied by probationary Ees or in new jobs opening up soon after her discharge)

N.L.R.B. v. Southern Florida Hotel and Motel Association, et al. 751 F.2d 1571 (C.A. 11, Feb. 1985)
(no violation by refusing to recall economic strikers where their positions had been eliminated for bona fide economic reason, replacements for them had not been hired, and non-strikers occupying similar positions had been permanently transferred to other jobs)

8307-8400 Slack work or other economic necessity

Telford & Doolen, Inc. 277 NLRB No. 112
(layoff of U steward and Ee and ultimate discharge of Ee, assertedly because they engaged in U activities and because they filed charges or gave testimony under Act, not unlawful, since E's motives were purely economic, coupled with dissatisfaction with Ee's job performance where, as result of its bad financial condition, E laid off its entire work force, recalling Ees only from time to time and ultimately closing department involved; and no replacements were ever hired for terminated Ees)

8307-8433 Not real reason

Northwind Maintenance and Painting Co., Inc. 281 NLRB No. 048
[hiring new Ees as replacements is patent evidence that attributing layoff to contract cancellation was pretext]

8307-8433—Cont.

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**
[pre-election mass discharge of Ees assertedly because of economic necessity held violative of 8(a)(1) as well as 8(a)(3) where E, in face of warnings to reduce costs, hired additional Ees and incurred other avoidable business expenses; only logical reason for discharges was to impose chilling effect on Ees about to vote for U representation; such chilling effect was implemented by E's other unlawful conduct; and asserted economic basis for discharges was not credited in view of E's business expenditures]

Resistance Technology, Inc. **280 NLRB No. 117**
[mass layoff of Ees violative in view of U animus, E's prior assurance that there would be no layoffs, suddenness and timing of layoffs, and failure of E to prove its contention that layoffs were economically necessary, where nature and level of work remained unchanged, E instituted overtime following layoffs, and E recalled substantially all laid-off Ees after U lost election]

Benmit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[demoting U activist allegedly because of slack work, violative, where evidence showed that hours worked by Ees in his job classification did not decline during period]

Central Broadcast Company **280 NLRB No. 056**
[automation of radio station no defense to discharge of all announcers who had signed U authorization cards while retaining nonsigners where E did not have financial condition necessitating automation, did not decide to automate until it received U representation ptn, and abandoned automation w/i days of its institution, returning to its prior format with more announcers than before]

Terraillon Corp. **280 NLRB No. 037**
[reduction of Ee's hours, unlawful, since for his U adherence; E's economic defense rejected where it retained high school student who was part time Ee who had only worked short time, rather than maintaining Ee's hours]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[alleged slack work contradicted by hiring of new Ees contemporaneously with discharges and reinstatement of Ees soon after discharges]

Armon Company **279 NLRB No. 158**
[layoff of senior truck driver who had signed card, violation where contentions that using common carriers for deliveries was cheaper and step toward liquidating business was not supported by evidence]

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **279 NLRB No. 082**
[layoff of two Ees, assertedly because of slack work caused by machine breakdown, violative, since real reason was Ees' U activity where Ees were laid off immediately after E received *R* ptn, E knew Ees were active U supporters, layoff was precipitous and E had never before laid off Ees when a machine had broken down]

Dayton Auto Electric, Inc. **278 NLRB No. 080**
[layoff of Ees unlawful, notwithstanding decrease in sales and repeated entreaties from its bankers and accountant for E to reduce work force, where E did little to reduce work force until U entered picture, despite high turnover which would have allowed E to reduce work force by attrition]

Quality Aluminum Products, Inc. **278 NLRB No. 049**
[E's claim that layoffs necessitated by lack of orders and seasonal nature of business, rejected where major downturn in business occurred after layoffs, Ees were not given customary pre-layoff notice, and layoffs immediately followed Ees' attendance at U meetings and display of U buttons]

Ballou Brick Co. **277 NLRB No. 009**
(discharge of 13 Ees, assertedly because E's inventory was so great as to eliminate the need for production, violative, since real reason was Ees' U activity where E at no time halted production after the discharges, offered no records to support its economic defense and discharges occurred shortly after E had received U's demand for recognition)

Superior Warehouse Grocers, Inc. **277 NLRB No. 010**
(layoff of U adherent, assertedly because of lack of business, violative)

Kenneth L. Hand Sr. d/b/a Neighborhood Roofing and Contracting, and Kenneth L. Hand Jr. and Sylvia Hand d/b/a Farrand Park Services **276 NLRB No. 081**
(E's failure to recall Ees following most recent layoff allegedly because there was no available work, violative where E's reason was false and each of these Ees had either sought U's assistance and representation, or had insisted he recive contractual wage rates and benefits to which he was entitled)

Quality Millwork Corp. and Its Alter Ego Quality Door Co. **276 NLRB No. 069**

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**
(mass layoff of U adherents during U organizing campaign not necessitated by E's problems with cash flow and bank overdrafts, as contended; E had never laid any Ees off in past ten years when it had similar problems; further, E had just had large debt forgiven)

Superior Container, Inc. **276 NLRB No. 055**
(layoff of Ees assertedly for economic reasons, unlawful, since E failed to show it would have terminated Ees in absence of their U activities, where E's economic justification for layoff was pretext in view of fact that remaining work force worked overtime shortly after layoff and E then hired new Ees w/o first recalling terminated Ees; E testified that savings were not important in his decision, and that he did not follow prior practice; and E contradicted himself in explaining overtime)

Limpert Brothers, Inc. **276 NLRB No. 037**
(layoff of Ees, assertedly because of slack work and business losses, violative, where Ees were laid off only one day after E obtained knowledge of U activity, E informed several Ees that reason for layoff was U activity and layoff was precipitous, occurring w/o any warning to Ees)

Corrugated Partitions West, Inc. **275 NLRB No. 126**
(layoff of Ees during U organizational campaign, assertedly because of poor sales, unlawful)

Penn Jersey Paper Co. **275 NLRB No. 064**
(discharge of Ee allegedly because of laziness on job and poor economic conditions, unlawful, where Ee was terminated because of U activity and fellow Ee's efforts to obtain U membership for both of them, in view of E's failure to give Ee written warning for performing his job in indolent manner, 2-week delay in implementing decision to terminate Ee, voluntary payment of 2 weeks' severance pay to Ee, improved business conditions at time of discharge, and use of another individual to perform Ee's duties after his termination)

Ducane Heating Corporation **273 NLRB No. 175**
(permanent layoff of Ee, assertedly because of a decline in business, violative, since real reason was Ee's testimony at Bd hearing against E and her U activity where E did not produce any evidence in support of its economic defense, in fact evidence adduced at trial showed E was very busy, and layoff occurred only 4 days after Ee gave testimony at Bd hearing)

Morning Star International, Inc. **JD-209-86**
[layoff of leading U proponents assertedly for lack of work, unlawful where, although E was operating at a loss, there was work to be done at plant as evidenced by E's hiring of Ees immediately before and after layoff, including Ees who performed work identical to that performed by laid off Ees; Ees had performed many jobs at plant other than their primary work; and E offered no explanation for giving Ees extended layoff unlike short layoff period given other Ees]

Baker Manufacturing Company v. N.L.R.B. **759 F.2d 1219 (C.A. 5, May 1985)**
(layoff of five U organizers, allegedly because lockout had caused work shortage, violative where E's records showed, and E had recently assured Ees, that there was plenty of work; further, E could have reduced work force by not hiring two new Ees and by laying off less skilled Ees)

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[discharges not justified by E's financial woes where discharged Ees were replaced w/i two months]

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[contention that layoffs were compelled by economic necessity in view of decrease in sales, increase in inventory w/o storage space, and completion of capital construction project, rejected where sales had increased, E had reduced inventory but increased production, and only one of laid-off Ees had been hired to work on construction project]

8307-8450 Adequately established

ABS Industries, Inc. **275 NLRB No. 145**
[parent company's having subsidiary sell impacter operation and shut down plant, not violation where subsidiary had already ceased 80 percent of operations due to lack of market, and other subsidiary to which impacter operation was sold was more efficient and needed more sales; moreover parent company had normal relations with U at subsidiary plant, was also selling non-U plants, and was only one of many Es in its industry drastically affected by recession]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[no unlawful discharge of U adherents where they were placed on leave of absence status due to injury pursuant to E's policy, their jobs were not filled during their absence, and they were recalled when E's business picked up in same manner as non-U supporters]

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(accelerated layoff of Ees before date on which layoff was scheduled, not unlawful, where E was face-to-face with immediate cessation of cash flow on date of layoff which was motivated by legitimate business judgement to immediately curtail future payroll obligations and operational expenses during cash flow crisis)

8307-8450—Cont.

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(discharge of Ees at store acquired by E from former owner in whose employ Ees had filed grievances and had refused to take polygraph tests concerning mishandling of E's funds, not unlawful where, although E must have considered Ees' refusals to take tests, E possessed substantial adverse information about Ees which alone justified discretionary business judgment not to retain them; and E's discharge decision was not motivated by anti-U animus or antipathy toward Ees' use of grievance procedure nor was it based on Ees' reliance on contract rights and procedures)

Confort & Company, Inc. **275 NLRB No. 082**
(simultaneous subcontracting out, reduction in overtime, and enforced use of discretionary vacation, allegedly because of U campaign, not violative where they were due to economic market conditions in the industry and unpredictable nature of E's business)

Thompson's Gas, Inc. and Del-Ro Transports, Inc. **274 NLRB No. 092**
(intermittent layoffs, assertedly for lack of work, of Ee who had joined U, filed ULP charges, and cooperated in prosecution of U's ULP charges, not unlawful, where layoffs occurred during seasonal summer decline in business and E's strained financial condition; fact that E was not laid off in past summers was not significant because of change in Ee's work status since then)

C. M. Carpenter, A Sole Proprietor, d/b/a Carpenter Trucking **274 NLRB No. 046**
(layoff of U adherent who was leader in organization drive and who was to be U steward, lawful, notwithstanding E's animus against U adherent, where at time he was laid off adherent had worked only 5 days in 2 weeks, there was lack of business, and in view of fact adherent was next to bottom of seniority list, and E's policy in case of layoff was that Ees last hired were first to go)

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. **JD-(ATL)-61-86**
[discharge of known U supporters, not unlawful, notwithstanding U animus and suddeness of discharges, since E rebutted GC's prima facie case, in view of business considerations including seasonal downturn, loss of major customer, and fact terminations by seniority]

Easthampton Electrical Services, Inc. **JD-85-85**
(discharges of Ees not unlawful, notwithstanding discharges took place one month after Ees had returned to 40 hour week, previously in slow times hours of all Ees had been cut rather than some Ees discharged, E had had profitable year, and two weeks prior to discharges had granted unit wide salary increase, absent evidence of E knowledge of U organizing activity, and since E offered plausible business and economic reasons for discharges, including fact total hours worked by Ees in dischargees' classification down)

8307-8467 Reasonable basis for selecting those to be laid off first, recalled first or discharged

Indiana Desk Company, Inc. **276 NLRB No. 165**
(no violation where E did not follow seniority in offering jobs to economic strikers, but rather offered jobs to Ees who held the same jobs before strike and in event of unavailability or declination by that Ee it then offered job to most qualified other striking Ee)

Tennessee Cold & Dry Storage, A Division of Conagra, Inc. **JD-(ATL)-61-86**
[discharge of known U supporters, not unlawful, notwithstanding U animus and suddeness of discharges, since E rebutted GC's prima facie case, in view of business considerations including seasonal downturn, loss of major customer, and fact terminations by seniority]

8307-8467-2500 Efficiency of employee

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 009**
[E's failure to recall former economic striker after his replacement left not justified by contentions that former striker had obtained regular and substantial employment with another E, or that his replacement possessed skills not possessed by former striker which allowed E to use replacement in enlarged work capacity, absent evidence that former strikers employment with other E was actually equivalent, or that changes in operations during strike warranted need for skills greater than those E required at beginning of strike, or that replacement was hired because he possessed those skills]

Webb Furniture Enterprises, Inc. **275 NLRB No. 180**
(E's contention that layoff of Ee was for absenteeism and that other Ees were more versatile rather than for U activities, rejected, as E retained 2 other Ees who did not sign U literature and with worse attendance records than discriminatee and record did not support claim of versatility of other Ees)

8307-8467-7500 Where basis for selection for layoff or recall unreasonable

Garrett Railroad Car & Equipment, Inc. **275 NLRB No. 151**
(recalling Ee (economic striker) out of seniority after strike's end, violative, since such treatment of Ee was disprate. E's action was not shown to be for some legitimate business reason or purpose and assessed in background of E's ULPs was inherently destructive of Ee Section 7 rights. Record provided sufficient evidence of E's singling out Ee striker who wanted to abandon strike (E had learned) and rendered this Ee-striker favorable disparate treatment some 3 weeks after strike ended)

Safety & Security Systems, Inc. **JD-(SF)-85-86**
[laying off U leader, violation, notwithstanding E's economic problems, where Ees with less ability and seniority were retained, E had committed ULPs against other U adherents, and management had specific plan to discriminate against U adherents]

8307-8800 Completion of work for which employees hired

ITT-FELEC Services, Inc. **JD-(SF)-131-86**
[routine termination of temporary job, not violation]

Baker Manufacturing Company v. N.L.R.B. **759 F.2d 1219 (C.A. 5, May 1985)**
(discharge of U supporter allegedly because E had ceased manufacturing equipment upon which he had been hired to work, violative where he was maintenance, not production, worker, there was ample work for him at time of his discharge, and E had recently told him so)

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[layoff of U adherents, violation, notwithstanding completion of project they were hired to work on, where they had been told that they would be kept on as permanent Ees]

8307-9100 Transfer of department to new plant

8307-9167 Sustained where economically justified

ARS Industries, Inc. **275 NLRB No. 145**
[parent company's having subsidiary sell impacter operation and shut down plant, not violation where subsidiary had already ceased 80 percent of operations due to lack of market, and other subsidiary to which impacter operation was sold was more efficient and needed more sales; moreover parent company had normal relations with U at subsidiary plant, was also selling non-U plants, and was only one of many Es in its industry drastically affected by recession]

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. **766 F.2d 812 (C.A. 3, July 1985)**
(E's layoff of Ees, not violative, notwithstanding E's U animus and coincidence between layoff and U organizational campaign, where there was no deviation from past practice of layoffs in face of economic conditions)

Purolator Armored, Inc. v. N.L.R.B. **764 F.2d 1423 (C.A. 7, July 1985)**
(notwithstanding operation was losing money, E violated Act by terminating said operation as E was willing to absorb these losses until U won election which shows that economics was not foremost in E's decision, and as U elected as operation's representative was same as one that represented other E units and there was frequent interchange with Ees, the closure had chilling effect on unionism)

8307-9600 Likelihood of claims against employer

Lone Star Industries, Inc. **279 NLRB No. 078**
[notwithstanding no prior preemployment physical exam policy and only instituted after economic strike ended, and notwithstanding it has been applied to recalled strikers, but not all of replacement Ees have undergone physicals, no violations over instituting physical exam policy or failure to reinstate recalled striker who failed exam, even though physician said illness treatable and posed no threat to his ability to perform job, since policy of E is that all Ees will take physical, policy bore no indication of discriminatory intent, E also discharged striker replacement who had same illness and policy was reasonable response to potential liability]

8311 BUSINESS DISRUPTION

8311-6700 Slowing production

Maple Tree, Inc. **JD-(ATL)-68-85**
(discharge of U advocates, assertedly for deliberately slowing production, violative)

8320 ALTERNATIVES TO ACTION WOULD VIOLATE OTHER SECTIONS OF NLRA OR OTHER STATUTES

Health Care Service-California d/b/a Valley Oaks Health Care Center **JD-(SF)-198-85**
[changing U supporter's work schedule to time which was less desireable to Ee, assertedly because it was mandated by State law, violative, where E presented no evidence of State law mandating such change and there was no showing of why Ee should not have been allowed to maintain her previous work schedule]

8322 CONTRACT PROVISION

S. Rosenthal and Company, Inc. d/b/a Rosenthal-Kaufmann Lithograph Company **276 NLRB No. 008**
(where E, pursuant to past practice, had extended part-time Ees' probationary period so as to have more time to assess their qualifications and find full-time positions for them, its discharging them when U demanded strict compliance with contract provision requiring that they be included in the bargaining unit or be discharged, not violative, since U effectively ended their probationary period and E discharged them because it had no full-time positions open rather than because of anti-U animus or discrimination)

8322-2000 Discriminatory enforcement of provisions

Montgomery Elevator Company **278 NLRB No. 122**
[E demoting and terminating Ee at U's request, unlawful, where for Ee's non-membership in U; contention Ee laid off since there were no *helper* positions available when he was returned to that status pursuant to agreement with U that Ees who failed mechanics test while working as mechanic with temporary permit be returned to *helper* status for 1 year, rejected, in view of disparate treatment of Ee and timing of termination soon after meeting of U's representative with E]

Book Covers, Inc. **276 NLRB No. 170**
(discharge of Ee for refusing to work overtime as required by contract, violative, as practice was to excuse Ees from working assigned overtime if supervisor presented with reasonable excuse, and excuse which Ee gave, and which lay behind motivation to fire Ee, was that Ee was going to labor board to file charges against E; furthermore, no Ee ever disciplined beyond receiving oral warring before)

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**
[retaining pyrometer steward pursuant to U's invocation of superseniority clause of contract, not unlawfully discriminatory as to two Ees who were not allowed to bump steward from sole remaining pyrometer position but laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

8322-3000 Superseniority and/or other benefits for union officials or stewards

Goodyear Tire and Rubber Company **278 NLRB No. 098**
[granting super-seniority to Executive Board members and Treasure of U for their terms of office for shift preference, surplus and layoff, and maintaining super-seniority clause with respect to Executive Board members and Treasurer of U, violative, where they had no responsibilities requiring on-the-job presence to further administration of bargaining agreement]

Goodyear Tire and Rubber Company **278 NLRB No. 098**
[according U's Executive Board member super-seniority under bargaining agreement with respect to shift preference and thereby causing Ee to be removed from first shift and placed on second shift, violative where Executive Board Member had no responsibility requiring on-the-job presence to further administration of bargaining agreement]

Telford & Dooley, Inc. **277 NLRB No. 112**
(layoff of U steward who was accorded superseniority under contract, not unlawful, where no other job was available that he was qualified to fill; steward had no seniority in E's other department and, under contract, was not entitled to bump anyone in that department in order to retain his job; and no Bd precedent exists which accords steward lawful superseniority extending beyond his department or seniority roster)

Mead Packaging **273 NLRB No. 181**
(E's unilateral discontinuance of insurance and pension benefits to U officers on leaves of absence for purpose of holding U office, not violative; granting such benefits to U officers alone under provision of contract would violate 8(a)(3) and 8(b)(2), since granting such benefits to U officers did not further effective administration of E's bargaining agreement where U officers were on U's payroll and acted as representatives of Ees at other Es premises, engaging in engotiations and arbitrations, and generally monitored compliance with U's bargaining agreements and further, granting of such benefits was not available to other Ees on an equal basis)

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**
[U letter of agreement stating that it did not intend to have steward granted superseniority to represent himself--apparently no other unit Ees remained--notwithstanding superseniority provisions of contract, and that agreement was voidable by E or U by written notification at any time, not binding contract but statement of intent voidable by U at will and thus no basis for holding violative E's retention of U steward pursuant to U's invocation of superseniority clause]

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**
[retaining pyrometer steward pursuant to U's invocation of superseniority clause of contract, not unlawfully discriminatory as to two Ees who were not allowed to bump steward from sole remaining pyrometer position but laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**
[U stewards justifiably presumed to have valid lay-off-recall superseniority on basis of U's retaining on-the-job representation for processing grievances; superseniority of nonstewards of officers engaged in no on-the-job, steward-like functions, to whom it was later extended, was evaluated under different criteria]

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**
[presumption of validity of job retention of U steward under superseniority provision of contract not rebutted by high ratio of stewards to Ees in steward's department, since Bd criteria for decisions focuses on U steward's on-the-job function rather than ratio of stewards to represented Ees]

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers **746 F.2d 143 (C.A. 2, Oct. 1984)**
(in affirming Bd's *Gulton* rule allowing enforcement of superseniority clause for layoff purposes only if U officials needed to be on job, ct held S.Ct's *Campbell* decision did not require different result; even if *Campbell*, in which S.Ct held veterans' retention of seniority under Selective Service Act did not invalidate superseniority of U officials over veterans during layoff, had been decided under NLRA, *Gulton* decision would not be inconsistent with *Campbell* since no reason existed to believe U officials therein did not meet *Gulton's* on job criteria)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers **746 F.2d 143 (C.A. 2, Oct. 1984)**
(ct held Bd's superseniority line of cases proceed from premise that superseniority encourages workers to be good U members so that they might increase their chances of being selected for positions afforded superseniority; such premise, drawn from Bd's experience in labor relations, is reasonable and therefore should not be rejected by reviewing ct; nor does reasonableness of premise depend on whether U officials afforded superseniority are appointed by U hierarchy or are elected by U members)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers **746 F.2d 143 (C.A. 2, Oct. 1984)**
(superseniority accorded U's recording secretary for layoff purposes held not justified under *Gulton* where secretary had neither significant representational nor contract administration duties requiring her presence in workplace; her duties were essentially clerical outside plant; and her maintenance of plant bulletin board took relatively little time and could be accomplished with only minor inconvenience of occasional trip to plant)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers **746 F.2d 143 (C.A. 2, Oct. 1984)**
(superseniority accorded sergeant-at-arms held not justified under *Gulton* where his duties involved only regulating U meetings and did not entail representational or contract administration duties at or away from plant; nor did his position on U fair practices committee justify grant of superseniority since it was awarded not because of that position but because of his status as U official; Bd could plainly find that his layoff would not seriously interfere with his duties as executive board member)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers **746 F.2d 143 (C.A. 2, Oct. 1984)**
(Ees did not waive right to challenge clause providing U officials with superseniority for puposes of layoff by ratifying agreement containing clause; right at issue herein is right to be free from discrimination that encourages U membership and is not *economic* right under S.Ct's *Metropolitan Edison* decision, such as right to strike or to refuse to cross lawful picket line, in attempt by Ees and U to achieve economic advantage and for which waiver is appropriate because Ee and U interests are presumed to coincide; if they do not, Ees remain free to change their representative)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers **746 F.2d 143 (C.A. 2, Oct. 1984)**
(Ees did not waive right to challenge clause providing U officials with superseniority for puposes of layoff since, unlike economic rights which are subject to waiver, right at issue herein is one in which U and Ee interests are likely to conflict; under *Gulton* superseniority presumably encourages Ees to support U so as to increase their chances of attaining U office and greater job security; on the other hand, Ees have right not to be coerced into supporting incumbent U and, since superseniority encourages such support, Ees' ability to select representative no longer remains free)

8322-3000—Cont.

N.L.R.B. v. Ensign Electric Division of Harvey Hubbell, Inc., and Steelworkers, Local 5925 (Center on National Labor Policy, Inc.) **767 F.2d 1100 (C.A. 4, July 1985)**

(contract provision's grant of superseniority for executive personnel of U, including recording secretary and treasurer, unlawful, notwithstanding U's contention that contract provision was negotiated at time superseniority was lawful under Bd decisions and Bd changed and retroactively applied rule on super seniority)

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 **776 F.2d 745 (C.A. 7, Nov. 1985)**

[grant of superseniority to U officer who performed steward-like duty on intermittent occasions as substitute, but whose primary duty did not involve performance of steward-like duties or on-the-job contract administration functions, violative]

8322-8000 No-strike agreement

Arizona Public Company **273 NLRB No. 210**

(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work,* and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

Indiana & Michigan Electric Company **273 NLRB No. 193**

(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd considered S.Ct's *Metropolitan Edison* decision from standpoint of U's waiver of U officials' Sec. 7 rights to extent they have affirmative duty to prevent illegal work stoppages, U's lawful bargaining away of statutory protection accorded U officials, insufficiency of general no-strike clause to constitute waiver, relevance of arbitration decisions in establishing waiver, and establishment of waiver by circumstances surrounding bargaining relationship as well as by language of agreement itself)

Indiana & Michigan Electric Company **273 NLRB No. 193**

(in finding E's disparate disciplinary suspension of U stewards for violating no-strike provision requiring U to disavow publicly unlawful strike and take affirmative action to end strike not unlawful, Bd held nothing in S.Ct's *Metropolitan Edison* decision indicates requirement for speccificity with reqard to naming of U officials as opposed to specificity requirement regarding what affirmative action can be expected of U to end unlawful strike; and in *Metropolitan Edison,* unlike here, no-strike clause was merely general clause imposing no obligation on U, and U officials took conscientious steps to end walkout)

Indiana & Michigan Electric Company **273 NLRB No. 193**

(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd held that, with regard to specificity requirement for naming of U officials as opposed to specificity regarding what affirmative action can be expected of U in event of unlawful strike, it has long been established that U, like an E, acts through its agents and it would be radical departure from longstanding precedent to hold that U's contractual or other obligations must be explicitly designated as responsibility of specified officials or agents)

Indiana & Michigan Electric Company **273 NLRB No. 193**

(imposition of disparate disciplinary suspensions on U stewards for violating no-strike provision, not unlawful, where U assumed duty to prevent unlawful strikes and thereby waived steward's statutory rights; while S.Ct in *Metropolitan Edison* found affirmative action cannot be required unless such requirement is bargained for, it merely held general *no-strike* clause was not enough to constitute waiver and left open what contractual language would suffice; here, contract unequivocally imposed duty to end unlawful strike, and stewards did not fulfill their contractual obligations even under most narrow construction of contract)

Nicholas, Inc. and Nicholas, Inc., Debtor in Possession **JD-(NY)-31-86**

[in cases arising before amendments to Bankruptcy Act effective, E, debtor-in-possession, lawfully discharged Ees for striking in violation of no-strike provision in contract where strike occurred during interim period of E petitioning court approval to reject contract and prior to court granting petition, and E continued to abide by terms of contract during this period, thus affirming contract]

Local Union 1392, Electrical Workers v. N.L.R.B. (Indiana & Michigan Electric Co.) **786 F.2d 733 (C.A. 6, Mar. 1986)**

[where E imposing more severe disciplinary suspensions on U stewards for violating no-strike provision, not unlawful where contractual language showed U intent for its officials to attempt to prevent unauthorized work stoppages, and this language constituted *clear and unmistakable waiver* of officials right to be free from selective discipline]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) **788 F.2d 1412 (C.A. 9, May 1986)**

[sympathy strikers' suspension lawful based on new Bd rule that, absent extrinsic evidence of contrary intent, general no-strike clause waived right to engage in such strikes, reversed and remanded, Bd treated rule as establishing irrebuttable presumption that broad no-strike clause barred such strike, rather than as shifting burden of proving whether clause was intended to encompass sympathy strikes. Bd relied on clause and U letter disavowing strike w/o discussing intent, prior rule's impact on contract's meaning, terms, or negotiations, and parties' conduct under it as rule required]

N.L.R.B. v. Deauville Hotel **751 F.2d 1562 (C.A. 11, Feb. 1985)**

(Bd holding that reasonable period of time must be allowed after contract is made for *air to clear* before enforcement of no strike clause unenforceable as lacking objective standard: ct applied standard of reasonable time for Ees to know that parties had agreed on contract with no-strike clause, taking into account local or national nature of preceding strike, existence of such clause in prior contract, whether incorporation of no-strike clause in new contract was controversial, extent of members' exposure to new contract during negotiations and ratification, and period of time between contract's effective date and strike)

N.L.R.B. v. Deauville Hotel **751 F.2d 1562 (C.A. 11, Feb. 1985)**

(objective standard lacking for Bd's holding allowing time to clear the air before E may enforce no-strike clause in contract agreed on after strike, since, although no-strike clauses encourage collective-bargaining and peaceful resolution of parties' disputes, Bd's rule, which has no standards or limits, means that E may take substantial risk in discharging Ees for violating the clause so that it may deem the clause of little value, and both parties may assign it little value in future negotiations)

N.L.R.B. v. Deauville Hotel **751 F.2d 1562 (C.A. 11, Feb. 1985)**

(discharge of Ee for picketing in violation of no-strike clause renewed in contract agreed upon after economic strike, not unlawful where U had reasonable time to notify its members, including dischargee, of new contract with no-strike clause; dischargee was in fact notified, reported for work, and joined picketers only when mistakenly informed by U steward that the contract had not been singed; U was obligated to heed no-strike clause and prevent unlawful strikers and neither U nor Ee was excused from honoring said clause)

N.L.R.B. v. Southern Florida Hotel and Motel Association, et al. **751 F.2d 1571 (C.A. 11, Feb. 1985)**

(enforcing no-strike clause by discharging returning economic strikers who began picketing three days after ratification of contract and end of strike, not violative, since, judged by objective standard, reasonable time for parties to *cool off* had passed since agreement on contract and for U to notify Ees of agreement and of strike's ends where Ees had ratified contract, ratification had been publicized, existence of no-strike clause in contract was known, and U officials failed towarn picketers when they came to U hall that violation of no-strike clause could result in discharge)

8329 FAILURE OF EMPLOYEE TO APPLY FOR REINSTATEMENT

8329-0600 Unconditional application

Brookhurst Professional Building, Inc., Number Three d/b/a Browning Manor Convalescent Hospital **279 NLRB No. 172**

[no unlawful refusal to reinstate economic strikers where E had hired permanent replacements, U never made unconditional offer for its striking members to return to work where it attached conditions to its offer, and E asked strikers to register, rather than to *apply* as it usually understood, for preferential hiring list]

Hansen Brothers Enterprises **279 NLRB No. 098**

[although U's offer on behalf of economic strikers to return to work, coupled with demand that all strikers be immediately reinstated and striker replacements be discharged, was conditional, Bd held E unlawfully refused to reinstate strikers since replacements were temporary and U's offer was therefore appropriate, where E's communications to strikers concerning reemployment rights and to replacements concerning their permanent Ee status were noncommital, and its statements showing own intent to permanently employ replacements, failed to satisfy E's burden of showing *mutual* understanding between itself and replacements that they were permanent]

N.L.R.B. v. Preterm, Inc. **784 F.2d 426 (C.A. 1, Feb. 1986)**

[burden of proof to show that offer to return to work was other than unconditional is on E]

8329-1200 After non-ULP strike or layoff

Service Electric Company **281 NLRB No. 107**
[in instant case, even under terms of settlement agreement, it was striking Ees—not E—who had burden of taking initiative in order to trigger (E's) reinstatement obligation]

8329-8700 Renewal at time of vacancy not required where application continuing

Medallion Kitchens, Inc. **277 NLRB No. 175**
[placing ad in newspaper that E had openings and was interviewing is not sufficient notice to reinstated economic strikers who had made unconditional offer to return to work notwithstanding some strikers saw ad and were reinstated. Burden on E to seek out strikers]

8338 FALSIFICATION OF JOB APPLICATION

8338-5000 Not real reason

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[discharging U adherent, violation notwithstanding his insubordination and falsification of employment application, since Ee was good worker, falsification had nothing to do with his discharge, and E had previously violated 8(a)(1)]

8347 FAILURE TO APPLY FOR JOB

American Press, Inc. **280 NLRB No. 109**
[successor E unlawfully refused to hire predecessor's Ees, notwithstanding successor's claim that they were not hired because they did not seek employment where Ees asked about employment, responded to E's blind ads, and attempted to apply in person; and since E attempted to conceal from Ees that it was accepting applications, failure to apply was not defense; moreover, Ees who discover E is hiring would be justified in assuming the futility of applying]

Medallion Kitchens, Inc. **277 NLRB No. 175**
[placing ad in newspaper that E had openings and was interviewing is not sufficient notice to reinstated economic strikers who had made unconditional offer to return to work notwithstanding some strikers saw ad and were reinstated. Burden on E to seek out strikers]

8349 INABILITY OF EMPLOYER TO CONTACT EMPLOYEE

Medallion Kitchens, Inc. **277 NLRB No. 175**
[placing ad in newspaper that E had openings and was interviewing is not sufficient notice to reinstated economic strikers who had made unconditional offer to return to work notwithstanding some strikers saw ad and were reinstated. Burden on E to seek out strikers]

8351 MISCONDUCT OF EMPLOYEE

8351-0100 Generally

8351-0114 Condonation vitiates defense

Harry Hoffman & Son Printing **278 NLRB No. 101**
[discharge of former striker for picket line misconduct of throwing tomato at car, unlawful, since 5-1/2 months between misconduct and discharge, and during that time E condoned misconduct by sending former striker letter advising him of his right to remain member of U or resign, advising him he was on preferential hiring list, calling to inquire if he were available for work and wished to remain on preferential hiring list, and stating all former strikers would remain on preferential list unless they had obtained substantially equivalent employment or resigned]

Harry Hoffman & Son Printing **278 NLRB No. 101**
[*condonation is factual matter which GC must prove by preponderance of evidence*]

The Gateway Theatre Corporation d/b/a Senator Theatre, Capitol Hill Cinemas **277 NLRB No. 186**
[discharges of Ees, unlawful, since for affiliation with U, notwithstanding Ees' repeated violations of rules regarding tardiness, unauthorized persons in work area, and leaving job, in view of E's U animus and condonation of Ees' infractions]

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**

Robert W. Wise, d/b/a Robert W. Wise Cabinetry **JD-(SF)-157-85**

8351-0128 Good-faith belief as to misconduct may be defense

JMC Transport, Inc. v. N.L.R.B. **776 F.2d 612 (C.A. 6, Nov. 1985)**
[ct rejected E's contention that when Ee is fired for misconduct only relevant issue is whether executive who makes firing decision has good faith belief that misconduct occurred; allowing E to assert good faith when one of its supervisors was primary actor in fabrication leading to discharge, as here, simply runs counter to any logical definition of good faith]

8351-0142 Mistaken belief as to misconduct no defense if conduct did not in fact occur

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[E's contention that U adherent discharged after receiving 3 reprimands pursuant to E's policy, rejected and discharge unlawful, since one of reprimands was in retaliation for her protected activity just a few weeks after she rejected overtures from E to be anti-U. Reprimand concerned alleged improper cashing of customer check months previously, and evidence was uncertain as to whether proper procedure having check approved by front office had been followed]

Gull, Inc. **279 NLRB No. 127**
[E failed to rebut GC's prima facie case that discharge of Ees, assertedly for engaging in slowdown, was discriminatory where E, in course of his investigation subsequent to 1 discriminatee's alleged *admission* of involvement in slowdown failed to question Ee about it nor questioned other Ees allegedly involved or their supervisor; also E did not refer to incident in personnel file or in discharging Ee who purportedly made admission; and E did not even establish that slowdown actually occurred]

8351-0184 Waiver vitiates defense

Arizona Public Company **273 NLRB No. 210**
(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work,* and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) **788 F.2d 1412 (C.A. 9, May 1986)**
[general no-strike clause waives Ees' statutory right to engage in sympathy strikes absent extinsic evidence that parties intended otherwise; rule is not substantive, and, rather than establishing irrebuttable presumption that broad no-strike rule bars sympathy strikes, shifts burden of proof to party making that claim and requires consideration of available evidence such as contract's other terms, negotiation of no-strike clause, and parties' bargaining history and past practices]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) **788 F.2d 1412 (C.A. 9, May 1986)**
[whether contract waives Ees' right to strike turns upon the proper interpretation of particular contract. It must be read as a whole and in light of the law relating to it when made. Other relevant considerations include bargaining history, context in which contract was negotiated, interpretation of contract by the parties, and conduct of the parties bearing upon its meaning]

8351-1200 Breach of no-strike agreement

Arizona Public Company **273 NLRB No. 210**
(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work,* and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

United Parcel Service, Inc. **273 NLRB No. 205**
(suspension and discharge of U stewards for participation in strike which was in violation of no strike agreement, not unlawful, notwithstanding contention actions discriminatory because of U office these individuals held as other strikers not similarly disciplined, where U stewards went beyond simple participation and provided leadership to rank-and-file Ees by relaying messages from U business agent, picketing in more than one location, and explaining strike to television reporters)

Nicholas, Inc. and Nicholas, Inc., Debtor in Possession **JD-(NY)-31-86**
[in cases arising before amendments to Bankruptcy Act effective, E, debtor-in-possession, lawfully discharged Ees for striking in violation of no-strike provision in contract where strike occurred during interim period of E petitioning court approval to reject contract and prior to court granting petition, and E continued to abide by terms of contract during this period, thus affirming contract]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) **788 F.2d 1412 (C.A. 9, May 1986)**
[sympathy strikers' suspension lawful based on new Bd rule that, absent extrinsic evidence of contrary intent, general no-strike clause waived right to engage in such strikes, reversed and remanded, Bd treated rule as establishing irrebuttable presumption that broad no-strike clause barred such strike,

8351-1200—Cont.

rather than as shifting burden of proving whether clause was intended to encompass sympathy strikes. Bd relied on clause and U letter disavowing strike w/o discussing intent, prior rule's impact on contract's meaning, terms, or negotiations, and parties' conduct under it as rule required]

N.L.R.B. v. Deauville Hotel 751 F.2d 1562 (C.A. 11, Feb. 1985)

(discharge of Ee for picketing in violation of no-strike clause renewed in contract agreed upon after economic strike, not unlawful where U had reasonable time to notify its members, including dischargee, of new contract with no-strike clause; dischargee was in fact notified, reported for work, and joined picketers only when mistakenly informed by U steward that the contract had not been singed; U was obligated to heed no-strike clause and prevent unlawful strikers and neither U nor Ee was excused from honoring said clause)

8351-1500 Breach of company rules

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)

[discipline for violation of E's (Hospital's) no solicitation rule *not an ULP*, where E undisputedly showed (1) violation of rule, (2) failed attempt to resolve dispute and possibly, withdraw discipline, and (3) final disciplinary actions in proportion to conduct involved, even though E had allowed some innocuous activity, such as sale of some raffle tickets, Girl Scout cookies and cosmetics by Ees w/o reprisal under E's rule]

8351-1550 Not real reason

Health Enterprises of America, Inc., d/b/a Miami Health Care Center 282 NLRB No. 033

[notwithstanding U adherent violated rule against patient abuse, discharge violative as real reasons were U activities and filing lawsuit against E, in view of spurious investigation and disparate discipline accorded discriminatee for violating rule]

Health Enterprises of America, Inc., d/b/a Miami Health Care Center 282 NLRB No. 033

[notwithstanding U adherents violated no call/no show rule, discharges violative as real reasons were U activities, filing lawsuit against E and close proximity to election which discharges would serve as warning to other Ees]

N.L.R.B. v. Malta Construction Company 806 F.2d 1009 (C.A. 11, Dec. 1986)

[discharge of Ee for *deliberate interference with production and refusing work assignment, followinstructions* during U campaign when Ee refused to remove U sticker from his E supplied hard hat when Ee was on his water break assisting fellow Ee who had a stuck front-end loader, held violative, since GC proved existence of presumptively invalid rule banning U insignia on hard hats and E did not prove any special circumstance to justify its rule. Ee had never been warned or disciplined for his behavior prior to his taking about U]

8351-3100 Illegal strike or interference with operations

United Parcel Service, Inc. 273 NLRB No. 205

(suspension and discharge of U stewards for participation in strike which was in violation of no strike agreement, not unlawful, notwithstanding contention actions discriminatory because of U office these individuals held as other strikers not similarly disciplined, where U stewards went beyond simple participation and provided leadership to rank-and-file Ees by relaying messages from U business agent, picketing in more than one location, and explaining strike to television reporters)

8351-4300 Intermittent, recurrent, or partial strike

Highlands Hospital Corporation, Inc., d/b/a Highlands Regional Medical Center 278 NLRB No. 160

[discharge of non-unit guards who told E they would not perform certain tasks because they did not believe in crossing picket line of striking unit Ees and later refused, despite E's threats of discipline, to perform tasks w/i scope of their employment, not unlawful, since guards' partial refusal to work constituted unprotected activity; to countenance Ees' refusal to work on terms lawfully prescribed by E would allow Ees to do what Bd would not allow E to do, i.e., to unilaterally determine conditions of employment]

8351-4600 Slowdown

Gull, Inc. 279 NLRB No. 127

[E failed to rebut GC's prima facie case that discharge of Ees, assertedly for engaging in slowdown, was discriminatory where E, in course of his investigation subsequent to 1 discriminatee's alleged *admission* of involvement in slowdown failed to question Ee about it nor questioned other Ees allegedly involved or their supervisor; also E did not refer to incident in personnel file or in discharging Ee who purportedly made admission; and E did not even establish that slowdown actually occurred]

Maple Tree, Inc. JD-(ATL)-48-85

(discharge of U advocates, assertedly for deliberately slowing production, violative)

8351-4900 Refusal to perform assigned duties

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza JD-(ATL)-87-84

(discharge of painter at apartment building, who was U adherent and filed charges, for failure to work, on usual day off in order to accomplish urgently needed painting, not violative, since discharge would have taken place absent protected activity, inasmuch as work on that day necessary and in view of previous poor quality and slowness of Ee's work)

8351-6200 Strike misconduct

8351-6201 Generally

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[misconduct of striking Ee directed against patrons or customers of E, or others seeking to enter (E's) premises for business purposes, is equivalent of misconduct against fellow Ees]

8351-6233 Not real reason

Cartridge Actuated Devices, Inc. 282 NLRB No. 066

[discharge of strikers for engaging in violent conduct and causing substantial damage to vehicles crossing picket line, unlawful, since E failed to discipline nonstriking Ees who engaged in similar conduct; Bd disagreed with view that striker's behavior of kicking vehicle was type of impulsive behavior that can be expected in course of lengthy and tense strike]

8351-6250 Insufficient to justify discharge or other discipline

Harry Hoffman & Son Printing 278 NLRB No. 101

[discharge of former striker for picket line misconduct of throwing tomato at car, unlawful, since 5-1/2 months between misconduct and discharge, and during that time E condoned misconduct by sending former striker letter advising him of his right to remain member of U or resign, advising him he was on preferential hiring list, calling to inquire if he were available for work and wished to remain on preferential hiring list, and stating all former strikers would remain on preferential list unless they had obtained substantially equivalent employment or resigned]

National Council of Young Israel d/b/a Shalom Nursing Home 276 NLRB No. 118

(ex-striker who joined with other pickets who were black in calling replacement Ees *nigger*, not barred from reinstatement, since participation in incident, taken in overall context, would not lead to such strained relations with other Ees were she permitted to return to work)

National Council of Young Israel d/b/a Shalom Nursing Home 276 NLRB No. 118

(ex-striker who asked Ee who was in wheelchair *Why don't you get up and walk?* and told supervisor whose sister was amputee that her sister *had a peg leg*, and screamed at Ee whose husband had died suddenly near picket line *We got one. We killed some white trash.* not barred from reinstatement, since conduct isolated and racist remark may well have been precipitated by unfair accusation that she was cause of heart attack that lead to death of Ee's husband near picket line)

MGM Grand Hotel 275 NLRB No. 146

(calling nonstriker *scab* is not type of strike misconduct that justifies refusal of reinstatement)

Catalytic, Inc. 275 NLRB No. 016

(discharge of striking Ee for misconduct, violative, where misconduct consisted of brief telephone call to nonstriking Ee's home which wife answered and striker said *you G-d damned bitch* and hung up, as this call, though unlawful under State law, was neither coercive nor intimidating, nor was there any evidence that striker knew of other calls made to residence or participated in any plan of harassment)

8351-6255 Sufficient to justify discharge or other discipline

Guy F. Atkinson d/b/a Bingham-Willamette Company 279 NLRB No. 037

[E's refusal to reinstate two former economic strikers, both of whom had served as U steward, and one of whom had been picket captain, not unlawful, since justified by their strike misconduct of throwing eggs at vehicles and beating on van of non-striking Ee, and hitting non-striking Ee in face; fact non-striker who assaulted and threatened picket stating he had gun, and whose friend took picket's possessions, was given only two day suspension did not constitute unlawful disparate treatment, since his conduct did not render non-striker unfit for futher employment in view of his prompt apology and offer of restitution]

Pacific Mutual Door Company 278 NLRB No. 120

[economic striker's discharging weapon at plant entrance held to be serious strike misconduct which justified E's refusal to reinstate him]

Pacific Mutual Door Company 278 NLRB No. 120

[striker's attempting to slash tire on truck and attempting to slash at security guard until another guard pulled him away held serious strike misconduct which justified E's refusal to reinstate him]

8351-6255—Cont.

National Council of Young Israel d/b/a Shalom Nursing Home 276 NLRB No. 118
(ex-striker properly excluded from preferential hiring list for reinstatement, absent evidence to refute report that while picketing, w/o provocation, he hit Ee with stick and told him *he would end up in pine box* as this was an assault with threat that Ee would be killed)

Auburn Foundry, Inc. 274 NLRB No. 192
(discharging three economic strikers for following car containing nonstrikers so as to intimidate them, not violative; although one striker was in different car and separated from other two strikers by E's pursuing car, inference that he was engaged in same high speed chase as they were was reasonable)

Gold Bond Building Products, A Division of National Gypsum Company JD-184-86
[discharge of striking Ee for slashing tire and instigating another tire slashing, not unlawful, since Ee's misconduct was sole reason for discharge; also, in E's mind, Ee's trespassing or illegal entry into plant disguised as security officer, although nonviolent and may well have been a joke and questionable as to whether such act alone would have justified discharge, was contributing factor for discharge since E feared sabotage]

Gold Bond Building Products, A Division of National Gypsum Company JD-184-86
[discharge of striking Ee for using open knife and tapping it on window of entering worker's car, and threatening 2 truck-drivers not to further serve E, not unlawful, since Ee's conduct was inherently coercive and intimidating with respect to Ee's exercise of Sec. 7 right to refrain from engaging in protected activities]

Skw Alloys, Inc. JD-330-85
(discharge of pickets, not unlawful, since justified by E's good faith belief that these two pickets had thrown nails on entrance way to plant resulting in flat and destroyed tires, where nail check of area had revealed no nails prior to pickets coming on duty, and subsequently when no one else was in area, nails were found; further, pickets had not previously been disciplined for protected activity and there was no evidence of U animus or disparate treatment)

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)
[misconduct of striking Ee directed against patrons or customers of E, or others seeking to enter (E's) premises for business purposes, is equivalent of misconduct against fellow Ees]

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)
[denial of reinstatement and backpay to ULP strikers for misconduct--spitting at non-striker, damaging non-striker's car, forcibly restraining non-striker from entering premises, telling potential patients that it was unsafe to enter premises, telling patients inside premises it was unsafe and forcibly preventing patient from entering premises]

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. 803 F.2d 1333 (C.A. 4, Oct. 1986)
[Es' refusal to reinstate ex-striker, who assumed responsibility for beating non-striker by another striker, and by warning witness to beating not to call for medical aid or police striker associated himself with perpetrator in this criminal act]

General Teamsters Local No. 162 v. N.L.R.B. (Western Pacific Construction Materials Co.) 782 F.2d 839 (C.A. 9, Feb. 1986)
[discharging striker for throwing rock that struck and damaged car of nonstriking Ee, not unlawful]

8351-6900 Strike unprotected

Electronic Data Systems International Corporation 278 NLRB No. 014
[discharge of 10 Ees, who engaged in unprotected work stoppage of a few minutes which was spontaneous reaction to discharge of supervisor, but not in protest of impact of discharge on employment, unlawful, notwithstanding unprotected nature of work stoppage and fact took place 9 months after U organizing campaign, in view of E's superficial investigation, previous good record of dischargees, severity of discipline in relationship to misconduct, disparity of treatment between U adherents and other Ees]

8351-8700 Unlawful interference with employer's business

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)
[misconduct of striking Ee directed against patrons or customers of E, or others seeking to enter (E's) premises for business purposes, is equivalent of misconduct against fellow Ees]

8351-9300 Wildcat strike, or threat thereof

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. 278 NLRB No. 102
[discharge of 3 U committeemen who participated in wildcat strike and appeared on picket line, violation, since E singled them out for disparate treatment because of their U office, where there was no evidence that they engaged in strike leadership activities, similarly situated Ees were not disciplined, and E knew that two of the committeemen had urged other Ees to return to work and unless E capitulated on grievance held not threatened to cause strike]

8355 NONUNION EMPLOYEE SIMULTANEOUSLY DISCHARGED, LAID OFF OR OTHERWISE DISCIPLINED

Lone Star Industries, Inc. 279 NLRB No. 078
[notwithstanding no prior preemployment physical exam policy and only instituted after economic strike ended, and notwithstanding it has been applied to recalled strikers, but not all of replacement Ees have undergone physicals, no violations over instituting physical exam policy or failure to reinstate recalled striker who failed exam, even though physician said illness treatable and posed no threat to his ability to perform job, since policy of E is that all Ees will take physical, policy bore no indication of discriminatory intent, E also discharged striker replacement who had same illness and policy was reasonable response to potential liability]

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center 276 NLRB No. 146
(where substantial majority of Ees not rehired were U leaders, strong circumstantial evidence of U animus is present, though evidence probative and not dispositive, notwithstanding successor retained some U Ees)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)
(while GC must usually show that E knew about individual Ee's U activities before Bd may conclude E violated Sec. 8(a)(3), GC may also prevail by showing E ordered general layoffs for purpose of discouraging U activities of some. This theory is viable even though some Ees who actually opposed U were laid off with their pro-U counterparts, or if all pro-U Ees not laid off. Focus is on E's motivation in ordering extensive layoffs, rather than upon pro-U or anti-U status of particular Ees)

8356 OTHER UNION ADHERENTS NOT DISCHARGED

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center 280 NLRB No. 130
[while in typical *Wright Line* case GC must demonstate E's awareness of pro-U acts or sentiments of individual Ees, GC can proceed on theory that E ordered general layoffs for purpose of discouraging U activity even if not all pro-U Ees are directly effected; E's general retaliation against workforce can discourage exercise of Sec. 7 rights just as effectively as adverse action taken against only known U supporters]

Oil Field Construction Company JD-(SF)-104-86

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)
(while GC must usually show that E knew about individual Ee's U activities before Bd may conclude E violated Sec. 8(a)(3), GC may also prevail by showing E ordered general layoffs for purpose of discouraging U activities of some. This theory is viable even though some Ees who actually opposed U were laid off with their pro-U counterparts, or if all pro-U Ees not laid off. Focus is on E's motivation in ordering extensive layoffs, rather than upon pro-U or anti-U status of particular Ees)

8357 SIMULTANEOUS DISCHARGE OF ANOTHER UNION ADHERENT NOT ALLEGED DISCRIMINATORY IN COMPLAINT

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)
(while GC must usually show that E knew about individual Ee's U activities before Bd may conclude E violated Sec. 8(a)(3), GC may also prevail by showing E ordered general layoffs for purpose of discouraging U activities of some. This theory is viable even though some Ees who actually opposed U were laid off with their pro-U counterparts, or if all pro-U Ees not laid off. Focus is on E's motivation in ordering extensive layoffs, rather than upon pro-U or anti-U status of particular Ees)

8365 REINSTATEMENT OR OFFER OF REINSTATEMENT

8365-0100 Generally

Coastside Scavenger Company 273 NLRB No. 198
(existence of temporary job is not equivalent of vacancy to which striker should have been reinstated)

8365-0100—Cont.

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[*Essentially... the validity of an offer of reinstatement depends on the situation in which the offeree finds himself as a result of the discrimination against him.* NLRB v. Murray Prods, Inc., 584 F.2d 934, 940 (9th Cir. 1978)]

8365-1300 No obligation to reinstate absent indication of employees' wish to return

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda 279 NLRB No. 089

[E's failure to reinstate former economic striker, unlawful, notwithstanding former striker's statement that he was happily employed at another E, absent evidence job former striker currently held was substantially equivalent to job he had held at E and that it constituted regular, rather than part-time or temporary employment]

Woodline Motor Freight, Inc. 278 NLRB No. 152

[discriminatee did not waive right to reinstatement by his expressed intent to resign, but did not do so, where offer was invalid, inasmuch as descriminatee reasonably feared further discrimination should they return to E's employ, and were likely to change minds when presented with valid offer. Discriminatee does not waive reinstatement by his response to invalid offer]

Medallion Kitchens, Inc. 277 NLRB No. 175

[placing ad in newspaper that E had openings and was interviewing is not sufficient notice to reinstated economic strikers who had made unconditional offer to return to work notwithstanding some strikers saw ad and were reinstated. Burden on E to seek out strikers]

8365-1700 Obligation to make offer of reinstatement for temporary employment

8365-1700 Obligation to make offer of reinstatement for temporary employment

Medallion Kitchens, Inc. 277 NLRB No. 175

[existence of *temporary* jobs is not equivalent of vacancy to which strikers should have been reinstated]

Medallion Kitchens, Inc. 277 NLRB No. 175

[Ees who were hired for a few months with employment to terminate on date certain when plant was to close and production shifted to new plant, held not *temporary* Ees, and failure of E to offer these jobs to unreinstated economic strikers, violative]

8365-2000 No obligation to reinstate if for sufficient, legitimate, and substantial business reasons

Radio Electric Service Company 278 NLRB No. 078

[E's failure to reinstate ULP strikers upon their unconditional offer to return to work, unlawful, since E failed to meet burden of establishing its affirmative defense of unavailability of jobs, where E presented no evidence regarding claimed elimination of all unit work as result of strike and *emergency changes* nor as to claimed reduction of personnel; evidence that E did present was clearly irrelevant; and work previously performed by strikers had been reassigned and was being performed by nonunit Ees whom E was obligated to remove, if necessary, and to replace them with ULP strikers]

Medallion Kitchens, Inc. 277 NLRB No. 175

[Ees who were hired for a few months with employment to terminate on date certain when plant was to close and production shifted to new plant, held not *temporary* Ees, and failure of E to offer these jobs to unreinstated economic strikers, violative]

8365-3000 Conditions attached to offer

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[no imposition on part of U of *all or none* condition or waiver of U's unconditional offer to return to work where objecting to E's unlawful reinstatement procedure of taking ULP strikers as work became available (piecemeal) rather than discharging replacements, U said Ees would not return piecemeal]

Hotel Holiday Inn De Isla Verde 278 NLRB No. 147

[upon ct remand, Bd deferred to strike settlement agreement restricting conditions of reemployment of economic strikers allegedly discharged for misconduct, and vacated its order requiring reinstatement where at time of settlement, there was no finding strikers had been unlawfully discharged and, thus, they did not have legal right to remedy nor did E have legal obligation to provide remedy; here, in return for meeting on some middle ground, E voluntarily offered to reinstate strikers, and both E and U voluntarily offered to forgo any adjudication rights they might have had]

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[burden of proof to show that offer to return to work was other than unconditional is on E]

8365-3300 Reinstatement to position not substantially same no defense

Central Broadcast Company 280 NLRB No. 056

[E's offer to reinstate laid-off U supporters to jobs below their professional capacities at reduced pay not valid offer]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[reinstatement w/o according Ee seniority acquired before discriminatory discharge does not satisfy E's obligation to reinstate Ee to substantially equivalent position]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda 279 NLRB No. 089

[E's failure to reinstate former economic striker, unlawful, notwithstanding former striker's statement that he was happily employed at another E, absent evidence job former striker currently held was substantially equivalent to job he had held at E and that it constituted regular, rather than part-time or temporary employment]

Medallion Kitchens, Inc. 277 NLRB No. 175

[jobs were not substantially equivalent where hours, duties, and authority were same though pay and benefits less and jobs should have been offered to unreinstated economic strikers as E unilaterally set wages and benefits after strike ended and after unconditional offer to return made by strikers]

Coastside Scavenger Company 273 NLRB No. 198

(temporary nature of job *is* critical factor in determining whether it is *substantially equivalent* to what position a striker had held)

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[offer of reinstatement phrased as a question such as *If (E) offered you your job back with backpay, would you take it?* not invalid. However, offer must still indicate availability of former (job) or comparable position. E's offer, in instant case, did not convey that there was job immediately available. Question put to Ee as to whether he would return to work if offered reinstatement does not present specific, unequivocal offer of reinstatement]

Arlington Hotel Company, Inc. v. N.L.R.B. 785 F.2d 249 (C.A. 8, Mar. 1986)

[failure of E to offer economic strikers reinstatement to jobs they were qualified for though not same or substantially equivalent to prestrike position, violative, as E had policy of cross-training and developing multiple capabilities for its Ees and did, in fact, transfer new Ees into positions that unreinstated strikers qualified for; therefore, E's recall policy clearly discriminated against unreinstated strikers in favor of new job applicants and Ees -- including permanent striker replacements -- already on payroll]

8365-4000 Offer of reinstatement but with different terms of employment

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077

[E's response to U's unconditional offer of ULP strikers to return to work was that it would reemploy them only as work became available and then only under unlawfully implemented terms and conditions of employment, violative, and backpay starts from day of offer to return to work]

Central Broadcast Company 280 NLRB No. 056

[E's offer to reinstate laid-off U supporters to jobs below their professional capacities at reduced pay not valid offer]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[reinstatement w/o according Ee seniority acquired before discriminatory discharge does not satisfy E's obligation to reinstate Ee to substantially equivalent position]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[reinstatement to position with diminished hours, drop in income, less desirable assignments and less desirable equipment, held improper; no tolling of backpay, and inasmuch as these changes are directly attributable to his unlawful discharge, his quitting E's employ w/o having another job was not willful loss of earnings but is constructive discharge]

Medallion Kitchens, Inc. 277 NLRB No. 175

[jobs were not substantially equivalent where hours, duties, and authority were same though pay and benefits less and jobs should have been offered to unreinstated economic strikers as E unilaterally set wages and benefits after strike ended and after unconditional offer to return made by strikers]

Embossing Printers, Inc. JD-19-85

(economic strikers rejection of unconditional offer of reinstatement (offer held unconditional notwithstanding it included strikers accepting unilateral changes to their health benefits as these changes were found to be lawful) converted their status to voluntary quits)

N.L.R.B. v. Harrison Ready Mix Concrete, Inc. 770 F.2d 78 (C.A. 6, Aug. 1985)

(placing strikers who abandoned strike below replacements and Ees who did not strike on seniority list, upon their reinstatement, not unlawful, since, in

8365-4000—Cont.

absence of specific and detailed findings by Bd of E's *inherently destructive* conduct, E neither intended nor caused any discrimination between strikers and nonstrikers or any destructive impact upon strike or U activity)

8365-6300 No valid offer made

Berger Transfer & Storage Co. **281 NLRB No. 155**
[E's operations managers' statement to discharged strikers generally that their actions were hurting company, that company could do better for them, and company wanted them to return to work, was not unconditional offer of reinstatement, was vague, did not clearly rescind their discharges, and thus their failure to return to work after purported *offer* did not toll backpay]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. **279 NLRB No. 091**
[letter to laid-off Ee which stated: *There is new position available with our company. We would like to know if you are interest in this position,* not valid offer of reinstatement as offer not specific, not unequivocal, and not unconditional]

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[no valid offer of reinstatement where discriminatees refused reinstatement because of reasonable fear that they would not be fully reinstated but would be subjected to further discrimination particularly in view of discrimination against U adherents who accepted reinstatement preceding offer of reinstatement to these discriminatees]

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[discriminatee did not waive right to reinstatement by his expressed intent to resign, but did not do so, where offer was invalid, inasmuch as descriminatee reasonably feared further discrimination should they return to E's employ, and were likely to change minds when presented with valid offer. Discriminatee does not waive reinstatement by his response to invalid offer]

Radio Electric Service Company **278 NLRB No. 078**
[E's letter to U, purportedly offering reinstatement to ULP strikers, held not valid offer, since it was not specific, unequivocal, and unconditional, where letter did not offer to reinstate strikers to specific jobs, but rather only stated that some jobs may be available; letter not only questioned ability of strikers to perform available jobs, but also implied that they would have to compete with laid-off Ees for those jobs; and rather than offering to reinstate strikers, E's letter requested negotiations with U over reinstatement rights of strikers and other Ees]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(letter requesting that Ee who had been unlawfully laid off to advise E earliest date he could report for work did not constitute offer of recall, since not specific, unequivocal, nor did it assure Ee that he would have preexisting benefits of which he had been deprived because of his U activities)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(E's letter to Ee who had been unlawfully laid off stating *We expect to have an opening for an apprentice with your qualification w/i two weeks. Please advise this office by certain date if you would be interested in accepting employment with company* not offer of reinstatement, since failed to specify job or when it would be available, nor was expectation of opening unconditional profer of same or substantially equivalent position as that from which Ee had been laid off)

Brenal Electric, Inc. **JD-(NY)-21-84**
[letter in which E stated that discharged Ees must contact E w/i 7 days if they desired reinstatement, not valid offer of reinstatement and did not end backpay liability, where day Ees were required to let E know of their decision was day after earliest date letter could have been received by Ees]

Brenal Electric, Inc. **JD-(NY)-21-84**
[valid offer of reinstatement made where, at E's request, Ee who had returned to work informed other Ees who had been discharged that their jobs were still available, and E would like them to return to work, since Ee informed former Ees that he was calling at E's request, former Ees knew he had returned to work, and therefore could reasonably assume he spoke for E]

Brenal Electric, Inc. **JD-(NY)-21-84**
[valid offer of reinstatement made where upon being informed by discharged Ee that he had been denied unemployment benefits because E had informed unemployment compensation agency that his job was still available, E confirmed his job as available]

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company **808 F.2d 1155 (C.A. 6, Dec. 1986)**
[offer of reinstatement phrased as a question such as *If (E) offered you your job back with backpay, would you take it?* not invalid. However, offer must still indicate availability of former (job) or comparable position. E's offer, in instant case, did not convey that there was job immediately available. Question put to Ee as to whether he would return to work if offered reinstatement does not present specific, unequivocal offer of reinstatement]

8365-7500 Subsequent reinstatement no defense

Central Broadcast Company **280 NLRB No. 056**
[discriminatory layoff of U supporter, violation notwithstanding subsequent recall]

The Gateway Theatre Corporation d/b/a Senator Threatre, Capitol Hill Cinemas **277 NLRB No. 186**
[discharges of Ee about whose work there had been no complaint, unlawful, since motivated by E's U animus, notwithstanding E's offer to rehire Ee and Ee's refusal because he did not wish to cross picket line, inasmuch as E's offer was not to retain Ee, but to rehire him and does not detract from fact E discharged Ee for no valid reason]

8372 REPLACEMENT

8372-5000 Non-ULP strikers may be replaced

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**
(E's hiring of replacements for its economic strikers on terms and conditions of its previous offer, not unlawful, since there was a valid impasse, old contract had expired, and E's bargaining conduct did not invalidate the impasse)

8372-5017 But preferential treatment of replacements unlawful

U.S. Mineral Products Co. **276 NLRB No. 022**
(permanently replaced economic strikers' entitlement to reinstatement is limited to being put on preferential hiring list with E not being required to reinstate economic striker unless and until his former job or its equivalent comes open by termination or expansion. However, once striker accepts permanent employment elsewhere, he ceases to be Ee of E and is no longer entitled to reinstatement rights)

Arlington Hotel Company, Inc. v. N.L.R.B. **785 F.2d 249 (C.A. 8, Mar. 1986)**
[failure of E to offer economic strikers reinstatement to jobs they were qualified for though not same or substantially equivalent to prestrike position, violative, as E had policy of cross-training and developing multiple capabilities for its Ees and did, in fact, transfer new Ees into positions that unreinstated strikers qualified for; therefore, E's recall policy clearly discriminated against unreinstated strikers in favor of new job applicants and Ees -- including permanent striker replacements -- already on payroll]

8372-5067 Temporary employee by permanent employee

Hansen Brothers Enterprises **279 NLRB No. 098**
[economic strikers are entitled to immediate reinstatement upon unconditional offer to return to work, provided their positions have not been filled by permanent replacements or there was no business justification; thus, where striker replacements are only temporary, offer to return to work which demands no more than discharge of those replacements is appropriate]

Medallion Kitchens, Inc. **277 NLRB No. 175**
[existence of *temporary* jobs is not equivalent of vacancy to which strikers should have been reinstated]

Medallion Kitchens, Inc. **277 NLRB No. 175**
[Ees who were hired for a few months with employment to terminate on date certain when plant was to close and production shifted to new plant, held not *temporary* Ees, and failure of E to offer these jobs to unreinstated economic strikers, violative]

8372-7500 ULP strikers may not be permanently replaced

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[no imposition on part of U of *all or none* condition or waiver of U's unconditional offer to return to work where objecting to E's unlawful reinstatement procedure of taking ULP strikers as work became available (piecemeal) rather than discharging replacements, U said Ees would not return piecemeal]

8376 RETENTION OR REEMPLOYMENT OF UNION MEMBERS

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**
[successor E's refusal to hire majority of predecessor's Ees, assertedly because those hired were more qualified, violative, notwithstanding successor E hired some U members, since real reason was Ees' refusal to withdraw from U where supervisor of successor E told some Ees they would be guaranteed employment if they withdrew from U, successor did not articulate any definite standard by which Ees were evaluated for selection and E's refusal to comply with subpoena for employment records justified adverse inference that e had unlawful motive]

Steffer Brothers **JD-269-86**
[discharge of Ee not unlawful where Ees, whose U involvement was comparable to that of dischargee, were not discriminated against by E]

8380 SENIORITY

8380—Cont.

Lone Star Industries, Inc. **279 NLRB No. 078**
[E's changing its 23-year policy for assigning work, including overtime, after strike, from work assignments on basis of seniority to rotation system of assigning work eliminating entirely factor of seniority, violative, since (new) policy in fact had predictable and actual effect of creating conditions after strike ended in which strikers would lose advantages in job assignments they had enjoyed under E's 23-year-old work assignment policy and strike replacements would be beneficiaries of those losses. Once strike ended, entire work force lost valuable rights]

Lone Star Industries, Inc. **279 NLRB No. 078**
[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

Foote & Davies, Inc. **278 NLRB No. 012**
[E's failure to recall sympathy striker to positions as they were vacated through attrition, assertedly because other Ees recalled had superior rights, violative, since real reason was Ee's engaging in sympathy strike where Ee made unconditional offer to return to work before vacancies occurred, Ee was not advised of openings even though he had more seniority than Ees recalled according to E's own seniority system and practice and E advanced no legitimate business reason for not recalling Ee]

Webb Furniture Enterprises, Inc. **275 NLRB No. 180**
(E's contention it laid off Ee not for Ee's U activities, but rather because he was least senior Ee in his department, was originally hired as spare hand, and department's assistant foreman could readily assume his duties, accepted, and layoff held lawful, notwithstanding E's U animus and other ULPs)

C. M. Carpenter, A Sole Proprietor, d/b/a Carpenter Trucking **274 NLRB No. 046**
(layoff of U adherent who was leader in organization drive and who was to be U steward, lawful, notwithstanding E's animus against U adherent, where at time he was laid off adherent had worked only 5 days in 2 weeks, there was lack of business, and in view of fact adherent was next to bottom of seniority list, and E's policy in case of layoff was that Ees last hired were first to go)

8384 UNION OR OTHER CONCERTED ACTIVITY, NO DEFENSE

8384-0100 Generally

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[discharge of U adherent, not unlawful, where pursuant to E's policy for receiving 3 written reprimands and other Ees had received reprimands for similar offenses. *Ee is not immune from discipline because pro-U; such Ee may not be singled out for discipline, but he is not immune from discipline*]

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. **803 F.2d 1333 (C.A. 4, Oct. 1986)**
[*mere exercise of protected rights does not immunize Ee from discharge and it is error to accord no weight to Ee's performance deficiencies*]

8384-8300 Particular activities

8384-8337 Display or wearing of union insignia

Malta Construction Company **276 NLRB No. 171**
(discharging Ee for refusing to remove U insignia from his company hard-hat, violative where E failed to establish any special circumstances based on legitimate production or safety reasons to justify prohibition)

8384-8375 Refusal to cross picket line

Dave Castellino & Sons **277 NLRB No. 050**
(termination of Ee for refusal to work in response to demonstrators' picket line at E's jobsite, unlawful, where Ee made common cause with protected activity of demonstrators, herein found to be statutory Ees, protesting against E's alleged failure to comply with statutory duty and contractual commitment to provide work force composed of 50 percent of area residents, and fact that ee's action was motivated by fear of personal bodily injury was irrelevant)

Limpert Brothers, Inc. **276 NLRB No. 037**
(discharge of Ees for refusing to cross lawful picket line, violative, since picketing is protected concerted activity and refusal to cross picket line is also protected concerted activity, and question of motivation on part of Ees' refusal to cross picket line is irrelevant)

Arizona Public Company **273 NLRB No. 210**
(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work*, and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

Indianapolis Power & Light Company **273 NLRB No. 211**
(broad no-strike clause in bargaining agreement though not expresaly mentioning sympathy strikes nevertheless held to include sympathy strikes in its proscription, unless extrinsic evidence indicates parties intended otherwise, and suspension and threat of discharge made to sympathy striker, not violative)

Ralphs Grocery Company **JD-(SF)-111-86**
[E's layoff and refusal to reinstate Ees who refused to cross primary picket line established by U in course of dispute with E involving another bargaining unit, not unlawful, since not for Ees' protected activity, where work performed by laid off Ees was transferred to another location, fact transfer of work coincided with strike happenstance, and laid off Ees had no contractual right to work at other location which was in different unit, and absent evidence of unlawful motivation of E or deviation from its usual practices]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) **788 F.2d 1412 (C.A. 9, May 1986)**
[sympathy strikers' suspension lawful based on new Bd rule that, absent extrinsic evidence of contrary intent, general no-strike clause waived right to engage in such strikes, reversed and remanded, Bd treated rule as establishing irrebuttable presumption that broad no-strike clause barred such strike, rather than as shifting burden of proving whether clause was intended to encompass sympathy strikes. Bd relied on clause and U letter disavowing strike w/o discussing intent, prior rule's impact on contract's meaning, terms, or negotiations, and parties' conduct under it as rule required]

8387 UNSATISFACTORY BEHAVIOR OF EMPLOYEE

8387-0100 Generally

JMC Transport, Inc. v. N.L.R.B. **776 F.2d 612 (C.A. 6, Nov. 1985)**
[where Ee's extremely hostile and abusive outbursts while engaged in protesting E's change in pay policy clearly could be seen as unprotected in context in which discharge is based on specific allegedly unprotected conduct, ct held E's failure to fire Ee for his abusive conduct defeated E's contention that Ee's conduct was unprotected; in context in which E had not found conduct so disruptive as to justify discharge at the time, ct declined to impose post hoc classification of unprotected conduct]

JMC Transport, Inc. v. N.L.R.B. **776 F.2d 612 (C.A. 6, Nov. 1985)**
[ct rejected E's contention that when Ee is fired for misconduct only relevant issue is whether executive who makes firing decision has good faith belief that misconduct occurred; allowing E to assert good faith when one of its supervisors was primary actor in fabrication leading to discharge, as here, simply runs counter to any logical definition of good faith]

8387-0300 Absence from work or lateness

Link Manufacturing Co. **281 NLRB No. 028**
[written warning given Ee for concededly poor attendance, not unlawful, notwithstanding warning issued after E's receipt of election ptn and unlawful conversion of other Ees' layoffs from temporary to permanent, where E had no specific knowledge of Ee's U activities or reason for focusing its anti-U animus on Ee]

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[discharge of U adherent for alleged insubordination when she failed to report to work as requested as soon as possible after doctor's appointment, or let E know when after appointment she locked her car keys in car, not unlawful, since E sustained burden of proving discharge would have taken place even absent Ee's U adherence]

Ro-Lab Rubber Co., Inc. **279 NLRB No. 057**
[E proved it would have discharged Ee for multiple incidents of negligence and unexcused absence even if there had been neither U activities by Ees nor unlawful retaliatory general increase in discipline by E]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[three-day suspension of U adherent, not violation, notwithstanding it was overdue and did not occur until Ee wore U T-shirt to work, where it was pursuant to E's attendance-control policy, which was nondiscriminatorily enforced, and Ee's U adherence was well known before he wore U T-shirt]

Clark Equipment Company **278 NLRB No. 085**
[discharge of U adherent lawful where he had poor attendance record]

8387-0300—Cont.

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company — 277 NLRB No. 047
(no violation, since discharge was for Ee's absenteeism rather than for his U activities, where Ee's absenteeism was interfering with production and had been troubling E prior to U organizing campaign)

Southwire Company — 277 NLRB No. 043
(E's written warning to U adherent for excessive absenteeism, not violative, since E would have warned Ee even in absence of (Ee's) U activity, GC has not shown that Ee was subject to disparate treatment)

Superior Container, Inc. — 276 NLRB No. 056
(discharge of Ee, reinstated as consequence of prior ULP proceeding, assertedly for absenteeism and tardiness, not unlawful, where Ee, during prework conference with E, committed himself to understanding of E's rules and promised his attendance would not be problem in future; Ee's subsequent actions upon being unable to come to work evinced cavalier approach to E's absentee policy; E's reasons for discharge remained consistent and did not shift; no connection could be made between discharge and Ee's U activity; and there was no evidence of disparate treatment of Ee)

Confort & Company, Inc. — 275 NLRB No. 082
(suspension of U supporter for excessive absenteeism and tardiness, justified and lawful)

Sur-Glo Realty Corp. d/b/a Granit Hotel and Country Club — JD-(NY)-10-86
[suspending waiter two weeks for failure to appear at breakfast, lawful where Ee admittedly violated long standing company rule]

Norbar, Inc. — JD-302-85
(discharge of Ee allegedly for U activities, not unlawful, where Ee, absent from work due to work-related injury, failed to submit contractually required medical reports; E based discharge solely and exclusively on its belief, in absence of reports, that Ee had quit, and not on Ee's U activities and pursuit of workmen's compensation claim; and E would have taken same action, regardless of Ee's activities)

IBP, Inc. — JD-221-85
(discharge of Ee who was U adherent in U organizing campaign and election, not unlawful, since discharge was pursuant to lawful warnings under E's progressive disciplinary policy regarding tardiness and took place one month after U lost election, and absent U animus, commission of other ULPs by E or disparate treatment)

Burlington Industries, Inc. — JD-(ATL)-13-85
(reprimand of U advocate for taking excessive time off her job not violative where E fully demonstrated that it would have reprimanded her even in absence of her U activities)

8387-0350 Not real reason

Health Enterprises of America, Inc., d/b/a Miami Health Care Center — 282 NLRB No. 033
[notwithstanding U adherents violated no call/no show rule, discharges violative as real reasons were U activities, filing lawsuit against E and close proximity to election which discharges would serve as warning to other Ees]

Premier Maintenance, Inc. — 282 NLRB No. 003
[discharge of Ee, unlawful, since for his U activity, rather than for not calling in when he would be absent, where E did not advance Ee's absence as reason for refusal to reemploy him, but rather informed Ee that his charge before NLRB would have to be resolved before he could be rehired, and E in past had not discharged Ees for first failure to call in]

Baddour, Inc. — 281 NLRB No. 084
[giving U activist warning and placing him on probation because he could not get to work because of car trouble, rather than giving him day off w/o pay or vacation day as was customary, violation]

Link Manufacturing Co. — 281 NLRB No. 028
[suspension of Ee for failing to report for work, unlawful, where E knew or suspected Ee was leading U adherent whom E subjected to unlawful threats, interrogation, and promises; other Ees who missed work were not disciplined; E threatened and reproached Ee for defying E by voting in election; E's explanation that Ee's attitude changed considerably indicated discriminatory motive; and it was only after onset of U and Ee's voting in election that E found Ee's attendance record intolerable]

Sealectro Corporation — 280 NLRB No. 015
[discharge of Ee unlawful since for U adherence rather than for poor attendance and failure to notify E when he was not coming into work, in view of E's departure from usual discipline system, E's U animus, fact rule regarding reporting absences had not been consistently enforced, and that *uncooperative attitude* which was given as reason for discharge at hearing, but was not given at time of discharge, raises inference that real reason was pretext]

Woodcliff Lake Hilton Inn, Inc. — 279 NLRB No. 166
[E's suspending of known U supporter, assertedly for being late for work, violative where other Ees had not been suspended for some offense and E had not followed its own progressive disciplinary system]

Michiel's Inc., d/b/a Le Saint Jean Des Pres Restaurant — 279 NLRB No. 017
[discharge of Ee, assertedly because she did not show up for scheduled work, violative, since real reason was Ee's open and active U support where Ee's work schedule was changed in such a way so as to make it impossible for her to go to school, a schedule E had accomodated before her U activity, and E threatened to fire Ee if she couldn't work the new schedule regardless of the U]

Hedaya Brothers, Inc. — 277 NLRB No. 093
(discharge of Ee, assertedly because of high absenteeism, violative, since real reason was Ee's support of rival U where Ee received many warnings only after Bd conducted election between competing Us, E's implementation of new warning system was violative of 8(a)(3) and warning system was applied in disparate manner)

Grunco, Inc., d/b/a Thriftway Supermarket; et al. — 276 NLRB No. 164
(discharge of active U adherent assertedly for not reporting for work for several days after he had been given permission to absent himself from work, unlawful, in view of extensive U activity known to E who strenuously opposed such activity, counterfeit defense giving rise to inference of unlawful motivation, and absence of any effort to seek explanation from Ee)

Ann's Laundry & Dry Cleaners, Inc. — 276 NLRB No. 026
(violation where E condoned absences and tardiness prior to Ee's U activities)

Webb Furniture Enterprises, Inc. — 275 NLRB No. 180
(layoff of Ee who had singed U literature twice, unlawful, notwithstanding he was one among many Ees who signed U literature. E's contention layoff was because of his absenteeism, rejected, where another Ee who did not sign U literature and who had higher absenteeism record than Ee was retained, and in view of E's knowledge of Ee's U activities, and its U animus)

Webb Furniture Enterprises, Inc. — 275 NLRB No. 180
(E's contention that layoff of Ee was for absenteeism and lack of versatility in job performance, rather than for his U activities, rejected, and layoff held unlawful, notwithstanding Ee had second worse absenteeism in his department, absent evidence retained Ees alleged to be more versatile than laid off Ee were in fact more versatile, or that E relied on their relative abilities in retaining them over Ee)

St. Paul's Church Home, Inc. — 275 NLRB No. 170
(discharge of known U supporter assertedly because of tardiness and absenteeism, including gross patient neglect at E's nursing home, unlawful, where E had given Ee glowing evaluation at which time E must have been aware of any absenteeism or tardiness problem Ee may have had; E exhibited shifting defenses to discharge; and E departed from its own third-warning policy when effecting discharge, thereby demonstrating that defenses were pretextual)

Confort & Company, Inc. — 275 NLRB No. 082
(discharge, after hearing, of U supporter, who was one of Ees who had filed charges against E and representative of charging party designated to be present throughout hearing, violative where E had condoned his absenteeism and tardiness until U campaign began, had wanted to promote him to lead position, had displayed anti-U campaign, had withdrawn its offer to solve Ee's tardiness problem by transferring him to another shift, and had concededly talked with him about his suspension and discharge in presence of E's comptroller in order to have a witness)

Confort & Company, Inc. — 275 NLRB No. 082
(issuing written warnings to U supporter, allegedly for excessive absenteeism and tardiness, violative where E had issued him only two written warnings and delayed his pay increase only once for same behavior, had offered him promotion to night lead position, and had only begun to pay attention to his tardiness and absenteeism when U campaign was in full swing)

Cassidy Cleaning, Inc. — JD-239-86
[discharge of Ees assertedly for having poor attendance and punctuality records, unlawful where, while some Ees had such records, E tolerated over long period of time same kind of absenteeism and tardiness which it suddenly found unacceptable after Ees voted for U representation; such sudden shift in approach to Ees' faulty attendance demonstrated pretextual nature of asserted reason for discharges; and E admitted that at time of discharges it abandoned its Ee handbook policy of progressive system of discipline for attendance infractions]

Broadstreet Medical Nursing Center — JD-112-86
[discharge of leading U activist assertedly for having bad record of tardiness, unlawful, in view of E's departure from work rules pertaining to frequency of tardiness before effecting discharge; timing of such disparate treatment with Ee's U activity; alteration of Ee's personnel records to make them appear in conformity with rules; and E's offer to Ee, prior to election, of better paying supervisory job at another of E's facilities when such job was open at facility herein and was filled shortly after Ee was let go]

8387-0350—Cont.

Sue-Gio Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[issuing written warning to Ee who publicized E's alleged ULPs and labor relations in newspaper article, violation where Ee had called in according to prior practice, had not been sufficiently late to have to be replaced]

United States Postal Service (North Jersey Facility) JD-(NY)-105-85

Fun-Sy Productions, Inc. JD-(NY)-49-85
(discharge of Ee, assertedly because of lateness, violative, since real reason was Ee's U activity where discharge occurred shortly after E gained knowledge of U campaign, E tolerated Ee's lateness in past and discharge was made pursuant to unlawful new lateness rule promulgated by E in response to Ees' U activity)

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. JD-(NY)-24-85
(discharge of Ees, assertedly for *stealing time;* from E by coming in late twice weekly, unlawful, where E's officials were aware of Ees' employment with another E and supervisors arranged with Ees to put in full day's work; E had no reasonable belief Ees were stealing time nor said anything, at time of discharge, about *juggling act* with 2 jobs or about excessive absences, and such belated reasons for discharge demonstrated shifting and unreliable defense; and E conducted no investigation of Ees' actions nor requested explanation from them before discharging them)

N.L.R.B. v. J. Coty Messenger Service, Inc. ———F.2d——— (C.A. 2, May 1965)
[discharge of U adherent assertedly for poor attendance, unlawful, in light of E's demonstrated U animus, disparate treatment of discharged Ee, and pretextual reason given for discharge]

N.L.R.B. v. Bliss and Laughlin Steel Company, Inc. 754 F.2d 229 (C.A. 7, Feb. 1985)
(discharge of Ee, assertedly because he was late for work, violative, since real reason was Ee's U activity where Ee was extremely active U organizer, Ee was in fact not late for work on day he was discharged and E's tardiness program was highly discretionary and applied to Ee in disparate manner)

8387-0400 Abuse of sick leave

8387-0450 Not real reason

La Reina, Inc. 279 NLRB No. 103
[conditioning U activist's return to work on supplying doctor's certificate and them discharging her, violation where E had been told that Ee had not seen a doctor while ill, and E had previously discriminatorily laid her off]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[discharge of known U adherent assertedly because she abused sick leave, unlawful, where sudden urgency of E in wanting Ee on job w/o making any effort to contact Ee suggested that E did not care whether Ee had legitimate reason for reporting to work late or whether she was in fact abusing leave; and failure of E to conduct full and fair investigation of alleged Ee misconduct was evidence of discriminatory intent, which was especially true where E, as here, manifested U hostility]

N.L.R.B. v. Lancer Corporation 759 F.2d 458 (C.A. 5, May 1985)
(discharge of known U adherent for alleged fraudulent attempt to seek sick pay, because of discrepancy between doctor's certificate and Ee's absence report regarding excused time period, unlawful, where such discrepancy was used as excuse to get rid of U adherent, in view of E's perfunctory investigation of Ee's claim for sick pay and failure to consult supervisor who had granted Ee sick leave, and fact that Ee's failure at interview to refute E's claim of misuse of sick leave played no part in decision to discharge Ee since decision was made prior to interview)

8387-0500 Accidents

Gulf, Inc. 279 NLRB No. 127
[discharge of U activist after he was engaged in automobile accident involving 2 Ees on company property, not unlawful where, although nobody was injured by incident, it could not be characterized as a minor one since there was clearly potential for injury and possibility that situation might recur]

Alamo Cement Company 277 NLRB No. 034
(discharging Ee for fear he would cause another explosion and kill someone by continuing to follow the same faulty procedures he had followed when he caused an explosion lawful)

Mobile Concrete, Inc. JD-453-84
(discharge of U adherent, assertedly for his U activity, not violative where he was discharged for his negligence in causing accident which he failed to report to management)

8387-0550 Not real reason

Armco Company 279 NLRB No. 158
[discharge, unlawful]

United States Postal Service JD-203-86
[discharge of probationary Ee who slipped at work, hurt his back, and was unable to work for several days, unlawful, since for filing grievance over denial of light work after being cleared for such duty and after receiving conflicting information from E's Ee relations department which said there was no light duty available for probationary Ees but that compensation unit would pay him, and compensation unit informed him he would not be paid because cleared for light duty, where not policy of E to terminate probationary Ees who lost time due to injury, and E only discharged after giving notice U would be utilized to secure his rights]

Roberto Sanchez and Elva Rodriguez v. N.L.R.B. 785 F.2d 409 (C.A. 2, Mar. 1986)
[discharge of U steward allegedly for driving incident, rather than for U activities, unlawful, since U steward met his burden of proving under *Wright Line* that discharge was result of U animus]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)
[discharge of Ee who was active U supporter and member of U's organizing committee, assertedly for accidental breakage of E's merchandise in plant, unlawful, where E had never before nor thereafter fired someone for such breakage, and Ee offered to pay for merchandise, thus clearly showing that asserted reason for discharge was pretextual; moreover, during subsequent conversation with E, Ee was told that dismissal was because of U]

8387-0600 Overstaying vacation or leave

Volt Information Sciences, Inc. 274 NLRB No. 047
(discharging female Ee for overstaying agreed upon maternity leave, not violative)

8387-0650 Not real reason

Hoechton Garment Company, A Subsidiary of Spencer Industries, Inc. 279 NLRB No. 081
[suspending Ee for abusing leave of absence granted to care for sick child, violation, notwithstanding Ee was seen across street from plant observing handbilling during leave, in view of E's knowledge of Ee's U support, lack of precedent for disciplining leave violation, E's failure to discipline Ee for violating leave to return to plant to pick up paycheck or to establish that Ee obtained leave by false pretenses or acted inconsistently with caring for sick child, and E's motivation to discipline Ee on basis of complaints voiced by anti-U Ees]

8387-0700 Slowdown

8387-0750 Not real reason

Maple Tree, Inc. JD-(ATL)-48-85
(discharge of U advocates, assertedly for deliberately slowing production, violative)

8387-0800 Accumulated objections or complaints regarding employee

McLean Trucking Company 279 NLRB No. 046
[Bd held that Ee would have been discharged even absent his U and other protected activities, in view of numerous suspensions he received for poor production and unacceptable behavior; further, E not aware at time Ee had decided to run for U steward at time scheduled discharge hearing]

Niagara Fiberglass, Inc. 279 NLRB No. 014

Arlington Hotel Company, Inc. 278 NLRB No. 007
[three-day suspension of U activist for failing to complete assigned duties, not violation, where it was pursuant to E's threat to discipline Ee on receipt of fifth warning]

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. 803 F.2d 1333 (C.A. 4, Oct. 1986)
[refusal to reinstate striker whose prior work performance was deficient and included customer complaints, 16 reprimands, fights with other Ees, and ptn signed by 13 Ees following strike requesting that Ee not be reinstated, not unlawful, notwithstanding contention that E tolerated Ee's poor work performance in past and waited to discharge him until after his participation in strike, absent evidence of improper motive for refusal to reinstate where Ee's participation in strike was no more than other striking Ees and no other Ee engaging in same type or level of activity was discharged]

8387-0850 Not real reason

Studio S.J.T., Limited 277 NLRB No. 126
(discharge of U organizer assertedly for (1) poor job performance, (2) tardiness, (3) attitude, and (4) dissemination of proprietary information, violative)

8387-1200 Arrest or conviction

8387-1250 Not real reason

United States Postal Service (North Jersey Facility) JD-(NY)-105-85
(discharge of U activitist for prior conviction, unlawful where E's policy precluded consideration of expunged prior convictions, and E had stated absenteeism was reason for discharge)

8387-1300 Assault on fellow employee

8387-1350 Not real reason

Esco Elevators, Inc. **276 NLRB No. 138**
(on ct remand, Bd held Ee's safety-related complaints constituted U endeavor and not personal undertaking, and his discharge purportedly because of fist fight with another Ee, unlawful, where Ee emphasized safety matters in campaign for U office before being elected U president; inspection of safety conditions at job sites was part of his role as U official; E was discharged by supervisor who had ascertained Ee was pressing safety conditions because he was U president; and other U officers were involved in attempting to resolve safety problem)

8387-1500 Coercion and intimidation of other employees

Chicago Metallic Corporation **273 NLRB No. 207**
(no violation by discharging pro-U Ee for coercing and intimidating anti-U Ees by threatening that their *heads would roll* if U came in and other threats of violence)

8387-1550 Not real reason

Activ Industries, Inc. **277 NLRB No. 087**
(E issuing disciplinary letter to Ee for allegedly harassing another Ee, unlawful, since E issued letter to discipline Ee for conversation solely because that conversation concerned unicnization, and notwithstanding letter issued to discipline Ee for single conversation, in which Ee alleged to have made obscene remarks, where Ee told he was being disciplined for several conversations with other Ee about U, none of which lost protected status)

8387-1700 Racial, sexual or religious conduct

Westinghouse Electric Corporation **277 NLRB No. 016**
(discharge of U adherent, not unlawful, since for his sexual harassment of female Ees, and dischrge would have taken place absent U activity, where E's reliance on reports from Ees that they had been sexually harassed by Ee not incredible or unacceptable and E's investigation not biased, negligent or cursory)

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods **JD-(SF)-101-86**
[discharge of key U organizer assertedly for sexual harassment of female Ees, not unlawful since, assuming E had knowledge of Ee's U activities and even though E found such activities unwelcome, E nevertheless had right to manage his enterprise and to discipline Ee for misconduct even though he was protected under Act]

8387-1800 Damage to Employers' property or goods

Port East Transfer, Inc. **278 NLRB No. 125**
[discharge of Ee unlawful, where for writing pro-U graffiti on E's restroom wall since such writing protected. Discharge was for content of writing, and not for defacing E's property, inasmuch as it was common for Ees to write graffiti on restroom walls, no other Ee had been disciplined, and writings of discharged E were not *so malicious, defamatory, or insubordinate as to lose protection of the Act*]

8387-1850 Not real reason

Airport Distributors, Inc. **280 NLRB No. 091**
[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of timing of discharge w/i 2 weeks of strike settlement and U recognition agreement; E's animus toward U and its supporter's and awareness of Ee's U support and strike activity; abruptness of E's action w/o confronting Ee with vehicle's condition; deviation from customary policy of investigating accidents; shifting and mutually inconsistent reasons for discharge; and absence of similar treatment of other Ees]

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(failure to recall laid off Ee assertedly for variety of reasons, unlawful, where E perceived Ee to be prime instigator of U's organizing activity prior to layoff; E recalled other Ees with less experience and seniority in Ee's line of work; and E's reliance on damage to equipment purportedly caused by Ee was of doubtful validity in view of E's lack of reaction to alleged incident which belied importance E now attached thereto)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[discharge of known U adherent employed as waitress, assertedly for her attitude when she broke dish while waiting on tables, unlawful, where E's attitude of amusement resulted from interchange with patrons in connection with breakage incident, she was never advised that breakage was cause of discharge, such breakage was common occurrence for which no one was disciplined, and E pledged to rehire Ee after she made negative statements about U and informed E who U organizer were]

N.L.R.B. v. E. I. DuPont De Nemours **750 F.2d 524 (C.A. 6, Dec. 1984)**
(discharge of U activist, allegedly because multiple positions on his machine broke simultaneously, violative where overhaul of his machine because of poor operation, which was due a month before, did not occur until after his discharge, and where other Ees who had also had simultaneous multiple breaks of positions on their machines had not even been reprimanded)

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**
[discharge of Ee who was active U supporter and member of U's organizing committee, assertedly for accidental breakage of E's merchandise in plant, unlawful, where E had never before nor thereafter fired someone for such breakage, and Ee offered to pay for merchandise, thus clearly showing that asserted reason for discharge was pretextual; moreover, during subsequent conversation with E, Ee was told that dismissal was because of U]

8387-2000 Discourtesy to patrons

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**
[warning Ee about repeatedly asking guest to sign statement about waiter's service and conduct which resulted in guest's annoyance and E's loss of future business from guest, lawful, notwithstanding Ee was acting in capacity as U steward, since that protected U activity lost protection]

8387-2200 Customer complaints about work

Pierre's Vending Company, Inc. **274 NLRB No. 184**
(notwithstanding that E's cessation of U activist's Saturday work was violative, warning notice, based on customer complaint concerning Ee's serving vending machine at customer's facility and later discharge for his *sloppy work habits and misconduc.*, not violative, since Ee's work was not satisfactory and E showed that action of warning and subsequent discharge of Ee would have taken place even in absence of mechanic's U activity)

8387-2250 Not real reason

Health Enterprises of America, Inc., d/b/a Miami Health Care Center **282 NLRB No. 033**
[notwithstanding U adherent violated rule against patient abuse, discharge violative as real reasons were U activities and filing lawsuit against E, in view of spurious investigation and disparate discipline accorded discriminatee for violating rule]

Raynor Motel Corporation d/b/a Holiday Inn East **281 NLRB No. 092**
[discharge of U activist for alleged customer complaints about slow service, unlawful]

Trover Clinic **280 NLRB No. 002**
[repremanding known U advocate and subsequently discharging her, assertedly because of complaint received concerning Ee's handling of patient's itemized account statement unlawful, where E departed from its customary manner of responding to patients' complaints concerning Ee behavior or work performance by failing to investigate matter and to seek explanation from Ee even though substantial confusion existed among Ees concerning procedure for production of itemized statements, and E did not follow its policy of counseling Ee and giving series of reprimands before reaching discharge stage]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[suspension and discharge of Ee-driver, assertedly for failure to make deliveries to customer who complained to E, and for Ee's attitude and intrusive behavior at customer's location, unlawful, where E was known outstanding U advocate and leader of Ees; asserted misconduct by Ee consisted of single day's conduct over 8-year exemplary work history; E was partly responsible for Ee's reaction at customer's location because of faulty loading and failure to support Ee at the time; and past discharges for misconduct required history of poor attitude or conduct of aggravated nature]

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(discharge of U activitist allegedly because of customer's complaints about salesman's misrepresenting equipment on new car resulting in state administrative investigation, violative)

United States Postal Service **275 NLRB No. 074**
(discharge of Ee who was mail carrier, unlawful, since for his threat to file grievance, rather than for his failure to notify E on third day of absence from work whether he would be at work next day, or for his poor work performance and customers complaints regarding him, where no rule or policy required Ees absent for less than week to notify E if they succeeded in obtaining substitute, which Ee had done, thus E had no rational reason to expect Ee to call, and Ee had condoned Ee's work deficiencies for approximately two months prior to discharge)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[assigning known U adherent employed as bartender to less desirable banquet work, and later discharging him, assertedly because of complaints by waitresses and by customer, unlawful, where customer's reference to Ee was made in letter containing general complaint about service and other conditions at E's business; letter was dated 4 days after E was removed from work schedule as bartender; and E could not have been seriously concerned about oral complaints against Ee since E neither informed Ee of it nor warned him about it]

8387-2250—Cont.

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) **793 F.2d 1062 (C.A. 9, July 1986)**

[discharge of salesmen, unlawful, since motivated by his U organizing activities and not because of his swearing at another Ee, where E did not ask Ee for his version of incident; E's attempt to justify discharge with background evidence of customer complaints of excessive agressiveness against salesman, rejected, where he had been successful salesman and had never been disciplined prior to discharge, nor had any salesman who had been successful been disciplined for agressiveness]

8387-2300 Dishonesty

Arlington Hotel Company, Inc. **278 NLRB No. 007**

[discharging U activist for undercharging customer by falsifying meal ticket, not violation, since, even if U activities were a motive, E met its *Wright Line* burden where Ee failed to clarify any question about E's discontinuation of *freebies*, and supervisor making discharge decision lacked personal U animus, was not treating Ee disparately, as he was new on job, and was ignorant of Ee's identity when he started investigating matter]

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**

(discharge of automobile salesman for participating in *curbing* incident which E considered theft, lawful)

8387-2350 Not real reason

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**

[discharging driver, violation, where, notwithstanding he falsified trip card, he would not have been discharged but for his numerous successful grievances costly to E]

McLean Roofing Company **276 NLRB No. 093**

(discharge of U advocates, assertedly for drinking and stealing, violative where discharge occurred shortly after E's expressions of U animus, interrogations, threats, and identification of discharged Ees as U organizers)

Genwal Coal Co., Inc. **275 NLRB No. 077**

(E's refusal to recall discriminatees, allegedly for overstaying lunch break and selling E's coal to others, during period it had hired several new Ees, violative where E had not rebutted GC's *prima facie* case by showing that newly hired Ees were more able or versatile to perform experienced Ees' mining duties and E's admission that he would not recall them because of their U activities)

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**

[E's alleged misappropriation of funds no defense where E conceded it was not basis for discharge]

8387-2500 Disloyalty

8387-2550 Not real reason

D.H. Martin Petroleum Co. **280 NLRB No. 058**

8387-2600 Violation of confidentiality

Raytheon Missile System Division, Raytheon Company **279 NLRB No. 035**

[E's transfer of compensation assistant in E's industrial relations department to position in production control department, not violative where Ee had current legitimate access to confidential labor relations information at time her pro-U sympathy first became known to E; E's decision to transfer her was predicated on more than conjecture, but rather on reasonable apprehension, based on her pro-U activity, that she might compromise confidential labor relations information]

8387-2650 Not real reason

Wells Fargo Armored Service Corp. **JD-(SF)-19-86**

[suspending Ee two business days after E received U request that Ees at location in question be considered accretion to existing unit and notice that Ee was U steward and U executive committee member, violation where E's contention that Ee misappropriated and copied three confidential company documents was unsupported by evidence; second suspension, immediately afterwards, for failure to comply with E's no-beard policy, violation where E had let Ee work for three months w/o complying]

8387-2800 Dissension with other employees

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. **803 F.2d 1333 (C.A. 4, Oct. 1986)**

[refusal to reinstate striker whose prior work performance was deficient and included customer complaints, 16 reprimands, fights with other Ees, and ptn signed by 13 Ees following strike requesting that Ee not be reinstated, not unlawful, notwithstanding contention that E tolerated Ee's poor work performance in past and waited to discharge him until after his participation in strike, absent evidence of improper motive for refusal to reinstate where Ee's participation in strike was no more than other striking Ees and no other Ee engaging in same type or level of activity was discharged]

8387-2850 Not real reason

Hy's of Chicago, Ltd. **276 NLRB No. 113**

(discharge of two U activists, assertedly for being involved in fight, held interference and violative where they were discharged because of their efforts to organize Ees)

Safety & Security Systems, Inc. **JD-(SF)-85-86**

[discharging U adherent because of potential personnel conflicts, while at work, with her ex-husband with whom she was involved in custody fight, violation where Ee would not have been in contact with her ex-spouse if E had assigned her to job for which she was hired]

Educational Broadcasting Corporation d/b/a WNET/Thirteen **JD-(NY)-125-85**

[discharge, allegedly for inability to work closely with another Ee, violation, since real reason was Ee's filing and pursuing grievance, where Ee had reasonable and honest belief in entitlement to relief under U contract]

David Warren & Son, Inc. **JD-(ATL)-31-85**

(discharge of leading U adherent, unlawful, notwithstanding E's contention that Ee quit because of his coworkers' animosity towards him, since circumstances raised inference that Ee was discharged, where E harbored U animus, told Ees he would shut down operation if Ees selected U, seized upon events resulting from his misinterpretation of U's letter demanding recognition that U already represented them thereby arousing animosity among Ee's coworkers towards Ee, and subsequently E purposely did nothing to dispel suspected violence)

8387-3000 Drunkenness

Hoboken Shipyards, Inc. **275 NLRB No. 212**

(E's refusal to hire minority Ee formerly employed by prior owner, not violative where refusal was not due to Ee's filing EEO suit against former E but because Ee was hostile, difficult to supervise, and used vulgar language to supervisors because of drinking or drugs or for other reasons)

8387-3050 Not real reason

Armon Company **279 NLRB No. 158**

[discharge, unlawful]

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**

McLean Roofing Company **276 NLRB No. 093**

(discharge of U advocates, assertedly for drinking and stealing, violative where discharge occurred shortly after E's expressions of U animus, interrogations, threats, and identification of discharged Ees as U organizers)

Baker Manufacturing Company v. N.L.R.B. **759 F.2d 1219 (C.A. 5, May 1985)**

(discharge of Ee immediately upon his return to work after three-day suspension for coming to work late and intoxicated, violative where suspension was appropriate discipline for his actions, and E changed it to discharge only after learning of Ee's organizing activities)

8387-3200 Falsification of production or timecard

PYA/Monarch, Inc. **275 NLRB No. 167**

discharge of driver who was U adherent, not violative, since discharged would have taken place absent U activities as driver violated E's rules by not making scheduled delivery notwithstanding another Ee who was not disciplined failed to inform driver that customer was open and delivery should be made as it was still driver's responsibility to ascertain whether customer open; further, driver failed to clock out when he left his E's premises which was also contrary to E's rules)

Stewart-Warner Corporation/Thor Power Tool Company **JD-(ATL)-62-86**

[even if GC had established prima facie case of discrimination, discharge of active U adherent not unlawful, where E demonstrated legitimate permissible reasons for discharge by showing that Ee falsified work records in violation of E's rule, accurate labor reporting was critical to E's operation, and there had never been incident where Ee falsified company document w/ o being terminated; and GC's asserted instances of disparate treatment of Ees either had not occurred or differed from Ee's situation]

8387-3250 Not real reason

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**

[discharging driver, violation, where, notwithstanding he falsified trip card, he would not have been discharged but for his numerous successful grievances costly to E]

8387-3500 Falsification or alteration of employer's records

Arlington Hotel Company, Inc. **278 NLRB No. 007**

[discharging U activist for undercharging customer by falsifying meal ticket, not violation, since, even if U activities were a motive, E met its *Wright Line* burden where Ee failed to clarify any question about E's discontinuation of *freebies*, and supervisor making discharge decision lacked personal U animus, was not treating Ee disparately, as he was new on job, and was ignorant of Ee's identity when he started investigating matter]

8387-3500—Cont.

Electrical Workers, Local Union No. 596 (Lylloth G. Woodall, an Individual) 274 NLRB No. 196
(permanently laying off U adherent not violative, where she would have been laid off even in absence of her protected activities, which included filing of ULP charges, in view of Ee writing check for vacation pay in gross amount w/o deductions and not including vacation pay in W-2 form which placed E in noncompliance with regulations of taxing and regulatory agents)

8387-3600 Making embarrassing or harmful statements about employer

Turner Beverage Company, Inc. 279 NLRB No. 024
[discharge of two Ees, husband and wife, assertedly because husband was U supporter and because both Ees engaged in concerted activity of making anonymous calls to E's franchisor which put E in jeopardy of losing its franchise, not violative, since E's real reason was not Ees' U activity but was their perceived role in making anonymous calls, activity that was unprotected, where calls were simply act of retaliation, having nothing to do with working conditions but related to Ees' general discontent with management and attempt to direct philosophy of E]

Larry Chapman, A Sole Proprietor, d/b/a Farm Boy Food Mart 278 NLRB No. 058
[reducing Ee's hours, not violation where reduction implemented prior to onset of union activities and was due to Ee's derogatory remarks about E]

8387-3650 Not real reason

Raynor Motel Corporation d/b/a Holiday Inn East 281 NLRB No. 092
[discharge of U activist for alleged derogatory remarks about E and management to, or in presence of, customers, unlawful]

8387-3700 Falsification of employment application

8387-3750 Not real reason

Pilled of Mississippi, Inc. 275 NLRB No. 117
(discharge of Ee, assertedly because she attempted to distribute U literature on work time, disrupted company meetings and falsified employment application violative, since real reason was her U activity where E enforced no-distribution rule in discriminatory manner, Ee was engaged in protected activity of supporting U at company meetings and E seized on false employment data as mere pretext to discharge as E did not act on information until after Ee defended U)

8387-3800 Going into other departments

8387-3850 Not real reason

J & B Smith Company, Inc. 280 NLRB No. 057
[discharging only Ee who passed out U cards allegedly for *wandering around the building*, violation where Ee made routine ten-minute trip to bathroom]

8387-4000 Hostility or bad attitude toward employer

Larry Chapman, A Sole Proprietor, d/b/a Farm Boy Food Mart 278 NLRB No. 058
[reducing Ee's hours, not violation where reduction implemented prior to onset of union activities and was due to Ee's derogatory remarks about E]

Bell Halter, Inc. 276 NLRB No. 136
(faulting Ee in evaluation for his *attitude* or belief that E *owes him more* either in terms of wages or improved working conditions is, in absence of other explanation, synonymous with faulting Ee for his U support)

Hoboken Shipyards, Inc. 275 NLRB No. 212
(E's refusal to hire minority Ee formerly employed by prior owner, not violative where refusal was not due to Ee's filing EEO suit against former E but because Ee was hostile, difficult to supervise, and used vulgar language to supervisors because of drinking or drugs or for other reasons)

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[discharging Ee who directed stream of invective, profanity and abuse at E, lawful, notwithstanding E's prior unlawful threats and suspension for publicizing E's alleged ULPs and labor relations in newspaper article]

Safety-Kleen Corp. JD-117-85
(discharge of U activist lawful where Ee had ongoing personality clash with E, constantly talked U with other Ees on work time causing them to complain to E, tried to provoke E, and was suspended for insubordination)

8387-4050 Not real reason

Marion Steel Company, Inc. 278 NLRB No. 127
[discharging known in-plant leader of U drive for his *bad attitude* in verbally assaulting supervisor and management by asking supervisor if he wanted to sign U card and making vulgar comment about supervisor's going back to work if U came in, violation, since *bad attitude* was euphemism for pro-U activities in context of Ee's open pro-U activities in context of Ee's open pro-U activities, which had resulted in his being placed in isolated job under close supervision to prevent his discussing U with other Ees and being warned to stop his U activities]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[suspending Ee, violation where it was due to Ee's publicizing E's alleged ULPs and labor relations in newspaper article rather than his allegedly threatening and abusive manner toward E]

JMC Transport, Inc. v. N.L.R.B. 776 F.2d 612 (C.A. 6, Nov. 1985)
[where Ee's extremely hostile and abusive outbursts while engaged in protesting E's change in pay policy clearly could be seen as unprotected in context in which discharge is based on specific allegedly unprotected conduct, ct held E's failure to fire Ee for his abusive conduct defeated E's contention that Ee's conduct was unprotected; in context in which E had not found conduct so disruptive as to justify discharge at the time, ct declined to impose post hoc classification of unprotected conduct]

8387-4400 Improper attire or appearance at work

8387-4450 Not real reason

La Reina, Inc. 279 NLRB No. 103
[strictly enforcing clothing rule and issuing written reprimand and one-day suspension for failure to comply on day after election, violation where rule had formerly been leniently enforced]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)
[discharge of key figure in U discussions, unlawful]

8387-4500 Inefficiency

Maple Tree, Inc. 281 NLRB No. 097
[discharge allegedly for low production, unlawful]

8387-4600 Malingering

8387-4650 Not real reason

Industrial Agrico Processing, Inc. 274 NLRB No. 102
(discharge of U adherent because he loitered in controller's office, violative, since credible testimony and in context of numerous ULPs show that E failed to demonstrate that it would have discharged Ee even in absence of Ee's U activity)

8387-4700 Violating specific instructions concerning work

La Reina, Inc. 275 NLRB No. 139
(violation, where Ee at tortilla maker, after testifying contrary to E's interests in Bd proceeding, was supervised more closely, warned about speaking with co-workers, reprimanded for picking dough off floor for reprocessing and quit when ordered to sign warning slip under threat of discharge, where picking up dough which had fallen on floor customary, and E's contention it reprimanded Ee because it believed she had deliberately placed rag in dough to cause E possible liability, rejected)

PYA/Monarch, Inc. 275 NLRB No. 167
discharge of driver who was U adherent, not violative, since discharged would have taken place absent U activities as driver violated E's rules by not making scheduled delivery notwithstanding another Ee who was not disciplined failed to inform driver that customer was open and delivery should be made as it was still driver's responsibility to ascertain whether customer open; further, driver failed to clock out when he left his E's premises which was also contrary to E's rules)

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company JD-83-86
[discharge of Ee not unlawful notwithstanding E's animus against U and against Ee whom E desired to be rid of because he had subjected E to unionization attempt, where Ee was not available, as required, for making delivery trip requiring strict time schedules under customer contract; E e knew he was to remain on-call status for whenever delivery loads became available; Ee had reacted unfavorably upon receipt of prior reprimand for unavailability; and conduct revealed Ee's total lack of concern about his job or E's contract responsibilities]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[warning waiter for bringing unordered food to table and asking guests to take it and for letting his busboy serve, lawful]

8387-4750 Not real reason

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[issuing written warning to waiter, who publicized E's alleged ULPs and labor relations in newspaper article for failure to check out with E after cleaning up and setting table for next meal, violation where offense was trivial]

8387-4800 Insubordination

The Lewis Grocer Company 282 NLRB No. 019
[disciplining Ee for insubordination, not unlawful where E demonstrated it would have disciplined Ee even in absence of protected conduct on his part]

8387-4800—Cont.

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[discharge of U adherent for alleged insubordination when she failed to report to work as requested as soon as possible after doctor's appointment, or let E know when after appointment she locked her car keys in car, not unlawful, since E sustained burden of proving discharge would have taken place even absent Ee's U adherence]

Evans St. Clair, Inc. **278 NLRB No. 065**
[discharging U leader for insubordination and threat of physical violence, not violation where threat was perceived as such by supervisor, relied on as discharge grounds, and was made w/o *culpable provocation* by supervisor, who had no obligation to withdraw from conversation with Ee about U meeting, and whose calling Ee *boy* was not so extreme as to excuse Ee's conduct]

Electronic Data Systems International Corporation **278 NLRB No. 014**
[suspension and discharge of Ee who was major solicitor of U authorization cards, not unlawful, since for insubordination rather than for refusal to meet with supervisor w/o witness inasmuch as refusal was not protected under *Weingarten* where meeting was intended for purpose of informing Ee of disciplinary decision already made, and Ee had no reason to believe otherwise, there was no certified or recognized U, and discharge was not in retaliation for U activity where U activity not mentioned in relation to warning to be given at meeting or in connection with previous warnings]

Superior Container, Inc. **276 NLRB No. 056**
(discharge of Ee, assertedly because he did not want to work overtime, not unlawful, where discharge was not because of enforcement of unlawful mandatory overtime rule but because Ee challenged E's authority when he punched out even though admonished in nonthreatening or noncoercive way about doing so; it was not until he had already defied E's authority that he asked whether he should return to work the next day; and such events represented effort by Ee to virtually dare E to discipline him)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(suspension of Ee at end of meeting with E who had called Ee into his office for purpose of delivering disciplinary writeup concerning her poor attendance, not unlawful, where suspension was in response to Ee's insubordinate conduct during meeting, which led to E's exasperated decision to suspend Ee pending consultation with higher authority on what next step to take)

The Meadows East Inc. **275 NLRB No. 181**
(no violation by suspending and discharging U activists for misconduct where, following their transfer from night to day shift for misconduct, they attempted to return to work on night shift and while trying to resolve matter with management over the telephone, they turned on loudspeaker attached to telephone and broadcast conversation to other Ees as they wanted everyone to know what was going on)

The Mead Corporation-Publishing Paper Division-Escanaba **275 NLRB No. 052**
(3-day suspension of U steward for insubordination in refusing to comply with E's *forceover* order to continue working additional shift in order to make emergency repairs on machine, lawful, since, contrary to ALJ, Bd found his refusal to work overtime was unprotected insubordination legitimately subject to discipline; further, there was no proof of anti-U discrimination and E had legitimate need to force Ees to perform emergency repair work)

Arizona Public Company **273 NLRB No. 210**
(unauthorized work stoppage or sympathy strike)

The Limited, Inc. **JD-315-85**
(discharge for insubordination, lawful where Ee refused to fill out questionnaire as required by E)

Safety-Kleen Corp. **JD-117-85**
(discharge, not unlawful)

Safety-Kleen Corp. **JD-117-85**
(suspension of U activist lawful where he acted insolently when asked about making *cold calls* to solicit new customers)

Alert Steel Products Company **JD-39-85**

8387-4850 Not real reason

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[although ALJ found E's proferred reason for discharge of Ee, i.e., insubordination, was wholly pretextual and real reason for discharge was Ee's U support, Bd still applies *Wright Line* analysis in all cases alleging violations of 8(a)(3) and (1); however, because finding of pretext necessarily means that E's reasons did not exist or were not relied on, inference of wrongful motive is left intact and discharge is unlawful]

Baddour, Inc. **281 NLRB No. 084**
[discharging Ee for alleged insubordination in remarking, when asked to work overtime, *Fuck it. I am leaving.* violation, where other Ees who used similar language in conversing with supervisors and were insubordinate merely received warnings]

Products Unlimited Corp. **280 NLRB No. 041**
[discharge of U adherent, unlawful, since for her U activities rather than for initial refusal to turn off her radio when requested to do so by her supervisor, where E at first suspended Ee, then subsequently contrary to usual policy, discharged her with no investigation, Ees had previously been permitted to play radios if volume did not disturb other Ees and other Ees had radios on at time U adherent was requested to turn hers off]

Grand Rapids Die Casting Corp. **279 NLRB No. 093**
[suspension and discharge of U steward, assertedly because of insubordination by refusing an order to return to work, violative, since real reason was her activity of grievance processing and threatening to file charges with Bd where Ee was threatened with discharge if she filed charges after Ee threatened to when E told her she was spending too much time on grievances, and E's manager continuously brought up fact Ee said she might file charges on day Ee was discharged]

Fiber Glass Systems, Inc. **278 NLRB No. 134**
[discharging U adherent, violation notwithstanding his insubordination and falsification of employment application, since Ee was good worker, falsification had nothing to do with his discharge, and E had previously violated 8(a)(1)]

Joseph A. Perry d/b/a Holiday Inn-Glendale **277 NLRB No. 145**
(mass discharge of Ees, assertedly because of insubordination and because E received a bad hotel inspection, violative, since real reason was Ees' U activity where Ees were discharged w/i 2 days of E's knowledge thereof, E gave shifting reasons, threatened Ees with reprisals for U activity and unlawfully interrogated Ees)

Garland Coal & Mining Co. **276 NLRB No. 102**
(discharge of chairman of grievance and safety committees for insubordination for refusing to sign E's memorandum threatening discharge if committees' members interfered in any activity outside their own unit, unlawful, where chairman's conduct did not remove him from protection of Act, since his refusal to sign did not impede or disrupt productivity in any way; refusal took place in private and not in front of other Ees; authority of supervisors involved was not publicly undermined; and there was no claim official's conduct exceeded acceptable bounds of conduct)

Pottsville Bleaching and Dyeing Company **275 NLRB No. 175**
(discharging U activist for allegedly insubordinate reaction to being disciplined for talking on job, violative, since only U activist of three Ees involved was disciplined, and his reaction thereto, although not submissive, was not insubordinate)

E.I. Dupont De Nemours and Company **JD-11-86**
[refusal to hire applicant after layoff, assertedly because she was insubordinate at prior job with same E, violative, since real reason was Ee's persistent U activities and repeated filing of charges with the Bd at prior job where Ee's asserted act of insubordination in protesting overtime and refusing to train Ees was protected activity done in furtherance of her U duties, Ee had 19 years of high quality service with E, and E, in overlooking Ee for hire, hired Ees with little or no experience]

Onan Corporation, A Division of Onan Corporation **JD-(ATL)-11-85**
(suspension and discharge of Ee for refusing to comply with E's demand that he remove T-shirt with U insignia and other U paraphenalia from his work place, violative, since Ee's action was not insubordinate or proper basis for discipline in view of discrimination inherent in E's demand)

N.L.R.B. v. Del Rey Tortilleria, Inc. **787 F.2d 1118 (C.A. 7, Apr. 1986)**
[discharge of Ee who was active U supporter and member of U's organizing committee, assertedly for insubordination for not complying with E's request to meet with E after end of Ee's shift, unlawful, where Ee told E she could not wait to meet with E who usually arrived 2 to 2-1/2 hours after Ee's shift ended; and during subsequent conversation with E, Ee was told that dismissal was because of U]

N.L.R.B. v. Bliss and Laughlin Steel Company, Inc. **754 F.2d 229 (C.A. 7, Feb. 1985)**
(discharge of Ee, assertedly because he refused to review and sign contract on behalf of E and thus was insubordinate, violative, since real reason was his U activity and testimony adverse to E at Bd hearing where E was trying to *set up* Ee by having him sign contract in an attempt to prove he was a supervisor and pretextual nature of E's action was shown by fact that after Ee refused to sign contract, E did not attempt to have any other company official act upon it)

8387-4900 Emotional outburst

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**
[discharging Ee who directed stream of invective, profanity and abuse at E, lawful, notwithstanding E's prior unlawful threats and suspension for publicizing E's alleged ULPs and labor relations in newspaper article]

8387-5000 Interference with other employees

8387-5000—Cont.

Able Bus, Inc. 279 NLRB No. 076
[discharge of bus driver after ordering his replacement off bus, not unlawful, since not motivated by his campaigning for office of U steward on platform adverse to E, where election took place over 3 months prior to discharge, he was defeated by wide margin, and had in intervening period violated safety rule in regard to his bus for which his suspension was to start next day]

8387-5050 Not real reason

E/M Corporation 281 NLRB No. 104
discharge of principal leader in organizing Ees, assertedly for interrupting Ees at work, unlawful, where E had knowledge of Ee's U activities; E admitted to Ee that U was reason for discharge; E's asserted reason for discharge was contrary to and refuted by evidence; and E's U animus was established by other unlawful conduct, including threatening another Ee with discharge if Ees selected U]

Mala Construction Company 276 NLRB No. 171
(discharge of U advocate for interfering with other Ee's work, violative where E did not previously discipline him as it justifiably could have done as result of his known work habits but, rather, tolerated him as Ee until he talked U on job)

8387-5300 Leaving early

8387-5350 Not real reason

Stop N' Go Inc. 279 NLRB No. 052
[discharging part-time after-hours Ee allegedly because he changed his full-time job's schedule so as to be unavailable and his wife for leaving job sick w/o store manager's permission, violation where husband was known, and wife believed, to have signed U card, husband was not unavailable, and wife had secured supervisor's permission to leave as store manager had directed]

Southwire Company 277 NLRB No. 043

8387-5400 Failure to adhere to meal or break schedule

8387-5450 Not real reason

St. Paul's Church Home, Inc. 275 NLRB No. 170
(E unlawfully changed known U supporter's hours and also disciplined and suspended her for overextending her break period, where Ee had unblemished disciplinary record, nothing was previously said or done if she was late or absent prior to her U activity, changes and discipline occurred shortly after inception of U organizing activity; warning was given to Ee after E received U's demand for recognition, and E failed to establish that it would have taken some actions in absence of Ee's U activity)

Genwal Coal Co., Inc. 275 NLRB No. 077
(E's refusal to recall discriminatees, allegedly for overstaying lunch break and selling E's coal to others, during period it had hired several new Ees, violative where E had not rebutted GC's *prima facie* case by showing that newly hired Ees were more able or versatile to perform experienced Ees' mining duties and E's admission that he would not recall them because of their U activities)

8387-5500 Loafing or laziness

8387-5550 Not real reason

Penn Jersey Paper Co. 273 NLRB No. 064
(discharge of Ee allegedly because of laziness on job and poor economic conditions, unlawful, where Ee was terminated because of U activity and fellow Ee's efforts to obtain U membership for both of them, in view of E's failure to give Ee written warning for performing his job in indolent manner, 2-week delay in implementing decision to terminate Ee, voluntary payment of 2 weeks' severance pay to Ee, improved business conditions at time of discharge, and use of another individual to perform Ee's duties after his termination)

8387-5800 Loss or theft of employer's property

Sahara Datsun, Inc. 278 NLRB No. 148
[discharge of U activist for attempting to steal from E and to sell drugs to fellow Ees, not violation]

Arlington Hotel Company, Inc. 278 NLRB No. 007
[discharging U activist for undercharging customer by falsifying meal ticket, not violation, since, even if U activities were a motive, E met its *Wright Line* burden where Ee failed to clarify any question about E's discontinuation of *freebies*, and supervisor making discharge decision lacked personal U animus, was not treating Ee disparately, as he was new on job, and was ignorant of Ee's identity when he started investigating matter]

Apple Glass Company JD-99-86
[discharge for third theft of E's property, lawful]

Weis Volkswagon Inc. JD-(NY)-68-85
(discharge of U adherent, assertedly because Ee had been observed stealing company property not violative, not withstanding that Ee claimed he was merely borrowing radio in wrecked company car to use in his own car to see if radio would function in Ee's car; evidence from observer's perspective looked as if Ee was purlining company property since Ee did not seek permission to take radio)

8387-5850 Not real reason

McLane/Western, Inc. 276 NLRB No. 063
(on ct remand, Bd held E had not shown it maintained rule requiring discharge of Ee for eating some demonstrably unsalvable goods and had not established *Wright Line* defense to alleged unlawful discharge for U activity, where past instances of stealing resulting in terminations did not involve taking of demonstrably unsalvable goods; Ee ate broken cracker from case in such condition goods were customarily thrown out; E's manager saw and had full opportunity to inspect damaged case; and management's reaction to incident belies its claim it had hard-and-fast rule unequivocally requiring Ee's discharge)

Genwal Coal Co., Inc. 275 NLRB No. 077
(E's refusal to recall discriminatees, allegedly for overstaying lunch break and selling E's coal to others, during period it had hired several new Ees, violative where E had not rebutted GC's *prima facie* case by showing that newly hired Ees were more able or versatile to perform experienced Ees' mining duties and E's admission that he would not recall them because of their U activities)

Morning Star International, Inc. JD-209-86
[layoff of leading U proponents assertedly because of costly production error and suspected stealing, unlawful, in view of inherent improbabilities of production error defense, non-existence of theft defense, failure to include alleged defenses in decisional layoff process, and shifting nature of asserted defenses]

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods JD-(SF)-101-86
[discharge of cashiers at E's store, who were known or believed to be leaders in Ees' organizing efforts, assertedly because they were responsible for cash shortages at work, unlawful; absent direct evidence that Ees personally took funds, surrounding circumstances including E's anti-U animus, made inference appropriate that E's motivating factor was desire to eliminate U adherents]

Wells Fargo Armored Service Corp. JD-(SF)-19-86
[suspending Ee two business days after E received U request that Ees at location in question be considered accretion to existing unit and notice that Ee was U steward and U executive committee member, violation where E's contention that Ee misappropriated and copied three confidential company documents was unsupported by evidence; second suspension, immediately afterwards, for failure to comply with E's no-beard policy, violation where E had let Ee work for three months w/o complying]

8387-6000 Neglect of work

Arlington Hotel Company, Inc. 278 NLRB No. 007
[three-day suspension of U activist for failing to complete assigned duties, not violation, where it was pursuant to E's threat to discipline Ee on receipt of fifth warning]

PYA/Monarch, Inc. 275 NLRB No. 167
discharge of driver who was U adherent, not violative, since discharged would have taken place absent U activities as driver violated E's rules by not making scheduled delivery notwithstanding another Ee who was not disciplined failed to inform driver that customer was open and delivery should be made as it was still driver's responsibility to ascertain whether customer open; further, driver failed to clock out when he left his E's premises which was also contrary to E's rules)

8387-6050 Not real reason

Garrison Valley Center, Inc. 277 NLRB No. 164
(discharge of Ee who was most active Ee on behalf of U during U's organizing campaign allegedly because Ee left patient at E's nursing home unattended while performing other work, violative, since E failed to meet burden of establishing that E would have discharged Ee even in absence of her U activities. Record evidence demonstrated that E had tolerated brief absences for work-related reasons and would discharge an Ee *only* when serious injury or death resulted from Ee's conduct)

8387-6300 Negligence

Ro-Lab Rubber Co., Inc. 279 NLRB No. 057
[E proved it would have discharged Ee for multiple incidents of negligence and unexcused absence even if there had been neither U activities by Ees nor unlawful retaliatory general increase in discipline by E]

St. Paul's Church Home, Inc. 275 NLRB No. 170
(discharge of known U supporter assertedly because of tardiness and absenteeism, including gross patient neglect at E's nursing home, unlawful, where E had given Ee glowing evaluation at which time E must have been aware of any absenteeism or tardiness problem Ee may have had; E exhibited shifting defenses to discharge; and E departed from its own third-warning policy when effecting discharge, thereby demonstrating that defenses were pretextual)

8387-6300—Cont.

Kenner Printing Company, Inc. **JD-(NY)-32-85**
(suspension of known U activist, not violative notwithstanding his longtime employment with E w/o any warnings about his work, since Ee's negligence caused customer complaints resulting in E's redoing their orders and having its reputation diminished)

Mobile Concrete, Inc. **JD-453-84**
(discharge of U adherent, assertedly for his U activity, not violative where he was discharged for his negligence in causing accident which he failed to report to management)

8387-6350 Not real reason

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**

8387-6500 Use of obscenity or profanity or engaging in other indecent conduct

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(E's discharge of U activist, based on good faith belief that he had engaged in unprotected act of defacing E's facility with obscene graffiti, not violative)

Hoboken Shipyards, Inc. **275 NLRB No. 212**
(E's refusal to hire minority Ee formerly employed by prior owner, not violative where refusal was not due to Ee's filing EEO suit against former E but because Ee was hostile, difficult to supervise, and used vulgar language to supervisors because of drinking or drugs or for other reasons)

Sus-Glo Realty Corp. d/b/a Granit Hotel and Country Club **JD-(NY)-10-86**
[discharging Ee who directed stream of invective, profanity and abuse at E, lawful, notwithstanding E's prior unlawful threats and suspension for publicizing E's alleged ULPs and labor relations in newspaper article]

Stuart-McGuire Company Inc. **JD-339-85**
(discharge of U supporter for putting graffiti on bathroom walls, not unlawful, where Ee had engaged in prior misconduct for which she was warned)

8387-6550 Not real reason

Baddour, Inc. **281 NLRB No. 084**
[discharging Ee for alleged insubordination in remarking, when asked to work overtime, *Fuck it. I am leaving,* violation, where other Ees who used similar language in conversing with supervisors and were insubordinate merely received warnings]

The Acme-Arsena Co., Inc. **276 NLRB No. 144**
(profane and foul language or what is normally considered discourteous conduct while engaged in protected activity does not justify disciplining Ee acting in representative capacity)

The Acme-Arsena Co., Inc. **276 NLRB No. 144**
(U steward's use of profane or obscene language while engaged in protected activity of complaining to E about work jurisdiction and safety matters did not amount to egregious conduct exceeding bounds of protected activity, where there was no evidence that steward engaged in unlawful and violent conduct in breach of conrtract, or in conduct demonstrating lack of loyalty to E)

David Clements Co., Inc. **JD-388-85**
[discharge of Ee for use of profanity when he was asked to sign notice of his suspension and for refusal to sign notice, unlawful, where suspension was pursuant to unlawfully instituted progressive discipline rule in response to U activity, since *E cannot lawfully discharge of Ee for mere use of profanity which was provoked by E's unlawful discrimination against him and absent evidence profanity was so gross as to remove Ee from protection of Act*]

Murray Sandblast and Paint, Inc. **JD-276-85**
(discharge of U adherent because he complained to his fellow Ees about having his (time) card pulled for clocking in one minute late and during this incident calling management a perjorative term, violative, since Ee's initial complaint was (protected) concerted activity w/i meaning of Act. Using obscenity did not deprive Ee of right to relief)

New Galax Mirror Corporation **JD-475-84**
(warning leading U adherent and subsequently discharging him, assertedly for abusive statements made to another Ee in violation of company rules, violative, since real reason was Ee's U activity where warning was simply a pretext to coverup E's hostility towards a known U supporter and other Ees were not similarly disciplined for similar or worse conduct)

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) **793 F.2d 1062 (C.A. 9, July 1986)**
[discharge of salesmen, unlawful, since motivated by his U organizing activities and not because of his swearing at another Ee, where E did not ask Ee for his version of incident; E's attempt to justify discharge with background evidence of customer complaints of excessive agressiveness against salesman, rejected, where he had been successful salesman and had never been disciplined prior to discharge, nor had any salesman who had been successful been disciplined for agressiveness]

8387-6700 Refusal to accept job assignment or promotion

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) **JD-(NY)-97-86**
[no unlawful discharge and refusal to reinstate Ee and conditioning of his reinstatement upon U's consent because of Ee's concerted activities where E terminated him for refusing to accept his assigned load, his sole pre-discharge activity was filing of EEOC charge, of which E was unaware, and his sole involvement with U dissident group was to ask for their help after discharge]

8387-6750 Not real reason

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home **275 NLRB No. 171**
(discharge of Ee, assertedly because she refused promotion to supervisor and thus had to be let go, violative, since real reason was Ee's U activity, where E was engaged in scheme to coerce Ees into accepting supervisory positions in an effort to preclude pro-U Ees from voting; further, E's failure to rehire Ee some 9 months later because she was associated with the *turmoil* at E's premises, violative, since *turmoil* meant Ee's support of U)

Jefferson Electric Company, A Division of Litton Systems, Inc. **274 NLRB No. 104**
(discharge of Ee, assertedly because of her refusal to work with cleaning fluid, violative, since real reason was her U activities where Ee had previously been excused from working with cleaning fluid because of her sensitivity to the fumes with no mention of disciplinary action, other Ees were allowed to transfer out of department where cleaning fluid was located because of allergic reactions w/o mention of discipline, and Ee was discharged subsequent to her U activities and w/i days after certification of election results, which U lost)

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[discharge of U activist, violation, notwithstanding claim of his poor performance and desire to do only one kind of work that would not justify full time employment, where evidence showed he performed other work, received no complaints or warnings about any aspect of his work, and was given pay raise and bonus three weeks before discharge]

Ballou Brick Company v. N.L.R.B. **798 F.2d 339 (C.A. 8, July 1986)**
[U adherent did not refuse to perform the work but rather said he did not want to do it; layoff therefore because of U activities and violation]

8387-6800 Refusal to work overtime

Superior Container, Inc. **276 NLRB No. 056**
(discharge of Ee, assertedly because he did not want to work overtime, not unlawful, where discharge was not because of enforcement of unlawful mandatory overtime rule but because Ee challenged E's authority when he punched out even though admonished in nonthreatening or noncoercive way about doing so; it was not until he had already defied E's authority that he asked whether he should return to work the next day; and such events represented effort by Ee to virtually dare E to discipline him)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(discharge of painter at apartment building, who was U adherent and filed charges, for failure to work, on usual day off in order to accomplish urgently needed painting, not violative, since discharge would have taken place absent protected activity, inasmuch as work on that day necessary and in view of previous poor quality and slowness of Ee's work)

8387-6850 Not real reason

Book Covers, Inc. **276 NLRB No. 170**
(discharge of Ee for refusing to work overtime as required by contract, violative, as practice was to excuse Ees from working assigned overtime if supervisor presented with reasonable excuse, and excuse which Ee gave, and which lay behind motivation to fire Ee, was that Ee was going to labor board to file charges against E; furthermore, no Ee ever disciplined beyond receiving oral warring before)

Hoboken Shipyards, Inc. **275 NLRB No. 212**
(refusal to hire active shop steward, who had filed several grievances while employed by prior owner, allegedly for refusing to work day shift and refusing overtime work, violative where other Ees who had made such refusals were hired)

8387-6900 Poor attitude at work

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(failure to hire U adherent allegedly because she was below average Ee who was argumentative and disruptive; had poor attitude and was unable to get along with her fellow Ees, not violative, since none of reasons were based on Ee's U activity)

8387-6900—Cont.

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company **JD-83-86**

[discharge of Ee not unlawful notwithstanding E's animus against U and against Ee whom E desired to be rid of because he had subjected E to unionization attempt, where Ee was not available, as required, for making delivery trip requiring strict time schedules under customer contract; E e knew he was to remain on-call satus for whenever delivery loads became available; Ee had reacted unfavorably upon receipt of prior reprimand for unavailability; and conduct revealed Ee's total lack of concern about his job or E's contract responsibilities]

8387-6950 Not real reason

Distron, A Division of Burger King Corporation **279 NLRB No. 029**

[suspension and discharge of Ee-driver, assertedly for failure to make deliveries to customer who complained to E, and for Ee's attitude and intrusive behavior at customer's location, unlawful, where E was known outstanding U advocate and leader of Ees; asserted misconduct by Ee consisted of single day's conduct over 8-year exemplary work history; E was partly responsible for Ee's reaction at customer's location because of faulty loading and failure to support Ee at the time; and past discharges for misconduct required history of poor attitude or conduct of aggravated nature]

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**

(failure to recall laid off Ee assertedly because of his bad attitude regarding his work and decrease in his production, unlawful, where Ee was perceived to be prime instigator of U's organizing campaign; personnel file document purportedly memorializing Ee's poor job performance was of after-the-fact origin manufactured to support E's claim that Ee was undesirable Ee; and E's rebuttal to prima facie case was entirely unconvincing)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**

[discharge of known U adherent employed as waitress, assertedly for her attitude when she broke dish while waiting on tables, unlawful, where E's attitude of amusement resulted from interchange with patrons in connection with breakage incident, she was never advised that breakage was cause of discharge, such breakage was common occurrence for which no one was disciplined, and E pledged to rehire Ee after she made negative statements about U and informed E who U organizer were]

Salem Leasing Corporation v. N.L.R.B. **774 F.2d 85 (C.A. 4, Oct. 1985)**

[ct affirmed Bd finding of violation where Ee was discharged allegedly for his *bad attitude*, poor work, and open criticism of E since record demonstrated Ee had good work record, successfully completed his required probationary period, was assigned additional responsibilities on such completion, and no disciplinary action against Ee was contemplated until after he made favorable comments about his former unionized E's working conditions and wages. E failed to shoulder burden of demonstrating Ee would have been fired regardless of his pro-U comments]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**

[discharge of key figure in U discussions, unlawful]

8387-7000 Profanity or abusive language used against supervisor

8387-7050 Not real reason

Duroyd Manufacturing, Inc. **276 NLRB No. 025**

(discharge of Ee, unlawful, since for his U activities, rather than for profanity against E's president and insubordination in view of E's U animus and its other violations, and fact prior use of profanity by Ee against E's president, use of profanity by other Ees had been previously tolerated and harassment of Ee by president)

Luther Martin and Minnie Martin, Co-Partners, d/b/a Martin's Leasing Company **JD-83-86**

[suspension of Ee assertedly for using profanity against supervisor, unlawful, where suspension occurred shortly after election which U lost, E had clearly made it known that Ee was undesirable because he had attempted to foist U on E's company, and mild profanity used by Ee was commonplace among Ees and used by supervisor]

Benson Associates **JD-101-85**

(supervisor's discharge of Ee perceived by supervisor to be in front of U organizing campaign, assertedly for Ee's use of curse words directed at supervisor, unlawful, where cursing by both Ees and supervisor was part of shop talk and had never been prohibited, supervisor considered U organizational attempt to be threat to his personal authority and reflection on job he was doing, and a ready object of his displeasure was Ee herein)

N.L.R.B. v. Vought Corporation - MLRS Systems Division **788 F.2d 1378 (C.A. 8, Apr. 1986)**

[discharge of Ee who was chairman of inplant U organizing committee, handed out U literature and authorization cards, and wore U insignia, unlawful, since discharge for protected activity rather than for abusive profane language towards supervisor when given written warning, since Ee's conduct not so indefensible as to forfeit protection of Act and was justifiably provoked by E's repeated violatic .s of his rights]

8387-7100 Harassing, threatening, etc. of supervisors

Fiber Glass Systems, Inc. **278 NLRB No. 154**

[terminating U adherent for physically pushing two supervisors and threatening them with a fight at annual company picnic, not violation]

Evans St. Clair, Inc. **278 NLRB No. 065**

[discharging U leader for insubordination and threat of physical violence, not violation where threat was perceived as such by supervisor, relied on as discharge grounds, and was made w/o *culpable provocation* by supervisor, who had no obligation to withdraw from conversation with Ee about U meeting, and whose calling Ee *boy* was not so extreme as to excuse Ee's conduct]

8387-7150 Not real reason

Olympic Limousine Service, Inc. **278 NLRB No. 133**

[Ee is entitled to reinstatement, notwithstanding he pled guilty to assault against supervisor at plant after he was unlawfully discharged, where assault was not pre-planned, action was provoked by supervisor screaming profanities at him and E had allowed other non-Ees to enter premises w/o questioning them and thus, conduct was not so egregious so as to deny him reinstatement]

Marion Steel Company, Inc. **278 NLRB No. 127**

[discharging known in-plant leader of U drive for his *bad attitude* in verbally assaulting supervisor and management by asking supervisor if he wanted to sign U card and making vulgar comment about supervisor's going back to work if U came in, violation, since *bad attitude* was euphemism for pro-U activities in context of Ee's open pro-U activities in context of Ee's open pro-U activities, which had resulted in his being placed in isolated job under close supervision to prevent his discussing U with other Ees and being warned to stop his U activities]

8387-7200 Refusal to take polygraph test

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**

(discharge of Ees at store acquired by E from former owner in whose employ Ees had filed grievances and had refused to take polygraph tests concerning mishandling of E's funds, not unlawful where, although E must have considered Ees' refusals to take tests, E possessed substantial adverse information about Ees which alone justified discretionary business judgment not to retain them; and E's discharge decision was not motivated by anti-U animus or antipathy toward Ees' use of grievance procedure nor was it based on Ees' reliance on contract rights and procedures)

8387-7250 Not real reason

Taft Broadcasting Company, WBRC–TV **274 NLRB No. 038**

(suspension of U's business manager for questioning right of E to polygraph members of bargaining unit concerning problem of property destruction and questioning whether others including representatives of E might also have had access to property and motive for destroying it, violative)

8387-7400 Refusal to work assigned hours

8387-7450 Not real reason

Hoboken Shipyards, Inc. **275 NLRB No. 212**

(refusal to hire active shop steward, who had filed several grievances while employed by prior owner, allegedly for refusing to work day shift and refusing overtime work, violative where other Ees who had made such refusals were hired)

8387-7500 Sales record low

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**

Safety-Kleen Corp. **JD-117-85**

(written disciplinary notice to U activist for failure to meet quota lawful in absence of disparate treatment)

8387-7800 Sleeping on job

Mississippi Chemical Corporation **280 NLRB No. 046**

[even in absence of specific written rules prohibiting it, Ee's sleeping on job when he would normally be expected to be awake normally constitutes offense warranting discharge; and where act of sleeping is established GC has heavy burden, frequently not carried, in establishing that discharge was nevertheless pretextual or disparate; however, violation may nevertheless be found if discipline imposed for offense is disparately applied]

The Meadows East Inc. **275 NLRB No. 181**

(no violation by transferring Ees to day shift to provide closer supervision of their activities after investigation confirmed that they slept and played cards on night shift and otherwise contributed to shift's morale problems; E was not even aware of their U activities at that time)

8387-7850 Not real reason

Baddour, Inc. **281 NLRB No. 084**
[discharge of U activist for allegedly sleeping on the job, unlawful]

The Standard Products Company, Rocky Mount Division **281 NLRB No. 018**
[Ee's discharge for sleeping on job, unlawful, notwithstanding that Ee was marginal Ee briefly employed by E and was recipient of series of reprimands for tardiness, where E did not meet its *Wright Line* burden that it would have discharged Ee even absent his U activity, in view of supervisor's statement to Ee that he would not be fired if he would get back his U authorization card]

Mississippi Chemical Corporation **280 NLRB No. 046**
[discharge of Ee for sleeping on job, unlawful, in view of Ee's known involvement in U activity, E's animus toward U organization, timing of discharge shortly after advent of U, E's toleration of similar offense by other Ees, and failure to establish that E had discharged any other Ee with unblemished work record like Ee's, which could be understood only as response to Ee's U activity]

8387-8100 Use of narcotics and drugs

Quality Inn-Lax **280 NLRB No. 145**
discharge of U activist for breach of rule against use of drugs and alcohol by Ees while on duty, not violation where E had discharged Ees in past for breach of this rule and showed no U animus]

Sahara Datsun, Inc. **278 NLRB No. 148**
[discharge of U activist for attempting to steal from E and to sell drugs to fellow Ees, not violation]

8387-8150 Not real reason

Budget Rent A Car of Washington, Inc. **276 NLRB No. 032**

8387-8500 Troublemakers and agitators

Pullman Power Products Corporation **275 NLRB No. 112**
(layoff of Ees, who had been active in replacing U steward, for poor workmanship and because some of Ees were *troublemakers*, not unlawful, notwithstanding that layoff occurred after E's superintendent met with Ees, since each of critical aspects of meeting was susceptible to two different meanings, one lawful and other unlawful, and record taken as whole gave insufficient basis for Bd to choose unlawful meaning over lawful meaning)

8387-8550 Not real reason

United States Steel Corporation **279 NLRB No. 004**
[E's refusal to hire Ee laid off from one of its facilities to work at another of its facilities, unlawful, since for his activities as U grievance chairman where his supervisor's referance to grievance chairman as *troublemaker* when speaking to foreman at facility to which he had applied for transfer connotated his activity of filing grievances, and this characterization was relied upon in rejecting Ees request for transfer. Use of word alone, not violative, but must look at context in which used]

8387-9100 Possibility of litigation against employer

La Reina, Inc. **275 NLRB No. 209**
(violation, where Ee at tortilla maker, after testifying contrary to E's interests in Bd proceeding, was supervised more closely, warned about speaking with co-workers, reprimanded for picking dough off floor for reprocessing and quit when ordered to sign warning slip under threat of discharge, where picking up dough which had fallen on floor customary, and E's contention it reprimanded Ee because it believed she had deliberately placed rag in dough to cause E possible liability, rejected)

8387-9200 Unauthorized behavior on job

8387-9250 Not real reason

H. Treffinger Repair Services, Inc. **281 NLRB No. 085**
[discharge of known U adherents assertedly because of threat made to, or because of engaging in fight or horseplay with, anti-U Ee, unlawful, where latter was not disciplined for engaging in purported fight; E admitted having U animus, made no investigation but relied on anti-U Ee's version of what happened, and took shifting positions in explaining discharges; and E effected discharges over shop supervisor's protests]

Woodcliff Lake Hilton Inn, Inc. **279 NLRB No. 146**
[E's suspending U advocate for 1 day, assertedly for playing guitar on duty and being absent from work station violation where E had condoned guitar playing in past, Ee was absent from work station on legitimate business, and E had not followed its own progressive disciplinary system]

Port Plastics, Inc. **279 NLRB No. 050**
[discharge of Ee, assertedly for refusal to follow E's rule regarding telephone contact with E's suppliers, violative, since real reason was Ee's U activity where animus was shown by E's unilateral change in working conditions after U won election and E's refusal to meet with Ee as U steward, rule was not contained in E's Ee-handbook and E in fact had no blanket rule prohibiting Ee contacts with suppliers]

Park Manor Nursing Home, Inc. **277 NLRB No. 028**
(E's discharge of U activist, assertedly for failing to obtain supervisory permision before leaving building, violative where real reason for discharge was her cooperation in investigation of U's charge in Bd case, her membership on U's negotiating committee, and her informing Bd that E was responsible for revocation ptn)

Pillod of Mississippi, Inc. **275 NLRB No. 117**
(discharge of Ee, assertedly because she attempted to distribute U literature on work time, disrupted company meetings and falsified employment application violative, since real reason was her U activity where E enforced no-distribution rule in discriminatory manner, Ee was engaged in protected activity of supporting U at company meetings and E seized on false employment data as mere pretext to discharge as E did not act on information until after Ee defended U)

Riverview 5 P's, Inc., t/a Riverview Inn **JD-54-86**
[discharge of known U adherent, assertedly for entering and engaging in improper behavior in unauthorized area at E's facility, unlawful, where E told Ee he was being discharged for economic reasons, and then at hearing stipulated it did not discharge any Ees for economic reasons and asserted for first time that discharge was because of E's improper behavior]

Northline Bus Center, Inc. **JD-(ATL)-41-85**
(discharge of Ee driving passengers by bus from airport to downtown locations, assertedly for being off his assigned bus route, unlawful where, after E became aware of Ee's U activities it seized on off-route incident to discharge Ee because he was pro-U; change in routes was not unusual for E's bus drivers who would from time to time have to change their routes; and E, who had not reviewed Ee's work record until after discharge, itemized 10 specific work rule infractions by Ee and then relied on them as subterfuge in attempt to justify discharge)

8387-9300 Unsatisfactory work

Inner City Broadcasting Corporation **281 NLRB No. 162**
[discharge of radio news announcer allegedly because she refused to sign Ee ptn which sought ouster of U, not unlawful, where discharge was part of E's response to decline in audience ratings, and E's discharge was for failure to improve her on-the-air performance]

H. Treffinger Repair Services, Inc. **281 NLRB No. 085**
[discharge of Ee assertedly for repeated errors and poor workmanship, not unlawful, since E rebutted GC's prima facie case by showing that Ee would have been discharged even if he had not engaged in protected activity, where Ee's U activity was of limited nature consisting of signing U authorization card, Ee did not have good work record for which he received written warnings giving notice of possible suspension or dismissal for continued poor performance, and termination notice made reference to prior dismissal warning]

Heck's Inc. **280 NLRB No. 055**
[issuing written warnings to U organizer for breaches of company policy, lawful, notwithstanding they followed unlawful transfer of organizer to different job for filing charges with Bd, since occurrence of unlawful transfer did not grant organizer immunity from discipline for failing properly to perform new job]

Stop N' Go Inc. **279 NLRB No. 052**

Telford & Doolen, Inc. **277 NLRB No. 112**
(layoff of U steward and Ee and ultimate discharge of Ee, assertedly because they engaged in U activities and because they filed charges or gave testimony under Act, not unlawful, since E's motives were purely economic, coupled with dissatisfaction with Ee's job performance where, as result of its bad financial condition, E laid off its entire work force, recalling Ees only from time to time and ultimately closing department involved; and no replacements were ever hired for terminated Ees)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(discharge of probationary part-time Ee at store acquired by E from former owner, assertedly for limited availability for work and slow performance, not unlawful, where Ee's assertion of contractual rights to obtain additional hours from former E was no basis for imputing retaliatory motivation on E's actions some 3 months later, in view of absence of U animus or of wholesale termination of U members following change of ownership, removal of supervisor having fractious relationship with Ee from his evaluation, and other supervisors' unfavorable comments about Ee's performance)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(issuance of written reprimand admonishing Ee about her poor attitude and work habits, not unlawful, where warning was issued solely because of poor condition in which Ee left her work place when she left for the day and not because of unlawful retaliation for Ee's threat to seek U's assistance in her scehduling dispute with E)

Eagle Discount Supermarkets, Midwestern Food Division, Lucky Stores, Inc. **275 NLRB No. 204**
(discharge of probationary Ee who had insisted upon right to U representation at disciplinary meeting with E and who had filed grievances concerning

8387-9300—Cont.

her assignment dispute with E, not unlawful, since discharge was well-grounded in legitimate business interests where Ee had extreme-poor attendance record; Ee had repeated disagreements with work schedule because of restrictions on her availability, and she exhibited unacceptable work habits during short time she had been working for E)

Pullman Power Products Corporation **275 NLRB No. 112**
(layoff of Ees, who had been active in replacing U steward, for poor workmanship and because some of Ees were *troublemakers*, not unlawful, notwithstanding that layoff occurred after E's superintendent met with Ees, since each of critical aspects of meeting was susceptible to two different meanings, one lawful and other unlawful, and record taken as whole gave insufficient basis for Bd to choose unlawful meaning over lawful meaning)

Volt Information Sciences, Inc. **274 NLRB No. 047**
(discharging U adherents for frequent mistakes where their performances did not improve after warnings, not violative)

Kureka Stone Quarry, Inc. **JD-23-86**
[discharge of Ee and subsequent denial of reinstatement, assertedly because Ee sought assistance of U in getting insurance payment, not unlawful, where E and U repeatedly attempted to assist Ee; rather, Ee was terminated because of failure to perform assigned duties]

Safety-Kleen Corp. **JD-117-85**
(discharge of U activist lawful where Ee had failed to service two customers' machines causing E to lose business)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(discharge of painter at apartment building, who was U adherent and filed charges, for failure to work, on usual day off in order to accomplish urgently needed painting, not violative, since discharge would have taken place absent protected activity, inasmuch as work on that day necessary and in view of previous poor quality and slowness of Ee's work)

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[discharge of U activist, not violation where as probationary Ee he had continuing unsatisfactory work performance]

8387-9350 Not real reason

J & B Smith Company, Inc. **280 NLRB No. 057**
[transferring only Ee who was passing out U cards to most onerous job in plant, violation, notwithstanding allegations of poor performance]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[reinstatements shortly after discharges for alleged poor work contradicted alleged motivation]

Yaohan of California, Inc. **280 NLRB No. 032**
[discharge of Ee, assertedly for poor performance, unlawful, where during his tenure of employment Ee was given wage increase and increased hours and responsibilities, and had never received any written warnings]

Yaohan of California, Inc. **280 NLRB No. 032**
[discharge of Ee, assertedly for poor performance, unlawful, in view of E's U animus; discharge of Ee contrary to E's policy of first warning, rather than discharging, Ee, disparate treatement accorded Ee vis-a-vis treatment of another Ee; pretextual nature of reasons asserted for discharge which was summarily effected on day following Ee's attempted concealment of his U activities; and E's statement to fellow Ee linking Ee's discharge with U]

Distron, A Division of Burger King Corporation **279 NLRB No. 029**
[suspension and discharge of Ee-driver, assertedly for failure to make deliveries to customer who complained to E, and for Ee's attitude and intrusive behavior at customer's location, unlawful, where E was known outstanding U advocate and leader of Ees; asserted misconduct by Ee consisted of single day's conduct over 8-year exemplary work history; E was partly responsible for Ee's reaction at customer's location because of faulty loading and failure to support Ee at the time; and past discharges for misconduct required history of poor attitude or conduct of aggravated nature]

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(failure to recall laid off Ee assertedly for variety of reasons, unlawful, where E perceived Ee to be prime instigator of U's organizing activity prior to layoff; E recalled other Ees with less experience and seniority in Ee's line of work; and E's reliance on damage to equipment purportedly caused by Ee was of doubtful validity in view of E's lack of reaction to alleged incident which belied importance E now attached thereto)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(failure to recall laid off Ee assertedly because of his bad attitude regarding his work and decrease in his production, unlawful, where Ee was perceived to be prime instigator of U's organizing campaign; personnel file document purportedly memorializing Ee's poor job performance was of after-the-fact origin manufactured to support E's claim that Ee was undesirable Ee; and E's rebuttal to prima facie case was entirely unconvincing)

Grunco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(discharge of Ee after he had been placed on probation assertedly for poor productivity, unlawful, in view of E's knowledge of Ee's leading role in U organizing, extent and severity of E's other ULPs, conceded hostility to U, implausibility of E's reasons for discharge, and fact that E seized upon disagreement with Ee about his production as opportunity to immediately accomplish Ee's separation which E had first tried to do by coercing Ee into quitting by placing him on probation)

Donald Dean d/b/a D.C. Construction Company **276 NLRB No. 097**
(E unlawfully failed to reemploy Ee who was laid off job for nondiscriminatory reasons, where E conducted job under its own perception that U limitations blocked hire and continued employment of Ee; supervisor made statements which, on their face, were direct admissions that E withheld employment of Ee because of his lack of U membership; and E's claims that Ee was not rehired because his work was inadequate were shifting and implausible)

Bell Halter, Inc. **276 NLRB No. 136**
(evaluation of Ee's job performance as being marginal rather than satisfactory, unlawful, where Ee was known active advocate of U to which E was strongly opposed; unfavorable evaluation after Ee engaged in U activity was substantial departure from prior favorable evaluation when he was not so engaged; downgrading of Ee because of *attitude*, in absence of other explanation, was synonymous with faulting Ee for supporting U; E failed to justify downgrading by specific instances; and supervisor making evaluation had doubtful opportunity to observe Ee whose immediate supervisor considered him satisfactory)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(discharge of Ees assertedly for deficiency in their work performance, unlawful, where E, who had knowledge of U organizing activity, demonstrated anti-U animus by many 8(a)(1) violations; discharges were timed during middle of U organizing campaign and were effected w/o warning and abruptly at beginning of shift; E failed to explain at time of discharges or at hearing what was wrong with Ees' work; and E made inexplicably evasive statements to Ees at time of discharges)

United Artists Eastern Theatres, Operating Valentine Theatre **275 NLRB No. 025**
(discharge of Ee, assertedly because of unsatisfactory work, violative, since real reason was Ee's participation in R proceeding and his U activity where Ee was told he would be promoted if he dropped the U and E gave inconsistent reasons to support discharge; further, E's contention that Ee's admission to accepting gratuities from patrons in violation of E's rules was conduct sufficient to deny reinstatement, rejected, since there was no evidence this was dischargeable offense and E was willing to overlook such behavior in exchange for Ee's forgoing U activity)

Morning Star International, Inc. **JD-209-86**
[layoff of leading U proponents assertedly because of costly production error and suspected stealing, unlawful, in view of inherent improbabilities of production error defense, non-existence of theft defense, failure to include alleged defenses in decisional layoff process, and shifting nature of asserted defenses]

Harry Rosenblatt & Sons **JD-(SF)-50-85**
(discharge of Ee who engaged in U organizing activities and prevailed upon management to meet with Ees at behest of aggrieved fellow Ees, allegedly for poor performance due to outside job, unlawful)

Salem Leasing Corporation v. N.L.R.B. **774 F.2d 85 (C.A. 4, Oct. 1985)**
[ct affirmed Bd finding of violation where Ee was discharged allegedly for his *bad attitude*, poor work, and open criticism of E since record demonstrated Ee had good work record, successfully completed his required probationary period, was assigned additional responsibilities on such completion, and no disciplinary action against Ee was contemplated until after he made favorable comments about his former unionized E's working conditions and wages. E failed to shoulder burden of demonstrating Ee would have been fired regardless of his pro-U comments]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[discharge violation, since it was for U activities rather than poor work performance because Ee's difficulty in supervising second shift resulted from defective products, over which he had no control, and he was not warned of alleged poor quality and productivity of his work]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**
[discharge of U activist, violation, notwithstanding claim of his poor performance and desire to do only one kind of work that would not justify full time employment, where evidence showed he performed other work, received no complaints or warnings about any aspect of his work, and was given pay raise and bonus three weeks before discharge]

8387-9350—Cont.

Ballou Brick Company v. N.L.R.B. 798 F.2d 339 (C.A. 8, July 1986)
[claim that Ee did unsatisfactory work, rejected where Ee was recalled after election]

8387-9400 Outside business or activities

8387-9450 Not real reason

Marin Operating, Inc. d/b/a The Clarion Hotel-Marin; Colorado Marin Associates, A Joint Venture; and Preferred Properties Fund 82, A Limited Partnership 279 NLRB No. 070
[issuing warnings to Ees because they picketed in company uniforms, violative, where E never before restricted what Ees could do in uniforms until they picketed in uniform]

Power-Seal Corporation 276 NLRB No. 036
(contention that Ees who were family of plant manager and part owner of business were discharged, not because E feared they would vote for U, but because plant manager, while still employed by E had conceived of competing business which became viable the day after his resignation, rejected, where, instead, while still employed by E, he had negotiated unsuccessfully to buy a noncompeting business and had only started a competing business two months after his family was discharged)

8387-9500 Violence or threat thereof

Fiber Glass Systems, Inc. 278 NLRB No. 154
[terminating U adherent for physically pushing two supervisors and threatening them with a fight at annual company picnic, not violation]

Chicago Metallic Corporation 273 NLRB No. 207
(no violation by discharging pro-U Ee for coercing and intimidating anti-U Ees by threatening that their *heads would roll* if U came in and other threats of violence)

County Respiratory Products, Inc. JD-(NY)-107-85
(discharge of Ee for threatening E's president with physical violence, not violative, notwithstanding E may have been pleased to have reason to discharge Ee who was prime suspect in U activity, where E would have discharged even in absence of U activity)

8387-9550 Not real reason

H. Treffinger Repair Services, Inc. 281 NLRB No. 085
[discharge of known U adherents assertedly because of threat made to, or because of engaging in fight or horseplay with, anti-U Ee, unlawful, where latter was not disciplined for engaging in purported fight; E admitted having U animus, made no investigation but relied on anti-U Ee's version of what happened, and took shifting positions in explaining discharges; and E effected discharges over shop supervisor's protests]

Auburn Foundry, Inc. 274 NLRB No. 192
(discharging striker for allegedly violating ct injunction by act of violence against E's plant, unlawful where two persons kicked doors at E's plant three times, and police found dischargee and another individual at plant's door, since police report did not show whether they had actually kicked the door, and, even if so, such conduct was innocuous)

8387-9700 Illegal activity

8387-9750 Not real reason

Auburn Foundry, Inc. 274 NLRB No. 192
(discharging striker for allegedly violating ct injunction by act of violence against E's plant, unlawful where two persons kicked doors at E's plant three times, and police found dischargee and another individual at plant's door, since police report did not show whether they had actually kicked the door, and, even if so, such conduct was innocuous)

8387-9900 Other

Stop N' Go Inc. 279 NLRB No. 052
[discharging part-time after-hours Ee allegedly because he changed his full-time job's schedule so as to be unavailable and his wife for leaving job sick w/o store manager's permission, violation where husband was known, and wife believed, to have signed U card, husband was not unavailable, and wife had secured supervisor's permission to leave as store manager had directed]

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[warning waiter for bringing unordered food to table and asking guests to take it and for letting his busboy serve, lawful]

8387-9950 Not real reason

Cauis Management Corp. 281 NLRB No. 174
[discharge of Ee serving as superintendent of E's apartment building, assertedly because Ee's wife operated sewing *factory* in their apartment, unlawful, where no warning or reason was given Ee for discharge; it was unlikely E would have summarily discharged Ee because of wife's sewing activity which E himself had taken advantage of and which E last discussed with Ee 3 months previously; and unconvincing nature of E's evidence of discrimination buttressed evidence of discrimination]

Marion Center Supply, Inc. 277 NLRB No. 026
(discharge of U activist assertedly for refusing to show truck lease at officer's request unlawful where Ee did not have the lease and had not stated that he did not feel like showing it)

8390 UNSATISFACTORY QUALIFICATIONS OR CHARACTERISTICS

8390-1700 Disease and physical incapacity

Plateau Coal Sales, Inc. 279 NLRB No. 156
[E's telling one of job applicants who was one of the applicants who allegedly had failed his required physical exam that he and others selected from panel (of applicants) need not be re-examined if they agreed to work non U, violative, since re-examination of job applicants would further delay (E's) dealing with U]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[no unlawful discharge of U adherents where they were placed on leave of absence status due to injury pursuant to E's policy, their jobs were not filled during their absence, and they were recalled when E's business picked up in same manner as non-U supporters]

Evans St. Clair, Inc. 278 NLRB No. 065
[placing U leader on involuntary medical leave, not violation where he was found unconscious on platform near his machine, had fallen off platform previously, doctor's note indicated that Ee should not work around machinery, and E suspected that Ee had recurring medical condition that might imperil E's safety record]

Page Avjet, Incorporated 278 NLRB No. 063
[E's refusal to allow U adherent to perform light work while Ee was injured, not unlawful, since E's policy was that injured Ees must perform light duty w/i their usual work functions, and Ee could not thus perform while on crutches, Ee did not inform E when he discontinued use of crutches, and when he reported to work w/o crutches, he was returned to work]

Ducane Heating Corporation 273 NLRB No. 175
(discharge of Ee, assertedly because of inability or refusal to do work because of back pain, not violative, where E had created light duty work for Ee on doctor's orders and only returned Ee to regular job when it received medical certification Ee could work w/o limitations and consistent with E's past practice, it was only after Ee said he *could not* perform regular job, that E decided to discharge him)

8390-1750 Not real reason

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. 277 NLRB No. 053
(E's contention that Ees' disabilities would prevent them from performing part of their job duties, rejected where Ees' disabilities had not prevented them from holding same job with *alter ego* E)

United States Postal Service JD-203-86
[discharge of probationary Ee who slipped at work, hurt his back, and was unable to work for several days, unlawful, since for filing grievance over denial of light work after being cleared for such duty and after receiving conflicting information from E's Ee relations department which said there was no light duty available for probationary Ees but that compensation unit would pay him, and compensation unit informed him he would not be paid because cleared for light duty, where not policy of E to terminate probationary Ees who lost time due to injury, and E only discharged after giving notice U would be utilized to secure his rights]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[discharge of leading U activist employed as waitress, assertedly because E feared she had hepatitis and she failed to bring in doctor's confirmation to the contrary, unlawful, where Ee did not have such medical condition, E failed to request any medical verification of Ee's condition and permitted her to continue working after E was first alerted she supposedly had health problem]

8390-5000 Incompetence

Alamo Cement Company 277 NLRB No. 034
(discharging Ee for fear he would cause another explosion and kill someone by continuing to follow the same faulty procedures he had followed when he caused an explosion)

8390-5050 Not real reason

Pierre's Vending Company, Inc. 274 NLRB No. 184
(discharge of Ee, U activist, because of his *incompetence and incompatibility* violative, since Ee had 10-year record of no discipline with E; general manager discharged Ee approximately 1 week after Ee became openly involved in U organizing activities, received wage increase 2 months before discharge and incidents that allegedly served as basis for discharge were not brought to Ee's attention at time they occurred)

8390-6700 Inexperience

8390-6750 Not real reason

Eskaton Sunrise Community **279 NLRB No. 012**
[refusal to reemploy U adherents who had left E's employ, assertedly because they were unqualified for vacant positions due to inexperience, unlawful, where E, while declining to reemploy U adherents, hired new Ees for positions in question but presented no evidence that new hires had greater experience than U adherents; and E had previously told U adherents they would be kept on because they were *top of the line* as desired by E]

8390-7500 Failure to qualify due to government regulation

8390-7550 Not real reason

Federal Armored Express, Inc. **JD-200-86**
[suspension and discharge of Ee who was driver-guard for armored car company, and posted U notices, unlawful, since for his U activities rather than for loss of his drivers license, in view of E's antiU statements and where E had given other drivers who had lost licenses jobs that did not require license. E hired new drivers rather than reinstate Ee even after notified of restoration of his driving privileges]

Wells Fargo Armored Service Corp. **JD-(SF)-19-86**
[discharging Ee on learning she was member of U executive committee, violation notwithstanding suspension of her driver's license, where Ee was performing other duties and was qualified to fill position for which E hired new Ee]

8390-9300 Lack of proper credentials for job

8390-9350 Not real reason

Programming & Systems, Inc. **275 NLRB No. 157**
(discharge of teacher-U adherent because she did not have baccalaureate degree as required by state regulations violative where discharge undertaken in attempt to vindicate the discharge of another E, U adherent. Effect of lack of qualifications left to compliance stage)

Federal Armored Express, Inc. **JD-200-86**
[suspension and discharge of Ee who was driver-guard for armored car company, and posted U notices, unlawful, since for his U activities rather than for loss of his drivers license, in view of E's antiU statements and where E had given other drivers who had lost licenses jobs that did not require license. E hired new drivers rather than reinstate Ee even after notified of restoration of his driving privileges]

8393 VIOLATION OF RULES AND STANDARDS

8393-0100 Generally

8393-0122 Existence of rule not established

Advertiser's Manufacturing Company **280 NLRB No. 128**

Port Plastics, Inc. **279 NLRB No. 050**
[discharge of Ee, assertedly for refusal to follow E's rule regarding telephone contact with E's suppliers, violative, since real reason was Ee's U activity where animus was shown by E's unilateral change in working conditions after U won election and E's refusal to meet with Ee as U steward, rule was not contained in E's Ee-handbook and E in fact had no blanket rule prohibiting Ee contacts with suppliers]

F & C Transfer Co., Inc. **277 NLRB No. 071**
(discharge of Ee, unlawful, since for U activities rather than for carrying unauthorized passenger in E's truck or for involvement in auto accident which E contended impacted its insurance coverage, where Ee had been threatened previously with discharge if he joined U and discharge took place after E had received checkoff authorization, in view of E's expressed anti-U sentiments, no written rule against unauthorized passengers, fact no other Ees disciplined for carrying unauthorized passengers, accident occured one and half year previously and Ee was cleared of any wrong doing)

Technicolor Government Services, Inc. **276 NLRB No. 041**
(discharging U steward for distributing to E's Ees application forms for employment with another E, who was bidder in competition for E's position as service contractor found unlawful where activity was concerted, protected U activity that was not disruptive and did not breach any existing rule of E)

8393-0144 Rule commonly violated and not similarly punished

La Reina, Inc. **279 NLRB No. 103**
[strictly enforcing clothing rule and issuing written reprimand and one-day suspension for failure to comply on day after election, violation where rule had formerly been leniently enforced]

La Reina, Inc. **275 NLRB No. 209**
(violation, where Ee at tortilla maker, after testifying contrary to E's interests in Bd proceeding, was supervised more closely, warned about speaking with co-workers, reprimanded for picking dough off floor for reprocessing and quit when ordered to sign warning slip under threat of discharge, where picking up dough which had fallen on floor customary, and E's contention it reprimanded Ee because it believed she had deliberately placed rag in dough to cause E possible liability, rejected)

Pilled of Mississippi, Inc. **275 NLRB No. 117**
(discharge of Ee, assertedly because he took company property home w/o authorization, violative, since real reason was his U activity where other Ees regularly took home company property w/o discipline and E knew Ee was active U supporter)

8393-0155 Rule discriminatorily or arbitrarily applied

Garrison Valley Center, Inc. **277 NLRB No. 164**
(discharge of Ee who was most active Ee on behalf of U during U's organizing campaign allegedly because Ee left patient at E's nursing home unattended while performing other work, violative, since E failed to meet burden of establishing that E would have discharged Ee even in absence of her U activities. Record evidence demonstrated that E had tolerated brief absences for work-related reasons and would discharge an Ee *only* when serious injury or death resulted from Ee's conduct)

8393-0166 Rule invalid

Radisson Muehlebach Hotel **273 NLRB No. 183**
(where U supporter Ee was discharged for allegedly violating rule which prohibited *false, vicious or malicious* statements against E by asking supervisors if they had seen newspaper article stating that E had not remitted any money to U for past three months, rule itself found violative and therefore no defense to discharge, since rule prohibited not only statements that were merely false, which constitute U or concerted protected activity, as well as statements that were knowingly false and therefore malicious, which were not, and E, in attempting to rely on rule failed to show that Ee's statements were the latter)

David Clements Co., Inc. **JD-388-85**
[discharge of Ee for use of profanity when he was asked to sign notice of his suspension and for refusal to sign notice, unlawful, where suspension was pursuant to unlawfully instituted progressive discipline rule in response to U activity, since *E cannot lawfully discharge of Ee for mere use of profanity which was provoked by E's unlawful discrimination against him and absent evidence profanity was so gross as to remove Ee from protection of Act*]

8393-0177 Rule not communicated to employees

Port Plastics, Inc. **279 NLRB No. 050**
[discharge of Ee, assertedly for refusal to follow E's rule regarding telephone contact with E's suppliers, violative, since real reason was Ee's U activity where animus was shown by E's unilateral change in working conditions after U won election and E's refusal to meet with Ee as U steward, rule was not contained in E's Ee-handbook and E in fact had no blanket rule prohibiting Ee contacts with suppliers]

8393-5000 Types of rules

8393-5027 No-solicitation and/or no-distribution and/or no-access rule

Premier Maintenance, Inc. **282 NLRB No. 003**
[promulgation of rule prohibiting solicitation of U cards in *working areas* and on *working time*, violative of Section 8(a)3), since applied only to U solicitation, absent evidence of interference with production and in view of U animus]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[written warning for attempting to get two Ees to sign U authorization cards while at their work stations, not violation where no-solicitation rule was uniformly enforced, notwithstanding E's use of supervisors to pass out anti-U campaign literature, since no-solicitation rule does not encompass E's situation]

Harry M. Stevens, Inc., A/K/A Harry M. Stevens Services, Inc. **277 NLRB No. 031**
(discharge of Ee, assertedly because he solicited U cards on working time, violative, where Ee had not yet commenced his assigned work, he was discharged in the absence of a valid no-solicitation/no-distribution rule and E made no showing that Ee had interfered with production)

Pilled of Mississippi, Inc. **275 NLRB No. 117**
(warning Ee pursuant to E's no-distribution rule who handed out U literature after he clocked in but before his actual starting time, violative)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, where there was no disparate application of concededly valid rule; and there were no other indicia of discriminatory intent)

The Broadway a Division of Carter Hawley Hale Stores, Inc. **JD-(SF)-082-85**
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, where there was no disparate application of valid rule even though Ee had solicited for Ee dinner while on working time in sight of E's managers' where dinner was isolated event sponsored

8393-5027—Cont.

and promoted by E itself, E is free to utilize its Ees' paid time for whatever legal activity it chooses, and Ees are not entitled to use medium of communication simply because E is using it)

The Broadway a Division of Carter Hawley Hale Stores, Inc. JD-(SF)-082-85
(issuance of written warning to Ee engaged in U organizing activity at E's store and his subsequent discharge for violating E's rule against solicitation during working time, not unlawful, not withstanding contention that, if GC was permitted to demonstrate that management officials had themselves at various times used working time to distribute pro-company literature, such showing would entitle U's adherents to *equal time*, since Bd cases do not demonstrate existence of rule favoring or enforcing doctrine of *equal time* for U's)

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)
[discipline for violation of E's (Hospital's) no solicitation rule *not an ULP*, where E undisputedly showed (1) violation of rule, (2) failed attempt to resolve dispute and possibly, withdraw discipline, and (3) final disciplinary actions in proportion to conduct involved, even though E had allowed some innocuous activity, such as sale of some raffle tickets, Girl Scout cookies and cosmetics by Ees w/o reprisal under E's rule]

8393-5031 Lunch period rules

Advance Development & Manufacturing Corporation 275 NLRB No. 036
(discharge of Ees, assertedly for their lunch break practices, violative, where E discharged Ees in reaction to receipt of U letter demanding recognition and in order to frustrate U's efforts to achieve recognition)

8393-5040 Time-card rules

PYA/Monarch, Inc. 275 NLRB No. 167
discharge of driver who was U adherent, not violative, since discharged would have taken place absent U activities as driver violated E's rules by not making scheduled delivery notwithstanding another Ee who was not disciplined failed to inform driver that customer was open and delivery should be made as it was still driver's responsibility to ascertain whether customer open; further, driver failed to clock out when he left his E's premises which was also contrary to E's rules)

Stewart-Warner Corporation/Thor Power Tool Company JD-(ATL)-62-86
[even if GC had established prima facie case of discrimination, discharge of active U adherent not unlawful, where E demonstrated legitimate permissible reasons for discharge by showing that Ee falsified work records in violation of E's rule, accurate labor reporting was critical to E's operation, and there had never been incident where Ee falsified company document w/ o being terminated; and GC's asserted instances of disparate treatment of Ees either had not occurred or differed from Ee's situation]

8393-5043 Reporting absences

Health Enterprises of America, Inc., d/b/a Miami Health Care Center 282 NLRB No. 033
[notwithstanding U adherents violated no call/no show rule, discharges violative as real reasons were U activities, filing lawsuit against E and close proximity to election which discharges would serve as warning to other Ees]

Benmit Division, U.S. Tubular, Inc. 280 NLRB No. 083
[discharging U supporter for failure to call in that he would be absent but not even disciplining non-U supporter for poor absenteeism record, disparate]

Soulnactro Corporation 280 NLRB No. 015
[discharge of Ee unlawful since for U adherence rather than for poor attendance and failure to notify E when he was not coming into work, in view of E's departure from usual discipline system, E's U animus, fact rule regarding reporting absences had not been consistently enforced, and that *uncooperative attitude* which was given as reason for discharge at hearing, but was not given at time of discharge, raises inference that real reason was pretext]

United States Postal Service 275 NLRB No. 074
(discharge of Ee who was mail carrier, unlawful, since for his threat to file grievance, rather than for his failure to notify E on third day of absence from work whether he would be at work next day, or for his poor work performance and customers complaints regarding him, where no rule or policy required Ees absent for less than week to notify E if they succeeded in obtaining substitute, which Ee had done, thus E had no rational reason to expect Ee to call, and Ee had condoned Ee's work deficiencies for approximately two months prior to discharge)

Sue-Glo Realty Corp. d/b/a Granit Hotel and Country Club JD-(NY)-10-86
[suspending waiter two weeks for failure to appear at breakfast, lawful where Ee admittedly violated long standing company rule]

Norbar, Inc. JD-302-85
(discharge of Ee allegedly for U activities, not unlawful, where Ee, absent from work due to work-related injury, failed to submit contractually required medical reports; E based discharge solely and exclusively on its belief, in absence of reports, that Ee had quit, and not on Ee's U activities and pursuit of workmen's compensation claim; and E would have taken same action, regardless of Ee's activities)

8393-5046 Rule against making false, vicious, or malicious statements concerning employees, employer, or its product

Bell Halter, Inc. 276 NLRB No. 136
(U adherent's discharge for stating in presence of other Ees that he had been beaten up by *company goons* not unlawful, where Ee violated known company rule relating to making false, vicious or malicious statements against E, violation of which was not trivial; discharge was not overreaction establishing pretext; Ee's failure to acknowledge making accusations against E, much less to claim he was joking, made reasonable E's presumption that statements were not only knowingly false, but also willful and malicious which, in connection with U activity, are not protected)

8393-5047 Leave of absence rules

East Central Communications, Inc. JD-116-86
[discharge of Ee, assertedly for abuse of paid sick leave rule, unlawful, in view of E's knowledge of Ee's vigorous U activity, timing of discharge shortly before election, E's failure to follow own 3-warning rule in disciplining Ee or to credibly explain why it had failed to do so, and fact that, if it had followed its rules, maximum discipline would have been issuance of warning for first offense; and E thereby seized upon infraction as excuse to mask discharge of Ee because of his U activity and to discourage similar activity among its Ees]

8393-5050 Safety rules

The Kent Corporation 275 NLRB No. 023
(depriving U advocate of overtime, assertedly for his lack of regard for safety rules, violative, where actual motive was Ee's U activities including his testimony before Bd 6 days before date of disciplinary action)

Kansas City Terminal Elevator Company 274 NLRB No. 010
(E's imposing 3-day suspension on its Ee, U activist and shop steward, because Ee had been playing cards during scheduled working time, but during lull in production process, violative, since suspension letter received by Ee indicated that conduct for which Ee was suspended was first offense-Ee had been guilty of safety related offense but E did not consider card playing in same category-which according to E's *progressive disciplinary system* should have been cause only for written disciplinary warning)

8393-5051 Rule providing for dismissal following customer complaints

Health Enterprises of America, Inc., d/b/a Miami Health Care Center 282 NLRB No. 033
[notwithstanding U adherent violated rule against patient abuse, discharge violative as real reasons were U activities and filing lawsuit against E, in view of spurious investigation and disparate discipline accorded discriminatee for violating rule]

8393-5065 Rule concerning employees' personal use of company material

Pillod of Mississippi, Inc. 275 NLRB No. 117
(discharge of Ee, assertedly because he took company property home w/o authorization, violative, since real reason was his U activity where other Ees regularly took home company property w/o discipline and E knew Ee was active U supporter)

8393-5070 Rule against drinking of alcoholic beverages on job

Quality Inn-Lax 280 NLRB No. 145
discharge of U activist for breach of rule against use of drugs and alcohol by Ees while on duty, not violation where E had discharged Ees in past for breach of this rule and showed no U animus]

Riverview 5 P's, Inc., t/a Riverview Inn JD-54-86
[discharge of Ee employed as bartender, assertedly for violating E's no-drinking rule, unlawful, where E knew of Ee's desire for U in E's facility; rule applied to drinking alcoholic, and not nonalcoholic beverages, and E admitted that Ee was not drinking intoxicants on observed occasions for which no write-up was issued to Ee; however, Ee was given written warning when Ees commenced organizing activities; and E's latently contended reason for Ee's drinking soda was pretextual, particularly in view of E's other extensive unlawful conduct (Robertson)]

JMC Transport, Inc. v. N.L.R.B. 776 F.2d 612 (C.A. 6, Nov. 1985)
[discharge of Ee, engaged in protected concerted activity of protesting E's change in pay policy, assertedly for violating E's alcoholic beverage policy, unlawful, where supervisor had earlier suggested that Ee would be fired if he continued *raising such a hassle about the pay;* there was proximity in time between protected activity and discharge; and significant factor in management's decision to terminate Ee was supervisor's corroboration of fabricated

8393-5070—Cont.

episode relating to Ee's possession of alcoholic beverage, and therefore supervisor's anti-labor motivation in making false report must be imputed]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[discharge of Ees, assertedly for violating E's *no drinking* rule, unlawful, where other Ees, including Ees herein, previously found drinking on job, were warned but retained; initial suspension of Ees was changed to discharge after they admitted U involvement; discharges occurred 1 day after E received U's notice of organizing drive; at Ee meeting E promised raise if Ees forgot about U and told Ees that discharge depended on whether or not they were for U; and E's asserted reason for discharge was not proven]

8393-5072 Rule against wearing union insignia

N.L.R.B. v. Malta Construction Company 806 F.2d 1009 (C.A. 11, Dec. 1986)

[discharge of Ee for *deliberate interference with production and refusing work assignment, followinstructions* during U campaign when Ee refused to remove U sticker from his E supplied hard hat when Ee was on his water break assisting fellow Ee who had a stuck front-end loader, held violative, since GC proved existence of presumptively invalid rule banning U insignia on hard hats and E did not prove any special circumstance to justify its rule. Ee had never been warned or disciplined for his behavior prior to his taking about U]

8393-5078 Rule against nepotism

Uniglass Industries, Div. United Merchants & Mfrs. 276 NLRB No. 035

(reimposition of anti-nepotism policy and applying it retroactively in order to avoid family disputes over union issues, violative, as it resulted in failure to rehire former Ees because of their U activities)

Robins Federal Credit Union 273 NLRB No. 165

(discharge of Ee acting as loan supervisor at E-credit U for violating E's policy prohibiting issuance of loans to loan officer's relatives, not unlawful, notwithstanding summary dismissal of Ee on eve of U election where, assuming GC, contrary to finding herein established prima facie case, E rebutted such case in view of all facts and circumstances herein; no finding was made as to whether loan made by Ee to husband of cousin was correct interpretation of *relative* under E's policy, rather, finding was that E's perceived violation of policy was motivating factor in Ee's dismissal)

Robins Federal Credit Union 273 NLRB No. 165

(in finding discharge of Ee acting as loan officer at E-credit union for violating E's written policy prohibiting issuance of loans to loan officer's relatives not unlawful, ALJ relied on fact that Ee's transaction was highly irregular and placed E in vulnerable position with unprotected security, length of time taken by E to investigate matter was not unreasonable, and Ee's U activities were not known prior to manager's recommendation to terminate Ee)

Robins Federal Credit Union 273 NLRB No. 165

(in finding discharge of Ee acting as loan officer at E-credit union for violating E's written policy prohibiting issuance of loans to loan officer's relatives not unlawful, ALJ held unlawful interrogation by single supervisor of a fellow Ee following Ee's discharge, unaccompanied by threats, not sufficient to prove animus toward U by E)

Robins Federal Credit Union 273 NLRB No. 165

(in finding discharge of Ee acting as loan officer at E-credit union for violating E's written policy prohibiting issuance of loans to loan officer's relatives not unlawful, ALJ held that, assuming relevance of disparate treatment of supervisor, who resigned after being afforded opportunity to do so at her request, was of questionable relevance as it occurred substantially after Ee's discharge; but assuming its relevance, it was supportive of E's position that it regarded violation of its policy as dischargeable offense)

Food and Commercial Workers, Local 152 v. N.L.R.B. 768 F.2d 1463 (C.A. D.C., July 1985)

(successor E's failure to hire Ees of predecessor, unlawful, since substantial evidence discriminatorily motivated where criteria established by E for hiring i.e. discipline, health, absenteeism and safety record, applied more strictly to Ees of predecessor E than to other applicants, rule against neopotism impacted disparately against Ees of predecessor E, and only 1/6-1/5 of individuals hired by successor E were Ees of predecessor)

8393-5083 Rule concerning work assignments

Northline Bus Center, Inc. JD-(ATL)-41-85

(discharge of Ee driving passengers by bus from airport to downtown locations, assertedly for being off his assigned bus route, unlawful where, after E became aware of Ee's U activities it seized on off-route incident to discharge Ee because he was pro-U; change in routes was not unusual for E's bus drivers who would from time to time have to change their routes; and E, who had not reviewed Ee's work record until after discharge, itemized 10 specific work rule infractions by Ee and then relied on them as subterfuge in attempt to justify discharge)

8393-5086 Rule against use of profanity or improper behavior

Advertisers Manufacturing Company 275 NLRB No. 019

(issuance of verbal and written warnings to U's chief steward who was also prominently involved in U matters, for violating work rules prohibiting profane language and sexual and/or racial harassment of other Ees, not unlawful, since incident did not involve common shop talk but was offensive remark directed at person of Ee in manner that violated work rules; U prominence did not isolate steward from discipline for sufficient cause; and warnings were issued after due investigation by E)

New Galax Mirror Corporation JD-475-84

(warning leading U adherent and subsequently discharging him, assertedly for abusive statements made to another Ee in violation of company rules, violative, since real reason was Ee's U activity where warning was simply a pretext to coverup E's hostility towards a known U supporter and other Ees were not similarly disciplined for similar or worse conduct)

8393-5088 Rules concerning company vehicles or equipment

Airport Distributors, Inc. 280 NLRB No. 091

[discharge assertedly for Ee's failure to comply with trucking company's rule requiring reporting of damage to vehicles due to accidents, unlawful, in view of timing of discharge w/i 2 weeks of strike settlement and U recognition agreement; E's animus toward U and its supporter's and awareness of Ee's U support and strike activity; abruptness of E's action w/o confronting Ee with vehicle's condition; deviation from customary policy of investigating accidents; shifting and mutually inconsistent reasons for discharge; and absence of similar treatment of other Ees]

F & C Transfer Co., Inc. 277 NLRB No. 071

(discharge of Ee, unlawful, since for U activities rather than for carrying unauthorized passenger in E's truck or for involvement in auto accident which E contended impacted its insurance coverage, where Ee had been threatened previously with discharge if he joined U and discharge took place after E had received checkoff authorization, in view of E's expressed anti-U sentiments, no written rule against unauthorized passengers, fact no other Ees disciplined for carrying unauthorized passengers, accident occured one and half year previously and Ee was cleared of any wrong doing)

8393-5095 Rules regarding appearance or attire

Marin Operating, Inc. d/b/a The Clarion Hotel-Marin; Colorado Marin Associates, A Joint Venture; and Preferred Properties Fund 82, A Limited Partnership 279 NLRB No. 070

[issuing warnings to Ees because they picketed in company uniforms, violative, where E never before restricted what Ees could do in uniforms until they picketed in uniform]

Wells Fargo Armored Service Corp. JD-(SF)-19-86

[suspending Ee two business days after E received U request that Ees at location in question be considered accretion to existing unit and notice that Ee was U steward and U executive committee member, violation where E's contention that Ee misappropriated and copied three confidential company documents was unsupported by evidence; second suspension, immediately afterwards, for failure to comply with E's no-beard policy, violation where E had let Ee work for three months w/o complying]

8396 VOLUNTARY QUIT OR LAYOFF

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. 281 NLRB No. 068

[Ee who signed agreement resigning as Ee in exchange for cash severance payment held not to have voluntarily quit but to have been constructively discharged, where material reduction in his work hours was intended by E to force Ee to quit, and such reduction was in retaliation against Ee for having appeared to testify as GC's witness at hearing in instant case]

Central Broadcast Company 280 NLRB No. 056

[U supporter on sick leave w/o E's objection not voluntary quit where she was negotiating with E for protection against fellow Ee when permanently laid off by E; also, E had previously constructively discharged her by subjecting her to intolerable working conditions where a fellow Ee had so threatened her that she had to call security guard and police]

Central Broadcast Company 280 NLRB No. 056

[no resignation where, notwithstanding U supporter went to E's office to resign, he never communicated desire to do so to E, because latter was not available and did not telephone Ee as requested]

Atlas Trucking, Inc. d/b/a Atlas Truck Rental & Leasing 280 NLRB No. 006

[accepting known U organizer's alleged *quit*, violation where Ee did not quit but called in to say he would not come in unless needed due to car trouble and mentioned that he had interviewed for lesser-paying job]

The Gateway Theatre Corporation d/b/a Senator Theatre, Capitol Hill Cinemas 277 NLRB No. 186

[Ee voluntarily quit, rather than was unlawfully discharged, where he left E's employ for temporary position with another E and U planned to refer him back to E; E's lawful termination of its relationship with U and unlaw-

8396—Cont.

ful discharge of other Ees who had been referred by U did not constitute discrimination against Ee]

H & H Pretzel Company **277 NLRB No. 143**
(no unlawful discharge where Ees chose to leave rather than work under terms of E's final offer, lawfully implemented after impasse, which changed their terms and conditions of employment)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(layoff of Ee unlawful and held to be constructive discharge, since for U activites, where E after the fact attempted to capitalize on Ee's wife's illness to state on layoff slip *voluntary quit* to care for wife, in order to preclude any obligation to recall Ee, E had previously made disparaging remarks about U and hired new Ees rather than recall Ee)

Kenneth L. Hand Sr. d/b/a Neighborhood Roofing and Contracting, and Kenneth L. Hand Jr. and Sylvia Hand d/b/a Farrand Park Services **276 NLRB No. 081**
(E's failure to recall Ees following most recent layoff allegedly because there was no available work, violative where E's reason was false and each of these Ees had either sought U's assistance and representation, or had insisted he receive contractual wage rates and benefits to which he was entitled)

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**
(successor E's bribing predecessor's Ees to quit and refusing to rehire them so as to eliminate U majority and bargaining obligation, violative)

South Nassau Communities Hospital **274 NLRB No. 179**
(no unlawful constructive discharge of U adherent but rather she resigned rather than be transferred after receiving unlawful warning, since transfer was due to personality conflict with supervisor and did not violate Act, nor did unlawful warning she received make circumstances so difficult as to force her resign)

Bronal Electric, Inc. **JD-(NY)-21-84**
[Ees discharged rather than quit, where they were informed by E after U's demand for recognition *if they wanted to put him out of business they had succeeded, that he was closing his doors, but that Ees could stay until Friday*, and after hearing these statements one Ee turned in his beeper and keys and walked out and other Ees followed; Ees could reasonably believe that they were discharged, especially where Ee who turned in beeper and keys had previously been asked by E to turn in tools and keys]

Hinz Store Fixtures & Construction Co., Inc. **JD-(SF)-191-85**
[E's trying to force Ee to accept its position that he voluntarily quit, and discharging him for trying to secure E's compliance with bargaining agreement, violation]

David Warren & Son, Inc. **JD-(ATL)-31-85**
(discharge of leading U adherent, unlawful, notwithstanding E's contention that Ee quit because of his coworkers' animosity towards him, since circumstances raised inference that Ee was discharged, where E harbored U animus, told Ees he would shut down operation if Ees selected U, seized upon events resulting from his misinterpretation of U's letter demanding recognition that U already represented them thereby arousing animosity among Ee's coworkers towards Ee, and subsequently E purposely did nothing to dispel suspected violence)

Embossing Printers, Inc. **JD-19-85**
(economic strikers rejection of unconditional offer of reinstatement (offer held unconditional notwithstanding it included strikers accepting unilateral changes to their health benefits as these changes were found to be lawful) converted their status to voluntary quits)

Kenneth MacGillivray and Joan MacGillivray, Co-Partners d/b/a Williams Street Company, A Limited Partnership d/b/a Tower Plaza **JD-(ATL)-87-84**
(individual who performed trash removal at apartment building in partial payment for rent, quit, rather than unlawfully discharged, when he moved from building, informed E he didn't think he was wanted by E and was leaving, and further informed another ee that he was giving 30 days notice, notwithstanding contention residence in building not requirement for employment and individual returned after he moved to perform trash removal)

8398 STRIKE SETTLEMENT AGREEMENT

Texaco, Inc. **273 NLRB No. 164**
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

8399 GRIEVANCE/ARBITRATION PROCEEDINGS AND/OR AWARD

Alpha Beta Company **273 NLRB No. 194**
(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

530 EMPLOYER OBLIGATION TO BARGAIN

0100 GENERALLY

2000 CONDITIONS PRECEDENT TO OBLIGATION TO BARGAIN

2025 REQUEST FOR RECOGNITION AND BARGAINING

2025-0100 Generally

Unifirst Corporation 280 NLRB No. 008

[where E's answer in summary judgment proceeding admitted it refused to bargain only from date Bd denied its mtn for reconsideration, Bd held E's bargaining obligation attached upon U's certification even when, as here, E was testing U's certification; Bd's R/R Sec. 102.65(e)(3) provides that motion for reconsideration does not operate to stay effectiveness of Bd action; consequently, E's refusal to bargain commenced on date that U, as admitted by E, requested to bargain]

2025-0183 Request not necessary where futile

United States Aviex Company 279 NLRB No. 110

[U held not to have made effective demand for recognition and bargaining, notwithstanding GC's contention that U obtained *constructive service* of demand when E refused delivery of U's demand letter, and that further effort to deliver demand would have been futile, where Ee who delivered letter to E's office failed to accept E's invitation to speak personally with E, and there was no showing that any of the handbills, subsequently distributed to Ees and to which demand letter was attached, were ever given to any responsible E official]

2025-0190 Failure to request

United States Aviex Company 279 NLRB No. 110

[U held not to have made effective demand for recognition and bargaining, notwithstanding GC's contention that U obtained *constructive service* of demand when E refused delivery of U's demand letter, and that further effort to deliver demand would have been futile, where Ee who delivered letter to E's office failed to accept E's invitation to speak personally with E, and there was no showing that any of the handbills, subsequently distributed to Ees and to which demand letter was attached, were ever given to any responsible E official]

Dukes Industries JD-167-85

(no violation where E decided to shut down operations and communicated decision to Ees prior to having any knowledge of U activity. Furthermore, U waived its perogative to bargain with E where, other than delivering its demand letter, it has made absolutely no attempt to meet and negotiate over effects of closing)

2025-3300 Elements of request

2025-3317 Implied request to bargain

2025-3317-2500 Demand for recognition

Matlack, Inc. 278 NLRB No. 036

[U made adequate demand for recognition where it sufficiently manifested its desire to represent and negotiate on behalf of Ees by repeated requests by U representatives, to which E responded that it had no intention of negotiating with U because of its contract with another U; U herein unquestionably represented overwhelming majority of Ees; and E reasonably understood that U wanted to represent Ees]

2025-5000 Forms of request

Armour and Company 280 NLRB No. 096

[U made sufficiently clear request for bargaining to give rise to E's duty to bargain regarding E's option to allocate severance and vacation pay to Ees being terminated to specific periods, where U asked E *what position it was going to take as to allocation?* since while request to bargain is prerequisite to E's duty to bargain, request need take no special form, so long as clear communication of meaning]

2025-6700 Continuing request

N.L.R.B. v. Fall River Dyeing & Finishing Corp. 775 F.2d 425 (C.A. 1, Oct. 1985)

[successor E obligated to bargain with U that had represented Ees of predecessor when it had employed substantial and representative complement i.e. had hired at least 50% of those it would ultimately employ in majority of Ees it would eventually employ when it reached full complement, notwithstanding at time of original demand for recognition representative complement not employed, since demand continuing and no need to renew later]

2025-8400 Absence of request

Armour and Company 280 NLRB No. 096

[U made sufficiently clear request for bargaining to give rise to E's duty to bargain regarding E's option to allocate severance and vacation pay to Ees being terminated to specific periods, where U asked E *what position it was going to take as to allocation?* since while request to bargain is prerequisite to E's duty to bargain, request need take no special form, so long as clear communication of meaning]

2050 Majority status of representative

Matlack, Inc. 278 NLRB No. 036

[E unlawfully refused to bargain with U representing majority of its Ees, rendered unlawful assistance to another U not having such representation, and discriminated in hire and tenure of Ees by entering into and maintaining U security contract with other U and by requiring Ees to join latter U and pay specified initiation fees and dues]

2050-1200 Majority status as prerequisite

Ednor Home Care, Inc. 276 NLRB No. 042

(E did not unlawfully withdraw recognition since E never recognized U, where upon being presented with authorization cards by U's business representative, E's owner never acknowledged, nor did U representative claim U represented majority of Ees. U's contention that there was initial discussion regarding terms of proposed contract delivered with economic terms left blank, and absent evidence of any statement by E connoting recognition, or explicit testimony of U representative concerning plans for negotiating meetings, nor was U representative's behavior consistent with belief U was recognized)

1115, Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board 275 NLRB No. 045

(E does not violate Section 8(a)(5) of Act by refusing to recognize U which bases its majority on *tainted* cards)

2050-2500 Determination of status

Wayside Realty Group, Inc. and Georgetown Hotel 281 NLRB No. 045

[E unlawfully withdrew recognition from U by failing to sign recognition agreement and by insisting upon Bd election, where E agreed to recognize U upon verifying U's majority status from authorization cards submitted by U, and E thereupon made such verification; although e and U subsequently agreed to private election as another means for determining U's majority support, E's decision not to proceed with private election made it a nullity and left E with obligation, according to earlier agreement, to voluntarily recognize U on basis of card majority]

Stop N' Go Inc. 279 NLRB No. 052

[majority status in 69-Ee unit not established where, of alleged 41-card majority, 27 cards were only authenticated by U representatives who neither witnessed signing nor received cards from signers]

Crest Industries Corp. 276 NLRB No. 067

(E's refusal to bargain with U, and comply with U's demand for recognition, violative where E, by polling its Ees, had determined that majority of Ees wished to be represented by U)

Louis Pappas' Homosassa Springs Restaurant, Inc. 275 NLRB No. 213

(unit size based upon member of Ees employed for greater part of year, *not* during peak season when (employment) roles are inflated)

2050-2500—Cont.

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(majority status (of Ee bargaining representative) can be established by means other than NLRB-conducted election such as *informal-election* in instant case where with E present and consent, Ees secretly marked ballot *yes* or *no* and put ballot in hat)

2050-5000 Exclusive power of Board to determine

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(majority status (of Ee bargaining representative) can be established by means other than NLRB-conducted election such as *informal-election* in instant case where with E present and consent, Ees secretly marked ballot *yes* or *no* and put ballot in hat)

2050-5067 May be determined in ULP proceeding

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders **280 NLRB No. 133**

[U, which has been representing unit Ees at predecessor E's plant for over 40 years, is to be recognized as ongoing representative for unit Ees where successor E has advanced no good-faith doubt about U no longer representing unit Ees, and there is not enough difference between predecessor E and successor E to overcome presumption that *—Ees' desires concerning unionization* are unchanged (successor Ees performed esentially same work, in same plant, with same equipment as before)]

2075 PROOF OF DESIGNATION

2075-0100 Generally

2075-0125 Formal designation not required

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(majority status (of Ee bargaining representative) can be established by means other than NLRB-conducted election such as *informal-election* in instant case where with E present and consent, Ees secretly marked ballot *yes* or *no* and put ballot in hat)

2075-0175 Testimony of employees or union representative

Stop N' Go Inc. **279 NLRB No. 052**

[majority status in 69-Ee unit not established where, of alleged 41-card majority, 27 cards were only authenticated by U representatives who neither witnessed signing nor received cards from signers]

2075-6700 Authorization cards

2075-6717 Form of card

2075-6717-6700 Dual purpose designation of representative and to obtain election

Robert W. Wise, d/b/a Robert W. Wise Cabinetry **JD-(SF)-157-85**

2075-6733 Proof of validity

2075-6733-2000 Method of authentication

2075-6733-2014 Testimony of solicitor

Limpert Brothers, Inc. **276 NLRB No. 037**

(solicitor of a card who testifies he or she witnessed signing of card and identifies the signature of signer, is sufficient to satisfy authentication and validity of the card and signator need not appear and testify)

2075-6733-2056 Testimony of witness to signing

Stop N' Go Inc. **279 NLRB No. 052**

[majority status in 69-Ee unit not established where, of alleged 41-card majority, 27 cards were only authenticated by U representatives who neither witnessed signing nor received cards from signers]

2075-6733-2070 Signature comparisons

Wayside Realty Group, Inc. and Georgetown Hotel **281 NLRB No. 045**

[E unlawfully withdrew recognition from U by failing to sign recognition agreement and by insisting upon Bd election, where E agreed to recognize U upon verifying U's majority status from authorization cards submitted by U, and E thereupon made such verification; although e and U subsequently agreed to private election as another means for determining U's majority support, E's decision not to proceed with private election made it a nullity and left E with obligation, according to earlier agreement, to voluntarily recognize U on basis of card majority]

2075-6733-2084 Due course delivery of card to union

Stop N' Go Inc. **279 NLRB No. 052**

[majority status in 69-Ee unit not established where, of alleged 41-card majority, 27 cards were only authenticated by U representatives who neither witnessed signing nor received cards from signers]

2075-6733-4000 Adequacy of card on its face

2075-6733-4025 Signed by other than employee

Limpert Brothers, Inc. **276 NLRB No. 037**

(fact that Ee had a friend read card to her and sign it for her does not invalidate card since Ee may authorize another person to sign his or her name on authorization card)

2075-6733-4050 Undated or misdated cards

Reeves Brothers, Inc. **277 NLRB No. 153**

[cards either left undated or only partially dated by Ees whose signatures they bore held valid where there was no doubt that cards were signed prior to date of U's demand for recognition]

Morning Star International, Inc. **JD-209-86**

[E's contention that U authorization cards should be treated as void or revocable at will because they were undated pursuant to U policy, rejected, where contention was based on language contained in card which was part of checkoff authorization and referred to revocation of authorization, rather than part of application for membership; any ambiguity in revocation of checkoff authorization was matter between Ee and U and did not arise in context of contest over designation of representative]

2075-6733-4067 Language of card

Limpert Brothers, Inc. **276 NLRB No. 037**

(card which was printed in Spanish held valid since signator was literate in Spanish and it is presumed he knew and understood contents and purpose of card)

2075-6733-4083 Other

Steffer Brothers **JD-269-86**

[date-stamp to show receipt of U authorization card by Bd's regional office held not relevant to authenticity or efficiency of card]

2075-6733-9500 Untimely revocation/withdrawal of card

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**

(Ee's asserted revocation of validly signed U authorization card held ineffective, where E engaged in widespread and pervasive unlawful acts in effort to destroy Ees' support for U, which was well under way when Ee attempted to revoke card; under such circumstances, Bd presumes that Ee revocations of authorization cards are direct result of E's unlawful conduct)

Apple Glass Company **JD-89-86**

[card valid, notwithstanding signer's testimony that he did not want his card turned in to U or wanted it back, where he had all unit cards in his locker all day and did not remove his card]

2075-6767 Circumstances impeaching validity of cards

2075-6767-0100 Generally

The Well-Bred Loaf, Inc. **280 NLRB No. 036**

[solicitor's representation may limit and cancel language of otherwise valid card and invalidate it for purpose of determining majority status when, if effect, he directs signer to disregard card's language]

Reeves Brothers, Inc. **277 NLRB No. 153**

[cards held invalid, where they were directly solicited by Ees' immediate supervisor or where supervisors were present when Ees signed cards]

2075-6767-0150 Testimony of employees as to subjective intent of own designation not admissible

Morning Star International, Inc. **JD-209-86**

2075-6767-0800 Misrepresentation in solicitation

2075-6767-0814 For election only

The Well-Bred Loaf, Inc. **280 NLRB No. 036**

[Bd found cards valid on basis of appropriate card language and solicitors' testimony that they had made no misrepresentations as to cards' purpose where solicitor told card signer *we would have elections after we get 50% of the cards* and that to join U Ee would have *to sign the card*]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**

[card found invalid, since there was question whether representation to card signer canceled valid language of card where signer testified that solicitor had told her *signing cards would enable us to have a vote to bring the Union in, but it was just to vote,* since this did not amount to valid designation of U as bargaining representative]

Reeves Brothers, Inc. **277 NLRB No. 153**

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**

(U authorization cards assertedly signed because of representation that only purpose for which cards would be used was to secure election held valid, where before signing Ees read card themselves or had card read to them by solicitors who told them U wanted to represent Ees, and solicitors made no statements to Ees to disregard langauge on card; nor did solicitors make any representation that only purpose for which cards would be used was to secure election)

2075-6767-0856 Majority of employees already signed

Tri-State Culvert Manufacturing, Inc. **280 NLRB No. 087**
[in finding that Ees' U authorizations cards should be included in count determining U majority because soliciting Ee did not induce Ees to sign cards by telling them everyone else had signed, ALJ held that, assuming such false representation did induce Ees to sign, he would reach same conclusion since, under Bd law, such misrepresentations are deemed to constitute mere *puffing* and/or sales talk which should be recognized as such by Ees]

2075-6767-0884 Other

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(U card invalid since Ee signed card for purpose other than wanting U to represent him, where Ee read card hurriedly during press of duties, and he had been informed earlier by fellow Ee that only purpose of card was to arrange meeting between Ees and U representative)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(U card invalid where Ee, who had limited education, very little English ability, and menial job, was hurriedly instructed by solicitor to sign what he placed in front of Ee, and Ee's own testimony showed he did not know what card represented)

Morning Star International, Inc. **JD-209-86**
[alleged misrepresentation to Ees that E really wanted U at plant held not to have invalidated U authorization cards under Bd's *Cumberland Shoe* doctrine (144 NLRB 1268) adopted by S.Ct]

2075-6767-3300 **Capacity of signer**

2075-6767-3325 Non-english speaking employees

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(U cards written in English and some in Spanish, distributed amonge Ees who could understand English and some who could not held valid, where Ees read the cards or cards were translated to them; they understood what cards said; and they voluntarily signed them)

Superior Container, Inc. **276 NLRB No. 055**
(authorization card printed in English and signed by Ee who was literate in Spanish only, invalid, since whatever facial presumption of validity which might otherwise attach to signed card if card itself is unambiguous was rebutted by evidence that Ee was unable to read card because he could not read language in which it was printed and it could not underclosed it because was not otherwise explained to him in language he could understand)

Limpert Brothers, Inc. **276 NLRB No. 037**
(card which was printed in Spanish held valid since signator was literate in Spanish and it is presumed he knew and understood contents and purpose of card)

Duroyd Manufacturing, Inc. **276 NLRB No. 025**

2075-6767-4100 **Solicitation by supervisors and/or management personnel**

D & D Development Co., Inc. d/b/a Anaheim Town and Country Inn **282 NLRB No. 034**
[E's refusal to honor contract, not unlawful, since U did not represent uncoerced majority at time recognition was granted and contract was executed, where U authorization cards were tainted by company manager's conduct in going well beyond any ministerial help to U or any benign cooperation in U effort by participating in organizational drive from start to finish and engaging in such conduct as calling in U, promising benefits if Ees joined, U coercively interrogating whether Ees signed cards, using supervisors to check cards, and precipitously executing contract]

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**
[U's card majority not tainted by solicitation of authorization cards by supervisor where Ees aware that E was opposed to Us, and that supervisor soliciting was about to be discharged by incoming new manager]

Reeves Brothers, Inc. **277 NLRB No. 153**
[cards held invalid, where they were directly solicited by Ees' immediate supervisor or where supervisors were present when Ees signed cards]

Reeves Brothers, Inc. **277 NLRB No. 153**
[E's contention that participation of its supervisory leadmen in U's organizational and card signing drive tainted cards and rendered them invalid, rejected, notwithstanding extensive participation of leadmen in soliciting card signatures, handbilling and other significant U activities, where supervisory participants directed work of only small groups of maintenance Ees and were not in position to affect working lives of vast majority of production Ees]

Kona 60 Minute Photo **277 NLRB No. 092**
(Ee majority freely designated U as their representative where supervisor was a passive presence when his Ee-wife solicited and secured signatures of majority of Ees to U authorization cards; supervisor made no effort to persuade any Ee to sign card; in response to Ee questions, he repeatedly advised them to decide for themselves if they wanted U; and supervisor neither misled Ees into believing E favored U nor gave them any cause to fear economic retaliation from supervisor if they refused to sign card)

Koenig Iron Works, Inc. **276 NLRB No. 083**
(solicitation of authorization cards for U, by highest paid Ee not violative)

Moe Warehouse & Accessory **275 NLRB No. 165**
(in order for U authorization cards to be tainted by participation of supervisor in U campaign, participation of supervisory personnel *must be of such kind as to have implied to Ees signing cards that E favored U or that there is reasonable basis for believing that Ees whose cards are sought to be invalidated were coercively induced to designate U*)

Moe Warehouse & Accessory **275 NLRB No. 165**
(U authorization cards not tainted by participation of supervisor who contacted U and attended subsequent meeting of Ees with U representative, where idea to contact U originated with Ees, E's opposition to U's organizing activity was known to Ees, and thus there was no basis for Ees feeling coerced into signing cards by any action of supervisor, and supervisor was subsequently discharged by E)

1115, Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board **275 NLRB No. 045**
(U's filing ptn in S.Ct of N.Y. to confirm that portion of arbitrator's award determining that U gained majority support of Ees in several previously unrepresented departments of E, violative, since award was based on *tainted authorization cards*, obtained by supervisors' assistance removing them as basis for attaining majority support; no deferral as decision of arbitrator palpably wrong as it seeks to achieve prohibited objective and lacks reasonable basis in fact and law)

2075-6767-5000 **Signing or delivery of card to union after demand for recognition**

Central Broadcast Company **280 NLRB No. 056**
[contention that card was ineffective to prove majority status because Ee had signed it at home and U had no knowledge of it being signed when demand letter sent, rejected where U business representative testified that he obtained majority of card signatures before U demand, and it was inferred that card was delivered to U]

3000 EMPLOYER OBLIGATION TO RECOGNIZE ON REQUEST

3033 EMPLOYER RESPONSE TO REQUEST

Quality Aluminum Products, Inc. **278 NLRB No. 049**
[refusal to recognize and bargain with U, violation where majority of Ees had signed valid U authorization cards, and E engaged in ULPs precluding fair election]

Matlack, Inc. **278 NLRB No. 036**
[U made adequate demand for recognition where it sufficiently manifested its desire to represent and negotiate on behalf of Ees by repeated requests by U representatives, to which E responded that it had no intention of negotiating with U because of its contract with another U; U herein unquestionably represented overwhelming majority of Ees; and E reasonably understood that U wanted to represent Ees]

Kona 60 Minute Photo **277 NLRB No. 092**
(E unlawfully refused to bargain with U where its reply to U's assertion of majority status and request for recognition consisted of commission of number of ULPs which had effect of undermining U's majority status)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(E did not unlawfully refuse to recognize U nor unlawfully withdraw recognition from U, where E's statements at meeting with U did not commit E to accord recognition to U; rather, E conditioned recognition by explicitly telling U representatives that he would have to take document back to E's board of directors for approval; at the time parties were not seeking to negotiate substantive terms of agreement but were merely negotiating regarding recognition of U and providing U with means of monitoring E's financial status to determine when substantive negotiations would become feasible)

Leeds Cablevision, Inc. and Cablevision Company, Inc. **277 NLRB No. 014**
(although joint E met with U on five occasions in order to negotiate contract for E's Ees, Bd found that joint E failed to bargain in good faith with U, since: (1) E failed to respond to U's first two requests for bargaining; (2) as soon as U requested bargaining E proposed closing one of its facilities; (3) E informed U it was not willing to discuss wages until ALJ issued his decision in prior Bd C case involving one of joint Es and same Ees; and (4) other expressions of joint Es' U animus which frustrated bargaining process)

Ednor Home Care, Inc. **276 NLRB No. 042**
(E did not unlawfully withdraw recognition since E never recognized U, where upon being presented with authorization cards by U's business repre-

3033—Cont.

sentative, E's owner never acknowledged, nor did U representative claim U represented majority of Ees. U's contention that there was initial discussion regarding terms of proposed contract delivered with economic terms left blank, and absent evidence of any statement by E connoting recognition, or explicit testimony of U representative concerning plans for negotiating meetings, nor was U representative's behavior consistent with belief U was recognized)

3067 MAY DECLINE TO RECOGNIZE WITHOUT ELECTION

3067-1500 Unless right to election is waived

Wayside Realty Group, Inc. and Georgetown Hotel **281 NLRB No. 045**
[E unlawfully withdrew recognition from U by failing to sign recognition agreement and by insisting upon Bd election, where E agreed to recognize U upon verifying U's majority status from authorization cards submitted by U, and E thereupon made such verification; although e and U subsequently agreed to private election as another means for determining U's majority support, E's decision not to proceed with private election made it a nullity and left E with obligation, according to earlier agreement, to voluntarily recognize U on basis of card majority]

Without Reservation **280 NLRB No. 165**
[refusing to bargain with U pursuant to agreement to be bound by card count, which showed U represented majority of Ees, violation where E, by avoiding completion of verification of signatures procedures, sought to repudiate previously agreed on method of determining whether U majority existed]

Duryea Manufacturing, Inc. **276 NLRB No. 025**
(E, once having agreed to authorization card check for determining majority status as basis for signing recognition agreement, was bound thereby)

3067-2500 Unless engaged in ULP precluding fair election

B & P Trucking, Inc. **279 NLRB No. 092**
[failing to reply to U request for recognition and committing hallmark ULPs including discriminatory shutdown of part of operations and discharge of its Ees, violation]

Stop N' Go Inc. **279 NLRB No. 052**
[8(a)(5) violation finding and bargaining order inappropriate, notwithstanding E's numerous ULPs, where 27 cards of alleged 41-card majority in 69-Ee unit were not properly authenticated]

Sahara Datsun, Inc. **278 NLRB No. 148**
[refusal to recognize and bargain with U that had card majority, violation where E committed ULPs during campaign]

Dayton Auto Electric, Inc. **278 NLRB No. 080**
[E's refusal to bargain with U which had card majority, unlawful, and bargaining order issued, in view of E's ULPs, and where E's contention that U forfeited its right to bargaining order by its picket line misconduct, rejected]

Quality Aluminum Products, Inc. **278 NLRB No. 049**
[refusal to recognize and bargain with U, violation where majority of Ees had signed valid U authorization cards, and E engaged in ULPs precluding fair election]

Kona 60 Minute Photo **277 NLRB No. 092**
(E unlawfully refused to bargain with U where its reply to U's assertion of majority status and request for recognition consisted of commission of number of ULPs which had effect of undermining U's majority status)

Limpert Brothers, Inc. **276 NLRB No. 037**
(E's refusal to recognize U, violative, and bargaining order appropriate, since U had obtained card majority and E's conduct precluded fair election where E interrogated Ees shortly after gaining knowledge of U activity, threatened them with plant closure, discriminatorily laid off large percentage of workforce one day after learning of U campaign and discharged other Ees for refusing to cross ULP picket line set up by laid off Ees)

3067-3700 Where not engaged in ULP precluding fair election

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[unilateral implementation of new leave policy, not violation where E had no bargaining obligation at that time, because, although U had card majority, E's ULPs did not preclude fair election]

Uniontown Hospital Association **277 NLRB No. 144**
(contrary to ALJ, E's failure to respond to U's request for recognition and its unilateral change not found violations where E's ULPs were found herein not to preclude fair election)

Kona 60 Minute Photo **277 NLRB No. 092**

3067-5000 Unless having independent knowledge of union majority

Without Reservation **280 NLRB No. 165**
[refusing to bargain with U pursuant to agreement to be bound by card count, which showed U represented majority of Ees, violation where E, by avoiding completion of verification of signatures procedures, sought to repudiate previously agreed on method of determining whether U majority existed]

Crest Industries Corp. **276 NLRB No. 067**
(E's refusal to bargain with U, and comply with U's demand for recognition, violative where E, by polling its Ees, had determined that majority of Ees wished to be represented by U)

Duryea Manufacturing, Inc. **276 NLRB No. 025**
(E, once having agreed to authorization card check for determining majority status as basis for signing recognition agreement, was bound thereby)

4000 DURATION OF OBLIGATION TO RECOGNIZE AND BARGAIN

4001 GENERALLY

4001-4700 Time runs from Board order or settlement

VIP Limousine, Inc. **276 NLRB No. 089**
(E's withdrawal of recognition from U and refusal to bargain, violative since E was obligated to bargain with U pursuant to non-Bd settlement reached by parties, no reasonable period for bargaining had elapsed, and thus E was not privileged to question U's majority status)

4020 CERTIFIED REPRESENTATIVE

4020-0100 Generally

Whisper Soft Mills, Inc. v. N.L.R.B. **754 F.2d 1381 (C.A. 9, Dec. 1984)**
(the duty of an E to bargain with the chosen representative of its Ees is an obligation only to the certified representative, and that obligation, being exclusive, exacts a negative duty to treat with no other)

4020-2000 Presumption of continued majority

4020-2033 Irrebuttably presumed for 1 year

Herbert Halperin distributing Corporation **281 NLRB No. 001**
[mtn for summary judgment granted, notwithstanding E's contention that it is entitled to a hearing to determine if U still retains majority support due to lapse of time and alleged high turnover rate among unit Ees, since U's continued majority status is presumed to exist for one-year certification period, and neither Ee turnover lapse of time justifies E's refusal to bargain]

Southern Lumber Company, Inc. **279 NLRB No. 027**
[violation, where E's refusals to bargain took place w/i one year following U's since U at such times enjoyed irrebuttable presumption of majority status; fact that E offered to bargain on one condition of employment, layoff procedure, was no defense that it refused to bargain over other mandatory subjects of bargaining]

Ben Franklin National Bank **278 NLRB No. 136**
[E's refusal to sign bargaining agreement unlawful, since obligated to sign where meeting of minds reached during certification year inasmuch as Ee's ratification of E's final offer and dispatch of U's telegraphic acceptance both transpired w/i certification year and before E posted letter withdrawing its last offer; notwithstanding receipt by E during certification year of ptn signed by majority of Ees stating they no longer wished to be represented by U, and prior reservation of right of E's president and Board of Directors to approve and ratify any tentative agreement, since e's president had apparent authority to bind E]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor **785 F.2d 195 (C.A. 7, Mar. 1986)**
[successor E's contention that it should not be ordered to bargain with U since predecessor's strike replacements should not be presumed to support U, rejected, since one year had not elapsed since U was certified and successor itself was responsible for not reinstating strikers, which itself was a ULP and thus, it cannot rely on that to support U's loss of majority status]

4020-2033-2500 Absent unusual circumstances

Ben Franklin National Bank **278 NLRB No. 136**
[*ptn bearing signatures of majority of unit Ees, signed and presented to E during certification year is not type of unusual circumstances warranting suspension of 1 year rule so as to release E from its obligation to grant recognition to certified U during entire period of certification*]

Farat, Inc. d/b/a V.I.P. Limousine Service **277 NLRB No. 056**
(seven and one-half month lapse of time between E's initial refusal to bargain in response to U's request for bargaining in incorrectly described unit and U's second request for bargaining held not to constitute such unusual circumstances that would relieve E of obligation to bargain during certification year)

Hydro-Air Equipment, Inc. d/b/a Lanco **277 NLRB No. 012**
(E's recognition of and signing contract with U as representative of Ees at new location, unlawful, since it was under continuing obligation to recognize and bargain with another U which had represented Ees at previous location, inasmuch as relocation took place during certification year, at time of recog-

4020-2033-2500—Cont.

nition of other U majority of unit consisted of Ees who had transferred from old location, and only significant change in operations was geographic)

N.L.R.B. v. Paper Manufacturers Company, et al. 784 F.2d 163 (C.A. 3, Mar. 1986)

[move of medical packaging division to same facility where regular packaging products manufactured w/i certification year not such changed circumstances that would justify E's refusal to bargain with U certified as representative of medical packaging Ees prior to move, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions, skills, and functions, with exception of two maintenance Ees, separate and distinct, no interchange of Ees; contention relocated Ees accretion to Ees in other division at same facility and represented by another U, rejected]

4020-2033-5000 Where certification enforced in ULP proceeding, year dates from time employer commences bargaining

Accurate Web, Inc. 279 NLRB No. 030

[E's withdrawal of recognition from U during certification year as extended, violative, since U and E entered into settlement agreement extending certification year, committing E to bargain with U, resulting in U's withdrawing ULP charges against E]

Accurate Web, Inc. 279 NLRB No. 030

[certification year for U extended, (where U not accorded full certification year) *to embrace that time in which the E has engaged in its unlawful refusal to bargain,* inasmuch as there should have been bargaining since certified U requested same w/i certification year]

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 983 (C.A. 9, July 1985)

(defense of U's alleged loss of majority support due to Ee turnover, rejected in view of irrebuttable presumption of continuing majority status for one year running from date of certification, which in instant case has been ordered to run from date that E begins good faith bargaining)

4020-2067 Rebuttably presumed after 1 year

H & H Pretzel Company 277 NLRB No. 143

(withdrawal of recognition after contract expired, violation, since presumption of continued majority status was not rebutted by E's contention that its change to distributor dealerships converted Ees to independent contractors in view of E's retention of right of control and fact that nine out of twelve Ees were new hires which did not establish loss of majority support, as turnover alone cannot do so)

J. L. Davidson Company JD-(SF)-186-85

[E's refusal to execute contract, not violation, since during interim between E's offer and U's acceptance, U's majority status was unequivocally rebutted by Ees' show of hands withdrawing U's authority to represent them]

Abramo Fish Co. Ltd. JD-222-85

(purchaser's refusal to recognize and bargain with U representing seller's Ees, not unlawful where, even assuming U had been certified to represent seller's Ees, U possessed only a rebuttable presumption of its majority status since alleged refusal to recognize U occurred more than 2 years after effective date of most recent contract, and U did not in fact have majority status)

Whiger Soft Milk, Inc. v. N.L.R.B. 754 F.2d 1381 (C.A. 9, Dec. 1984)

(at expiration of certification year, the presumption of majority status becomes rebuttable, and an E may rebut that presumption so as to withdraw recognition by presenting evidence of sufficient objective basis for a reasonable doubt of the U's majority status at the time E refused to bargain; however, such objective evidence must be clear, cogent and convincing)

4020-2067-5000 Free of unfair labor practices

Johns-Manville Sales Corporation 282 NLRB No. 040

[E possessed good-faith doubt of U majority based on ptn signed by majority of Ees requesting decert election when it withdrew recognition from certified U, notwithstanding E committed ULP when it laid off Ees w/o following seniority where ULP committed 8 months before withdrawal, involved only 3 Ees, E advanced legitimate business reason for not following seniority and E continued to bargain with U until withdrawal

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor 785 F.2d 195 (C.A. 7, Mar. 1986)

[successor E's contention that it should not be ordered to bargain with U since predecessor's strike replacements should not be presumed to support U, rejected, since one year had not elapsed since U was certified and successor itself was responsible for not reinstating strikers, which itself was a ULP and thus, it cannot rely on that to support U's loss of majority status]

4020-4000 Certification by Board

Unifirst Corporation 280 NLRB No. 008

[where E's answer in summary judgment proceeding admitted it refused to bargain only from date Bd denied its mtn for reconsideration, Bd held E's bargaining obligation attached upon U's certification even when, as here, E was testing U's certification; Bd's R/R Sec. 102.65(e)(3) provides that motion for reconsideration does not operate to stay effectiveness of Bd action; consequently, E's refusal to bargain commenced on date that U, as admitted by E, requested to bargain]

4025 REPRESENTATIVES UNDER CONTRACT

Watson-Rummell Electric Co. 277 NLRB No. 162

[E's failure to bargain with U following expiration of contract of multi-E association from which E had timely withdrawn, unlawful, where E failed to bargain on individual basis]

4025-2500 Majority status irrebuttably presumed during term of contract

BASF-Wyandotte Corporation 276 NLRB No. 068

(E's withdrawal of recognition during term of contract, on grounds that majority of Ees had signed ptn repudiating U and it had been presented with letter of disclaimer signed by members of local U's Executive Committee, violative, since majority status of U is irrebuttably presumed during term of contract and further, contract was signed and administered by both the local and International U and International had in no way disclaimed its bargaining rights and after learning of actions by its local, International informed E that local was in receivership and it would continue servicing the contract)

4025-5000 After expiration of contract

Architectural Woodwork Corporation 280 NLRB No. 108

[unilateral change in overtime payment policy, violation, notwithstanding expiration of contract, where presumption of continued majority status was not rebutted by good faith doubt based on decertification ptn that was unlawfully induced by E]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118

[contract provision stating that U *warrants, represents and agrees* that it represented a majority of unit Ees not clear and unmistakable waiver of U's right to benefit from presumption of majority status after expiration of contract]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118

[U's continued majority status presumed after expiration of contract, despite E's claim that U failed to fairly represent unit Ees' interests, where there was no ambiguity in unit description, no evidence of U-E understanding negating intent to enter into collective-bargaining relationship, and no evidence of existence of relationship inimical to Act's fundamental policy or standard; insofar as facts may have shown inept, ineffective or unfair representation, Ees may assert their interests through intra-U, Bd or other legal procedures, but E may not defend refusal to bargain on these grounds]

American Fluorescent Corp. 275 NLRB No. 154

(documentary evidence supporting U's theory that recognition clause of expired (labor) contract survived the whole contract, disregarded as irrelevant, since U's theory would perpetuate irrebuttable presumption of majority status conflicting with concept of contract bar interwoven in GC's theory)

Engineered Control Systems, Inc. 274 NLRB No. 191

The Typographers, Inc. JD-22-86

[rebuttable presumption of majority U support survives E's withdrawal from multiE unit]

Alpine Vending, Inc. JD-(SF)-99-85

(E's failure to apply provisions of bargaining agreement to all Ees of unit, and after expiration of contract unilaterally changing contract rate of pay, and failing to make contributions to health, welfare, and pension trust funds, unlawful, where E did not during term of contract give notice and obtain consent of U for deviations as required by Section 8(d) of Act, and after contract expired did not bargain to impasse with U)

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) JD-(SF)-87-85

(signatory to memorandum agreement gave proper notice of termination of agreement and agreement terminated at expiration date of agreement notwithstanding U and E association prematurely negotiated new contract prior to time that proper notice could be sent (60 days), since signatories could not be bound to mid-term modification as it is wording of memorandum agreement rather than contract incorporated by reference that controls termination dates)

4025-7500 Contract of predecessor employer

Louis Pappas' Homosassa Springs Restaurant, Inc. 275 NLRB No. 213

(in absence of any unusual circumstances, such as accretion to unit by agreement of parties w/o participation of affected Ees, presumption of majority status continues after takeover by Respondent (successor). No significance that U may not have been *recently* certified)

4040 VOLUNTARILY RECOGNIZED REPRESENTATIVES

4040-5000 Presumption of majority status

The Typographers, Inc. JD-22-86
[rebuttable presumption of majority U support survives E's withdrawal from multiE unit]

4040-5025 Voluntary recognition raises presumption of regularity that their representative had majority status

Wilder Construction 276 NLRB No. 104
(E's withdrawal of recongition from U when Ees went out on economic strike because E and U were unable to reach full agreement on terms of collective-bargaining agreement, violative and strike, subsequently was ULP strike, since E foreclosed possibility of entering into collective-bargaining agreement)

4040-5037 Contract creates irrebuttable presumption of continuing majority status of union

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders 280 NLRB No. 133
[so long as predecessor Ees at alleged successor's plant are majority of Ees in successor unit, alleged successor may properly be considered to be successor E]

4040-5042 Presumption resulting from long bargaining history

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders 280 NLRB No. 133
[U, which has been representing unit Ees at predecessor E's plant for over 40 years, is to be recognized as ongoing representative for unit Ees where successor E has advanced no good-faith doubt about U no longer representing unit Ees, and there is not enough difference between predecessor E and successor E to overcome presumption that *---Ees' desires concerning unionization* are unchanged (successor Ees performed essentially same work, in same plant, with same equipment as before)]

4040-5090 Withdrawal from multiemployer bargaining unit

Elevator Sales and Service, Inc. 278 NLRB No. 094
[refusal of E and its *alter ego* to recognize U and honor contracts, violation, where E failed to effectively withdraw from multi-E bargaining association]

Cascade Painting Company, Inc. 277 NLRB No. 103
(in adopting ALJ's finding that Es, as purported non-U Es in single-E units following withdrawal from multi-E bargaining after expiration of contract, did not rebut presumption of U's continuing majority status, Bd found it unnecessary to rely on principle enunciated in *Golden State Habilitation Convalescent Center*, 224 NLRB 1618, that new Ees support U in same ratio as those whom they have replaced)

Cascade Painting Company, Inc. 277 NLRB No. 103
(Es unlawfully withdrew recognition from U where Es failed to rebut presumption of U's continued representation of Ee majorities in single-E units following withdrawal from multi-E bargaining; Es informed their Ees of intention to become non-U Es which, however, was choice open only to Ees, not Es; and after expiration of contract and w/o advising U or federal or state agencies, Es ceased making payments to U trust funds, stopped paying contract wages, and negotiated with Ees regarding wages and other terms and conditions of employment)

4050 SETTLEMENT AGREEMENT WITH BARGAINING PROVISION

Accurate Web, Inc. 279 NLRB No. 030
[E's withdrawal of recognition from U during certification year as extended, violative, since U and E entered into settlement agreement extending certification year, committing E to bargain with U, resulting in U's withdrawing ULP charges against E]

VIP Limousine, Inc. 276 NLRB No. 089
(E's withdrawal of recognition from U and refusal to bargain, violative since E was obligated to bargain with U pursuant to non-Bd settlement reached by parties, no reasonable period for bargaining had elapsed, and thus E was not privileged to question U's majority status)

4055 REPRESENTATIVE SUBJECT TO BARGAINING ORDER IN LITIGATION

Gentzler Tool & Die Corp. 275 NLRB No. 124
(notwithstanding Bd has pending ptn for enforcement of its Order requiring execution of contract, retroactive application of contract and that E c/d from dealing directly with Ees, Bd issued another D/O arising from subsequent C finding E violations for refusal to bargain and withdrawal of recognition which are different violations than those found in first decision, and therefore, Order in first decision would not remedy those violations found in second decision; hence, need for another Order)

4070 TERMINATION BY LOSS OF VIABLE RELATIONSHIP

The Gateway Theatre Corporation d/b/a Senator Threatre, Capitol Hill Cinemas 277 NLRB No. 186
[termination of oral agreement whereby U referred Ees to E, E would refer personnel problems to U, and E would pay agreed upon wages, and E unilaterally reducing wages, not unlawful, since termination took place after agreed upon duration of contract]

4075 TERMINATION BY WITHDRAWAL OF RECOGNITION

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital 282 NLRB No. 010
[E's refusal to bargain with U in which E's letter purported not to withdraw recognition unconditionally, but only to suspend negotiations *pending a final determination as to whether or not your labor organization represents a majority of nurses at our hospital* not untimely refusal, since, notwithstanding E's letter was over 6-months before any ULP charge as a refusal to bargain which is contingent on other occurrences does not start statute of limitations running]

General Hugh Mercer Corp., d/b/a Princeton Holiday Inn 282 NLRB No. 004
[E's withdrawal of recognition before one year period following Bd certification, violative since there is conclusive presumption of continued majority status in U during full one year period following Bd certification]

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. 281 NLRB No. 117
[E unlawfully withdrew recognition from U where, in prior case, Bd ordered E to give retroactive effect to contract reached by E and U, thereby giving rise to presumption that E's majority status was in effect at time E withdrew recognition; E's defense that U had lost, or E had good faith doubt of, U's majority status, predicated solely on Ee ptn assertedly showing Ees' disaffection with U, rejected, where circumstances surrounding solicitation of ptn signatures and ptn's language indicated ptn was meant to precipitate Ee ratification vote on E's proposed contract]

Aqueslide 'N' Dive Corporation 281 NLRB No. 034
[withdrawal of U recognition, unlawful, where withdrawal occurred in atmosphere of ULPs; showing that portion of unit Ees no longer desired U representation was insufficient to justify withdrawal; other Ees in layoff status either had been recalled or had reasonable expectation of recall and were eligible for inclusion in unit since they were on payroll at time of withdrawal and had not been terminated nor advised there was no chance of recall; and following filing of bankruptcy ptn, E expressed hope of resuming normal production]

Tri-State Culvert Manufacturing, Inc. 280 NLRB No. 087
[E held entitled to withdraw recognition from U where U lacked majority support of Ees at time E voluntarily recognized U as Ee representative, and there was no evidence that U thereafter obtained majority status prior to withdrawal of recognition]

Accurate Web, Inc. 279 NLRB No. 030
[E's withdrawal of recognition from U during certification year as extended, violative, since U and E entered into settlement agreement extending certification year, committing E to bargain with U, resulting in U's withdrawing ULP charges against E]

Taylor Hospital 279 NLRB No. 006
[E's withdrawal of recognition from U based on ptn signed by majority of unit Ees, violative, where E's withdrawal of recognition was at a time when there remained an unremedied unlawful discharge of a long-time leading U supporter and member of U's bargaining team at the outset of long-delayed negotiations; because of the serious ULP of discharge, E is precluded from effectively relying on its asserted doubt of U's majority status]

Central Washington Health Services Association d/b/a Central Washing Hospital 279 NLRB No. 011
[anti U ptns signed by Ees not basis for good faith doubt of U's continuing majority, where signatures not obtained in atmosphere free of ULPs and so did not justify E's withdrawal of recognition]

Central Washington Health Services Association d/b/a Central Washing Hospital 279 NLRB No. 011
[filing of RM ptn supported by ptns signed by Ees not basis for good faith doubt of U's continuing majority, and did not justify withdrawal of recognition by E, since filing of RM ptn to question majority of previously certified U must itself be supported by objective considerations indicating loss of majority, and herein E's unlawful involvement in ptns, unlawful interrogations and promise of benefits tainted ptns in such a way E cannot rely on them]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118
[withdrawal of recognition without good faith doubt of U majority status based on objective considerations, violation where E unilaterally ceased fund contributions before concluding U did not represent majority, told Ee it was not going to renew contract before all but two alleged Ee expressions of dissatisfaction with U, interrogated Ees as to what transpired at U meetings, solicited Ee to keep E informed as to future U meetings, threatened to

4075—Cont.

discharge Ee for supporting the U and offered to reimburse Ee for U initiation fee]

The Gateway Theatre Corporation d/b/a Senator Threatre, Capitol Hill Cinemas **277 NLRB No. 186**
[termination of oral agreement whereby U referred Ees to E, E would refer personnel problems to U, and E would pay agreed upon wages, and E unilaterally reducing wages, not unlawful, since termination took place after agreed upon duration of contract]

H & H Pretzel Company **277 NLRB No. 143**
(withdrawal of recognition after contract expired, violation, since presumption of continued majority status was not rebutted by E's contention that its change to distributor dealerships converted Ees to independent contractors in view of E's retention of right of control and fact that nine out of twelve Ees were new hires which did not establish loss of majority support, as turnover alone cannot do so)

Cascade Painting Company, Inc. **277 NLRB No. 103**
(Es unlawfully withdrew recognition from U where Es failed to rebut presumption of U's continued representation of Ee majorities in single-E units following withdrawal from multi-E bargaining; Es informed their Ees of intention to become non-U Es which, however, was choice open only to Ees, not Es; and after expiration of contract and w/o advising U or federal or state agencies, Es ceased making payments to U trust funds, stopped paying contract wages, and negotiated with Ees regarding wages and other terms and conditions of employment)

BASF Wyandotte Corporation **276 NLRB No. 175**
(E's withdrawal of recognition from U, not violative where E had reasonably grounded good faith doubt as to continued majority status of U; E announced its withdrawal of recognition on date and time of expiration of bargaining agreement following its receipt of cards from majority of Ees stating they no longer wished U representation; withdrawal was lawful notwithstanding E's ULPs since they were not *sufficiently serious ...that they possessed an inherent tendency to ...(contribute) to the union's loss of majority status*)

Wilder Construction **276 NLRB No. 104**
(E's withdrawal of recongition from U when Ees went out on economic strike because E and U were unable to reach full agreement on terms of collective-bargaining agreement, violative and strike, subsequently was ULP strike, since E foreclosed possibility of entering into collective-bargaining agreement)

Indiana Cabinet Company, Inc. **275 NLRB No. 169**
(no violation)

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(E's written memo to U representative stating that E would no longer be bound by terms of expired contract and would demand that Ees vote on designation of their representative before negotiations could be resumed held to constitute unlawful implied threat of withdrawal of recognition and refusal to negotiate contract with U)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(withdrawal of recognition from U based solely on ptn circulated by cousin of E's antiU president, violative where only three ptn signers could claim any connection with ten-man unit represented by U)

Abbott-Northwestern Hospital **274 NLRB No. 162**
(withdrawing recognition as to, and unilaterally changing working conditions of, 9 represented psychiatric assistants after transfer to same facility of 63 historically unrepresented psychiatric assistants, not violative, since consolidation obliterated unit of 9 represented Ees and unit of only part of group of Ees in same classification was inappropriate; unrepresented Ees were not accreted to former unit of represented Ees, parties had agreed that U would not represent previously unrepresented Ees, and U had reserved its representative position only as to previously represented Ees and complaint alleged violations only as to them)

Weiser Optical Company **274 NLRB No. 143**
(supervisor's telling Ee that *it was getting close to this time* referring to Bd's *open period* when decertification ptn can be filed, telling Ee that E's president was *trying to get things started* and informing Ees during a meeting that he thought Ees were mature enough to work out differences w/o a *third party*, held unlawful encouragement of decertification ptn and withdrawal of recognition based on ptn violative; E's unsolicited involvement with ptn was far more than ministerial aid since idea of ptn was implanted in Ees' mind by E, thus tainting ptn and E's good-faith doubt of U's majority status)

Choctawhatchee Electric Cooperative, Inc. **274 NLRB No. 084**
(withdrawal of recognition on basis of decertification ptn, violative where ptn was tainted by E's ULPs)

The Cooper Union For The Advancement of Science and Art **273 NLRB No. 214**
(professional educational institution's withdrawal of recognition from and refusal to bargain with U representing faculty members, unlawful, where members were found not managerial but Ees entitled to protection of Act)

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**
[E's repudiation of contract during its term by notifying U of its termination held unlawful mid-term withdrawal of recognition from U]

Duct-O-Wire Company **JD-(ATL)-3-86**
[E's withdrawal of recognition, based on decertification ptn signed by majority of unit Ees, not violative where E rebutted presumption of majority status by demonstrating on date of withdrawal, and in context free of ULPs, U 1) in fact had lost its majority status and 2) that withdrawal was predicated on reasonable doubt, based on objective considerations, of U's majority status]

White-Rodgers, Division of Emerson Electric Company **JD-(ATL)-4-86**
[E's withdrawal of recognition from U, assertedly because it had been presented ptn signed by majority of Ees renouncing U which established its good faith doubt, violative, since ptn was tainted by E's ULPs where E impliedly promised two Ees improvements in wages and pensions and threatened to freeze wages and benefits if they didn't support ptn and those two Ees then signed ptn which gave E a bare majroity to rely on in withdrawing recognition]

Alpine Vending, Inc. **JD-(SF)-99-85**
(no unlawful withdrawal of recognition where E never formally expressed intention to cease recognizing U, and absent evidence U admitted it did not represent majority of Ees, E's failure to reply to U's requests for clarifications regarding its intentions concerning processing of grievance *seems more in nature of continuing failure to bargain in good faith than evidence supporting full repudiation of bargaining claim*)

Bertolucci's Fender and Body Shop, Inc. **JD-(SF)-143-85**
(E's withdrawal of proposal after it was accepted by the U not found to be unlawful withdrawal of recognition as alleged)

Frederick Davidowitz, D.D.S. Professional Corporation and Martin Goldberg, D.D.S. Professional Corporation, a Partnership d/b/a Union Health Services **JD-(SF)-112-85**
(withdrawal of recognition based on decertification ptn signed by substantial majority of unit Ees, lawful where there was no evidence of E's involvement with ptn, nor were Ees coerced in signing ptn by E's prior ULP's then pending before Bd, and Ees stated that they were not affected by pending charges but by U's failure to win contract from E)

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) **JD-(SF)-87-85**
(signatory to memorandum agreement gave proper notice of termination of agreement and agreement terminated at expiration date of agreement notwithstanding U and E association prematurely negotiated new contract prior to time that proper notice could be sent (60 days), since signatories could not be bound to mid-term modification as it is wording of memorandum agreement rather than contract incorporated by reference that controls termination dates)

N.L.R.B. v. The Cooper Union For The Advancement of Science and Art **783 F.2d 29 (C.A. 2, Jan. 1986)**
[withdrawal of recognition from unit of full-time faculty members, violation, where advanced educational institution's faculty members forming unit were Ees, rather than managers of supervisors]

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) **755 F.2d 5 (C.A. 2, Feb. 1985)**
(where local U representing only E's guards and other guards in armored car industry was merged into local U representing guards and nonguards, and E voluntarily recognized latter U, E's withdrawing recognition after contract had expired and U had rejected E's final offer, not violative; Sec. 9(b)(3) language and legislative history provide sufficient support for Bd's conclusion that Congress knowingly decreased stability of bargaining relationships involving such Us to protect guards from potential for division of loyalty between E and fellow U members)

Landmark International Trucks, Inc. v. N.L.R.B. **775 F.2d 148 (C.A. 6, Oct. 1985)**
[successor E's withdrawing recognition from U, not violation, notwithstanding Bd's finding that E's letter requesting Ees to advise E of resignation from U provided no reasonable basis for E's decision that U had lost majority status, where there was abundant evidence, known to E at time of decision, of U's loss of majority status, including uncontradicted testimony that Bd had not considered because Bd found it hearsay]

Whisper Soft Mills, Inc. v. N.L.R.B. **754 F.2d 1381 (C.A. 9, Dec. 1984)**
(E's withdrawal of recognition at end of certification year on grounds that substantial majority of unit was comprised of Ees who crossed picket line, not violative, since Ee turnover may be considered in determining E's good faith doubt where a demand for reinstatement by striking Ees at time E withdrew recognition would result in loss of employment for majority of striking Ees; and further, presumption that strike replacements support U in same ratio as strikers, rejected)

4080 TERMINATION OF OBLIGATION BY EMPLOYER BECAUSE OF REPRESENTATIVE'S LOSS OF MAJORITY STATUS

4080-0100 Generally

4080-0112 Loss of majority in recognized unit

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(E's withdrawal of recognition based on U's loss of majority status, unlawful, where proximate cause of loss was E's ULPs including threats, loss of benefits, and direct dealings with Ees which caused at least one Ee to sign statement repudiating U and w/o this Ee's signature less than half of unit Ees would have signed ptn)

J. L. Davidson Company **JD-(SF)-186-85**
[E's refusal to execute contract, not violation where E was aware that Ees withdrew U's authority to represent them]

4080-0125 Belief in loss of majority must be based upon objective consideration

The Hearst Corporation, San Antonio Light Division **281 NLRB No. 113**
[E may not lawfully withdraw recognition from an incumbent U because of asserted doubt of U's majority status unless such doubt is based on objective considerations sufficient to afford E a reasonable ground for believing that its Ees no longer desire to be represented by the U; the asserted doubt, however, may not be raised in the context of any E activities aimed at causing Ee disaffection with the U]

Ashe Brick Company **280 NLRB No. 162**
[E's doubt of U's majority status not based on objective considerations and did not justify withdrawal of recognition, where doubt based on fact it did not hear from U for over 3 months and that support for on going strike had dwindled, since U did contact mediators, and strikers who cross picket line are not presumed to have withdrawn support from U, and absent other evidence strikers no longer desired U to represent them]

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders **280 NLRB No. 133**
[U, which has been representing unit Ees at predecessor E's plant for over 40 years, is to be recognized as ongoing representative for unit Ees where successor E has advanced no good-faith doubt about U no longer representing unit Ees, and there is not enough difference between predecessor E and successor E to overcome presumption that *—Ees' desires concerning unionization* are unchanged (successor Ees performed essentially same work, in same plant, with same equipment as before)]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[testimony of only 4 Ees out of complement of approximately 100 Ees sufficient to carry burden that supervisor's conduct was unlawful. Nor does it satisfy E's burden of establishing that its asserted objective considerations arose in atmosphere free from coercion in support of its affirmative defense of good-faith doubt of U's majority support]

Bryan Memorial Hospital **279 NLRB No. 039**
[withdrawal of recognition unlawful notwithstanding decert ptn filed and E furnished with 11 affidavits from unit members stating they no longer wanted U to represent them and that these 11 affiants knew that majority of unit members did not want U to represent them any longer but would not furnish their names as they requested anonymity, since E's receipt of Ees' unverified assertions that majority of Ees no longer support their U representative, is insufficient to create reasonable based doubt that claimed desire of those Ees is factual]

Hydro Conduit Corporation **278 NLRB No. 164**
[E's refusal to bargain with U, assertedly because of good faith doubt of U's majority status, violative, since on basis of recently expired contract, U is presumed to represent majority of Ees which presumption was not rebutted where E's doubt was based on generalized belief that Ees would not want U, a decline in checkoff authorizations and fact that Ees decided to return to work the day after voting to strike, all factors not rebutting U's presumption of majority status]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**
[E's alleged doubt of U majority status not based on objective considerations, where only credited evidence of asserted Ee dissatisfaction was hearsay testimony that two Ees' in eleven-person unit stated that U had done nothing for them and that most Ees felt same way; complaining Ees later attended U meeting and paid dues, demonstrating that harbering negative feelings toward U is not inconsistent with desire for continued representation]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 119**
[withdrawal of recognition without good faith doubt of U majority status based on objective considerations, violation where E unilaterally ceased fund contributions before concluding U did not represent majority, told Ee it was not going to renew contract before all but two alleged Ee expressions of dissatisfaction with U, interrogated Ees as to what transpired at U meetings, solicited Ee to keep E informed as to future U meetings, threatened to discharge Ee for supporting the U and offered to reimburse Ee for U initiation fee]

Radek Enterprises, Inc. **277 NLRB No. 101**
(E receipt of Ee's unverified assertions that majority of Ees no longer support their U representative is insufficient to create *reasonably based conviction that the claimed desire of those Ees to be rid of U* is factual)

Wilder Construction **276 NLRB No. 104**
(proof that economic strikers permanently severed their employment relationship or abandoned their strikers' status must be unequivocal in relation to time of withdrawal or recognition)

Steven Muss, Cynthia Muss Lawrence and Debbie Muss Kenken, A Copartnership, d/b/a Alexander Muss & Sons **274 NLRB No. 193**
(E's recognition and execution of contract with one U and its withdrawal of recognition from another U which was striking E over failure of contract negotiations, not violative, since no R ptn had been filed with Bd thus raising qcr, and E had objective considerations for doubting striking U's majority status where striking Ees had been on strike for over a year, all strikers had been permanently replaced and 13 of 17 current Ees had freely signed cards authorizing new U to represent them, giving no indication of support for striking U)

4080-0150 Belief must be held in good faith and not advanced to gain time to undermine union

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[E's withdrawal of recognition of U, unlawful, since its assertion of doubt of U's majority not made in context free of ULPs of type aimed at causing disaffection from U where supervisor had unlawfully solicited resignations from U from striking Ees]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**
[withdrawal of recognition without good faith doubt of U majority status based on objective considerations, violation where E unilaterally ceased fund contributions before concluding U did not represent majority, told Ee it was not going to renew contract before all but two alleged Ee expressions of dissatisfaction with U, interrogated Ees as to what transpired at U meetings, solicited Ee to keep E informed as to future U meetings, threatened to discharge Ee for supporting the U and offered to reimburse Ee for U initiation fee]

American Fluorescent Corp. **275 NLRB No. 154**
(withdrawal of recognition of U as exclusive Ee bargaining agent, not violative where there is no evidence that E took any action to inhibit transfer of former bargaining unit members, and no evidence to refute evidence of proferred assistance by E. E terminated its operations in one city and resumed operations in another 35 miles north of first city in another county where U did not represent majority of E's work force)

4080-0175 Withdrawal of recognition must be at appropriate time in relation to

4080-0175-2000 Certification

Harley-Davidson Transportation Co., Inc. **273 NLRB No. 192**
]*successor* lawfully withdrew from bargaining after 3 sessions and of voluntarily recognizing U that had been certified over year during predecessor's time on basis of good faith doubt evidenced by ptn signed by majority of Ees stating they no longer wanted U to be its representative. Change of ownership not treated as equivalent of certification or voluntary recognition of U following organizational drive since relationship between U and Ees not disturbed so all U has is presumption of majority status that may be rebutted at anytime w/o waiting reasonable period. Signatures on ptn need not be authenticated)

4080-0175-4000 Voluntary recognition

Harley-Davidson Transportation Co., Inc. **273 NLRB No. 192**
]*successor* lawfully withdrew from bargaining after 3 sessions and of voluntarily recognizing U that had been certified over year during predecessor's time on basis of good faith doubt evidenced by ptn signed by majority of Ees stating they no longer wanted U to be its representative. Change of ownership not treated as equivalent of certification or voluntary recognition of U following organizational drive since relationship between U and Ees not disturbed so all U has is presumption of majority status that may be rebutted at anytime w/o waiting reasonable period. Signatures on ptn need not be authenticated)

4080-0175-8000 Contract

Hydro Conduit Corporation **278 NLRB No. 164**
[E's refusal to bargain with U, assertedly because of good faith doubt of U's majority status, violative, since on basis of recently expired contract, U is presumed to represent majority of Ees which presumption was not rebutted where E's doubt was based on generalized belief that Ees would not want U, a decline in checkoff authorizations and fact that Ees decided to return to

4080-0175-8000—Cont.

work the day after voting to strike, all factors not rebutting U's presumption of majority status]

BASF-Wyandotte Corporation 276 NLRB No. 068
(E's withdrawal of recognition during term of contract, on grounds that majority of Ees had signed ptn repudiating U and it had been presented with letter of disclaimer signed by members of local U's Executive Committee, violative, since majority status of U is irrebuttably presumed during term of contract and further, contract was signed and administered by both the local and International U and International had in no way disclaimed its bargaining rights and after learning of actions by its local, International informed E that local was in receivership and it would continue servicing the contract)

Duroyd Manufacturing, Inc. 276 NLRB No. 025
(E's refusal to bargain with U, unlawful, since recognition agreement had been validly executed by agent of E with apparent authority who concluded after authorization card check that U represented majority of Ees, and further, E's president subsequently retained labor counsel and attended two negotiating sessions before withdrawing recognition)

4080-5000 Objective Considerations Evaluated in Establishing Employer's Doubt of Majority Status

4080-5001 Generally

Royal Vending Services, Ltd. 275 NLRB No. 173
(successor's contention of doubt of U's majority status rejected where successor knew at time it took over business that predecessor had been transmitting dues to U for six of eight Ees in unit)

4080-5006 Claims asserted by rival union

4080-5006-2500 By representation petition

Len Martin Corporation 282 NLRB No. 075
[*RCA Del Caribe, Inc.*, 262 NLRB 963 (1982) cited as authority where E refused to bargain with incumbent U while timely ptn for R election was filed by competing U]

4080-5012 Employer's information concerning employee dissatisfaction with union

4080-5012-0100 Generally

4080-5012-0150 Must come from employees and not employer on their behalf

Hydro Conduit Corporation 278 NLRB No. 164
[E's refusal to bargain with U, assertedly because of good faith doubt of U's majority status, violative, since on basis of recently expired contract, U is presumed to represent majority of Ees which presumption was not rebutted where E's doubt was based on generalized belief that Ees would not want U, a decline in checkoff authorizations and fact that Ees decided to return to work the day after voting to strike, all factors not rebutting U's presumption of majority status]

4080-5012-1700 Through statements of employees

Bryan Memorial Hospital 279 NLRB No. 039
[withdrawal of recognition unlawful notwithstanding decert ptn filed and E furnished with 11 affidavits from unit members stating they no longer wanted U to represent them and that these 11 affiants knew that majority of unit members did not want U to represent them any longer but would not furnish their names as they requested anonymity, since E's receipt of Ees' unverified assertions that majority of Ees no longer support their U representative, is insufficient to create reasonable based doubt that claimed desire of those Ees is factual]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118
[E's alleged doubt of U majority status not based on objective considerations, where only credited evidence of asserted Ee dissatisfaction was hearsay testimony that two Ees' in eleven-person unit stated that U had done nothing for them and that most Ees felt same way; complaining Ees later attended U meeting and paid dues, demonstrating that harbering negative feelings toward U is not inconsistent with desire for continued representation]

ACL Corporation d/b/a Atlanta Hilton & Towers 278 NLRB No. 076
[E's withdrawal of recognition from U and refusal to bargain assertedly based on good faith doubt of U's majority status because checkoffs had decreased, Ees told E they didn't want the U and E had experienced high turnovers, violative, since absence of majority of Ees from checkoff does not establish lack of majority support, Ee statements were no more than general criticism and dissatisfaction and turnover was amongst only a small minority of overall unit which did not rebut presumption that new Ees support U in proportion to Ees with more seniority]

American Mirror Company, Inc. 277 NLRB No. 179
[withdrawal of recognition from U following poll of Ees conducted by town mayor after management officials left polling area, not unlawful, since poll which showed majority of Ees no longer supported U was lawful because E had reasonably grounded doubt about U's continued majority status]

Redok Enterprises, Inc. 277 NLRB No. 101
(E receipt of Ee's unverified assertions that majority of Ees no longer support their U representative is insufficient to create *reasonably based conviction that the claimed desire of those Ees to be rid of U* is factual)

Wilder Construction 276 NLRB No. 104
(statements of displeasure with U by a minority of Ees could not establish doubt that majority of Ees no longer wanted U to represent them)

Norsk Hydro Aluminum, Inc. JD-(ATL)-14-86
[E's withdrawal of recognition from U, not violative, where E received ptn signed by majority of Ees signifying they no longer wished representation by U, majority of Ees had voiced dissatisfaction with U to E, U president resigned from U in middle of negotiations and there was a lack of observable U activity w/i the plant]

Best Cast, Inc. JD-(NY)-1-86
[successor E's failure to answer U's bargaining request, violation, where e's only established doubt was based on statements of 19 out of 75 unit Ees that they no longer desired U representation]

Jackie Lee Enterprise, Inc. and Jackie Lee, Limited, Inc. JD-246-85
(no unlawful refusal to bargain by purchaser with U which represented Ees of seller E whom it was hiring, even assuming successor E, since E had objective basis for good faith doubt of U's majority prior to setting initial terms and conditions of employment, where all unit Ees informing E that they no longer desired U representation, but wanted *to cut their own deal*, notwithstanding Ees' retention of U membership to retain pension rights and other benefits, since their request for withdrawal cards after executing private employment agreement with E showed Ees had no desire to retain U as bargaining agent)

Healthcare International, Inc. and Healthcare Colorado Springs, Inc. d/b/a Cedar Springs Psychiatric Hospital JD-(SF)-134-85
(E's refusal to recognize and bargain with U as successor E, not violative, since at time U demanded recognition E had good faith doubt of U's majority status where many Ees in unit told E's supervisors at Ee meetings that they disapproved of the U, at time of U demand Ees having dues deducted had declined to only 6 out of 100 Ees and E's doubt was reinforced by fact that U was taking its own written poll to determine support among unit Ees)

4080-5012-3300 Meeting of employees

Save Mart of Modesto, Inc. JD-(SF)-25-85
(E did not unlawfully refuse to recognize U at new store notwithstanding after-acquired stores clause in labor contract and that all unit Ees in meat department were U members because evidence showed that unit Ees did not wish U to represent them, E told them before they transferred that department would be non-U to start out with and still they volunteered to go and these Ees resigned from U)

4080-5012-5000 Polling by employer

American National Insurance Company 281 NLRB No. 105
[E's poll of Ees to determine whether they desired representation by U violative, where poll was not conducted by secret ballot]

Boaz Carpet Yarns, Inc. 280 NLRB No. 004
[E's withdrawal of recognition, not violation where Ees' ptn expressing disaffection with U provided objective evidence pursuant to which E had filed election ptn, which E had filed election ptn, which was blocked by U's filing of ULP charges, but E had verified Ees' dissafection with U by fairly conducted poll by secret ballot]

American Mirror Company, Inc. 277 NLRB No. 179
[withdrawal of recognition from U following poll of Ees conducted by town mayor after management officials left polling area, not unlawful, since poll which showed majority of Ees no longer supported U was lawful because E had reasonably grounded doubt about U's continued majority status]

Best Cast, Inc. JD-(NY)-1-86
[E's poll of Ee sentiments about U taken after E's unlawful refusal to bargain cannot reverse violation]

Landmark International Trucks, Inc. v. N.L.R.B. 775 F.2d 148 (C.A. 6, Oct. 1985)
[successor E's withdrawing recognition from U, not violation, notwithstanding Bd's finding that E's letter requesting Ees to advise E of resignation from U provided no reasonable basis for E's decision that U had lost majority status, where there was abundant evidence, known to E at time of decision, of U's loss of majority status, including uncontradicted testimony that Bd had not considered because Bd found it hearsay]

4080-5012-6700 Written communications from employees

S.M.S. Automotive Products, Inc. 282 NLRB No. 006
[ptn signed by majority of Ees, held to be a valid indicator that U had lost majority support, where caption at top of ptn stated in clear and unambiguous language that purpose of ptn was to declare that incumbent U was no longer wanted; further, although U argued that foreign speaking individuals may not have understood ptn, argument was w/o merit and GC satisfied

4080-5012-6700—Cont.

burden of proving ptn was understood by all Ees where there was unrebutted testimony that ptn was explained to all ees in their foreign language]

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. **281 NLRB No. 117**
[E unlawfully withdrew recognition from U where, in prior case, Bd ordered E to give retroactive effect to contract reached by E and U, thereby giving rise to presumption that E's majority status was in effect at time E withdrew recognition; E's defense that U had lost, or E had good faith doubt of, U's majority status, predicated solely on Ee ptn assertedly showing Ees' disaffectionwith U, rejected, where circumstances surrounding solicitation of ptn signatures and ptn's language indicated ptn was meant to precipitate Ee ratification vote on E's proposed contract]

Toyota of San Francisco **280 NLRB No. 093**
[E's withdrawal of recognition on basis of ptn signed by 34 out of 63 Ees in unit, unlawful, where E has engaged in numerous unremedied ULPs which probably contributed to Ees' dissatisfaction with U]

Boaz Carpet Yarns, Inc. **280 NLRB No. 004**
[E's withdrawal of recognition, not violation where Ees' ptn expressing disaffection with U provided objective evidence pursuant to which E had filed election ptn, which E had filed election ptn, which was blocked by U's filing of ULP charges, but E had verified Ees' dissafection with U by fairly conducted poll by secret ballot]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**
[anti U ptns signed by Ees not basis for good faith doubt of U's continuing majority, where signatures not obtained in atmosphere free of ULPs and so did not justify E's withdrawal of recognition]

American Mirror Company, Inc. **277 NLRB No. 179**
[withdrawal of recognition from U following poll of Ees conducted by town mayor after management officials left polling area, not unlawful, since poll which showed majority of Ees no longer supported U was lawful because E had reasonably grounded doubt about U's continued majority status]

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(U's loss of majority status and signing of ptn by half of unit Ees repudiating U tainted by E's ULPs where E dealt directly with Ees, threatened Ees that, if U did not accept E's contract proposals, but at same time promising that if Ees went non-U E would increase wages, grant health and welfare benefits as good or better than U plan, and offer financial assistance to Ees who wished to purchase own trucks and work for E as owner-operators; some of Ees were present when statements were made, and there was short time between statement and signing of ptn, supporting inference that statements were proximate cause of at least one Ee signing ptn)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(withdrawal of recognition from U based solely on ptn circulated by cousin of E's antiU president, violative where only three ptn signers could claim any connection with ten-man unit represented by U)

American Threat Company **274 NLRB No. 164**
(E's withdrawal of recognition upon receipt of cards from majority of unit Ees that they did not wish to be represented by U, not unlawful, absent ULPs)

Norsk Hydro Aluminum, Inc. **JD-(ATL)-14-86**
[E's withdrawal of recognition from U, not violative, where E received ptn signed by majority of Ees signifying they no longer wished representation by U, majority of Ees had voiced dissatisfaction with U to E, U president resigned from U in middle of negotiations and there was a lack of observable U activity w/i the plant]

The Cincinnati Enquirer, Inc. **JD-171-85**
(document received by E after expiration of contract signed by bare majority of Ees, not objective basis for doubt of U's majority, and did not rebut presumption of U's continuing majority after expiration of contract, where document was untitled, ambiguous paper with columns headed *yes* and *no* with signatures under *yes*, evidence did not establish Ees who signed no longer wished to represented by U)

4080-5018 Employee support or lack thereof of incumbent's strike

Ashe Brick Company **280 NLRB No. 162**
[E's doubt of U's majority status not based on objective considerations and did not justify withdrawal of recognition, where doubt based on fact it did not hear from U for over 3 months and that support for on going strike had dwindled, since U did contact mediators, and strikers who cross picket line are not presumed to have withdrawn support from U, and absent other evidence strikers no longer desired U to represent them]

Hydro Conduit Corporation **278 NLRB No. 164**
[E's refusal to bargain with U, assertedly because of good faith doubt of U's majority status, violative, since on basis of recently expired contract, U is presumed to represent majority of Ees which presumption was not rebutted where E's doubt was based on generalized belief that Ees would not want U, a decline in checkoff authorizations and fact that Ees decided to return to work the day after voting to strike, all factors not rebutting U's presumption of majority status]

Wilder Construction **276 NLRB No. 104**
(while normally incumbent U enjoys presumption of majority support, in construction industry certain contracts are lawful even in absence of majority support; therefore, presumption of continued majority does not always apply)

4080-5024 Checkoff authorizations

4080-5024-6700 Decrease in authorizations

Hydro Conduit Corporation **278 NLRB No. 164**
[E's refusal to bargain with U, assertedly because of good faith doubt of U's majority status, violative, since on basis of recently expired contract, U is presumed to represent majority of Ees which presumption was not rebutted where E's doubt was based on generalized belief that Ees would not want U, a decline in checkoff authorizations and fact that Ees decided to return to work the day after voting to strike, all factors not rebutting U's presumption of majority status]

ACL Corporation d/b/a Atlanta Hilton & Towers **278 NLRB No. 076**
[E's withdrawal of recognition from U and refusal to bargain assertedly based on good faith doubt of U's majority status because checkoffs had decreased, Ees told E they didn't want the U and E had experienced high turnovers, violative, since absence of majority of Ees from checkoff does not establish lack of majority support, Ee statements were no more than general criticism and dissatisfaction and turnover was amongst only a small minority of overall unit which did not rebut presumption that new Ees support U in proportion to Ees with more seniority]

Healthcare International, Inc. and Healthcare Colorado Springs, Inc. d/b/a Cedar Springs Psychiatric Hospital **JD-(SF)-134-85**
(E's refusal to recognize and bargain with U as successor E, not violative, since at time U demanded recognition E had good faith doubt of U's majority status where many Ees in unit told E's supervisors at Ee meetings that they disapproved of the U, at time of U demand Ees having dues deducted had declined to only 6 out of 100 Ees and E's doubt was reinforced by fact that U was taking its own written poll to determine support among unit Ees)

4080-5030 Internal union activities as evidence of lack of support

4080-5030-5000 Nonmembership in Union

Best Cast, Inc. **JD-(NY)-1-86**
[Ee rejection of U membership or dues obligation rather than U representation not evidence of dissatisfaction with U]

4080-5030-5500 Resignations from union

Norsk Hydro Aluminum, Inc. **JD-(ATL)-14-86**
[E's withdrawal of recognition from U, not violative, where E received ptn signed by majority of Ees signifying they no longer wished representation by U, majority of Ees had voiced dissatisfaction with U to E, U president resigned from U in middle of negotiations and there was a lack of observable U activity w/i the plant]

Jackie Lee Enterprise, Inc. and Jackie Lee, Limited, Inc. **JD-246-85**
(no unlawful refusal to bargain by purchaser with U which represented Ees of seller E whom it was hiring, even assuming successor E, since E had objective basis for good faith doubt of U's majority prior to setting initial terms and conditions of employment, where all unit Ees informing E that they no longer desired U representation, but wanted *to cut their own deal*, notwithstanding Ees' retention of U membership to retain pension rights and other benefits, since their request for withdrawal cards after executing private employment agreement with E showed Ees had no desire to retain U as bargaining agent)

4080-5036 Inactivity by union

4080-5036-2500 Lack of communication with employer

Ashe Brick Company **280 NLRB No. 162**
[E's doubt of U's majority status not based on objective considerations and did not justify withdrawal of recognition, where doubt based on fact it did not hear from U for over 3 months and that support for on going strike had dwindled, since U did contact mediators, and strikers who cross picket line are not presumed to have withdrawn support from U, and absent other evidence strikers no longer desired U to represent them]

Royal Vending Services, Ltd. **275 NLRB No. 173**
(successor's contention that U had lost majority status based on information from predecessor that U had not been active in enforcing old contract or negotiating new one rejected in view of predecessor's transmission of dues to U for six out of eight unit Ees)

4080-5036-7500 Failure to file grievances

Cowles Publishing Company **280 NLRB No. 105**
[E's withdrawal of recognition, refusal to execute contract and furnish information to U on unit Ees, on grounds U had abandoned unit thus giving E good faith doubt, violative, since U had not abandoned unit where, although U had experienced some turnover in its representatives, this had happened only once, U did continue to process grievances and had U steward present at E's plant and fact that U's negotiator told E once during negotiations that contract w/o U security was not worth the paper it was written on, and U failed to secure this demand, was not evidence of abandonment]

4080-5039 Conduct of union during negotiations

Cowles Publishing Company **280 NLRB No. 105**
[E's withdrawal of recognition, refusal to execute contract and furnish information to U on unit Ees, on grounds U had abandoned unit thus giving E good faith doubt, violative, since U had not abandoned unit where, although U had experienced some turnover in its representatives, this had happened only once, U did continue to process grievances and had U steward present at E's plant and fact that U's negotiator told E once during negotiations that contract w/o U security was not worth the paper it was written on, and U failed to secure this demand, was not evidence of abandonment]

4080-5042 Union animus

4080-5042-3300 Employer's ULP as affecting asserted reasonable grounds

Johns-Manville Sales Corporation **282 NLRB No. 040**
[E possessed good-faith doubt of U majority based on ptn signed by majority of Ees requesting decert election when it withdrew recognition from certified U, notwithstanding E committed ULP when it laid off Ees w/o following seniority where ULP committed 8 months before withdrawal, involved only 3 Ees, E advanced legitimate business reason for not following seniority and E continued to bargain with U until withdrawal

The Hearst Corporation, San Antonio Light Division **281 NLRB No. 113**
[E was precluded from relying on Ee-ptns repudiating U and E's withdrawal of recognition violative, where E engaged in numerous violations of 8(a)(1) prior to and simultaneous with circulation of ptns by soliciting Ee repudiation of U, interrogating Ees about U sympathies, promising Ees better benefits w/o U and urging Ees to persuade coworkers to withdraw support from U; E may not rely on defense that some Ees were unaware of E's unlawful conduct where E's activity was aimed specifically at causing Ee disaffection from U since such conduct bars any reliance on disaffection]

Toyota of San Francisco **280 NLRB No. 093**
[E's withdrawal of recognition on basis of ptn signed by 34 out of 63 Ees in unit, unlawful, where E has engaged in numerous unremedied ULPs which probably contributed to Ees' dissatisfaction with U]

Taylor Hospital **279 NLRB No. 006**
[E's withdrawal of recognition from U based on ptn signed by majority of unit Ees, violative, where E's withdrawal of recognition was at a time when there remained an unremedied unlawful discharge of a long-time leading U supporter and member of U's bargaining team at the outset of long-delayed negotiations; because of the serious ULP of discharge, E is precluded from effectively relying on its asserted doubt of U's majority status]

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(U's loss of majority status and signing of ptn by half of unit Ees repudiating U tainted by E's ULPs where E dealt directly with Ees, threatened Ees that, if U did not accept E's contract proposals, but at same time promising that if Ees went non-U E would increase wages, grant health and welfare benefits as good or better than U plan, and offer financial assistance to Ees who wished to purchase own trucks and work for E as owner-operators; some of Ees were present when statements were made, and there was short time between statement and signing of ptn, supporting inference that statements were proximate cause of at least one Ee signing ptn)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's withdrawal of recognition of U at expiration of contract, unlawful, notwithstanding its contention that U had lost majority status, and any ULPs designed to undermine U were committed after ptn, as decertification ptn on which E relied as basis for loss of majority did not constitute valid basis for good faith doubt of majority status, since only 1 out of 3 Ees in unit had signed ptn and ULPs committed after ptn were such that it may have been reason Ee refused to support U)

White-Rodgers, Division of Emerson Electric Company **JD-(ATL)-4-86**
[E's withdrawal of recognition from U, assertedly because it had been presented ptn signed by majority of Ees renouncing U which established its good faith doubt, violative, since ptn was tainted by E's ULPs where E impliedly promised two Ees improvements in wages and pensions and threatened to freeze wages and benefits if they didn't support ptn and those two Ees then signed ptn which gave E a bare majroity to rely on in withdrawing recognition]

4080-5066 Change in unit composition

4080-5066-2500 Economic turnover

Allis Chalmers Corporation **278 NLRB No. 082**
[Ee turnover does not support finding U has lost its majority because it is assumed absent contrary evidence, that new Ees will be U supporters in same ratio as those they replace]

H & H Pretzel Company **277 NLRB No. 143**
(withdrawal of recognition after contract expired, violation, since presumption of continued majority status was not rebutted by E's contention that its change to distributor dealerships converted Ees to independent contractors in view of E's retention of right of control and fact that nine out of twelve Ees were new hires which did not establish loss of majority support, as turnover alone cannot do so)

Cascade Painting Company, Inc. **277 NLRB No. 103**
(in adopting ALJ's finding that Es, as purported non-U Es in single-E units following withdrawal from multi-E bargaining after expiration of contract, did not rebut presumption of U's continuing majority status, Bd found it unnecessary to rely on principle enunciated in *Golden State Habilitation Convalescent Center*, 224 NLRB 1618, that new Ees support U in same ratio as those whom they have replaced)

4080-5066-3700 Change in Operations

H & H Pretzel Company **277 NLRB No. 143**
(withdrawal of recognition after contract expired, violation, since presumption of continued majority status was not rebutted by E's contention that its change to distributor dealerships converted Ees to independent contractors in view of E's retention of right of control and fact that nine out of twelve Ees were new hires which did not establish loss of majority support, as turnover alone cannot do so)

American Fluorescent Corp. **275 NLRB No. 154**
(withdrawal of recognition of U as exclusive Ee bargaining agent, not violative where there is no evidence that E took any action to inhibit transfer of former bargaining unit members, and no evidence to refute evidence of proferred assistance by E. E terminated its operations in one city and resumed operations in another 35 miles north of first city in another county where U did not represent majority of E's work force)

4080-5066-5000 Substantial reduction in work force

Molded Acoustical Products, Inc. **280 NLRB No. 163**
[E's refusal to recognize and bargain with U w/i certification year after E relocated its operations, violative notwithstanding reduction in work force from 130 to 118, turnover in Ees, and E's reliance on statements from some Ees that they would not support strike and wanted to resign their U membership]

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders **280 NLRB No. 133**
[in finding successor, Bd did not consider material factor the fact that successor employed only half the number of supervisors that predecessor employed or that only one of the employed supervisors came from predecessor, or that job classifications substantially reduced, in light of same products produced in same plant with same equipment even though on much reduced scale]

4080-5072 Replacement of economic strikers

Service Electric Company **281 NLRB No. 107**
[E did not violate Act by refusing, after U gave notice that strike over, U's demand that employment terms for replacements be restored to levels prevailing prior to commencement of strike, where economic strikers failed to offer to return to work, coupled with absence of any evidence that Ees had abaondoned future employment with E]

Service Electric Company **281 NLRB No. 107**
[E under no obligation to bargain over employment terms of strike replacements, whether terms better or worse than preexisting terms before strike, whether strike has ended, or not, where no resolution of underlying dispute because no agreement on contract, and there are unreinstated strikers who have not abandoned future employment with E but whose jobs continued to be filled by replacements]

Wilder Construction **276 NLRB No. 104**
(computatioon to determine majority status of U must include both strikers and strike replacements at time of withdrawal of recognition)

Wilder Construction **276 NLRB No. 104**
(proof that economic strikers permanently severed their employment relationship or abandoned their strikers' status must be unequivocal in relation to time of withdrawal or recognition)

Wilder Construction **276 NLRB No. 104**
(presumption rebutted where there is conflict of interest between strikers and their replacements (lawfully discharged strikers and their replacements))

Whisper Soft Mills, Inc. v. N.L.R.B. **754 F.2d 1381 (C.A. 9, Dec. 1984)**
(E's withdrawal of recogntion at end of certification year on grounds that substantial majority of unit was comprised of Ees who crossed picket line,

4080-5072—Cont.

not violative, since Ee turnover may be considered in determining E's good faith doubt where a demand for reinstatement by striking Ees at time E withdrew recognition would result in loss of employment for majority of striking Ees; and further, presumption that strike replacements support U in same ratio as strikers, rejected)

4080-5084 Decertification movement

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**

[filing of decertification ptn, *standing alone,* does not permit E to make unilateral changes]

The Hearst Corporation, San Antonio Light Division **281 NLRB No. 113**

[E was precluded from relying on Ee-ptns repudiating U and E's withdrawal of recognition violative, where E engaged in numerous violations of 8(a)(1) prior to and simultaneous with circulation of ptns by soliciting Ee repudiation of U, interrogating Ees about U sympathies, promising Ees better benefits w/o U and urging Ees to persuade coworkers to withdraw support from U; E may not rely on defense that some Ees were unaware of E's unlawful conduct where E's activity was aimed specifically at causing Ee disaffection from U since such conduct bars any reliance on disaffection]

Architectural Woodwork Corporation **280 NLRB No. 108**

[unilateral change in overtime payment policy, violation, notwithstanding expiration of contract, where presumption of continued majority status was not rebutted by good faith doubt based on decertification ptn that was unlawfully induced by E]

Hennessy Products, Inc. **273 NLRB No. 190**

(in agreeing with ALJ that no violation existed under *Telautograph Corp.*, Bd noted that, while overruling *Telautograph* in *Dresser Industries*, it decided to apply *Dresser* prospectively and would not find unlawful actions taken while *Telautograph* was law; accordingly, E's refusal, because of decertification ptn filed during strike, to furnish U Ees' names, addresses, work classifications and wage rates and information concerning status of laid off strikers was not unlawful, specifically because of unusual factual matrix herein and lack of any pending grievance or existence of current or recently expired contract)

Spring Valley Farms, Inc. **JD-(ATL)-54-86**

[filing of decertification ptn w/i certification year did not serve to remove E's legal obligation to sign agreement reached, where agreement reached w/i certification year]

4080-5084-5000 Decertification petition majority support

Johns-Manville Sales Corporation **282 NLRB No. 040**

[E possessed good-faith doubt of U majority based on ptn signed by majority of Ees requesting decert election when it withdrew recognition from certified U, notwithstanding E committed ULP when it laid off Ees w/o following seniority where ULP committed 8 months before withdrawal, involved only 3 Ees, E advanced legitimate business reason for not following seniority and E continued to bargain with U until withdrawal

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**

[U decertification ptn tainted and E's withdrawal of recognition and unilateral changes in conditions of employment in reliance thereon, unlawful, where e had made statements informing Ees that in order to keep working during anticipated strike they would have to resign from U, and in view of small majority of Ees who signed decertification ptn]

Bryan Memorial Hospital **279 NLRB No. 039**

[withdrawal of recognition unlawful notwithstanding decert ptn filed and E furnished with 11 affidavits from unit members stating they no longer wanted U to represent them and that these 11 affiants knew that majority of unit members did not want U to represent them any longer but would not furnish their names as they requested anonymity, since E's receipt of Ees' unverified assertions that majority of Ees no longer support their U representative, is insufficient to create reasonable based doubt that claimed desire of those Ees is factual]

Central Washington Health Services Association d/b/a Central Washing Hospital **279 NLRB No. 011**

[anti U ptns signed by Ees not basis for good faith doubt of U's continuing majority, where signatures not obtained in atmosphere free of ULPs and so did not justify E's withdrawal of recognition]

National Council of Young Israel d/b/a Shalom Nursing Home **276 NLRB No. 118**

(under *Telautograph*, 199 NLRB 892, the law at time Judge's decision issued (since overruled by *Dresser Industries*, 264 NLRB 1088 but Bd refrained from giving its new rule retroactive effect) E did not unlawfully refuse to bargain or unlawfully withdraw recognition when it ceased negotiating with U after decertification ptn filed)

Indiana Cabinet Company, Inc. **275 NLRB No. 169**

(E's refusal to bargain over contract renewal based on good faith doubt of U's majority support, not violative where anti-U ptn which was source of E's good-faith doubt was unblemished by any ULP and contained signatures of majority of Ees)

Engineered Control Systems, Inc. **274 NLRB No. 191**

(E's withdrawal of recognition of U at expiration of contract, unlawful, notwithstanding its contention that U had lost majority status, and any ULPs designed to undermine U were committed after ptn, as decertification ptn on which E relied as basis for loss of majority did not constitute valid basis for good faith doubt of majority status, since only 1 out of 3 Ees in unit had signed ptn and ULPs committed after ptn were such that it may have been reason Ee refused to support U)

Harley-Davidson Transportation Co., Inc. **273 NLRB No. 192**

]successor lawfully withdrew from bargaining after 3 sessions and of voluntarily recognizing U that had been certified over year during predecessor's time on basis of good faith doubt evidenced by ptn signed by majority of Ees stating they no longer wanted U to be its representative. Change of ownership not treated as equivalent of certification or voluntary recognition of U following organizational drive since relationship between U and Ees not disturbed so all U has is presumption of majority status that may be rebutted at anytime w/o waiting reasonable period. Signatures on ptn need not be authenticated)

Duct-O-Wire Company **JD-(ATL)-3-86**

[E's withdrawal of recognition, based on decertification ptn signed by majority of unit Ees, not violative where E rebutted presumption of majority status by demonstrating on date of withdrawal, and in context free of ULPs, U 1) in fact had lost its majority status and 2) that withdrawal was predicated on reasonable doubt, based on objective considerations, of U's majority status]

White-Rodgers, Division of Emerson Electric Company **JD-(ATL)-4-86**

[E's withdrawal of recognition from U, assertedly because it had been presented ptn signed by majority of Ees renouncing U which established its good faith doubt, violative, since ptn was tainted by E's ULPs where E impliedly promised two Ees improvements in wages and pensions and threatened to freeze wages and benefits if they didn't support ptn and those two Ees then signed ptn which gave E a bare majroity to rely on in withdrawing recognition]

Benjamin Pontiac Inc. **JD-(NY)-82-85**

(U's contention that E's refusal to bargain based on filing of decertification ptn signed by majority of unit Ees not valid basis for E's good faith doubt of U's majority, because signatures on ptn were obtained with promises of improved pension benefits by one of E's car salesmen allegedly cloaked by E with authority to act in E's interest, rejected, where salesman's only duty beyond that of other salesmen was purely clerical and ministerial function of filling out salesmen's commission statements)

Frederick Davidowitz, D.D.S. Professional Corporation and Martin Goldberg, D.D.S. Professional Corporation, a Partnership d/b/a Union Health Services **JD-(SF)-112-85**

(withdrawal of recognition based on decertification ptn signed by substantial majority of unit Ees, lawful where there was no evidence of E's involvement with ptn, nor were Ees coerced in signing ptn by E's prior ULP's then pending before Bd, and Ees stated that they were not affected by pending charges but by U's failure to win contract from E)

Western Medical Enterprises, Inc., d/b/a ARA Living Center, Verdugo Vista Convalescent Hospital **JD-(SF)-54-85**

(E's withdrawal of recognition based on ptn signed by majority of Ees indicating they no longer supported incumbent U, not violative, notwithstanding one of E's supervisors had written withdrawal language on 1 of 3 pages of ptn, where this was the only evidence of E's involvement with ptn, ptn was initiated by Ees alone and E held meeting with department heads and told them to remain neutral in regard to ptn, not get involved with it, give advice or answer questions)

N.L.R.B. v. Auto Fast Freight, Inc. **793 F.2d 1126 (C.A. 9, July 1986)**

[decertification ptn no defense to E's unilateral changes where it was filed after unlawful cessation of health and welfare fund payments, institution of new medical plan, reduction in wages, and constructive discharges of Ees for refusing to resign from U]

4080-5087 Incumbent union's organizational efforts

Tooling and Equipment International Corporation, Successor to Automotive Pattern Company **JD-334-85**

(E's refusal to bargain with U as successor E, not violative, since U did not enjoy majority support at time it demanded recognition, notwithstanding E had no knowledge of this fact, where most of the U member Ees attempted to withdraw from U prior to time U demanded recognition, Ees refused, upon request from U, to organize E and there was no evidence that E caused the Ee disaffection)

4080-5080 Loss of election

Angelica Corporation 276 NLRB No. 038
(unilaterally promulgating and implementing improvements in wages and working conditions, violative where done prior to issuance of certification of results of decertification election that U lost)

4080-5093 Filing of petition for election by employer

Central Washington Health Services Association d/b/a Central Washing Hospital 279 NLRB No. 011
[filing of RM ptn supported by ptns signed by Ees not basis for good faith doubt of U's continuing majority, and did not justify withdrawal of recognition by E, since filing of RM ptn to question majority of previously certified U must itself be supported by objective considerations indicating loss of majority, and herein E's unlawful involvement in ptns, unlawful interrogations and promise of benefits tainted ptns in such a way E cannot rely on them]

Hydro Conduit Corporation 278 NLRB No. 164
[Bd has consistently refused to allow litigation of RD's administrative determination as to objective considerations in support of RM ptn on grounds that this protects confidentiality of data submitted in support of ptn and permits expeditious resolution of issues concerning Ee choice of representative; however, an administrative determination that objective considerations support RM ptn is not determinative of E's obligation to engage in further bargaining]

Hydro Conduit Corporation 278 NLRB No. 164
[RD's decision in *RM* case, finding that qcr exists and election should be held, cannot control whether E also had objective considerations for refusing to bargain with U in subsequent ULP case, notwithstanding U did not appeal RD's decision, since to hold otherwise would result in a denial of due process; while administrative determination of objective considerations is proper in *R* case since no violation of law is at issue, it is not proper in ULP case since parties must be afforded opportunity to fully litigate all relevant issues]

4090 TERMINATION OF OBLIGATION BY EMPLOYER BY CHANGED CIRCUMSTANCES

4090-3000 Affiliation change

Canterbury Villa of Waterford, Inc. 282 NLRB No. 072
[on withdrawal of case from CA, E's refusal to bargain, unlawful, notwithstanding nonmembers' inability to vote on U's change in affiliation, since affiliation is internal U matter with which Bd is precluded from interfering; moreover, there was *substantial continuity* between pre-and-post disaffiliation U, and due process was safeguarded by U members' voting on, and district ct's approval of settlement agreement providing for, change in affiliation]

Eastern Connecticut Health Services, Inc. d/b/a New London Convalescent Home 281 NLRB No. 120
[E's refusal to bargain with certified local, whose parent organization had disaffiliated with another U and then affiliated directly with AFL-CIO, violative, where there was substantial continuity in operations of certified local, as prescribed in *Seattle-First National Bank* 106 S.Ct 1007, (1986), notwithstanding E's contention that disaffiliation caused disruption of existing intra-U relationship and financial instability in parent organization]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)
[E unlawfully refused to bargain with independent U after it affiliated with international where conditions requiring E to continue bargaining with U were met, since (1) unit Ees had fair opportunity, with adequate due process safeguards, to approve of organizational change, and (2) there was *substantial continuity* between pre-and post-affiliation U; consequently, results of election, which favored affiliation, were valid]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)
[E unlawfully refused to bargain with independent U after it affiliated with international, since affiliation did not significantly change U's identity where bargaining unit and officers, as well as those responsible for negotiating and processing grievances, remained the same; retention of such key personnel was important since continuity is then likely to be preserved; and U stated that it will honor any existing contractual commitments to E and that its activities will continue to be governed for most part by its own constitution and by-laws]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)
[E unlawfully refused to bargain with independent U after it affiliated with international, where Bd's finding of substantial continuity was adequately sustained, notwithstanding E's contention that continuity was based on ALJ's mistaken assumption that U had already affiliated when in fact it had not, pending resolution of instant case; even if such misapprehension existed, ALJ considered effects of affiliation on U and articulated grounds to sustain Bd's finding of continuity]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)
[E unlawfully refused to bargain with independent U after it a/w international, notwithstanding E's contention that changes due to affiliation were so great as to create new bargaining entity, with international's constitution significantly affecting autonomy of U as independent; while constitution placed certain obligations on U, its autonomy was not significantly curtailed, since U retained control over negotiating and administering contracts, processing grievances, and calling str'es; and money in U's treasury was to be spent for U's own purposes and at its sole discretion]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)
[E unlawfully refused to bargain with independent U after it a/w international, notwithstanding E's contention that affiliation of small independent U with much larger U creates substantially different bargaining entity; ct distg cases relied on by E on ground such cases either involved international constitution substantially limiting U's autonomy, irregularities in affiliation procedure, loss of control over U's affairs, use of affiliation as a stratagem, or Bd determination that Ees had choice between different and distinct bargaining representatives or none]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)
[in finding that E unlawfully refused to bargain with independent U after it a/w international, ct held that determination of whether continuity exists is fact-specific determination to be made by Bd in first instance after considering particular effect of orgnizational change; and S.Ct has explicitly rejected argument that affiliation *by itself* necessarily changes U's identity and results in Ees being represented by different organization; rather, S.Ct asserted that unless qcr is raised affiliation vote is purely internal U affair]

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)
[in finding that E unlawfully refused to bargain with independent U after it a/w international, ct held Bd's judgment that small independent U's affiliation with large international did not raise qcr, particularly where membership freely chose to continue its support of its bargaining agent, is consistent with both policy against unnecessary outside interference with U decision-making and policy in favor of maintaining stability in bargaining representative]

4090-4000 Change in collective bargaining representative

IMS Manufacturing Company, Inc. 278 NLRB No. 079
[successor E's refusal to bargain with U on grounds that bargaining demand was made by International U when local U was certified as bargaining representative in prior decertification election held at predecessor E, violative, since there was no indication E was misled, E did not seek clarification of demand from U or Bd and U in any event amended charge to allege E refused to bargain with both the International and local U]

Samaritan Health Center, Dusconess Hospital Unit, A Division of The Sisters of Mercy Health Corporation, Inc. 277 NLRB No. 139
(E's refusal to recognize and bargain with local U during term of contract, not violative, since, before contract had expired, local U unequivocally disclaimed any interest in representing unit Ees where it informed E that, consistent with Ee wishes, International U had approved administrative transfer of bargaining unit to another local U and that local U would be servicing unit Ees and U did not thereafter engage in any action inconsistent with disclaimer for 2 months, thus E was not obligated to recognize or reinstitute its bargaining relationship)

4090-5000 Change in unit

Herbert Halperin distributing Corporation 281 NLRB No. 001
[mtn for summary judgment granted, notwithstanding E's contention that it is entitled to a hearing to determine if U still retains majority support due to lapse of time and alleged high turnover rate among unit Ees, since U's continued majority status is presumed to exist for one-year certification period, and neither Ee turnover lapse of time justifies E's refusal to bargain]

Computer Sciences Corporation 280 NLRB No. 001
[E held successor E and obligated to bargain with U which had represented unit of its commercial, as opposed to scientific programmers (nonunit), under previous E, since performed same work at same location and majority of its commercial programmers had been Ees of former E, notwithstanding contention no obligation to bargain where after takeover commercial programmers in paper reorganization were sprinkled throughout organization, and cross training program set up with scientific programmers, inasmuch as neither work nor working conditions changed after takeover]

4090-5000—Cont.

ACL Corporation d/b/a Atlanta Hilton & Towers **278 NLRB No. 076**
[E's withdrawal of recognition from U and refusal to bargain, on grounds unit was inappropriate because it contained Ees employed as guards, violative, where Ees in dispute were in no way entrusted with the protection of E's premises or safety of persons; further, if E believes certain individuals should be excluded from unit because of guard status, proper procedure is unit clarification, not withdrawal of recognition. See Bd's R/R's 102.60(b) and 102.61(d)]

N.L.R.B. v. Paper Manufacturers Company, et al. **786 F.2d 163 (C.A. 3, Mar. 1986)**
[move of medical packaging division to same facility where regular packaging products manufactured w/i certification year not such changed circumstances that would justify E's refusal to bargain with U certified as representative of medical packaging Ees prior to move, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions, skills, and functions, with exception of two maintenance Ees, separate and distinct, no interchange of Ees; contention relocated Ees accretion to Ees in other division at same facility and represented by another U, rejected]

4090-6000 Merger of unions

American National Insurance Company **281 NLRB No. 105**
[E's refusal to recognize and bargain with newly merged U violative, notwithstanding U's disenfranchisement of 2400 nonmember Ees in 3000 Ee unit in affiliation election, since S.Ct in *N.L.R.B. v. Financial Institution Employees*, 106 S.Ct 1007 (1985) held that Act does not require that nonmembers be permitted to vote in U affiliation elections, there was continuity of identity between original U and postmerger bargaining representative and original U provided U members fair and meaningful opportunity to become informed about proposed merger and to cast informed vote]

Hydrotherm, Inc. **280 NLRB No. 167**
[refusing to bargain with local U that was certified under unamended premerger title, violation, notwithstanding that U merged with another local prior to election that resulted in change of name to one different from that of certified U, where U retained same character and relationship to Ees, had same international constitution, bylaws, officers, stewards, grievance procedure, methods of servincing contracts, assessing dues, making fund payments, place of business, and way of conducting affairs]

The Cincinnati Enquirer, Inc. **JD-171-85**
(merger of local Us valid and U resulting from merger held successor since adequate notice given of meetings at which merger votes were to take place, voting was by secret ballot in each local, and there was sufficient continuity of representation for premerger Ees since merger did not result in complete loss of identity of pre-merger groups inasmuch as each local U continued to negotiate separate bargaining agreements and each local's officers would continue to serve on joint governing board)

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) **755 F.2d 5 (C.A. 2, Feb. 1985)**
(where local U representing only E's guards and other guards in armored car industry was merged into local U representing guards and nonguards, and E voluntarily recognized latter U, E's withdrawing recognition after contract had expired and U had rejected E's final offer, not violative; Sec. 9(b)(3) language and legislative history provide sufficient support for Bd's conclusion that Congress knowingly decreased stability of bargaining relationships involving such Us to protect guards from potential for division of loyalty between E and fellow U members)

United Retail Workers Union Local 881, chartered by Food & Commercial Workers v. N.L.R.B. (May Department Stores Co. et al.) **797 F.2d 421 (C.A. 7, July 1986)**
[applying principles laid down by the S.Ct in *Financial Institution*, ct held that Bd cannot require U to allow non-U Ees to vote in merger elections and remanded case to Bd to consider any remaining issues involved in the merger]

4090-7500 Relocation of plant or certain operations

Central Soya Company, Inc. **281 NLRB No. 173**
[E's consolidation/relocation of facilities to a different part of town, withdrawal of recognition from U at new location once Ees at old locations had been transferred to new location and refusal to bargain with U over effects of decision to consolidate/relocate, violative, where there was no substantial change in operations following the consolidation/relocation and once Ees were transferred to new location with other unrepresented Ees, those transferred constituted a majority of Ees who still desired U representation]

Molded Acoustical Products, Inc. **280 NLRB No. 163**
[E's refusal to recognize and bargain with U during certification year relocated operations on ground unit was limited to old operations, violative where new plant was continuation of same operation]

Drummond Coal Company, Inc. **277 NLRB No. 177**
[E's transfer of repair work caused primarily by fundamental change in nature and direction of E's operations and not costs from city to onsite location at mine and closing city repair shop w/o notice to or bargaining with U over decision and its effects, not violative]

Safelite, Division of Lear Siegler, Inc. **277 NLRB No. 080**
(new plant opened by E assertedly for operational efficiency which replaced old plant and was located only a few miles therefrom, held to be accretion of old plant and E's withdrawal of recognition from U at old plant and failure to bargain over effects of opening new plant violative, where Ees at new plant performed work identical to old plant, supervisors at both plants reported to the same management and two plants were only 20 minutes away from each other; further, E's asserted good faith doubt of U's majority status at new plant was groundless since E hired majority of Ees from old plant to staff new plant)

Hydro-Air Equipment, Inc. d/b/a Lanco **277 NLRB No. 012**
(E's recognition of and signing contract with U as representative of Ees at new location, unlawful, since it was under continuing obligation to recognize and bargain with another U which had represented Ees at previous location, inasmuch as relocation took place during certification year, at time of recognition of other U majority of unit consisted of Ees who had transferred from old location, and only significant change in operations was geographic)

Suburban Transit Corp. and Suburban Trails, Inc. **276 NLRB No. 005**
(no violation when E relocated unit work (single E) and thereby brought unit Ees under different bargaining agreement which was less favorable to these Ees, since contract covering original workstation did not contain any provisions preventing E from making such relocation w/o first obtaining consent of U and E bargained in good faith over decision to relocate)

American Fluorescent Corp. **275 NLRB No. 154**
(withdrawal of recognition of U as exclusive Ee bargaining agent, not violative where there is no evidence that E took any action to inhibit transfer of former bargaining unit members, and no evidence to refute evidence of proferred assistance by E. E terminated its operations in one city and resumed operations in another 35 miles north of first city in another county where U did not represent majority of E's work force)

Paper Manufacturers Company **274 NLRB No. 070**
(E's refusal to bargain with U upon its transfer of Ees to new location during certification year, on grounds that transfer involved acquisition of new equipment and an increase in Ee complement, thus constituting *unusual circumstances* warranting its refusal to bargain, violative, where there was no hiatus when Ees were transferred, Ees received same wages, benefits and performed same jobs before and after transfer and transferred Ees remained an identifiable entity separate from Ees at new location; further, fact that transferred unit increased in size was inconsequential since addition of new Ees occurred gradually over a period of 11 months)

Patrick Cadillac Company; Hanley Dawson BMW, d/b/a Patrick BMW SAAB; et al. **JD-156-86**
[E's refusal to bargain with U and apply extant contract to relocated bodyshop operations, not violative, since new bodyshop did not have substantially same equipment or utilize substantially same operations where new bodyshop was five times the size of old bodyshop and performed work old bodyshop was incapable of handling and new operation employed many more Ees]

Patrick Cadillac Company; Hanley Dawson BMW, d/b/a Patrick BMW SAAB; et al. **JD-156-86**
[existing agreement remains in effect following relocation providing operations and equipment remain substantially same at new location and substantial percentage (approximately 40% or more) of Ees at old plant have transferred to new location by time relocation substantially completed]

N.L.R.B. v. Paper Manufacturers Company, et al. **786 F.2d 163 (C.A. 3, Mar. 1986)**
[move of medical packaging division to same facility where regular packaging products manufactured w/i certification year not such changed circumstances that would justify E's refusal to bargain with U certified as representative of medical packaging Ees prior to move, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions, skills, and functions, with exception of two maintenance Ees, separate and distinct, no interchange of Ees; contention relocated Ees accretion to Ees in other division at same facility and represented by another U, rejected]

4800 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYER

4825 OBLIGATION TO RECOGNIZE AND BARGAIN

Sewell-Allen Big Star, Inc., No. 3 d/b/a Sewell-Allen Big Star No. 52 **280 NLRB No. 137**
[alleged refusal by E to hire majority of seller's Ees in order to avoid successorship status, and E's resulting refusal to recognize and bargain with U, not unlawful, where E did not hire Ees either because of reasons related to their work, including negative recommendations it received from others, or because Ees did not apply for and seek work with E]

4825-3300 Alter ego of employer

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. **279 NLRB No. 073**
[E's refusal to recognize and bargain with U which represented Ees of which it was held alter ego, unlawful, notwithstanding E of which it was held alter ego had timely and effectively withdrawn from multi-E bargaining unit]

Gilroy Sheet Metal, Inc. and Billie Hanoum, A Sole Proprietorship, d/b/a Gilroy Heating & Air Conditioning **280 NLRB No. 121**
[new e held not to be disguised continuance and alter ego of old E, notwithstanding there was shift in ownership among close family members (husband and wife), where new E was owned exclusively by husband, his wife having then been separated from him at time new business was formed, evidence did not show any U hostility as motive for forming new business but rather decision was based on matters relating to personal health, financial and marital difficulties and new business did not take over any work of old business]

Elevator Sales and Service, Inc. **278 NLRB No. 094**
[refusal of E and its *alter ego* to recognize U and honor contracts, violation, where E failed to effectively withdraw from multi-E bargaining association]

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**
[two Es held single E and alter egos and withdrawal of recognition from U violative, since E which ostensibly bought business was nothing but disguised continuance of old business where evidence showed old E transferred operations to new E to evade bargaining obligations, new E existed almost exclusively to service old E's customers, new E was essentially precluded from performing its own business nor could it set its own rates and old E required all customers to deal with it rather than new E]

Mar-Kay Cartage, Inc. and Contemporary Delivery Systems, Inc. **277 NLRB No. 152**
(company's refusal to bargain with U which had bargaining agreement with company to which it was held alter ego, unlawful)

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**
(E's refusal to bargain with U, violative where E was bound by bargaining agreement entered into between U and E's alter ego and E was part of single E with its alter ego and third E)

Contee Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(violation where two companies found successor to, single E with, and alter egos of E which had contract with U herein refused to recognize and bargain with U)

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 224**
(partnership being continuation of corporate painting contractor (alter ego), for labor relations purposes, legally obligated to same extent as the Corporation, including proscriptions of Sec. 8(a)(1), (3) and (5) of Act)

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-380-85**
[where existing unionized company and newly formed non-U company constituted single integrated E, and non-U company was alter ego and disguised continuance of old company, ALJ held that old company's duty to bargain with U and its duty to honor existing U contract were binding on new company; and both companies violated 8(a)(5) by failing and refusing to recognize and bargain with U, by rejecting U contract, by changing contractual pay rates and fringe benefits, and by ending fringe benefit contributions]

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**
(where bankrupt E originally petitioned for recognization but later, as debtor-in-possession, opted to liquidate entirely thereby evading its obligation to recognize and bargain with U, alter ego of bankrupt E held obligated to recognize and bargain with U, where corporate principals of bankrupt E, all members of same family, chose not to consider effects of reorganization and liquidation, liquidated original corporation, and then established another in its place constituting its alter ego)

4825-5000 Joint or single employer

Gilroy Sheet Metal, Inc. and Billie Hanoum, A Sole Proprietorship, d/b/a Gilroy Heating & Air Conditioning **280 NLRB No. 121**
[new business held not to be single E with old business where new business commenced operations only after old business ceased operations; Bd normally applies the term *single employer* to situations in which ongoing, nominally distinct businesses, are alleged to be one and the same in terms of common control over labor relations, integration of operations, common management, and common ownership]

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**
[two Es held single E and alter egos and withdrawal of recognition from U violative, since E which ostensibly bought business was nothing but disguised continuance of old business where evidence showed old E transferred operations to new E to evade bargaining obligations, new E existed almost exclusively to service old E's customers, new E was essentially precluded from performing its own business nor could it set its own rates and old E required all customers to deal with it rather than new E]

Leeds Cablevision, Inc. and Cablevision Company, Inc. **277 NLRB No. 014**
(although joint E met with U on five occasions in order to negotiate contract for E's Ees, Bd found that joint E failed to bargain in good faith with U, since: (1) E failed to respond to U's first two requests for bargaining; (2) as soon as U requested bargaining E proposed closing one of its facilities; (3) E informed U it was not willing to discuss wages until ALJ issued his decision in prior Bd C case involving one of joint Es and same Ees; and (4) other expressions of joint Es' U animus which frustrated bargaining process)

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**
(E's refusal to bargain with U, violative where E was bound by bargaining agreement entered into between U and E's alter ego and E was part of single E with its alter ego and third E)

Contee Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(violation where two companies found successor to, single E with, and alter egos of E which had contract with U herein refused to recognize and bargain with U)

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-380-85**
[where existing unionized company and newly formed non-U company constituted single integrated E, and non-U company was alter ego and disguised continuance of old company, ALJ held that old company's duty to bargain with U and its duty to honor existing U contract were binding on new company; and both companies violated 8(a)(5) by failing and refusing to recognize and bargain with U, by rejecting U contract, by changing contractual pay rates and fringe benefits, and by ending fringe benefit contributions]

Quality Plastic Molds, Inc., and Titan Enterprises, Corp. **JD-(NY)-143-84**
(violation by failing to recognize and bargain with U which represented unionized company's Ees as representative also of nonU company's Ees who were found to be included in unionized company's Ees' bargaining unit where companies were found single E herein)

Clinton's Ditch Cooperative Co., Inc. v. N.L.R.B. **778 F.2d 132 (C.A. 2, Dec. 1985)**
[U's contention that E was joint-E with subcontractor who took over E's trucking operations and E had duty to bargain when it chose another subcontractor, rejected and E's unilateral decision to change subcontractors not violative, since E did not have sufficient control over Ees of first subcontractor where E did not continue to play any role in hiring or firing, E did not directly administer discipline to drivers, subcontractor provided almost all benefits to drivers and E had only indirect, limited connection to problems of pay and other aspects of labor relations]

4825-6700 Successor employer

Cencom of Missouri **282 NLRB No. 037**
[E's refusal to recognize and bargain with U on behalf of predecessor E's Ees, violation where prior to requests successor E commenced operations with work force consisting entirely of its predecessor's Ees]

Cal-Am Partners d/b/a Amscot Coal **281 NLRB No. 027**
[successor E's failure to reply to U's request for recognition and bargaining, violation]

Springfield Transit Management, Inc. **281 NLRB No. 017**
[successor E's refusing to bargain, bypassing U to deal directly with Ees, and offering them unilateral reduction in wages from those paid by predecessor, violations]

Big R Distributors, Inc. d/b/a Shoppers Choice **280 NLRB No. 148**
[purchaser of inventory and fixtures of store held successor and obligated to recognize and bargain with U, where it continued in same business, employed same manager and assistant manager, Ee complement performed same functions and 3 out of 5 Ees hired by purchaser when it took over operations were represented by U when Ees of seller, notwithstanding 2 out of 3 of those hired were in layoff status from seller, where they had reasonable expectation of recall]

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders **280 NLRB No. 133**
[U, which has been representing unit Ees at predecessor E's plant for over 40 years, is to be recognized as ongoing representative for unit Ees where successor E has advanced no good-faith doubt about U no longer represent-

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ing unit Ees, and there is not enough difference between predecessor E and successor E to overcome presumption that *—Ees' desires concerning unionization* are unchanged (successor Ees performed essentially same work, in same plant, with same equipment as before)]

Aquabrom, Division of Great Lakes Chemical Corp., as Successor to Bromine Division, Drug Research, Inc.; Tesco Chemicals, Inc. **280 NLRB No. 066**

[on ct remand, Bd held that E was successor where changes in E's operations had no effect on Ees' job classifications, skills, or duties except in one minor respect involving 6 Ees; moreover, other long term changes, establishing absence of successorship status, occurred well after E hired representative complement of Ees]

Mangold Markets, Inc. **280 NLRB No. 090**

[refusal to bargain as successor E, on grounds store it took over was reopened as single store as opposed to multistore chain and Ees of predecessor were not employed at store E took over, violative, where store remained a retail store, Ees performed identical work, E did not show that change in store's operation changed Ees' working conditions and, although Ees were not employed at store E took over, did work for predecessor whose operation was highly integrated with substantial interchange between stores, thus Ees could be assumed to still desire U representation]

American Stevedoring Company **280 NLRB No. 088**

[E which contracted to perform delivery services for retailer held successor to E which had previously furnished service to stores, and obligated to bargain with U which had represented Ees of predecessor, since making same deliveries, using same trucks which retailer's parent company had brought from previous contractor, notwithstanding predecessor was licensed carrier that supplied full carier service and owned vehicles that were making deliveries while successor had contract only to supply drivers for one E's trucks and was not carrier, and that successor hired no Ees of predecessor, since refusal to hire was because of Ees' U membership]

American Stevedoring Company **280 NLRB No. 088**

[E which contracted to perform delivery service for retailer held successor to E which had previously furnished service to stores, and obligated to bargain with U which had represented Ees of predecessor, notwithstanding no Ees of successor had been Ees of predecessor, where successor did not inform Ees of predecessor it was hiring Ees to perform their former jobs and sought applicants through newspaper ad which concealed E's identity, thus out of successor's initial work force of 21 only 9 Ees of predecessor applied, and none were hired inasmuch as E specifically refused to hire because of U membership]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**

[successor E's refusal to bargain with U, on grounds U did not enjoy majority support, violative, notwithstanding U did not have actual majority support of Ees hired where, but for E's discrimminatory refusal to hire predecessor's Ees, U would have enjoyed majority support; U's majority support in such instance is presumed as a matter of law]

American Press, Inc. **280 NLRB No. 109**

[where E-purchaser discriminatorily refused to hire most of seller's Ees and, but for such unlawful conduct, majority of work force would have been composed of seller's Ees, Bd held E unlawfully refused to bargain with U representing seller's Ees since, but for unlawful considerations, continuity of seller's Ee complement would have been maintained, and other requisite elements for finding successorship were present; and rule is that new owner's failure to hire predecessor's Ees will not defeat claim of successorship if such failure is shown to have been motivated by former Ees' U affiliation]

American Press, Inc. **280 NLRB No. 109**

[successor E is ordinarily free to set initial hiring terms w/o preliminary bargaining with incumbent U; however, where it is clear new E plans to retain all of unit Ees, it must consult U before altering existing terms and conditions of employment]

American Press, Inc. **280 NLRB No. 109**

[successor E held not entitled to set initial terms of employment w/o consulting incumbent U, since any uncertainty as to what E, who refused to hire predecessor's Ees because of their U affiliation, would have done absent its unlawful purpose must be resolved against E who cannot be permitted to benefit from its unlawful conduct; and since E discriminated in hiring, it can be inferred that substantially all former Ees would have been retained absent unlawful discrimination]

Armco, Inc., Eastern Steel Division, Ashland Works **279 NLRB No. 143**

[E found successor E and obligated to bargain with incumbent U at new plant, notwithstanding contention Ees in new plant were accretion and thus E had no duty to recognize U at new plant but could recognize U it had historically dealt with at its other plants, since Ees at new plant could still be considered a separate appropriate unit where interchange between plants was minimal, Ees at new plant had been represented by incumbent U for 30 years and Ees at new plant had not been so integrated with E's other Ees so as to negate their separate identity]

Armco, Inc., Eastern Steel Division, Ashland Works **279 NLRB No. 143**

[successor E's contention that incumbent U at new plant had waived right to represent Ees by yielding representational rights to a rival U and failing to request bargaining, rejected, and E's refusal to bargain with incumbent U, unilateral changes in terms and conditions of employment, recognition of rival U and enforcing U security, violative, since bargaining request would have been futile i.e., E had already granted recognition to rival U, Ees at new plant had not been accreted and incumbent U had in no way *clearly and unmistakeably* waived right to represent Ees]

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**

[successor E's refusal to bargain with U, on grounds that certain operational procedures had changed so as to fundamentally change employing enterprise, violative, where there was no hiatus in operations, E provided care to same patients at same facility and utilized basically the same procedures as predecessor]

Plateau Coal Sales, Inc. **279 NLRB No. 156**

[employing industry not substantially same notwithstanding new E engaged in same business, at same facility, with essentially same equipment, Ees have requisite skills to perform work of new E, 1 supervisor from old hired as superintendent of new operation, and new E committee itself to hire from pool of Ees of old E since new E did not operate preparation plant which was 90% of primary operation of old E, new E set up to handle output of owners' mines only, 1 shift instead of 2 formerly, no contractual arrangement between Es (new E acquired lease from 3rd party) and hiatus of 2-1/2 months from shutdown of old to startup of new operation]

H.H.H. Enterprises, Inc., d/b/a Stephenson Haus **279 NLRB No. 139**

[purchaser who assumed operation of restaurant w/o hiatus and w/o charge of name until some months later held successor E, and obligated to bargain with U, which represented Ees of predecessor E where upon assumption of operation, it hired all Ees of predecessor E w/o change of working conditions]

Mediterranean Diner, Inc., t/a Bay Diner, Inc., and New Bay Diner, Inc., t/a Mediterranean Lounge **279 NLRB No. 077**

[successor E's refusal to bargain, violative, notwithstanding U did not enjoy irrebuttable presumption of majority status, where predecessor, both before and during certification year, committed numerous ULPs which were of such character as to affect U's status and to cause Ee disaffection; because of unremedied ULPs, predecessor, at time of successor's take over, was foreclosed from challenging U's majority status and remained obligated to bargain with U]

Mediterranean Diner, Inc., t/a Bay Diner, Inc., and New Bay Diner, Inc., t/a Mediterranean Lounge **279 NLRB No. 077**

[successor E's ignoring U's bargaining demand, violative, notwithstanding successor had dispelled lingering effects of earlier ULPs, where bargaining relationship was thereafter entitled to reasonable period, during which U made its demand]

Marin Operating, Inc. d/b/a The Clarion Hotel-Marin; Colorado Marin Associates, A Joint Venture; and Preferred Properties Fund 82, A Limited Partnership **279 NLRB No. 070**

[successor E's refusal to bargain on grounds predecessor E unlawfully recognized U in separate units of Ees, violative, since, even though predecessor E's recognition of U in separate units may have been improper in view of that certified by Bd, successor E is barred by 10(b) from challenging that recognition; to allow successor E to challenge that recognition would upset successful 12-year bargaining relationship and revive problems long ago put to rest]

E G & G Florida, Inc. **279 NLRB No. 065**

[successor E's unilateral decisions to eliminate positions and not to hire Ees, not violative]

E G & G Florida, Inc. **279 NLRB No. 065**

[successor E's unilateral changes of Ees' terms and conditions of employment once they had been hired, violative, where successor E made it perfectly clear that it intended to hire predecessor's Ees, w/o indicating that their terms and conditions of employment would be altered]

Beck Corporation, d/b/a Jessie Beck's Riverside Hotel and Casino **279 NLRB No. 061**

[purchaser held successor-E to seller and obligated to bargain with U to remedy seller's refusal, which was held unlawful in prior case, to bargain with U as representative of unit as certified where majority of Ees in unit at time U demanded bargaining with successor were Ees of predecessor, notwithstanding constituted majority for only short period after take over due to departure of Ees caused by situation in labor market and industry at time. Successor-E's contention it had insufficient knowledge of predecessor's ULPs, rejected]

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Beck Corporation, d/b/a Jessie Beck's Riverside Hotel and Casino **279 NLRB No. 061**
[successor-E obligated to bargain with U which represented Ees of predecessor, where successor E had hired full complement, and majority of Ees in unit at successor were Ees of predecessor. *Process of identifying full complement will vary from case to case. I would be ludicrous to postpone defining full complement until small enterprise reached status of international corporation, but it would also be inappropriate to point to full complement as existing at moment successor assumes operation of moribund corporation*]

Elal Realty Management Inc. **279 NLRB No. 002**
[discharge of Ees and refusal to rehire them by successor E, violative, since reason was Ees' U membership and E's desire to work with non-U Ees where E gave patently false reasons for discharge which justified inference of anti-U motive; further, bargaining order is appropriate for successor E since U made demand to bargain and all Ees are ordered reinstated, thus, successor E employs majority of prior workforce]

Myers Custom Products Inc., A Wholly Owned Subsidiary of Myers Electric Products, Inc., d/b/a Gibbons Enclosures, Inc. **278 NLRB No. 092**
[E's refusal to bargain with U as successor E, not violative, since on date U demanded recognition, E had not yet hired *substantial and representative* work force for purpose of determining U's majority status where, prior to purchasing business, E planned, with a reasonable degree of certainty, a substantial increase in number of unit Ees w/i a relatively short time, therefore, it was appropriate to delay determination of bargaining obligation for short duration of planned work force expansion, a date U did not enjoy majority status]

Cutter Dodge, Inc. **278 NLRB No. 083**
[purchaser of auto dealership held successor of seller and obligated to recognize U which had represented Ees of seller since at time U requested recognition buyer had employed substantial and representative complement of its work force, majority of which had previously worked for respondent E's predecessor in appropriate unit notwithstanding E's contention that determination of its majority status should be delayed because it had not yet commenced its own new car preparation operation nor hired Ees to operate it]

IMS Manufacturing Company, Inc. **278 NLRB No. 079**
[E held successor E and obligated to bargain with U upon demand, where E operated plant for same purpose as predecessor, purchased 80% of predecessor's equipment, utilized same manufacturing procedures, albeit with minor modifications, served essentially same customers as predecessor, hired majority of predecessor's Ees and there was only 11 day hiatus in operations]

Martin J. Barry Company **278 NLRB No. 056**
[proper remedial obligations for *Golden State* successor involving predecessor's unlawful refusal to execute and implement contract with U was to make Ees whole for predecessor's ULP up to time predecessor ceased business and then, bargain in good faith with U for contract, since such remedy is sufficient to convince unit Ees that employing enterprise intends to comply with the Act and strikes a balance between interests of successor, the public and the affected Ees]

Martin J. Barry Company **278 NLRB No. 056**
[E's contention that it was not *Golden State* successor and liable for predecessor's ULPs because it had no contractual relationship with predecessor nor did it purchase predecessor's assets, rejected, since E agreed to substantially reduce management fees charged to predecessor (who remained a customer of E) and such arrangement *effectively constituted payment* for predecessor's business]

Matlack, Inc. **278 NLRB No. 036**
[E unlawfully refused to bargain with U representing separate unit of predecessor's Ees since latter Ees were not accretion to successor E's unit, because predecessor's Ees had not lost their separate identity and had not been incorporated into existing larger unit with required community of interest among entire group; under circumstances herein, to apply accretion principles would deny *accreted* Ees a vote on their choice of bargaining representative]

Taylor Stone d/b/a Eastone of Ohio, Inc. **277 NLRB No. 187**
[E held successor and obligated to bargain with U which had represented Ees of another E, in view of substantial continuity of employing enterprise, where, at time U requested recognition, all of its unit Ees had been employed by other company, it was engaged in same busiess at same plant, using same equipment and methods of production to manufacture same product, and majority of its suppliers and customers were same as those of other company, notwithstanding U's failure to negotiate contract with predecessor E, subsequent 2 month strike and 6 month close of plant]

Shoreline South Intermediate Care, Inc.; Inland Pacific, Inc. **276 NLRB No. 095**
(E who took over financially distressed facility whose Ees were represented by U held not to have unlawfully refused to bargain with U, notwithstanding fact that E did not want U, where E's hiring practices with respect to former E's Ees were not unlawful; substantial business reasons existed for thorough shakeup of acquired facility; GC did not meet burden of establishing that U affiliation, and not E's business judgment, motivated Ee changes; and U never requested E to bargain, but assumed E was obligated to hire former Ees)

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**
(successor E's refusal to bargain, violative, notwithstanding lack of same work force, where successor E bribed some of predecessor's Ees to quit and unlawfully refused to rehire them, so that U would lose majority status and successor would have no duty to bargain)

Trucking Water Air Corporation **276 NLRB No. 158**
(successor E's reply to U agent's request to meet and discuss *the situation* that E was a *nonunion company* constituted unlawful refusal to bargain where E was aware that predecessor was unionized)

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(in absence of any unusual circumstances, such as accretion to unit by agreement of parties w/o participation of affected Ees, presumption of majority status continues after takeover by Respondent (successor). No significance that U may not have been *recently* certified)

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(burden of proof upon Respondent (successor E in instant proceeding) to prove good faith doubt of (U's) majority status)

Royal Vending Services, Ltd. **275 NLRB No. 173**
(successor's response to U's notice of termination of contract and request to negotiate new one that it was not party to a contract with the U and refusal to reply to subsequent letters from U, violative)

Inland Container Corporation **275 NLRB No. 60**
(E held successor notwithstanding 2 1/2 month hiatus between closing of predecessor and commencement of successor E's operations, where hiatus may have been necessary at least inpart because of E's discriminatory hiring policies and plant renovations; however, renovations E made were insufficient to negotiate *substantial continuity* of employing enterprise as new machinery was introduced and work done did not alter machinery's fundamental character but was in nature of long overdue repairs)

Contee Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(violation where two companies found successor to, single E with, and alter egos of E which had contract with U herein refused to recognize and bargain with U)

Sun Coast Foods, Inc. **273 NLRB No. 203**
(successor E's refusal to bargain with U which had represented Ees of predecessor E, not unlawful, where E did engage in dilatory tactics upon receipt of demand for bargaining, but was subsequently presented with ptn signed by majority of Ees expressing desire not to be represented by U, and was found by Bd not to have committed any ULPs)

Harley-Davidson Transportation Co., Inc. **273 NLRB No. 192**
]*successor* lawfully withdrew from bargaining after 3 sessions and of voluntarily recognizing U that had been certified over year during predecessor's time on basis of good faith doubt evidenced by ptn signed by majority of Ees stating they no longer wanted U to be its representative. Change of ownership not treated as equivalent of certification or voluntary recognition of U following organizational drive since relationship between U and Ees not disturbed so all U has is presumption of majority status that may be rebutted at anytime w/o waiting reasonable period. Signatures on ptn need not be authenticated)

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **273 NLRB No. 189**
(E's refusing to recognize and bargain with U as successor, violative where U's majority status as bargaining representative would have continued following takeover but for E's unlawful conduct in failing to hire Ees of predecessor)

Best Cast, Inc. **JD-(NY)-1-86**
[admitted successor E's failure to answer U's request for bargaining, violation where E failed to prove alleged doubt of U majority status]

Tooling and Equipment International Corporation, Successor to Automotive Pattern Company **JD-334-85**
(E's refusal to bargain with U as successor E, not violative, since U did not enjoy majority support at time it demanded recognition, notwithstanding E had no knowledge of this fact, where most of the U member Ees attempted to withdraw from U prior to time U demanded recognition, Ees refused, upon request from U, to organize E and there was no evidence that E caused the Ee disaffection)

Jackie Lee Enterprise, Inc. and Jackie Lee, Limited, Inc. **JD-246-85**
(no unlawful refusal to bargain by purchaser with U which represented Ees of seller E whom it was hiring, even assuming successor E, since E had

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objective basis for good faith doubt of U's majority prior to setting initial terms and conditions of employment, where all unit Ees informing E that they no longer desired U representation, but wanted *to cut their own deal*, notwithstanding Ees' retention of U membership to retain pension rights and other benefits, since their request for withdrawal cards after executing private employment agreement with E showed Ees had no desire to retain U as bargaining agent)

Healthcare International, Inc. and Healthcare Colorado Springs, Inc. d/b/a Cedar Springs Psychiatric Hospital **JD-(SF)-134-85**

(E's refusal to recognize and bargain with U as successor E, not violative, since at time U demanded recognition E had good faith doubt of U's majority status where many Ees in unit told E's supervisors at Ee meetings that they disapproved of the U, at time of U demand Ees having dues deducted had declined to only 6 out of 100 Ees and E's doubt was reinforced by fact that U was taking its own written poll to determine support among unit Ees)

Abramo Fish Co. Ltd. **JD-222-85**

(in case involving purchaser's alleged refusal to recognize and bargain with U representing seller's Ees, date when purchaser took effective control of business, rather than date of formal title transfer almost a month later, was date on which successorship, if any, should be based)

Abramo Fish Co. Ltd. **JD-222-85**

(purchaser not obligated to assume seller's contract and permitted to raise good-faith doubt of U's majority status where, although purchaser committed himself to retain all of seller's Ees, nothing in written agreements between it and seller revealed agreement to assume contract between seller and U)

Abramo Fish Co. Ltd. **JD-222-85**

(purchaser's asserted good-faith doubt of U's majority status justified its refusal to recognize and bargain with U representing seller's Ees; although unsuccessful attempts by 5 of 9 unit Ees to withdraw from U was not sufficient by itself to support claim of good-faith doubt, Ees' dissatisfaction with U was further signified when attempted withhdrawals are considered in context of pre-hire conversation with E which provided reasonable basis for concluding withdrawals expressed Ees' agreement with E's stated desire to operate non-U, which was fortified when Ees told E of their attempted withdrawals)

A & L Investment Corporation **JD-(SF)-108-85**

(successor E's refusal to bargain with U on grounds that 20 months had passed since Ees elected U at predecessor E and Ee turnover since that time required new election, violative, since Ee turnover was irrelevant on question of Ee sentiment where certification year was still in effect at successor E (it being extended because of predecessor E's refusal to bargain) and thus, U enjoyed irrebutable presumption of majority status)

Flexible Foam Products, Inc. **JD-100-85**

(purchaser of E's equipment for producing one product which leased 10% of E's space and hired a very few of E's Ees, not successor to E where, despite similarities of work force, location, supervision and product, there was no continuity of employing industry in view of four-month hiatus between operations, Ees' lack of expectations of employment with purchaser, substantial difference in scope of operations in areas affecting Ees' desires about U representation, namely size of work force, working conditions, and nature of jobs)

Great Plains Furniture Industries, Inc. **JD-14-85**

]when business changes hands and there is substantial continuity in employing enterprise, Act requires successor E to bargain with labor organization which represented Ees of its predecessor. This successorship doctrine is based on rationale that mere change of ownership, w/o any essential change in working conditions, would not be likely to change Ee attitudes toward representation)

Great Plains Furniture Industries, Inc. **JD-14-85**

(purchaser held successor E and obligated to bargain with U which represented Ees of seller, notwithstanding purchaser had begun to derive income from distributing other products which it did not manufacture, changed quality and cost of its product line, as well as suppliers, where at time of bargaining demand majority of purchaser's Ees had been employed by seller, Ees were doing same work in virtually same job classifications, using same equipment and machinery in same plant under same working conditions and suprvision, in order to make same product)

Great Plains Furniture Industries, Inc. **JD-14-85**

(unilateral grant of wage increases by purchaser-successor after bargaining obligation attached, not unlawful, since successor had promised wage increases at time he set initial terms and conditions of employment and at that time no bargaining obligation had ripened; therefore, successor was free to set whatever terms he wished and so long as unilateral changes implemented were encompassed w/i initial terms of employment, no violation arises)

Szabo Food Service, Inc. **JD-434-84**

(E's failure to recognize U and bargain with it after E received written demand for recognition from U and E's unilaterally implementing new wages and employment conditions, violative)

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[in successorship situation, bargaining obligation can normally be determined at time of transfer or when operations begin. In other instances, however, such as when E is rebuilding collapsed business or is operating at substantially reduced capacity, delay in making determination may be appropriate. As S.Ct has noted, determination regarding successor's obligation to bargain may have to wait until successor E has hired full complement of Ees since it will not be evident until then that bargaining representative represents majority of complementing unit required by Sec. 9(a) of Act]

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[full complement principle has been interpreted to require that examination of workforce composition be postponed until business is operating at its maximum capacity or until E has completed hiring all of its bargaining unit Ees fixing appropriate date at which bargaining obligation arises involves balancing objective of ensuring maximum Ee participation in selection of bargaining agent against goal of permitting Ees to be represented as quickly as possible Bd has reconciled these interests by applying substantial and representative complement standard]

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[successor E obligated to bargain with U that had represented Ees of predecessor when it had employed substantial and representative complement i.e. had hired at least 50% of those it would ultimately employ in majority of Ees it would eventually employ when it reached full complement, notwithstanding at time of original demand for recognition representative complement not employed, since demand continuing and no need to renew later]

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[in determining whether E must recognize and bargain with U that has represented Ees of former e. Bd looks to totality of circumstances to determine whether there has been substantial and material alteration in employing enterprise critical inquiry is whether any changes in operation have significantly altered Ees working conditions, employment relationship and Ees' expectations and needs with regard to representation]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor **785 F.2d 195 (C.A. 7, Mar. 1986)**

[there is, and can never be, a formal definition of successor. Factors can be identified, but the determination in each case involves the facts and the labor policy at issue]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor **785 F.2d 195 (C.A. 7, Mar. 1986)**

[E held successor E where list of changes in business proffered to support its position were only *basic cosmetic modifications* of the physical and organizational structure and to the extent E made some substantive changes, overriding aspect of acquisition was fact that E hired all Ees of predecessor E]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor **785 F.2d 195 (C.A. 7, Mar. 1986)**

[successor E's contention that it should not be ordered to bargain with U since predecesaor's strike replacements should not be presumed to support U, rejected, since one year had not elapsed since U was certified and successor itself was responsible for not reinstating strikers, which itself was a ULP and thus, it cannot rely on that to support U's loss of majority status]

N.L.R.B. v. Jeffries Lithograph Company, a subsidiary of Ticor Printing Group, Inc. **752 F.2d 459 (C.A. 9, Jan. 1985)**

(in determining when new E has achieved *substantial and representative compliment* of ees, Bd considers 5 factors, no one controlling: 1) whether job classifications designated for operations were filled or substantially filled; 2) whether operation was in normal or substantially normal production; 3) size of complement on date of normal production; 4) time expected to elapse before substantially larger complement would be at work; and 5) relative certainty of E's expected expansion)

N.L.R.B. v. Jeffries Lithograph Company, a subsidiary of Ticor Printing Group, Inc. **752 F.2d 459 (C.A. 9, Jan. 1985)**

(successor's bargaining obligation matured on date of demand by U as E had *substantial and representative complement* notwithstanding that in accordance with successor's planned expansion Ee complement more than doubled in 7 month period and Bd does not need to wait 8 months from reopening until full production achieved to set bargaining obligation)

Food and Commercial Workers, Local 152 v. N.L.R.B. **768 F.2d 1463 (C.A. D.C., July 1985)**

]even entirely new E at given place of employment may be required to recognize and bargain with previously recognized or certified bargaining representative of

4825-6700—Cont.

Ees of that place of employment if substantial continuity of employing industry. In such circumstances, new E is deemed successor and may escape duty to recognize and bargain only if genuine doubt as to whether U has majority support in unit)

Food and Commercial Workers, Local 152 v. N.L.R.B. **760 F.2d 1463 (C.A. D.C., July 1985)**

(in determining whether E is successor, and obligated to recognize and bargain with U; *essential inquiry is whether operations, as they impinge on U members, remains essentially same after transfer of ownership. Focus of analysis is not on continuity of business structure in general, but rather on particular operations of business as they affect members of relevant bargaining unit*)

Food and Commercial Workers, Local 152 v. N.L.R.B. **760 F.2d 1463 (C.A. D.C., July 1985)**

(purchaser of stock of meat packing company which operated portion of sellers facilities after hiatus of year and half, held successor and obligated to recognize and bargain, notwithstanding hiatus, reduction to single shift and consequent reduction in Ees, change to strictly kosher products and in top management after stock transfer, since none of these changes resulted in substantial transformation of operations, affected Ee's attitude towards representation or E's obligation towards U)

4825-7500 Change in corporate structure

Abrams Fish Co. Ltd. **JD-222-85**

(U held not to have had presumptive continuing majority status where buyer of business from seller having contract with U made substantial changes in its nature putting into question likelihood that Ees expected continuation of U representation; 5 of 9 Ees hired by buyer sought withdrawal of cards from U w/i first week of employment; buyer told Ees formerly employed by U-E that his business would be non-U; and there was no evidence U gained support among Ees prior to its recognition demand)

4825-8700 Bankruptcy trustee or debtor-in-possession

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. **———U.S.——— (U.S. S.Ct, Feb. 1984)**

[debtor-in-possession is E under NLRA and is obligated to bargain collectively with certified representative over terms of new contract pending rejection of existing contract or following formal approval of rejection by Bankruptcy Ct, but no ULP by unilaterally breaching contract before formal Bankruptcy Ct action]

Aquaslide 'N' Dive Corporation **281 NLRB No. 034**

[E's refusal to continue negotiations with U after it had filed bankruptcy ptn, on ground that it could not negotiate further absent bank approval (assets were frozen), unlawful, where E and U could have engaged in full negotiations, even though consummation of any agreements may have depended upon approval in bankruptcy proceedings]

Edwin Odum d/b/a The Phoenix Company **274 NLRB No. 146**

(Congress nullified *Bildisco*, 104 S.Ct 1188, which held that filing Chapter 11 ptn renders collective-bargaining agreement unenforceable by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, July 10, 1984)

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-6-86**

[*issue of whether Sec. 8(d) may be used to enforce post-bankruptcy ptn contract should be determined by analyzing policies and provisions of Bankruptcy Code. Code treatment of transactions between debtor-in-possession and third parties after bankruptcy ptn filed supports view that Code favors enforceability both with respect to assumed pre-petition contracts and contracts negotiated post-ptn. Code favors enforceability of post ptn contracts as a means of establishing confidence in debtor-in-possession and encouraging third parties to do business with debtor*]

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-6-86**

[upon reconsideration in light of *NLRB v. Bildisco*, 459 U.S. 1145, debtor-in-possession's changes in provisions in regard to permanent replacement of strikers after expiration of contract, but prior to filing of bankruptcy ptn, unlawful since debtor-in-possession had assumed contract post ptn]

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-6-86**

[upon reconsideration in light of *NLRB v. Bildisco*, 459 U.S. 1145, debtor-in-possession unilateral changes in provisions regarding U's access to plant and wages and benefits prior to expiration of contract, and prior to filing of bankruptcy ptn, unlawful, since debtor in possession assumed contract post ptn]

Mark Manufacturing Corp. **JD-373-85**

[E's failure to give pay raises and checkoff U dues, on grounds that pending bankruptcy litigation and *NLRB v. Bildisco*, 104 S.Ct. 1188 allowed its actions, violative, since E abrogated bargaining agreement before bankruptcy ptn was filed and did not submit any proposal to the U, after filing ptn, to modify bargaining agreement, as required by Bankruptcy Amendments of 1984]

U. S. Truck Company, Inc. **JD-111-85**

(unilateral changes by E, who was debtor-in-possession, after effective date of bankruptcy ct order authorizing rejection of bargaining agreement, not unlawful, under *NLRB v. Bildisco and Bildisco*, 104 S.Ct 1188. However, E had obligation to bargain regarding new contract)

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**

(while requiring, as part of remedy, alter ego to abide by contract between bankrupt *predecessor* acting as debtor-in-posaession and U seems incongruous in light of S.Ct's *Bildisco* decision, which provides that once bankruptcy ptn is filed contract is not enforceable, S.Ct, however, recognized in *Bildisco* that debtor-in-possession is required to recognize and bargain with U)

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**

(where bankrupt E originally petitioned for recognization but later, as debtor-in-possession, opted to liquidate entirely thereby evading its obligation to recognize and bargain with U, alter ego of bankrupt E held obligated to recognize and bargain with U, where corporate principals of bankrupt E, all members of same family, chose not to consider effects of reorganization and liquidation, liquidated original corporation, and then established another in its place constituting its alter ego)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(ct should deny debtor's mtn to enjoin Bd proceedings on charge if ULP charge stems from debtor's failure to bargain in good faith over terms and conditions of new contract)

4850 OBLIGATION TO HONOR CONTRACT

4850-3300 Alter ego of employer

Otten Truck Line; United Star Express, Inc.; and Claude Hayes, an Individual **282 NLRB No. 073**

[E who was held alter ego successor to debtor-in-possession violated Act by dealing directly with Ees and instituting unilateral changes notwithstanding debtor-in-possession repudiated contract. (Modifications of *Bildisco* contained in Bankruptcy Amendments and Federal Judgeship Act of 1984 not applicable to instant case)]

Alabama Metal Products, Inc., and Its Alter Ego Delta Laminating, Inc. **280 NLRB No. 123**

[manufacturing company's refusal to extend contract to newly formed and separately located company providing products for use by manufacturer, to bargain with U with regard to effects of movement of unit work to newly formed company, and to process grievances with regard to movement of such work, not unlawful, where factors establishing single E or alter ego status were either absent or insufficient for finding that either of such relationships existed]

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. **280 NLRB No. 021**

[E's layoff of Ees from business it was terminating unlawful where it immediately began new business, held to be alter ego of teminated business, and induced laid off Ees to become Ees of new company under non-U conditions]

Elevator Sales and Service, Inc. **278 NLRB No. 094**

[refusal of E and its *alter ego* to recognize U and honor contracts, violation, where E failed to effectively withdraw from multi-E bargaining association]

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**

[two Es held single E and alter egos and withdrawal of recognition from U violative, since E which ostensibly bought business was nothing but disguised continuance of old business where evidence showed old E transferred operations to new E to evade bargaining obligations, new E existed almost exclusively to service old E's customers, new E was essentially precluded from performing its own business nor could it set its own rates and old E required all customers to deal with it rather than new E]

Mar-Kay Cartage, Inc. and Contemporary Delivery Systems, Inc. **277 NLRB No. 152**

(company's refusal to apply terms of contract which U had with its alter ego, unlawful)

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos **277 NLRB No. 39**

(no violation, where E, alleged to be alter ego of another Respondent E, failed to recall Ees laid off by other E in accordance with their seniority with other E, or honor bargaining contract between other Respondent E and U, since it was held not to be alter ego, nor did it alone meet Bd's jurisdictional standards)

4850-3300—Cont.

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**
(E's unilateral changes in wage rates and fringe benefits in contract, violative where E was bound by bargaining agreement entered into between U and E's alter ego with which E and third E constituted single E)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(unilateral changes in terms and conditions of employment for Ees transferred from corporation to sole proprietorship, violative, since transfer did not relieve either E from duty of complying with contract covering transferred Ees where Es were found single E and *alter egos* of each other)

Contee Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(violation where two spinoff companies, to which E had transferred operations for purpose of avoiding its debt burden, including its debt to U funds, and which were founds successors to, single E with, and alter egos of transferring E herein, refused to honor U's contract with transferring E by making contributions to U funds, checking off and remitting U dues, and adhering to contract terms regarding job rotation and overtime, holiday, and vacation pay)

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 224**
(partnership being continuation of corporate painting contractor (alter ego), for labor relations purposes, legally obligated to same extent as the Corporation, including proscriptions of Sec. 8(a5)(a)(1), (3) and (5) of Act)

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-380-85**
[where existing unionized company and newly formed non-U company constituted single integrated E, and non-U company was alter ego and disguised continuance of old company, ALJ held that old company's duty to bargain with U and its duty to honor existing U contract were binding on new company; and both companies violated 8(a)(5) by failing and refusing to recognize and bargain with U, by rejecting U contract, by changing contractual pay rates and fringe benefits, and by ending fringe benefit contributions]

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**
(new corporation, herein found to constitute alter ego of bankrupt E, held to have been formed at least in part to avoid latter's bargaining relationship with U and to evade responsibilities under Act to recognize and bargain with U concerning unilateral changes, where bankrupt E had been embroiled in dispute with U for some time over U benefits and means by which E could lower its benefits costs; and before bankruptcy ptn was filed and at time relatively close to formation of new corporation, principals of E were considering going *non-U*)

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**
(while requiring, as part of remedy, alter ego to abide by contract between bankrupt *predecessor* acting as debtor-in-possession and U seems incongruous in light of S.Ct's *Bildisco* decision, which provides that once bankruptcy ptn is filed contract is not enforceable, S.Ct, however, recognized in *Bildisco* that debtor-in-possession is required to recognize and bargain with U)

Goodman Piping Products, Inc. v. N.L.R.B. **741 F.2d 10 (C.A. 2, June 1984)**
[failure of nonU company to adhere to U contract of unionized company, violative where companies were found alter egos of each other]

N.L.R.B. v. Allcoast Transfer, Inc. and Ward Moving and Storage, Inc. **780 F.2d 576 (C.A. 6, Jan. 1986)**
[moving and storage company held alter ego of company that organized it where two enterprises had identical management and supervision, centralized control of operational and labor relations policies, substantially identical business purpose and operations as well as substantially identical equipment and Ees; circumstances so strongly supported finding of alter ego status that Bd could infer that E intended to avoid U obligations w/o further inquiry into E intent]

4850-6700 Successor employer

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders **280 NLRB No. 133**
[so long as predecessor Ees at alleged successor's plant are majority of Ees in successor unit, alleged successor may properly be considered to be successor E]

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders **280 NLRB No. 133**
[U, which has been representing unit Ees at predecessor E's plant for over 40 years, is to be recognized as ongoing representative for unit Ees where successor E has advanced no good-faith doubt about U no longer representing unit Ees, and there is not enough difference between predecessor E and successor E to overcome presumption that *—Ees' desires concerning unionization* are unchanged (successor Ees performed essentially same work, in same plant, with same equipment as before)]

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders **280 NLRB No. 133**
[in finding successor, Bd did not consider material factor the fact that successor employed only half the number of supervisors that predecessor employed or that only one of the employed supervisors came from predecessor, or that job classifications substantially reduced, in light of same products produced in same plant with same equipment even though on much reduced scale]

American Press, Inc. **280 NLRB No. 109**
[successor E is ordinarily free to set initial hiring terms w/o preliminary bargaining with incumbent U; however, where it is clear new E plans to retain all of unit Ees, it must consult U before altering existing terms and conditions of employment]

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. **280 NLRB No. 021**
[E held successor to company whose assets it purchased and obligated to honor contract predecessor had with U, where there was continuity of operation with same Ees and working conditions, and purchaser made contributions to U's benefit and productivity funds, and while it complained about what it believed to be onerous provisions of contract, never indicated it would not abide by contract]

Martin J. Barry Company **278 NLRB No. 056**
[order directing E, who was admitted *Burns* successor, to execute and implement contract agreed to by predecessor and make Ees whole for failure to so implement, contravened 10(c) of the Act and Bd was w/o remedial autority to so order, since, under principles of *H.K. Porter*, 397 U.S. 99 (1970), Bd lacks remedial authority to impose contractual terms involuntarily on either party to a collective bargaining agreement]

Martin J. Barry Company **278 NLRB No. 056**
[proper remedial obligations for *Golden State* successor involving predecessor's unlawful refusal to execute and implement contract with U was to make Ees whole for predecessor's ULP up to time predecessor ceased business and then, bargain in good faith with U for contract, since such remedy is sufficient to convince unit Ees that employing enterprise intends to comply with the Act and strikes a balance between interests of successor, the public and the affected Ees]

Prime Time Post, Inc. **274 NLRB No. 218**
(successor E held not obligated to contribute to international's health and welfare fund pursuant to U's agreement with predecessor E and cessation of contributions not violative, where successor E at no time assumed obligations of predecessor E and entered into contract with local U of international which did not require it to make contributions to the fund; further, international waived right to bargain over fund contributions when it never requested successor E to bargain and was aware that local U was bargaining with E and entered into contract which did not provide for fund contributions)

Contee Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(violation where two spinoff companies, to which E had transferred operations for purpose of avoiding its debt burden, including its debt to U funds, and which were founds successors to, single E with, and alter egos of transferring E herein, refused to honor U's contract with transferring E by making contributions to U funds, checking off and remitting U dues, and adhering to contract terms regarding job rotation and overtime, holiday, and vacation pay)

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **273 NLRB No. 189**
(E's failure to assume all obligations under bargaining agreement, violative where E assumed such obligations when it purchased apartment building from predecessor)

N.L.R.B. v. Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **785 F.2d 46 (C.A. 2, Mar. 1986)**
[purchaser's failure to recognize and bargain and honor contract with U, violation, since it was found successor and it assumed predecessor's U contract, as shown by sale contract provision that seller's U contract was permitted encumbrance, assignment of sale and U contract and deed to purchaser by its nominee, and purchaser's awareness of contractual obligation manifested by its offering predecessor's Ees money to give up their jobs]

4850-7500 Joint or single employer

Alabama Metal Products, Inc., and Its Alter Ego Delta Laminating, Inc. **280 NLRB No. 123**
[manufacturing company's refusal to extend contract to newly formed and separately located company providing products for use by manufacturer, to bargain with U with regard to effects of movement of unit work to newly formed company, and to process grievances with regard to movement of such work, not unlawful, where factors establishing single E or alter ego status were either absent or insufficient for finding that either of such relationships existed]

4850-7500—Cont.

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**
[two Es held single E and alter egos and withdrawal of recognition from U violative, since E which ostensibly bought business was nothing but disguised continuance of old business where evidence showed old E transferred operations to new E to evade bargaining obligations, new E existed almost exclusively to service old E's customers, new E was essentially precluded from performing its own business nor could it set its own rates and old E required all customers to deal with it rather than new E]

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**
(E's unilateral changes in wage rates and fringe benefits in contract, violative where E was bound by bargaining agreement entered into between U and E's alter ego with which E and third E constituted single E)

O. Voorhees Painting Co. and O.V. International, Inc. **275 NLRB No. 114**
(joint Es' failing to properly pay unit Ees and make fringe benefit contributions pursuant to bargaining agreement between one of joint Es and U, violative)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(unilateral changes in terms and conditions of employment for Ees transferred from corporation to sole proprietorship, violative, since transfer did not relieve either E from duty of complying with contract covering transferred Ees where Es were found single E and *alter egos* of each other)

Contee Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(violation where two spinoff companies, to which E had transferred operations for purpose of avoiding its debt burden, including its debt to U funds, and which were founds successors to, single E with, and alter egos of transferring E herein, refused to honor U's contract with transferring E by making contributions to U funds, checking off and remitting U dues, and adhering to contract terms regarding job rotation and overtime, holiday, and vacation pay)

David A. Morrow & Associates, Inc. and Ryan Electric, Inc., Alter Ego and/or Single Employer **JD-300-85**
[where existing unionized company and newly formed non-U company constituted single integrated E, and non-U company was alter ego and disguised continuance of old company, ALJ held that old company's duty to bargain with U and its duty to honor existing U contract were binding on new company; and both companies violated 8(a)(5) by failing and refusing to recognize and bargain with U, by rejecting U contract, by changing contractual pay rates and fringe benefits, and by ending fringe benefit contributions]

Quality Plastic Molds, Inc., and Titan Enterprises, Corp. **JD-(NY)-143-84**
(violation by failing to apply unionized company's contract to nonU company's Ees who were found to be member of unionized company's Ees' bargaining unit where companies were found single E herein)

4850-7550 Double-breasted operations

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**
[E's contention that its alleged double breasted operation allowed it to transfer unit work from one business to the other, rejected, since Es were found to be single E and alter egos and thus, work was never transferred out of bargaining unit]

4850-8700 **Bankruptcy trustee or debtor-in-possession**

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. **———U.S.———**
(U.S. S.Ct, Feb. 1984)
[Bd is precluded from, in effect, enforcing terms of collective-bargaining agreement by filing ULP charges against debtor-in-possession for violating Sec. 8(d) of NLRA by modifying or terminating unexpired labor agreement. Though Bd's action is nominally one to enforce Sec. 8(d), practical effect of enforcement action would be to require adherence to terms of agreement, but filing of ptn in bankruptcy means that agreement is no longer enforceable. Consequently, Bd enforcement under these circumstances would run directly counter to express provisions of Bankruptcy Code]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. **———U.S.———**
(U.S. S.Ct, Feb. 1984)
[debtor-in-possession does not commit ULP when, after filing bankruptcy ptn but before Bankruptcy Ct approved rejection of bargaining agreement, it unilaterally modifies or terminates one or more provisions of contract, notwithstanding contract provided that it was binding on parties or successors even though bankruptcy should supervene]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. **———U.S.———**
(U.S. S.Ct, Feb. 1984)
[debtor-in-possession is E under NLRA and is obligated to bargain collectively with certified representative over terms of new contract pending rejection of existing contract or following formal approval of rejection by Bankruptcy Ct, but no ULP by unilaterally breaching contract before formal Bankruptcy Ct action]

Otten Truck Line; United Star Express, Inc.; and Claude Hayes, an Individual **282 NLRB No. 073**
[E who was held alter ego successor to debtor-in-possession violated Act by dealing directly with Ees and instituting unilateral changes notwithstanding debtor-in-possession repudiated contract. (Modifications of *Bildisco* contained in Bankruptcy Amendments and Federal Judgeship Act of 1984 not applicable to instant case)]

Hiyoto Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[E's unilateral change in contract terms, prior to institution of bankruptcy proceeding, by failing to make required payments to U health and retirement trust funds, unlawful; inability to make payments, claimed but not proved by E, was no defense; however, any finding of violation against E as debtor-in-possession for failing to comply with contract after filing of bankruptcy ptn was barred by S.Ct's *Bildisco* decision (104 S.Ct 1188)]

Hiyoto Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[alleged refusal by E to bargain with U, not unlawful, where E who, as debtor-in-possession having continuing obligation to bargain over terms of new contract, sought to do so both before and after bankruptcy ct approved rejection of old contract; U made no request to bargain during that period; and it was not E's fault U failed to follow up on his bargaining request]

Hiyoto Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[direct dealing with Ees concerning terms and conditions of employment, not unlawful, where E, as debtor-in-possession, rightfully sought unilateral substitution of modified terms and conditions of employment and had proposed to U same terms subsequently offered to Ees; U's refusal to negotiate until its erroneous belief that E was bound by contract, abrogated by bankruptcy ct, was disproved or substantiated was in essence waiver of U's right to object to imposition of new terms and conditions of employment; and E was under severe time constraints to resume operations]

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**
(E's post bankruptcy ptn conduct consisting of implementation of unilateral changes in bargaining agreement, layoff of seven Ees, and subcontracting of unit work, not violative in light of S.Ct's decision in *Bildisco*)

Edwin Odum d/b/a The Phoenix Company **274 NLRB No. 146**
(Congress nullified *Bildisco*, 104 S.Ct 1188, which held that filing Chapter 11 ptn renders collective-bargaining agreement unenforceable by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984, Publ. L. 98-353, July 10, 1984)

Lake Castings, Inc. **274 NLRB No. 040**
(mtn for summary judgment granted, in view of E's trustee in bankruptcy failure to file answer, insofar as complaint alleged violation of Sections 8(a)(5) and (1) by failing to make premium payments for medical insurance for unit Ees prior to filing of bankruptcy ptn; however, mtn denied and that portion of complaint remanded to RD which alleged violation by failure to make insurance premium payments on or after date of filing bankruptcy ptn in view of *Bildisco* 104 S.Ct 1188, which held debtor-in-possession does not committ ULP when it unilaterally rejects or modifies bargaining agreement before bankruptcy ct approves formal rejection)

San Juan Hotel Corporation d/b/a El San Juan Hotel **274 NLRB No. 003**
(E's discontinuance of contributions to Ees' pension fund required by contract, not unlawful, since contract was unenforceable during relevant period oftime as result of E's filing of bankruptcy ptn where, by operation of law, upon conversion of case from Chapter 11 reogranization to Chapter 7 liquidation proceeding, contract was automatically rejected 60 days after conversion)

Nicholas, Inc. and Nicholas, Inc., Debtor in Possession **JD-(NY)-31-86**
[in cases arising before 10 July 1984, trustee (in bankruptcy), *subject to court approval*, may assume or reject any executory, contract such as an unexpired collective-bargaining agreement. Debtor in possession under Chapter 11 (Bankruptcy Code) may unilaterally reject or modify agreement until formal rejection is approved or denied by ct. See *NLRB v. Bildisco & Bildisco* 104 S.Ct 1188 (1984), 115 LRRM 2805]

Nicholas, Inc. and Nicholas, Inc., Debtor in Possession **JD-(NY)-31-86**
[in cases arising before amendments to Bankruptcy Act effective, E, debtor-in-possession, lawfully discharged Ees for striking in violation of no-strike provision in contract where strike occurred during interim period of E petitioning court approval to reject contract and prior to court granting petition, and E continued to abide by terms of contract during this period, thus affirming contract]

4850-8700—Cont.

Mark Manufacturing Corp. **JD-373-85**
[E's failure to give pay raises and checkoff U dues, on grounds that pending bankruptcy litigation and *NLRB v. Bildisco*, 104 S.Ct. 1188 allowed its actions, violative, since E abrogated bargaining agreement before bankruptcy ptn was filed and did not submit any proposal to the U, after filing ptn, to modify bargaining agreement, as required by Bankruptcy Amendments of 1984]

Metro Force Security, Ltd.; and Metro Force Security, Ltd., Debtor in Possession **JD-(NY)-130-85**
[violation, where debtor-in-possession failed to comply with bargaining agreement provisions as to wages, contributions to welfare fund, payment for sick days, and remission of U dues and initiation fees deducted from Ees' wages, since default occurred after passage of 1984 Bankruptcy Amendments, PL 98-353, which provides that debtor-in-possession may not unilaterally alter bargaining agreement, but must first comply with notice and other requirements set forth therein]

Ambassador Convalescent Center, Inc. Debtor-In-Possession In Bankruptcy **JD-319-85**
(refusing to grant wage increase as required by executed agreement, violative, notwithstanding E's argument that agreement was void because E, debtor-in-possession, did not seek or obtain approval of bankruptcy ct where ct was not required to approve agreement)

Wolverine Porcelain Enameling Company and Gregory Crumpton, Its Trustee in Bankruptcy Under Chapter 7 of The Bankruptcy Act **JD-299-85**
(trustee in bankruptcy is successor to bankrupt E, and bound to honor latter's bargaining obligations)

U. S. Truck Company, Inc. **JD-111-85**
(unilateral changes by E, who was debtor-in-possession, after effective date of bankruptcy ct order authorizing rejection of bargaining agreement, not unlawful, under *NLRB v. Bildisco and Bildisco*, 104 S.Ct 1188. However, E had obligation to bargain regarding new contract)

5400 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYEE REPRESENTATIVE

Canterbury Villa of Waterford, Inc. **282 NLRB No. 072**
[on withdrawal of case from CA, E's refusal to bargain, unlawful, notwithstanding nonmembers' inability to vote on U's change in affiliation, since affiliation is internal U matter with which Bd is precluded from interfering; moreover, there was *substantial continuity* between pre-and-post disaffiliation U, and due process was safeguarded by U members' voting on, and district ct's approval of settlement agreement providing for, change in affiliation]

Hydrotherm, Inc. **280 NLRB No. 167**
[refusing to bargain with local U that was certified under unamended pre-merger title, violation, notwithstanding that U merged with another local prior to election that resulted in change of name to one different from that of certified U, where U retained same character and relationship to Ees, had same international constitution, bylaws, officers, stewards, grievance procedure, methods of servincing contracts, assessing dues, making fund payments, place of business, and way of conducting affairs]

Prime Time Post, Inc. **274 NLRB No. 218**
(successor E held not obligated to contribute to international's health and welfare fund pursuant to U's agreement with predecessor E and cessation of contributions not violative, where successor E at no time assumed obligations of predecessor E and entered into contract with local U of international which did not require it to make contributions to the fund; further, international waived right to bargain over fund contributions when it never requested successor E to bargain and was aware that local U was bargaining with E and entered into contract which did not provide for fund contributions)

5700 MULTIEMPLOYER BARGAINING

5714 INTENT OF EMPLOYERS

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 224**
(right to withdraw from E group bargaining with U is limited by reasonable controls as to time and manner of withdrawal. Intention to withdraw must be *unequivocal, and exercised at an appropriate time, apparent willingness of secretary and principal official of E collective bargaining group to allow E to drop out of E bargaining group, absence of any pending negotiations at time of withdrawal as well as its timely letter to group, non-payment of dues to group, expressed intent to operate non-U shop and unequivocal withdrawal (by letter) from E bargaining group was valid withdrawal)*

Kroll Furniture **JD-(SF)-75-86**
[E's refusal to sign bargaining agreement allegedly reached in concert with multi-E bargaining group, not violative where there was no requisite intent on part of E necessary to finding that E was part of group]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E's contention that there was no case authority for holding E to intention to be bound by multi-E bargaining arising from E's prior bargaining authorization and that such intention was controlling, rejected, where facts showed both an express and continuing unconditional bargaining authorization by E in first instance followed by 2 contracts including E in their terms thereafter, in contrast to dissimilar circumstances in cases relied on by E which were clearly inapposite]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[while Bd does examine into E's intent to be bound by multi-E bargaining before finding E bound thereby, once Bd finds consensual involvement therein, E's right to withdraw and avoid contractual obligations is dependent not on unfettered desire or intention, expressed at will, but by timely and unequivocal notice of withdrawal]

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) **764 F.2d 739 (C.A. 10, June 1985)**
(test to determine multi-E unit's apparent authority to negotiate bargaining agreement is whether employer has indicated from outset unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has asserted to and entered upon negotiations with group's representative)

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) **764 F.2d 739 (C.A. 10, June 1985)**
(E's repudiation of bargaining agreements reached through multi-E bargaining, violative notwithstanding E's contention that negotiations were entered and agreements reached w/o E's real or apparent authority, where E allowed its managers to sign authorizations for association to bargain on E's behalf over three-year period, observed terms of agreements negotiated by association, and used lawyer recommended by association to negotiate settlement agreement with U)

5742 AUTHORITY OF ASSOCIATION

Arden Electric, et al. **275 NLRB No. 095**
(U's ptns seeking single-E units of Es who had participated in multi-E unit represented by E association held not proper for dismissal, where E-members and E association intended to limit latter's authority so as to bargain only with IBEW or other Us as determined by board of directors and, upon accepting petitioner's disclaimer and thereby agreeing to dissolution of multi-E unit, E association could not bind Es to multi-E bargaining relationship with substitute for petitioner)

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E association's negotiators had both actual or express authority to bargain on behalf of E members, based upon E-members' earlier powers of attorney which were not shown to have been withdrawn by probative evidence, as well as implied authority based upon open past practice on part of association's officials whose conduct and apparent authority in such respects was not shown to have been disaffirmed by any E-members]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E's contention that there was no case authority for holding E to intention to be bound by multi-E bargaining arising from E's prior bargaining authorization and that such intention was controlling, rejected, where facts showed both an express and continuing unconditional bargaining authorization by E in first instance followed by 2 contracts including E in their terms thereafter, in contrast to dissimilar circumstances in cases relied on by E which were clearly inapposite]

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) **764 F.2d 739 (C.A. 10, June 1985)**
(test to determine multi-E unit's apparent authority to negotiate bargaining agreement is whether employer has indicated from outset unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has asserted to and entered upon negotiations with group's representative)

5756 UNION ASSENT TO MULTIEMPLOYER BARGAINING OF EMPLOYER

5756—Cont.

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**

[fact that U sent negotiated contract separately to E members of E association for their signatures following signing by E association held no grounds, in fact or law, to sustain view advanced by E that such U conduct supported view that U agreed to E's bargaining singly, since U took such action to be on safe side to nail down those Es who intended to abide by law as viewed by U, and those who did not do so and would therefore be subject to legal action]

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) **764 F.2d 739 (C.A. 10, June 1985)**

(test to determine multi-E unit's apparent authority to negotiate bargaining agreement is whether employer has indicated from outset unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has asserted to and entered upon negotiations with group's representative)

5770 WITHDRAWAL FROM MULTIEMPLOYER BARGAINING

Cascade Painting Company, Inc. **277 NLRB No. 103**

(Es unlawfully withdrew recognition from U where Es failed to rebut presumption of U's continued representation of Ee majorities in single-E units following withdrawal from multi-E bargaining; Es informed their Ees of intention to become non-U Es which, however, was choice open only to Ees, not Es; and after expiration of contract and w/o advising U or federal or state agencies, Es ceased making payments to U trust funds, stopped paying contract wages, and negotiated with Ees regarding wages and other terms and conditions of employment)

5770-1200 Timely and unequivocal

American Bank Note Company **281 NLRB No. 099**

[E can withdraw from multi-E bargaining upon written notice made prior to date set by contract for modification of existing contract or prior to agreed upon date to begin negotiations, *see Retail Associates, Inc.* 120 NLRB 388 (1958)]

American Bank Note Company **281 NLRB No. 099**

[decline in business, even to point where volume of business is 1/4 of its previous level does not constitute unusual circumstances which would relieve E of consequences of its failure to give timely notice (of withdrawal from multiE bargaining)]

Watson-Rummell Electric Co. **277 NLRB No. 162**

[E's repudiation of multi-E association contract and unilateral changes upon expiration of contract, violation where notice of withdrawal was delivered to association, but not to U, as required by contract]

Watson-Rummell Electric Co. **277 NLRB No. 162**

[E's notice of withdrawal effective since it was timely and unequivocal, notwithstanding E's concurrent unremedied ULPs]

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 224**

(right to withdraw from E group bargaining with U is limited by reasonable controls as to time and manner of withdrawal. Intention to withdraw must be *unequivocal, and exercised at an appropriate time, apparent willingness of secretary and principal official of E collective bargaining group to allow E to drop out of E bargaining group, absence of any pending negotiations at time of withdrawal as well as its timely letter, to group non-payment of dues to group, expressed intent to operate non-U shop and unequivocal withdrawal (by letter) from E bargaining group was valid withdrawal)*

The Setterlin Company **JD-56-86**

[E's unilateral cessation of contributions to U's health and welfare and pension funds and implementation of contributions to alternate plans, lawful where E had lawfully and timely withdrawn from multi-E association; negotiations with U had reached impasse; E, fearing continued contributions to U funds would be evidence of assent to be bound by multi-E association contract, had notified U of intent to implement new benefit plans if impasse continued; and U had not only failed to request bargaining but avoided it in attempt to bind E to multi-E association contract]

The Setterlin Company **JD-56-86**

[unilateral changes lawful after timely and lawful withdrawal from multi-E association and impasse in bargaining separately with U]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**

[while Bd does examine into E's intent to be bound by multi-E bargaining before finding E bound thereby, once Bd finds consensual involvement therein, E's right to withdraw and avoid contractual obligations is dependent not on unfettered desire or intention, expressed at will, but by timely and unequivocal notice of withdrawal]

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) **JD-(SF)-87-85**

(signatory to memorandum agreement gave proper notice of termination of agreement and agreement terminated at expiration date of agreement notwithstanding U and E association prematurely negotiated new contract prior to time that proper notice could be sent (60 days), since signatories could not be bound to mid-term modification as it is wording of memorandum agreement rather than contract incorporated by reference that controls termination dates)

5770-1250 Employer's conduct inconsistent with valid withdrawal

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**

[E's initial withdrawal from multi-E bargaining timely, since w/i time period set in contract and before negotiations began, notwithstanding E gave notice of withdrawal prospectively three months prior to expiration of contract, since E may withdraw from multi-E bargaining effective at future date or conditioned on some future event; however, herein E negated its withdrawal by its subsequent participation in negotiations up until stated date of withdrawal]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**

[E did not effectively withdraw from multi-E bargaining, hence its failure to honor agreement reached, unlawful, notwithstanding its initial timely withdrawal, since E's subsequent participation in negotiations up to effective date of withdrawal, with no indication E negotiating as independent, was inconsistent with attempt to abandon group bargaining, notwithstanding E's nonparticipation after date of stated withdrawal; nor did U consent to withdrawal, and E's contention unusual circumstances of unit fragmentation justified withdrawal, rejected]

5770-2500 Untimely

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**

[E, bound by extension agreement negotiated by multi-E association, unlawfully refused to execute it and to abide by its terms, where E continued its business under guise of alter ego company, had never communicated written notice of withdrawal from E association or multi-E bargaining and had not revoked its prior written letter of assent to association of bargaining authority and U never *agreed* to E's withdrawal whether based upon alleged or unsupported manifestation of intent by E or circumstances surrounding bargaining sessions]

5770-2533 During contract term

The Leapley Company **278 NLRB No. 140**

[withdrawal from multi-E association and attempt to bargain with U individually, violation where it failed to comply with letter of assent requiring withdrawal 150 days before termination of current contract; timeliness of withdrawal under minimum requirements of Bd decisions no defense where parties had agreed in writing on terms of withdrawal]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**

[while Bd does examine into E's intent to be bound by multi-E bargaining before finding E bound thereby, once Bd finds consensual involvement therein, E's right to withdraw and avoid contractual obligations is dependent not on unfettered desire or intention, expressed at will, but by timely and unequivocal notice of withdrawal]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**

[E-member of multi-E association unlawfully refused to execute extension agreement negotiated by E association where E was included on list of E-members when parties reached agreement, E was covered by 2 preceeding contracts pursuant to earlier specific authorizations by E who had never withdrawn from multi-E bargaining nor given any notice, oral or written that it had withdrawn therefrom; and despite E's failure to respond to U's letter requesting his signature to negotiated agreement, it was found E received such request but failed to execute agreement]

5770-2550 Where negotiations had begun

Elevator Sales and Service, Inc. **278 NLRB No. 094**

[E's withdrawal from E-association held untimely, where written notice was not sent to either international U or local U prior to parties' commencement of negotiations]

Thermo Heating, Inc. **JD-(SF)-16-85**

(E's refusal to abide by terms of *Extension of Agreement* negotiated on its behalf by multi-E association which had effect of decreasing wages and extending duration of current contract, on grounds that E had timely with-

5770-2550—Cont.

drawn from association, violative, where E's attempted withdrawal occurred *after* negotiations on agreement had begun, tentative agreement was reached with U and association and agreement had been ratified by a majority of association's members)

Pleasanton Plastics, Inc. **JD-(SF)-15-85**
(E had timely withdrawn from multi-E bargaining where it gave unequivocal notice of withdrawal prior to commencement of bargaining for new agreement; contention that meetings prior to notice constituted negotiations, and hence notice untimely, rejected, since meetings merely exploratory exchange of ideas outside formal negotiation channels, not did letter written in response to U request that Es put their concerns in writing commence negotiations)

5770-2583 Absent unusual circumstances

Watson-Rummell Electric Co. **277 NLRB No. 162**
[unusual circumstances permitting untimely withdrawal limited to economic circumstances, such as imminent bankruptcy, and dissipation of multi-E association unit to point where it is no longer a viable bargaining entity]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[in finding no unusual circumstances permitting E to withdraw from multi-E bargaining due to economic hardship or E's filing of ptn in bankruptcy, ALJ held E could not plead economic distress where E chose to shut off its income by transferring all work to alter ego company which E created in effort to escape its contractual obligations]

Greater Detroit Heating and Cooling, Inc. **JD-116-85**
(E's late withdrawal from group bargaining and repudiation of negotiated contract, violative where it did not show *unusual circumstances* to justify its refusal to accept and comply with contract)

Thermo Heating, Inc. **JD-(SF)-16-85**
(E's refusal to abide by terms of *Extension of Agreement* negotiated on its behalf by multi-E association which had effect of decreasing wages and extending duration of current contract, on grounds that extreme financial conditions permitted untimely withdrawal from association, violative, where, although E could show it was experiencing financial losses, E did not show that adherence to negotiated agreement would worsen its financial condition or that it was in no position to adhere to agreement)

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**
[E did not effectively withdraw from multi-E bargaining, hence its failure to honor agreement reached, unlawful, notwithstanding its initial timely withdrawal, since E's subsequent participation in negotiations up to effective date of withdrawal, with no indication E negotiating as independent, was inconsistent with attempt to abandon group bargaining, notwithstanding E's nonparticipation after date of stated withdrawal; nor did U consent to withdrawal, and E's contention unusual circumstances of unit fragmentation justified withdrawal, rejected]

5770-3100 Unusual circumstances permitting untimely withdrawal

American Bank Note Company **281 NLRB No. 099**
[decline in business, even to point where volume of business is 1/4 of its previous level does not constitute unusual circumstances which would relieve E of consequences of its failure to give timely notice (of withdrawal from multiE bargaining)]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**
[*fragmentation of multi-E bargaining unit is unusual circumstance that justifies E's unilateral withdrawal from unit during negotiations. Unit fragmentation occurs if, after negotiations have begun, substantial proportion of members of bargaining unit properly withdraw from it*]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**
[signing of interim bargaining agreement by less than all members of multi-E association not such fragmentation of multi-E unit that would constitute unusual circumstances justifying E withdrawal from multi-E bargaining]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**
[signing of bargaining agreement with U by members of E association located in one city separate from agreement signed by E members in another city not fragmentation of multi-E unit that would constitute unusual circumstances justifying withdrawal of E from multi-E unit, since Es which signed such separate agreement represented less that 7 per cent of Ees bound by negotiations, notwithstanding constituted third of Ees bound by negotiations]

5770-3700 Consent to untimely withdrawal

5770-3733 Consent of union

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E, bound by extension agreement negotiated by multi-E association, unlawfully refused to execute it and to abide by its terms, where E continued its business under guise of alter ego company, had never communicated written notice of withdrawal from E association or multi-E bargaining and had not revoked its prior written letter of assent to association of bargaining authority and U never *agreed* to E's withdrawal whether based upon alleged or unsupported manifestation of intent by E or circumstances surrounding bargaining sessions]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E, bound by extension agreement negotiated by multi-E association, unlawfully refused to execute it and to abide by its terms, where E continued its business under guise of alter ego company, since there were no unusual circumstances permitting E to withdraw from multi-E bargaining due to economic hardship or E's filing in bankruptcy, and E made no such argument on behalf of its alter ego which continued operation in post-extension agreement period; financial inability to meet contract wage rates, here unproven, is no grounds for permitting untimely withdrawal]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**
[U did not consent to E's withdrawal from multi-E bargaining by failing to object to omission of E's name from list of E association members, where U announced it considered purported withdrawals mere bargaining tactics, absent affirmative actions antithetical to claim no withdrawal had occured, notwithstanding U's attempt to get E to sign interim agreement, and U's continuation of strike against E]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**
[E did not effectively withdraw from multi-E bargaining, hence its failure to honor agreement reached, unlawful, notwithstanding its initial timely withdrawal, since E's subsequent participation in negotiations up to effective date of withdrawal, with no indication E negotiating as independent, was inconsistent with attempt to abandon group bargaining, notwithstanding E's nonparticipation after date of stated withdrawal; nor did U consent to withdrawal, and E's contention unusual circumstances of unit fragmentation justified withdrawal, rejected]

5770-5000 Interim agreements

Thermo Heating, Inc. **JD-(SF)-16-85**
(E's refusal to abide by terms of *Extension of Agreement* negotiated on its behalf by multi-E association which had effect of decreasing wages and extending duration of current contract, on grounds that E had timely withdrawn from association, violative, where E's attempted withdrawal occurred *after* negotiations on agreement had begun, tentative agreement was reached with U and association and agreement had been ratified by a majority of association's members)

5784 WITHDRAWAL OF UNION FROM MULTIEMPLOYER BARGAINING

5784-3300 Timely

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. **279 NLRB No. 073**
[E's midterm withdrawal from multi-E bargaining timely and effective, since justified by unusual circumstances, where E's economic situation was such that it faced closure, and in view of U's intransigence in regard to contractual payments to health and welfare]

Arden Electric, et al. **275 NLRB No. 095**
(U's ptns seeking single-E units of Es who had participated in multi-E unit represented by E association held not proper for dismissal, where E-members and E association intended to limit latter's authority so as to bargain only with IBEW or other Us as determined by board of directors and, upon accepting petitioner's disclaimer and thereby agreeing to dissolution of multi-E unit, E association could not bind Es to multi-E bargaining relationship with substitute for petitioner)

5784-6700 Untimely where negotiations begun

5784-6767 Absent unusual circumstances

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. **279 NLRB No. 073**
[E's midterm withdrawal from multi-E bargaining timely and effective, since justified by unusual circumstances, where E's economic situation was such that it faced closure, and in view of U's intransigence in regard to contractual payments to health and welfare]

5791 INDIVIDUAL BARGAINING WITH UNION DURING MULTIEMPLOYER NEGOTIATIONS

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. JD-25-86

[fact that U sent negotiated contract separately to E members of E association for their signatures following signing by E association held no grounds, in fact or law, to sustain view advanced by E that such U conduct supported view that U agreed to E's bargaining singly, since U took such action to be on safe side to nail down those Es who intended to abide by law as viewed by U, and those who did not do so and would therefore be subject to legal action]

5800 MULTIUNION BARGAINING

6000 NATURE AND EXTENT OF OBLIGATION AND DUTY TO BARGAIN

6001 GENERALLY

6001-2500 Effect of 8(f) prehire agreement

Wilder Construction 276 NLRB No. 104

(while normally incumbent U enjoys presumption of majority support, in construction industry certain contracts are lawful even in absence of majority support; therefore, presumption of continued majority does not always apply)

6001-5000 Scope of section 8(d)

Phillip A. Hunt Corporation JD-14-86

[E's decision to relocate certain work performed by unit Ees at plant represented by U to new non-U plant, excluded from limited scope of 8(d) where decision to relocate was not based upon labor costs but instead was based upon change in direction and nature of its business]

6001-5017 Obligation to meet with object of reaching understanding on wages, hours, and other terms and conditons of employment

Mack Trucks, Inc. 277 NLRB No. 084

(alleged failure of E to bargain with U over effects of its decision to close one plant and transfer work of truck assembling to another facility, not violative, since record fails to show E refused to bargain over effects of E's decision to close its facility. Local and international U's as well as E's proposals were discussed at numerous negotiating sessions. Record warrants determination that E was willing to discuss closure and transfer problems with U representatives w/i framework of E and U's master agreement)

6001-5025 Continuation of existing terms and conditions pending bargaining

Crest Floors & Plastics, Inc. 274 NLRB No. 185

(unilateral changes violative, since E was still bound by expired contract where it had notified U of intention to terminate contract but had not offered to negotiatea new one or notified U of intention to change terms and conditions of employment existing at time of expiration of old contract)

Alpine Vending, Inc. JD-(SF)-99-85

(E's failure to apply provisions of bargaining agreement to all Ees of unit, and after expiration of contract unilaterally changing contract rate of pay, and failing to make contributions to health, welfare, and pension trust funds, unlawful, where E did not during term of contract give notice and obtain consent of U for deviations as required by Section 8(d) of Act, and after contract expired did not bargain to impasse with U)

6001-5028 Applicability during bankruptcy proceeding

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ——U.S.——

(U.S. S.Ct, Feb. 1984)

[Bd is precluded from, in effect, enforcing terms of collective-bargaining agreement by filing ULP charges against debtor-in-possession for violating Sec. 8(d) of NLRA by modifying or terminating unexpired labor agreement. Though Bd's action is nominally one to enforce Sec. 8(d), practical effect of enforcement action would be to require adherence to terms of agreement, but filing of ptn in bankruptcy means that agreement is no longer enforceable. Consequently, Bd enforcement under these circumstances would run directly counter to express provisions of Bankruptcy Code]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ——U.S.——

(U.S. S.Ct, Feb. 1984)

[debtor-in-possession does not need to comply with mid-term contract modification procedures set forth in Sec. 8(d) because bargaining agreement is not enforceable contract w/i meaning of 8(d); therefore, because modification accomplished by operation of law (Bankuptcy Code) and not by unilateral action of E, it follows that debtor-in-possession need not comply with provisions of Sec. 8(d) prior to seeking Bankruptcy Ct's permission to reject agreement]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ——U.S.——

(U.S. S.Ct, Feb. 1984)

[debtor-in-possession is E under NLRA and is obligated to bargain collectively with certified representative over terms of new contract pending rejection of existing contract or following formal approval of rejection by Bankruptcy Ct, but no ULP by unilaterally breaching contract before formal Bankruptcy Ct action]

Mark Manufacturing Corp. JD-373-85

[E's failure to give pay raises and checkoff U dues, on grounds that pending bankruptcy litigation and *NLRB v. Bildisco*, 104 S.Ct. 1188 allowed its actions, violative, since E abrogated bargaining agreement before bankruptcy ptn was filed and did not submit any proposal to the U, after filing ptn, to modify bargaining agreement, as required by Bankruptcy Amendments of 1984]

N.L.R.B. v. Superior Fowarding, Inc. 762 F.2d 695 (C.A. 8, May 1985)

(ct should deny debtor's mtn to enjoin Bd proceedings on charge if ULP charge stems from debtor's failure to bargain in good faith over terms and conditions of new contract)

N.L.R.B. v. Superior Fowarding, Inc. 762 F.2d 695 (C.A. 8, May 1985)

(bankruptcy ct may, upon mtn by debtor, enjoin Bd from proceeding with hearings on ULP charges which arise from debtor's unilateral modification or rejection of collective-bargaining agreement, when those proceedings would threaten assets of debtor's estate)

6001-5083 Duty to bargain as to matters not covered by agreement

Armour and Company 280 NLRB No. 096

[contention that since allocation of severance and vacation payments to Ees being terminated upon closing of plant to specific periods was bargained for between parties, and was matter which bargaining agreement controlled, neither party had further obligation to bargain during term of bargaining agreement, rejected, since U is not seeking to discuss any modification of terms or conditions of contract and contract silent on issue, notwithstanding parties reached agreement on other matters concerning closing of plant, where no zipper clause, no clear and unmistakable waiver of matter, and absent evidence issue was subject of prior bargaining]

Westinghouse Electric Corporation 278 NLRB No. 061

[obligation to bargain over wages, hours, and terms and conditions of employment, as well as any mid-term changes therein, covers multitude of specific items where terms, conditions of employment, and mid-term changes have effect of cutting wages, decreasing (Ee) take functions and content of (an Ee's) job an asserted waiver of bargaining obligation involves exaimnation of meaning of contract provisions and does not oust Bd of jurisdiction to make that examination]

Electrical Workers Local 1466 v. N.L.R.B. (Columbus and Southern Ohio Electric Co.) 795 F.2d 150

[no unilateral change in wages and no requirement that E must bargain when E discontinued its past practice of 40 years of paying Christmas bonus where contract contained zipper clause that stated... contract...*shall be the sole source of all rights or claims which may be asserted in arbitration hereunder or otherwise*.... and contract silent as to Christmas bonus]

6017 EMPLOYEE PRESENTATION OF OWN GRIEVANCE: 9(a) PROVISO

6017-5000 Union must be given opportunity to be present

United States Postal Service 281 NLRB No. 138

[E's settling EEO precomplaint at meeting with Ee, w/o notification to or participation by U, violated Sec. 9(a)'s guarantee of U's right to be present at E's and Ee's adjustment of grievances, where subject matter of EEO precomplaint and grievance which U was responsible for processing were the same]

United States Postal Service 281 NLRB No. 139

[E's settling EEO claim with Ee w/o affording U opportunity to be present, violation where EEO claim and contract grievance involved same subject matter, for reasons stated in *United Postal Service*, 281 NLRB No. 138]

Wedgewood Nursing Home 273 NLRB No. 216

(E did not unlawfully adjust grievances at *Ee council* meetings by not allowing U opportunity to be present at such time as required by Sec. 9(a), where shop stewards were in attendance at council meetings at which it was alleged grievances were discussed and adjusted; E is not required under second proviso of Section 9(a) to notify particular U officials in addition to U stewards, or similar in plant U representatives before holding meetings at which Ees could air grievances)

6033 MECHANICS OF BARGAINING

6033-0700 Participation in bargaining session

6033-0700—Cont.

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**

[failure of E, present at bargaining sessions with U, to testify in support of its consultant engaged in negotiating with U held not to have adversely affected E's case, where E was not active participant in bargaining and much of the time was present *pro forma*; consequently, E's failure to testify in support of consultant's testimony merely represented gaps in E's awareness of what occurred at bargaining sessions]

Mack Trucks, Inc. **277 NLRB No. 084**

(alleged failure of E to bargain with U over effects of its decision to close one plant and transfer work of truck assembling to another facility, not violative, since record fails to show E refused to bargain over effects of E's decision to close its facility. Local and international U's as well as E's proposals were discussed at numerous negotiating sessions. Record warrants determination that E was willing to discuss closure and transfer problems with U representatives w/i framework of E and U's master agreement)

6033-1400 Time and place of meeting

6033-1475 Situs of bargaining sessions

N.L.R.B. v. Platte Valley Plumbing & Heating **748 F.2d 445 (C.A. 8, Nov. 1984)**

(E's refusal to negotiate with U at U hall rather than E's premises, as had been done in prior sessions, violative, since place of conducting negotiations is mere protocol and does not constitute a matter of substance concerning the duty to bargain)

6033-2000 Authority of representative

BASF Wyandotte Corporation **276 NLRB No. 175**

(E's distribution of information to Ees on salaried benefits not unlawful where E was given authorization by U representatives to distribute information)

Spring Valley Farms, Inc. **JD-(ATL)-54-86**

[*When agent is appointed to negotiate collective bargaining agreement, that agent is deemed to have apparent authority to bind his principal, absent clear notice to contrary. Where there is such notice, condition on agreement is imposed*]

Ambassador Convalescent Center, Inc. Debtor-In-Possession In Bankruptcy **JD-319-85**

(agent appointed to negotiate bargaining agreement, is deemed to have apparent authority to bind his principal in absence of clear notice to contrary)

6033-2850 Must have sufficient authority and knowledge to negotiate effectively

Hyatt Regency New Orleans **281 NLRB No. 042**

[asserted lack of authority on part of E's negotiator held not to indicate bad faith bargaining, since agent is not required to have plenary authority; it is sufficient that he has enough authority to engage in meaningful negotiations]

Coastside Scavenger Company **273 NLRB No. 198**

(although E not required to be represented by individual possessing final authority to enter into agreement, this is subject to limitation that it does not inhibit progress of negotiations. Degree of authority possessed by negotiator is factor which may be considered in determining good-faith bargaining)

Tectonic Industries, Inc. **JD-(NY)-100-84**

(E's failure to send representative to bargaining table who had authority and knowledge to bargain in good faith, unlawful, where representative's power to negotiate was limited to securing U's acceptance of changes previously instituted by E, such limited power was a hindrance to good-faith bargaining, and it was evident that representative did not understand extent of proposals he was making on behalf of E)

Whisper Soft Mills, Inc. v. N.L.R.B. **754 F.2d 1381 (C.A. 9, Dec. 1984)**

(E had no duty to bargain with District Council of local U (the latter being the certified representative), notwithstanding local U's contention it had delegated authority to District Council to bargain on its behalf, since District Council did not consent to local U's grant of authority where District Council claimed throughout negtotiations with E that local U did not want to be a party to any agreement and such statement was in effect a claim by District Council *not* to be an agent of local U)

6033-4300 Composition of bargaining committee

6033-4320 Representative may designate composition of bargaining representative

U.S. Postal Service **280 NLRB No. 080**

[choice of representatives (for U) is solely internal affair for U and choice of those agents must be free from E influence. E may not permit his supervisors, even low level supervisors, to participate as U representatives in collective-bargaining process]

Whisper Soft Mills, Inc. v. N.L.R.B. **754 F.2d 1381 (C.A. 9, Dec. 1984)**

(an international U is not barred from delegating bargaining authority to members of a local U and in general, a U may select whomever it wants, including officers and members of other Us, as representatives in dealing with Es)

6033-4340 Employer may not refuse to meet with designated representative absent special circumstances

Port Plastics, Inc. **279 NLRB No. 050**

[E's refusal to recognize Ee as U's designated shop steward and refusing to meet with him to discuss grievances, violative, notwithstanding E was under no contractual obligation to do so]

Sahara Datsun, Inc. **278 NLRB No. 148**

[U officer not entitled to act as U representative in negotiations where, by informing bank through which E obtained financing for its customers that E was submitting falsified customer credit applications and by publishing, in newsletter mailed to Ees, accusations that E's owners were involved with prostitutes and use and sale of cocaine, he created such atmosphere of ill will that good faith bargaining would be futile, if not impossible, were E required to deal with him as U representative; allegations were unsubstantiated and directed against members of management who would negotiate with U]

Southern California Edison Company **274 NLRB No. 167**

(E's refusal to conduct grievance meetings with Ees or U officials who wore *Stick Your Retro* button concerning retroactive pay raise during contract negotiations between E and U, violative, since wearing of button protected, and no matter what buttons were being worn, E was not privileged to refuse to meet and deal with U on matters being pursued through grievance arbitration process, at least so long as they did not cause unreasonable disruption (of process))

6033-4370 Representative delegation of bargaining authority to another union

Whisper Soft Mills, Inc. v. N.L.R.B. **754 F.2d 1381 (C.A. 9, Dec. 1984)**

(an international U is not barred from delegating bargaining authority to members of a local U and in general, a U may select whomever it wants, including officers and members of other Us, as representatives in dealing with Es)

6033-4380 Presence of persons other than conferees at bargaining session

N.L.R.B. v. Platte Valley Plumbing & Heating **748 F.2d 445 (C.A. 8, Nov. 1984)**

(E's refusal to reply to U's letters requesting further negotiations on grounds that U was asking E to meet in presence of other Es with whom U had been negotiating violative, since fact that other Es were to be present did not defeat fonafides of U's request to resume bargaining)

6033-4380-1300 Stenographers or court reporters

Nassau Insurance Company **280 NLRB No. 103**

[U's insistence on having stenographer present at negotiating session justified E's subsequent refusal to bargain, since presence of stenographer non-mandatory subject of bargaining; U's contention stenographer was present only to record E's final offer, and was justified by E's pre-settlement withdrawal of proposals, rejected]

6033-5600 Counterproposals

6033-5650 Obligation to make after proposals

Hyatt Regency New Orleans **281 NLRB No. 042**

[E's counteroffer held not evidence of bad faith bargaining even though it was made 4-1/2 months after preceding proposal had been withdrawn and it represented more demanding bargaining position than withdrawn proposal; party which withdraws proposal is under no obligation to offer another proposal; and justification for more demanding offer was not so illogical in view of waning support for U and its desire to sign contract at earliest possible moment]

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC **JD-288-85**

[insisting to impasse on sole control of wages, not violation where U failed to make counterproposal it had indicated it intended to make]

6033-6000 Withdrawal of agreed-upon contract proposals

15th Avenue Iron Works, Inc., and Abbot Builders and Management Corp. **279 NLRB No. 091**

[violation, where E withdrew its agreements and offers as done for retaliation after U had filed new ULP charges against it]

Luther Manor Nursing Home **277 NLRB No. 007**

(E's unilateral withdrawal of previously offered wage proposal which Bd, in prior case, found had been agreed to and accepted by U, resulting in total effective agreement, unlawful)

6033-6000—Cont.

Coastside Scavenger Company **273 NLRB No. 198**
(agreements reached on individual items during (contract) negotiations are *not necessarily* final and binding)

Coastside Scavenger Company **273 NLRB No. 198**
(contention that E's sending different *final offer* letters to Ees prior to economic strike against E was attempt to bypass U and direct dealing with Ees, rejected, since sending and distributing such letter in no way disparaged U or Ees' bargaining representative, was not coercive and amounted to *no more than a legitimate tactic of urging the ees to communicate with their representative, to persuade them to tell their negotiators they wanted them to accept the company's newest offer*)

Coastside Scavenger Company **273 NLRB No. 198**
(nonagreement is not to be equated to bad faith; change of circumstance (U's strike in instant case) can make withdrawal of *offers* lawful)

Tectonic Industries, Inc. **JD-(NY)-100-84**
(E's withdrawal of its offer after it had been accepted by U, unlawful; offer is not automatically terminated by other party's rejection or counter proposal, but it can be accepted w/i reasonable time; accordingly, while E's position that it was not obligted to keep offer available for a year in face of U's rejection of it is reasonable, there is nothing that prohibits E from keeping offer available if it decides to do so)

Tectonic Industries, Inc. **JD-(NY)-100-84**
(E demonstrated lack of good-faith bargaining and that it did not come to bargaining table with desire to reach agreement as shown by withdrawing earlier proposal accepted by U, presenting regressive proposals w/o adequate justification for its action, and doing so in course of committing ULPs)

6033-7000 Impasse

6033-7001 Generally

The Idaho Statesman **281 NLRB No. 041**
[insisting to impasse on permissive bargaining subjects of changing scope of unit by changing U's jurisdiction over mailroom work and attempting to restrict or expand unit, violations]

Lou Stecher's Super Markets **275 NLRB No. 071**
(while temporary lapse in communications is not necessarily indicative of impasse, it assumes significance herein in light of E's and U's statements regarding futility of bargaining and their initial commitment to meet every day; further, when U and E finally did meet, it was so U could confirm rumor that E was implementing contract proposal)

Lou Stecher's Super Markets **275 NLRB No. 071**
(finding of impasse not precluded by U's stated intention to *get back* to E after assembling *independent package*, since U did not get back to E except to confirm rumor about implementation of E's contract proposal, and U's failure to get back to E is evidence that U resigned itself to futility of bargaining)

Lou Stecher's Super Markets **275 NLRB No. 071**
(finding of impasse is consistent with U's statement that it would *get something together* for negotiations where statement occurred in conversation in which E confirmed he would begin implementing contract proposal, and U was simply trying to dissuade E from implementing contract proposal rather than stating belief that progress could be made through further negotiations)

Lou Stecher's Super Markets **275 NLRB No. 071**
(finding of impasse is not precluded by fact that parties met on only three occasions, since Bd does not apply rigid formula in determining whether length of negotiations is indicative of impasse; here, abbreviated nature of negotiations is consistent with parties' recognition of futility of further bargaining)

N.L.R.B. v. Auto Fast Freight, Inc. **793 F.2d 1126 (C.A. 9, July 1986)**
[exception to bargaining to impasse rule is that E may unilaterally implement proposals w/o first bargaining to impasse where, upon expiration of contract, U has avoided or delayed bargaining, and E has given U notice of specific proposals it intends to implement]

6033-7001-5000 No obligation to continue negotiations after impasse

Bloomsburg Craftsmen, Inc. **276 NLRB No. 043**
(E's refusal to meet with U to discuss demands for written job descriptions, not violative where E's duty to meet in good faith was suspended by bona fide impasse; futility of further negotiations was as much fault of U as E where, having declared its position, U at no time following deadlock communicated any changes in its proposal)

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. **766 F.2d 812 (C.A. 3, July 1985)**
(E's unilateral wage reduction, not violative, since parties were at impasse where E bargained in good faith for wage concessions for 2 months and had presented its bottom line proposal to U at least 3 weeks before implementation and U gave no indication it would agree to any wage concession)

6033-7008 What constitutes

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's unilateral implementation of its flat rate wage with incentive proposal after expiration of bargaining agreement, and rejection by Ees of E's final proposal, not unlawful, since impasse existed where there had been 7 negotiating meetings during which there had been in depth discussions, positions on issues were advanced in good faith, but parties positions on flat rate wage remained unalterably opposite; fact concessions made on other matters did not preclude finding of impasse on flat rate since that issue was of overriding importance and parties were still not close to reaching agreement]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[no impasse existed where E, in response to U's initial proposal that E pay all of forthcoming increase in Ees' insurance coverage, stated that it sought to cease making such contributions in its entirety; such matter was not pursued any further during course of negotiations; E proposed and bargained for number of changes in parts of contract relating to insurance coverage; inherent in such proposals was continuation and not termination of insurance coverage; and to U's claim of *ratification* of contract by Ees, E responded that no contract existed for Ees to ratify]

H & H Pretzel Company **277 NLRB No. 143**
(E had bargained to impasse over conversion of its driver Ees to independent contractors where U made no concessions, notwithstanding E notified it a month before contract expired of E's intent, offered alternatively during negotiations to retain drivers as Ees in exchange for economic concessions, advised U of its economic problems, and offered to let U substantiate them by examining E's records)

Browning-Ferris Industries of Pennsylvania, Inc. **275 NLRB No. 021**
(impasse reached where E entered negotiations determined to leave negotiations with ability to employ fewer drivers at lower rate of pay while U never retreated from position of insisting on 4-day work week and some wage increase; on *gut* issue of overtime, E proposed *incentive* plan instead of *time and one-half for overtime* on which U insisted for the entirety of bargaining; and while E did attempt to displace U through decertification, other factors did not show that E was bargaining in bad faith)

Long Island University **JD-263-86**
[no impasse where U did not reject offer of E nor announce strike; rather U announced they would *probably* recommend rejection and *probably* recommend strike, but did not recommend rejection. Bd has never found, absent rigid time constraints, that failure to respond to E's *final offer* w/i 5 day period constitutes rejection which would have brought parties to impasse; therefore, unilateral implementation of wage proposals, violative]

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
(E held not privileged to institute wage incentive plan on ground that, while there was no overall bargaining impasse at time plan was implemented, impasse existed on when implementation should be accomplished; bargaining does not contemplate piecemeal implementation of each item, and *impasse* contemplates deadlock in negotiations over prospects of concluding complete agreement; assuming impasse existed over plan's implementation, no finding could be made that such issue had crippled prospects for reaching agreement or was sole impediment thereto; and here parties continued to negotiate over other items)

Tectonic Industries, Inc. **JD-(NY)-100-84**
(no impasse existed and E unlawfully unilaterally implemented its prior contract proposals, where e had not bargained in good faith, had not exhausted prospects of reaching agreement, and had committed ULPs during course of bargaining)

6033-7014 Agreement need not be reached

Hamady Bros. Food Markets, Inc. **275 NLRB No. 183**
(E's unilaterally implementing its proposals, not violative where E had bargained in good faith to impasse; although parties met only 5 times, finding of impasse not precluded where parties engaged in good-faith bargaining; further, E's repeated requests for cost reductions and U's insistence on restoration of benefits were issues of central importance to both parties; after both parties reasserted their respective positions, E announced it would implement its final proposal and received no response from U)

Coastside Scavenger Company **273 NLRB No. 198**
(E's seeking to change *discharge and suspension language* during contract negotiations with U so that it could exercise *the prerogatives of management*, because of backpay E was required to pay certain discriminatees *not bad faith bargaining*, since E had discussed various proposals (with U) and made concessions and/or agreements on number of issues concerning Ees' conditions of employment)

6033-7028 Concessions indicate lack of impasse

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's unilateral implementation of its flat rate wage with incentive proposal after expiration of bargaining agreement, and rejection by Ees of E's final proposal, not unlawful, since impasse existed where there had been 7 negotiating meetings during which there had been in depth discussions, positions on issues were advanced in good faith, but parties positions on flat rate wage remained unalterably opposite; fact concessions made on other matters did not preclude finding of impasse on flat rate since that issue was of overriding importance and parties were still not close to reaching agreement]

H & H Pretzel Company **277 NLRB No. 143**
(E had bargained to impasse over conversion of its driver Ees to independent contractors where U made no concessions, notwithstanding E notified it a month before contract expired of E's intent, offered alternatively during negotiations to rettain drivers as Ees in exchange for economic concessions, advied U of its economic problems, and offered to let U subetantiate them by examining E's records)

SGS Control Services, Inc. **275 NLRB No. 137**
(significant concessions of both parties late in bargaining sessions, especially of U, indicated lack of impasse)

Robinson Construction Co., Inc. **JD-(SF)-7-85**
(E's unilateral changes in wages and fringe benefits, on grounds that impasse had been reached, violative, since no impasse existed where only 2 real bargaining sessions had taken place, U and E both had made changes in their negotiating positions and E declared impasse w/o giving U time to present E's final proposal to its committee for vote)

6033-7056 No impasse

Coalite, Inc. **278 NLRB No. 040**
[no impasse regarding insurance benefits where parties met for only two sessions, E agreed to provide U with information on basis of which U would make proposals, parties agreed to meet again before E's stated deadline for expiration of benefits, and E provided no information but sent U notice of impasse instead]

Long Island University **JD-263-86**
[no impasse where U did not reject offer of E nor announce strike; rather U announced they would *probably* recommend rejection and *probably* recommend strike, but did not recommend rejection. Bd has never found, absent rigid time constraints, that failure to respond to E's *final offer* w/i 5 day period constitutes rejection which would have brought parties to impasse; therefore, unilateral implementation of wage proposals, violative]

N.L.R.B. v. Henry Miller Spring & Manufacturing Company, Inc. **———F.2d——— (C.A. 3, June 1986)**
[implementation of last contract offer, unlawful, where bargaining history did not support E's claim of impasse]

N.L.R.B. v. Henry Miller Spring & Manufacturing Company, Inc. **——— F.2d ——— (C.A. 3, June 1986)**
[implementation of last contract offer, unlawful, where bargaining history did not support E's claim of impasse]

6033-7056-3300 **Intentional refusal to bargain**

N.L.R.B. v. Auto Fast Freight, Inc. **793 F.2d 1126 (C.A. 9, July 1986)**
[exception to bargaining to impasse rule is that E may unilaterally implement proposals w/o first bargaining to impasse where, upon expiration of contract, U has avoided or delayed bargaining, and E has given U notice of specific proposals it intends to implement]

6033-7056-5000 **Surface bargaining**

Port Plastics, Inc. **279 NLRB No. 050**
[E engaged in bad faith surface bargaining where, prior to U election, E told unit Ees he wouldn't give those *bastards* anything during negotiations, E's proposals at table were not merely tough but sought to ensure U no voice in Ees' terms and conditions of employment i.e., management rights clause gave E absolute authority over all terms and conditions of employment, U was excluded from grievance and seniority provisions and was not permitted to grieve E's wage decisions; further, U demonstrated flexibility in important areas while E was unyielding on all major points]

6033-7056-8400 **Existence of possibility of agreement**

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(no impasse found in view of few negotiating sessions, agreement on most issues, and lack of evidence of uncompromising positions or feelings of futility of parties)

Dependable Building Maintenance Company; et al. **276 NLRB No. 007**
(Es' initial implementation of their final offer, violative, since there was no impasse where they implemented their offer too soon after complying with U's request for information to test U's alleged rigidity anad determine whether the U would use the information to modify its position; Es' subsequent implementations of their final offer seven and twelve months later, respectively, however, not violative, since there was enough evidence of continued disagreement to support finding of impasse where U made no economic concessions)

SGS Control Services, Inc. **275 NLRB No. 137**
(lack of impasse indicated where U still believed parties' differences could be resolved after E's submission of its final offer and at time of E's implementation thereof, and E was not justified in assuming that further bargaining would have been futile)

John's Lumber & Hardware Company **JD-199-86**
[no impasse after E's unlawful unilateral changes and bargaining directly with Ees, even if no unremedied ULPs existed, in view of resolution of difficult noneconomic issues and continuing bargaining over economic issues, E's economic package on table while E refused to allow U audit of its books, discussion of possible settlement of instant case and of backpay]

Robinson Construction Co., Inc. **JD-(SF)-7-85**
(E's unilateral changes in wages and fringe benefits, on grounds that impasse had been reached, violative, since no impasse existed where only 2 real bargaining sessions had taken place, U and E both had made changes in their negotiating positions and E declared impasse w/o giving U time to present E's final proposal to its committee for vote)

6033-7056-9500 **Refusal to provide financial records**

Cowin & Co., Inc. **277 NLRB No. 082**
(E's refusal to provide U with requested financial information during bargaining, violative, since E's statements to U in course of bargaining amounted to claim of inability to pay where at outset of negotiations E advised U that there was *real question* whether E would be in business at termination of contract and E raised as justification for wage reduction proposals its financial losses for previous 3 years; further, because of this finding, E's claim of impasse rejected and its unilateral wage reduction and change in work rules, violative)

United Sheetmetal of Arizona, Inc. **JD-(SF)-97-85**
(E refusing to supply U with information during bargaining to support insistence on regressive wage proposals, violative and no impasse reached, where E repeatedly bemoaned fact during negotiations that it could not compete with non-U contractors and thus was making a *poverty plea* and its refusal to provide data to U in response to U request for supporting data not only is unlawful but prevents finding of bonafide impasse subsequent to U's request for information)

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. **785 F.2d 570 (C.A. 7, Mar. 1986)**
[although Es acknowledged, in response to U inquiries, that they could lose money and eventually go out of business if their competitive position did not improve, they never communicated to U that they were unable to pay U's proposed demands and there was no substantial evidence to support Bd's conclusion that Es bargained in bad faith by refusing to provide substantiating financial data after pleading inability to pay]

6033-7070 Resumption of bargaining required

Accurate Web, Inc. **279 NLRB No. 030**
[E's withdrawal of recognition from U during certification year as extended, violative, since U and E entered into settlement agreement extending certification year, committing E to bargain with U, resulting in U's withdrawing ULP charges against E]

6033-7084 Unilateral action may be justified by impasse

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's unilateral implementation of its flat rate wage with incentive proposal after expiration of bargaining agreement, and rejection by Ees of E's final proposal, not unlawful, since impasse existed where there had been 7 negotiating meetings during which there had been in depth discussions, positions on issues were advanced in good faith, but parties positions on flat rate wage remained unalterably opposite; fact concessions made on other matters did not preclude finding of impasse on flat rate since that issue was of overriding importance and parties were still not close to reaching agreement]

Walter A. Ziegar, Inc. **278 NLRB No. 149**
[implementation of final offer reducing wages after impasse, not violation]

Coalite, Inc. **278 NLRB No. 040**
[unilaterally discontinuing contractual insurance benefits for laid-off Ees, violation in absence of impasse]

H & H Pretzel Company **277 NLRB No. 143**
(E's unilateral implementation of its final offer involving conversion of its driver Ees to independent contractors, not violation where parties had bargained to impasse)

Koenig Iron Works, Inc. **276 NLRB No. 083**
(where party, in bargaining sessions *...insists on continually avoiding or delaying bargaining...*)

6033-7084—Cont.

Dependable Building Maintenance Company; et al. **276 NLRB No. 007**
(Es' initial implementation of their final offer, violative, since there was no impasse where they implemented their offer too soon after complying with U's request for information to test U's alleged rigidity and determine whether the U would use the information to modify its position; Es' subsequent implementations of their final offer seven and twelve months later, respectively, however, not violative, since there was enough evidence of continued disagreement to support finding of impasse where U made no economic concessions)

SGS Control Services, Inc. **275 NLRB No. 137**
(E's implementation of its final offer in absence of impasse, violative)

Lou Stecher's Super Markets **275 NLRB No. 071**
(E's unilateral introduction of prepared product contrary to U's desires, not violative where, notwithstanding parties had met only three times, they reached impasse over subject as shown by U president's comment that parties were far apart and could not get together, their subsequent lapse in communication broken only by U president's wish to confirm rumor that E was going to introduce the product, and his statement, following such confirmation, that they U would *get something together,* which was attempt to dissuade E from introducing product rather than affirmation of belief that progress could be made)

Taft Broadcasting Company, WBRC--TV **274 NLRB No. 038**
(E did not unlawfully insist to impasse on nonmandatory subject of bargaining where GC failed to satisfy his burden of proof that E conditioned any agreement to mandatory subject on acceptance of its nonmandatory jurisdictional unit proposal; rather such proposal was simply one of several unresolved issues when parties reached impasse generally on mandatory subjects of bargaining)

E. F. Mitchler Co., d/b/a Lodi Ready Mix **JD-(SF)-91-86**
[E's unilateral implementation of new wage rates and vacation benefits, failure to remit contributions to pension fund, and alteration of seniority system after expiration of contract, unlawful, notwithstanding existence of impasse, since changes *varied* from E's final offer; E's contention that in view of U's rejection of its final offer, it would have been futile to offer less advantageous conditions which it implemented, rejected, inasmuch as had E announced its intent to implement proposals, impasse might have been broken and bargaining continued]

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. **766 F.2d 812 (C.A. 3, July 1985)**
(E's unilateral wage reduction, not violative, since parties were at impasse where E bargained in good faith for wage concessions for 2 months and had presented its bottom line proposal to U at least 3 weeks before implementation and U gave no indication it would agree to any wage concession)

6033-8400 Failure to sign or reduce agreement to writing

General Hugh Mercer Corp., d/b/a Princeton Holiday Inn **282 NLRB No. 004**
[E's refusal to sign agreed-upon contract, violative]

Georjan, Inc. and/or Fort Mason Enterprises, Inc. and/or Latrobe Speedway **281 NLRB No. 129**
[E's refusal to execute contract, assertedly because there were major areas of disagreement, violative, since the areas of disagreement were only in the talking stages during negotiations and at the final negotiation session where there was agreement, E raised these other areas of disagreement only to impede formation of a contract he now found too expensive]

E.B. Manning & Son, Inc. **281 NLRB No. 152**
[E's refusal to sign contract and to provide health and welfare benefits, unlawful, where complete agreement was reached on all contract terms, obligating E to sign contract and to provide contractual benefits; E's mailing of contract draft to U did not relieve E of its obligations since E and U agreed it was E's responsibility to prepare written contract, and E made no attempt to contact U after U indicated it had not received contract which differed in some respects from agreed upon terms]

Springfield Transit Management, Inc. **281 NLRB No. 124**
[E's failure to execute contract after impasse and issuance of state ct-ordered arbitration award, unlawful, where E and U reached agreement consisting of old contract, pre-arbitration agreements, and arbitration award, all of which E's prepared document accurately reflected, and U requested that document be signed; E's defense that its pre-arbitration agreements required approval of state authority which retained control over its bargaining process, rejected, since failure by E and authority, which were ordered by ct to submit unresolved issues to arbitration, to submit previously negotiated contract terms constituted approval of agreements

Inner City Broadcasting Corporation **281 NLRB No. 162**
[E held not to have unlawfully refused to execute contract with U, since there was no acceptance of E's final offer and therefore no agreement, where E's offer was conditioned upon U's acceptance by specified time, which U failed to meet; and even if E's offer was unconditional, contract drafts previously tendered by U differed from E's offer as to duration and effective dates, and therefore did not express agreement of parties]

Ashe Brick Company **280 NLRB No. 162**
[enforceable contract formed and E obligated to execute and abide by contract, where U accepted unequivocally w/o modification E's complete contract package since E's proposals were still on bargaining table, notwithstanding U had rejected some proposals and made some counter proposals, and that U's acceptance was over 3 months after last bargaining session, absent evidence E had withdrawn proposals prior to U's acceptance, and where U's mention of certain terms in telegram of acceptance were merely mention of certain terms already reached and not offer of new terms]

Cowles Publishing Company **280 NLRB No. 105**
[E's withdrawal of recognition, refusal to execute contract and furnish information to U on unit Ees, on grounds U had abandoned unit thus giving E good faith doubt, violative, since U had not abandoned unit where, although U had experienced some turnover in its representatives, this had happened only once, U did continue to process grievances and had U steward present at E's plant and fact that U's negotiator told E once during negotiations that contract w/o U security was not worth the paper it was written on, and U failed to secure this demand, was not evidence of abandonment]

Newtown Corporation **280 NLRB No. 038**
[E's refusal to execute written agreement with U on ground that U's constitution and bylaws prohibited entering into binding agreement absent majority vote of U membership, unlawful, where U accepted E's contract offer by informing E that unit ratified contract by vote of 5 for and 5 against; since internal U matters cannot effect validity of bargaining agreements, E's argument based on U's constitution and bylaws was incorrect as matter of law; and, thus, E had no standing to question validity of U's internal procedures in ratifying agreement]

John Wanamaker Philadelphia **279 NLRB No. 140**
[E's refusal to execute contract with U, assertedly after U had conformed agreement to all of E's objections, not violative, where, in final meeting with U, E had not told U of all its objections to agreement before it abruptly terminated meeting, thus, there was no meeting of minds on all provisions of contract]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[E did not violate Act by refusing to execute draft contract, where lack of agreement about anyone of submitted contract proposals would have been complete defense to claim that E was obligated to execute contract; and, in any event, there was a number of outstanding issues on which no agreement was reached]

Fashion Furniture Mfg., Inc. **279 NLRB No. 095**
[E's refusal to sign completed written bargaining agreement, unlawful, notwithstanding asserted condition precedent of inclusion of provision regarding E's average in health and welfare and pension payments, where U informed E that it did not wish to include average provision in new contract, and there was no evidence that E indicated agreement was conditioned on inclusion]

Fashion Furniture Mfg., Inc. **279 NLRB No. 095**
[E's refusal to execute written contract, violative where E's refusal was based on U's denial of E's additional and belated demand for concessions regarding deferral of benefit payments after agreement had been reached and ratified]

Hilton Inn North **279 NLRB No. 009**
[E's refusal to sign contract on which final agreement reached, unlawful. E's contention its final offer was withdrawn and never reinstated, rejected, and E's owner's review of contract language did not constitute right to veto agreements reached]

R.E.C. Corporation **277 NLRB No. 120**
(E's refusal to sign bargaining agreement until U's long time shop chairman fulfills his promise to sign letter resigning from E's employ, unlawful, absent express agreement that conditioned E's signing of agreement on resignation letter; E's contention agreement to sign retirement letter was *side agreement* and integral part of renewal contract, thus refusal to execute letter abrogated entire agreement, barred by parol evidence rule in that E thereby would seek to change term of contract)

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **277 NLRB No. 078**
(E's failure to execute contract setting forth its final offer that U accepted, violation, since offer contained all essential terms, including health and welfare plan and pension benefit levels, the only omission being administrative details that did not affect U; deferring such identified issues does not preclude finding that parties agreed on a contract, and E showed its belief that offer could result in enforceable contract by presenting an offer w/o contingencies and by its letter to Ees)

Luther Manor Nursing Home **277 NLRB No. 007**
(E unlawfully refused to execute written contract embodying terms of complete bargaining agreement which parties had reached and effective dates of which were determined by parties' practice of using wage offers' effective dates to determine duration of contract)

6033-8400—Cont.

Round Hill Foods, Inc. **276 NLRB No. 114**
(E's refusal to execute agreed upon contract with U, assertedly because it had good faith doubt of U's majority status as E had learned that Ee attendance at U meetings was very low and only 13 out of 227 unit Ees had attended a U meeting to ratify contract, violative, since such matters are purely intra-U matters and cannot be relied upon in asserting good faith doubt of U's majority status)

Georgia Pacific Corporation **275 NLRB No. 017**
(E's refusal to reduce to writing agreement regarding change from 3 shifts a day to *4 shift program*, effect of which was that each Ee worked 7 days and then had 2 days off, where E and U had negotiated change, plan had been agreed to by majority of members of U, and implemented, and when parties agree on a mandatory subject of bargaining Sec. 8(d) requires execution of written agreement; E's contention it had right under management rights clause to make change unilaterally, rejected, since no clear and unmistakable waiver of right to bargain regarding change in shifts)

Felbro, Inc. **274 NLRB No. 186**
(E's refusal to abide by contract, on grounds that it revoked its offer before it was notified of contract's ratification by membership, violative, where E and U had agreed on all terms of contract and Ees ratified contract; further, fact that E was not notified of ratification was immaterial to its attempt to revoke offer)

Arno Moccasin Company **274 NLRB No. 222**
(E's failure and refusal to sign, upon request, complete agreement of parties, violative where U timely accepted E's complete contract offer, and complete agreement on wages, hours, and working conditions had been reached by parties)

Amer-Cal Industries, Inc. **274 NLRB No. 148**
(E's refusal to sign contract on grounds that execution of parties' agreement was contingent upon outcome of decertification proceeding, not violative, notwithstanding contingency was nonmandatory subject of bargaining where U failed to object to E's proposal regarding contingency during negotiations)

Interprint Co. **273 NLRB No. 222**
(E's refusal to execute allegedly agreed-upon contract on grounds that there was no *meeting of the minds*, not violative, where draft of contract submitted by U to E did not contain commencement or termination dates and no dates were agreed upon by parties during negotiations, several clauses in draft were omitted or altered by U to make contract more acceptable to U, and ALJ, during the hearing, added or omitted terms to contract which in fact the parties had never agreed to, and in effect wrote the contract for the parties, contrary to Bd's remedial powers as interpreted in *H.K. Porter*)

Kelly Broadcasting Company d/b/a DCRA–TV **273 NLRB No. 206**
(notwithstanding that under *Dresser*, 264 NLRB 1088, E and incumbent U required to bargain and execute any agreed upon contract even though decertification ptn filed, E and U may by mutual agreement defer effective and execution date of any contract reached until decertification ptn is resolved, and refusal of E to sign this contract with incumbent U until such resulution, not violative)

Stablex of South Carolina, Inc. **JD-(ATL)-64-86**
[E did not unlawfully refuse to execute agreement to which ratification by Ees or U members was condition precedent, where Ees initially rejected contract by written vote, but then assertedly accepted contract by showing of hands after they were told it was necessary to either vote to strike or accept contract, since, notwithstanding contract ratification procedure does not need to be written and is generally *considered internal U matter not subject to question by E, once having followed procedure, U is not free to ignore results and adopt different procedure*]

Norsk Hydro Aluminum, Inc. **JD-(ATL)-14-86**
[E's refusal to execute contract, not violative, since there was no meeting of the minds on major issue of wages where although e had made offer on wages, offer was withdrawn before acceptance by U]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E, bound by extension agreement negotiated by multi-E association, unlawfully refused to execute it and to abide by its terms, where E continued its business under guise of alter ego company, had never communicated written notice of withdrawal from E association or multi-E bargaining and had not revoked its prior written letter of assent to association of bargaining authority and U never *agreed* to E's withdrawal whether based upon alleged or unsupported manifestation of intent by E or circumstances surrounding bargaining sessions]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E, bound by extension agreement negotiated by multi-E association, unlawfully refused to execute it and to abide by its terms, where E continued its business under guise of alter ego company, since there were no unusual circumstances permitting E to withdraw from multi-E bargaining due to economic hardship or E's filing in bankruptcy, and E made no such argument on behalf of its alter ego which continued operation in post-extension agreement period; financial inability to meet contract wage rates, here unproven, is no grounds for permitting untimely withdrawal]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E-member of multi-E association unlawfully refused to execute extension agreement negotiated by E association where E was included on list of E-members when parties reached agreement, E was covered by 2 preceeding contracts pursuant to earlier specific authorizations by E who had never withdrawn from multi-E bargaining nor given any notice, oral or written that it had withdrawn therefrom; and despite E's failure to respond to U's letter requesting his signature to negotiated agreement, it was found E received such request but failed to execute agreement]

Coos-Bend, Inc., d/b/a The Sawmill Restaurant & Lounge **JD-(SF)-156-85**
(E's refusal to execute written bargaining agreement containing terms verbally agreed to, violative)

Bertolucci's Fender and Body Shop, Inc. **JD-(SF)-143-85**
(no unlawful refusal to execute contract where parties had not agreed on length of probationary period, U security, and incentive plan)

Murphy Fabrication and Erection Co. **JD-146-85**
(E did not unlawfully refuse to execute written contract where there was no agreement to extend expiring contract for another year; even if E had agreed to extension, no binding agreement on terms of extension had been reached since newly-appointed U negotiators were unaware of settlement agreement reached with E in prior ULP case or of wage concessions granted by U during term of contract and there was no discussion between parties concerning those matters)

Flechtner Packing Company **JD-135-85**
(E's refusal to execute and abide by terms of bargaining agreement, on grounds that it never reached agreement with U on eye care plan, violative, since full agreement was reached where E's written proposal on eye care was clear and unambiguous, accepted and ratified by U; further, E's contention that after it made proposal on eye care, it was informed by insurance carrier that there was less costly plan available, and thus there was mutual mistake, rejected, since the mistake was solely on E's part)

N.L.R.B. v. Gentzler Tool and Die Company **778 F.2d 1211 (C.A. 6, Dec. 1985)**
[Bd's order that E sign bargaining agreement and give retroactive effect to its terms, enforced; E's contention that it is in compliance with Bd's order since it had compensated Ees for any losses and restored benefits, and that U had failed to comply with order by declining to correct contract, rejected]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**
[E's refusal to execute agreed upon contract upon ratification by Ees, which was only condition to execution of contract agreed to, unlawful; E's contention that it have effectively revoked offer by its mailgram sent to U prior to U's mailing notification of ratification vote, rejected, since ratification, not notification of vote, was critical act]

6033-8401 Generally

Inner City Broadcasting Corporation **281 NLRB No. 162**
[under Act's requirement that parties in bargaining relationship execute written contracts incorporating any agreement reached, it is not Bd's function to determine what parties should have agreed upon; Bd can only order refusing party to execute contract which both parties had, in fact, agreed to]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[while lack of agreement about effective date of proposed contract in some circumstances can be complete defense to claim that E or U is unwarrantedly refusing to execute written contract, such is not the case herein where effective date, selected by U, was w/o significance in terms of its impact on E, assuming agreement on other terms of draft contract]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[if variations between draft contract written by one of the parties and parties' agreement are only *minor deviations* or *inadvertent errors*, party that has been asked to execute contract must do so after elimination of deviations or errors; however, such principle did not apply herein where U included terms regarding overtime in its written draft that U knew had not been agreed upon; and additional terms imposed duties on E beyond anything parties had previously discussed]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[while fact that agreement is product of one party's mistake does not entitle that party to refuse to sign contract embodying such agreement where mistake is part of written agreement or even part of fully discussed oral understanding, such requirement is not to be imposed where, as here, E's

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alleged agreement would have had to have been product of momentary inattention or confusion, and U made no effort to confirm that parties really had reached agreement]

Hydro Conduit Corporation **278 NLRB No. 164**
[mere filing and service of ULP charge alleging E refused to execute an agreement does not constitute notice of acceptance of an offer in collective bargaining negotiations between private parties so as to make E's failure to execute agreement, when there has otherwise not been a valid acceptance, a violation of Section 8(a)(5)]

Ben Franklin National Bank **278 NLRB No. 136**
[E's refusal to sign bargaining agreement unlawful, since obligated to sign where meeting of minds reached during certification year inasmuch as Ee's ratification of E's final offer and dispatch of U's telegraphic acceptance both transpired w/i certification year and before E posted letter withdrawing its last offer; notwithstanding receipt by E during certification year of ptn signed by majority of Ees stating they no longer wished to be represented by U, and prior reservation of right of E's president and Board of Directors to approve and ratify any tentative agreement, since e's president had apparent authority to bind E]

Ben Franklin National Bank **278 NLRB No. 136**
[E's contention that under technical rules of contract law it was not obligated to execute contract, since U's acceptance of E's offer was not effective until U's mailgram of acceptance was received, which was after expiration of certification year, rejected, since technical rules of contract law do not control collective bargaining, and further, assuming arguendo applicability of technical contract rules, U's acceptance was operative when its mailgram of acceptance was dispatched]

Ben Franklin National Bank **278 NLRB No. 136**
[*Section 8(d) obligation to reduce to writing and execute provisions of bargaining agreement upon which meeting of minds has been achieved does not arise if obligation to do so has expressly been made contingent upon fulfillment of condition subsequent*]

Lithochrome Corporation **276 NLRB No. 132**
(E's refusal to execute contract, not unlawful, since no agreement reached where E waid for U to contact him when U finished negotiating with major Es in industry in same city, and when U subsequently transmitted copies of contract with another E to E it was accompanied by a note requesting E contact U regarding any changes, and in ptn to ct to compel arbitration under provisions of expired contract, U did not allege parties had reached agreement)

Coastside Scavenger Company **273 NLRB No. 198**
]*Heinz remedy* (E's obligation to bargain in good faith includes duty to sign written agreement embodying terms that had been agreed upon), inappropriate where parties did not reach agreement at times mentioned in C or at any other time)

Spring Valley Farms, Inc. **JD-(ATL)-54-86**
[*before party can be ordered to execute bargaining agreement, it must be affirmatively shown that agreement was reached on all subjects, not simply major ones*]

Spring Valley Farms, Inc. **JD-(ATL)-54-86**
[filing of decertification ptn w/i certification year did not serve to remove E's legal obligation to sign agreement reached, where agreement reached w/ i certification year]

Spring Valley Farms, Inc. **JD-(ATL)-54-86**
[E obligated to sign agreement reached notwithstanding allegations of rejection by U membership, no meeting of minds over checkoff provision, length of contract and its effective date, where, in fact, ratification by membership not required, agreement, in fact, reached over checkoff and term of contract, and though effective date of contract left blank and parties had not discussed a date for signing, parties were in agreement contract would be effective on signing and so ALJ set effective date 1 week after U's notification to E of its acceptance]

6033-9200 Ratification by employees

Newtown Corporation **280 NLRB No. 038**
[E's refusal to execute written agreement with U on ground that U's constitution and bylaws prohibited entering into binding agreement absent majority vote of U membership, unlawful, where U accepted E's contract offer by informing E that unit ratified contract by vote of 5 for and 5 against; since internal U matters cannot effect validity of bargaining agreements, E's argument based on U's constitution and bylaws was incorrect as matter of law; and, thus, E had no standing to question validity of U's internal procedures in ratifying agreement]

Freedom WLNE-TV, Inc. **278 NLRB No. 167**
[E's conditioning further movement in negotiations upon U's conducting ratification vote, violative]

Childers Products Company **276 NLRB No. 074**
(E's refusal to execute and to give effect to contract, conditioning acceptance on ratification by Ees when, in fact, ratification was effected by U's executive board, unlawful, since condition precedent of ratification meant ratification as defined by U in its internal procedures, and during negotiations parties had not established any understanding what U meant by ratification; consequently, method of ratification was w/i U's exclusive control and U reasonably interpreted its constitution and by-laws concerning ratification and acted in accordance therewith by having board ratify contract)

Childers Products Company **276 NLRB No. 074**
(in finding that E unlawfully refused to execute and to give effect to contract, conditioning acceptance on ratification by Ees when, in fact, ratification was effected by U's executive board, Bd held it was for U, not E, to construe and apply U's internal procedures relating to what would be sufficient to amount to ratification and, therefore, E had no standing to question procedure of ratification which was w/i U's exclusive domain and control)

Felbro, Inc. **274 NLRB No. 186**
(E's refusal to abide by contract, on grounds that it revoked its offer before it was notified of contract's ratification by membership, violative, where E and U had agreed on all terms of contract and Ees ratified contract; further, fact that E was not notified of ratification was immaterial to its attempt to revoke offer)

Stubler of South Carolina, Inc. **JD-(ATL)-64-86**
[E did not unlawfully refuse to execute agreement to which ratification by Ees or U members was condition precedent, where Ees initially rejected contract by written vote, but then assertedly accepted contract by showing of hands after they were told it was necessary to either vote to strike or accept contract, since, notwithstanding contract ratification procedure does not need to be written and is generally *considered internal U matter not subject to question by E, once having followed procedure, U is not free to ignore results and adopt different procedure*]

Spring Valley Farms, Inc. **JD-(ATL)-54-86**
[Bd requires specific proof of agreement to make ratification condition precedent to bargaining agreement]

Spring Valley Farms, Inc. **JD-(ATL)-54-86**
[ratification by Ees not condition precedent to agreement, since statement by U representative that merely announced intention, consistent with U's practice, to submit final agreement to membership for ratification did not constitute proposal, nor did any party seek to include ratification as term of agreement; U's decision to take final proposal to membership for ratification did not in itself make acceptance of proposal contingent upon ratification]

J. L. Davidson Company **JD-(SF)-186-85**
[E's refusal to execute contract, not violation where E was aware that Ees had refused to ratify contract and had withdrawn U's authority to represent them]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**
[E's refusal to execute agreed upon contract upon ratification by Ees, which was only condition to execution of contract agreed to, unlawful; E's contention that it have effectively revoked offer by its mailgram sent to U prior to U's mailing notification of ratification vote, rejected, since ratification, not notification of vote, was critical act]

6033-9300 Ratification by employer

Ben Franklin National Bank **278 NLRB No. 136**
[E's refusal to sign bargaining agreement unlawful, since obligated to sign where meeting of minds reached during certification year inasmuch as Ee's ratification of E's final offer and dispatch of U's telegraphic acceptance both transpired w/i certification year and before E posted letter withdrawing its last offer; notwithstanding receipt by E during certification year of ptn signed by majority of Ees stating they no longer wished to be represented by U, and prior reservation of right of E's president and Board of Directors to approve and ratify any tentative agreement, since e's president had apparent authority to bind E]

Ben Franklin National Bank **278 NLRB No. 136**
[E's contention that it had no obligation to sign agreement reached between U and its negotiators since subsequent ratification by its Board of Directors required, rejected, where E's final offer was communicated as final offer embodying complete contract rather than as routine bargaining offer by E's president who was also member of Board of Directors, nor did letter submitting offer contain any caveat that further action by Board of Directors was essential to meeting of minds]

Spring Valley Farms, Inc. **JD-(ATL)-54-86**
[Bd requires specific proof of agreement to make ratification condition precedent to bargaining agreement]

Spring Valley Farms, Inc. **JD-(ATL)-54-86**
[E's contention it was not required to execute and sign agreement, since required approval of agreement by its trustees in bankruptcy, and subsequent approval by ct appointed board of directors not obtained, rejected, notwithstanding E had advised U in general terms that agreement would be subject to approval of trustees, absent evidence that U agreed approval was condition of agreement, in view of E's failure to specify mechanics of approval by trustees, fact letter transmitting E's *final, final* offer did not mention necessi-

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ty of approval, and absent evidence trustees were not aware of progress of negotiations and agreement offered by U]

6033-9640 Repudiation of contract

NDK Corporation 278 NLRB No. 151
[E unlawfully repudiated contract with U in midterm, where E's admissions provided requisite proof to establish GC's *prima facie* case, and E was not permitted to escape liability under federal labor policy and conventional common law principles on ground that E's consent to execution of contract was unlawfully induced by U official's false representation that contract would not be enforced]

Ben Franklin National Bank 278 NLRB No. 136
[*bargaining contract offer is not automatically terminated upon rejection by other party to bargaining process, and, in absence of prior withdrawal of proposal, either expressly, or through operation of changed circumstances giving rise to reasonably based conclusion that offer has been withdrawn, rejecting party may supercede its previous action and accept proposal, giving rise to legal imperative on part of offer or to abide by mandate of Section 8(d) of Act*]

Felbro, Inc. 274 NLRB No. 186
(E's refusal to abide by contract, on grounds that it revoked its offer before it was notified of contract's ratification by membership, violative, where E and U had agreed on all terms of contract and Ees ratified contract; further, fact that E was not notified of ratification was immaterial to its attempt to revoke offer)

EPE, Inc. 273 NLRB No. 169
(E's re-opening contract for purpose of obtaining U's agreement to raising insurance premiums and granting wage increase and then unilaterally repudiating contract when U did not agree to its proposals, violative, where E's action in re-opening contract was attempt to coerce U into accepting proposals which had been found violative in prior Bd hearing and further, because of E's bad faith in re-opening contract, it could not rely on provision allowing for repudiation of contract if no agreement was reached during re-opener negotiations as grounds for repudiating contract)

6050 SUBJECT MATTER OF BARGAINING

6050-0100 Generally

Westinghouse Electric Corporation 278 NLRB No. 061
[obligation to bargain over wages, hours, and terms and conditions of employment, as well as any mid-term changes therein, covers multitude of specific items where terms, conditions of employment, and mid-term changes have effect of cutting wages, decreasing (Ee) take-hom pay or changes in functions and content of (an Ee's) job an asserted waiver of bargaining obligation involves examination of meaning of contract provisions and does not oust Bd of jurisdiction to make that examination]

6050-0120 Mandatory subjects defined

Alamo Cement Company 281 NLRB No. 110
[E's unilateral 25-cent increase in rental fees charged by third-party supplier for uniforms furnished to Ees who opted to wear uniforms but were not required to do so, not unlawful since, assuming matter was mandatory subject of bargaining, increase did not constitute material, substantial, and significant change in terms and conditions of employment]

ABS Industries, Inc. 275 NLRB No. 145
[unilateral decision to close plant and relocate remaining work, not violation, as there was no duty to bargain where decision was nonmandatory bargaining subject in view of fact it turned, not on reduction of labor costs but on restructuring of company due to heavy losses and requirements of lenders]

Pan American Grain Company, Inc. and Bulk Terminal Operations, Inc. 281 NLRB No. 019
[decision to subcontract stevedoring work found mandatory subject of bargaining where U could have made concessions that would have affected decision to subcontract]

Armour and Company 280 NLRB No. 096
[whether severance and vacation pay paid to Ees being terminated is to be allocated to specific periods held mandatory subject of bargaining, since effects real value of bargaining agreement and economic well being of Ees, where under state statute E has option to allocate payments to specific periods, and if allocated, rather than lump sum payments, payments will be deemed wages and effect Ees' eligibility for unemployment compensation]

Borden, Inc., Chemical Division Thermoplastic Products 279 NLRB No. 089
[insisting to impasse on permissive bargaining subject by demanding that receipt of severance pay by Ees whose jobs had been terminated be conditioned on their execution of general release of Ees' civil and statutory health and safety complaints, violation, where there was insufficient nexus between permissive subject of general releases and mandatory subject of severance pay to inextricably intertwine the two subjects of bargaining]

Harold Weinz; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013
[subject of discriminatorily motivated contracting was specifically excluded from sweep of *Otis Elevator Co.* 269 NLRB 891, 892 where contracting out held permissable under certain circumstances. Further, such contracting decision for admitted purpose of reducing labor costs constitutes mandatory subject of bargaining]

Harold Weinz; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013
[check cashing previledges]

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147
[hospital's failure to bargain with U regarding lay off of Ees allegedly because of cuts in Medicaid, and concerning effects of lay off, unlawful, since not justified by compelling economic considerations and new Ees hired after lay off and after Medicaid reductions effective; contention lay offs not mandatory subject of bargaining, rejected]

Metropolitan Teletronics Corp. 279 NLRB No. 134
[decision to relocate operations not manadatory bargaining subject where it did not turn on labor costs]

Getty Refining and Marketing Co. 279 NLRB No. 126
[Ee recreation fund partially supporting social events and group recreational activities held existing employment condition subject to mandatory bargaining since fund amounted to significant economic benefit to individual Ees, and substantial sum which constituted integral part of total economic package available to Ees and was, in effect, wage enhancement feature that was part of E's compensation structure]

Getty Refining and Marketing Co. 279 NLRB No. 126
[Ee recreation fund partially supporting social events and group recreational activities held existing employment condition subject to mandatory bargaining; while E established fund unilaterally, it was not simply gift or gratuity since Ee benefit that E initiates voluntarily may become employment condition over which E must bargain; here, fund existed for almost 30 years, E incorporated fund policy into Ee relations manual, and E thereby gave Ees some expectation that fund benefit will remain available in connection with their employment; *Benchmark Industries*, 270 NLRB 22, distg.]

Freedom WLNE-TV, Inc. 278 NLRB No. 167
[E's practice of providing Ees with Christmas bonus was mandatory subject of bargaining where: (1) E maintained practice, for 3 years preceding sale of E, of making cash Christmas bonus payments; (2) Christmas bonus was made pursuant to formula inextricably tied to Ee's wages and seniority; (3) Christmas bonus was negotiated between E and U, resulting in contractual obligation; (4) instant E contractually assumed terms of bargaining agreement upon its purchase of E; (5) E acknowledged its contractual commitment to pay Christmas bonus by its memorandum that advised Ees payments would be made]

Freedom WLNE-TV, Inc. 278 NLRB No. 167
[profit sharing payments became term and condition of employment of unit Ees where E issued memorandum to Ees unconditionally announcing E's decision to make profit-sharing payments]

Brown Company; Brown Company, Livingston-Graham Division; et al. 278 NLRB No. 113
[transfer of unit work mandatory subject of bargaining, where motivated by desire to reduce labor costs]

Coalite, Inc. 278 NLRB No. 040
[benefits for laid off Ees mandatory bargaining subject where they were not inextricably entwined in contract with nonmandatory subject of benefits for pensioners and surviving spouses]

BASF Wyandotte Corporation 278 NLRB No. 028
[U time clause mandatory bargaining subject]

Mack Trucks, Inc. 277 NLRB No. 084
(E's decision to *transfer and consolidate work* being performed at truck assembly facility to another facility *not mandatory* bargaining subject, since E's decision did not turn on bargaining unit labor costs, but on serious losses for year 1980 and projected future losses because of E's excess productive capacity which led E to believe E had over invested in capital assets and such transfer to larger and more modern facility would cut freight and overhead costs)

Reichhold Chemicals, Inc. 277 NLRB No. 073
(waiver of right to strike over ULPs mandatory subject of bargaining and waiver of replaced ULP strikers right to avail themselves of Bd's processes also mandatory subject of bargaining, since derivative of waiver of right to strike)

San Antonio Portland Cement Company 277 NLRB No. 036
(refusal to bargain over forced retirement of Ee, unlawful)

Maintenance Service Corporation 275 NLRB No. 198
(performance of unit work by foremen)

Kansas National Education Association 275 NLRB No. 091
(terms of Ee's transfer to another position held manadatory subject of bargaining since terms of transfer clearly afect employment conditions)

6050-0120—Cont.

tracting program as temporary one that did not effec fundamental change in nature of its operation)

G. Zaffino and Sons, Inc. 275 NLRB No. 067
(no unlawful surface bargaining, where E made various complete contract offers during negotiations, which included wage increases, U security, grievance arbitration procedures, greater health and welfare benefits, notwithstanding contention E's insistence on provision allowing it to subcontract evidenced intention to avoid reaching agreement since subcontracting mandatory subject of bargaining and E may refuse to agree to subcontracting restrictions or insist on right to subcontract)

Advertisers Manufacturing Company 275 NLRB No. 019
(E's payment of year-end bonus, assertedly unlawfully discontinued, held to constitute wages and terms and conditions of employment, notwithstanding absence of formula for determining bonus amount or of prior formal pronouncement or fact that amounts varied, where bonus was uninterruptedly paid for 30 years; Ees considered bonus as established benefit and had continued expectation of receiving it; and nonpayment of bonus in proceeding year did not establish that bonus constituted discretionary gift)

Georgia Pacific Corporation 275 NLRB No. 017
(work shifts, held mandatory subject of bargaining)

Continental Telephone Company of California 274 NLRB No. 210
(absentee rules affecting employment tenure)

United Technologies Corporation 274 NLRB No. 163
(mandatory subjects of bargaining include only those issues that settle an aspect of relationship between E and Ees and while matters affecting individuals outside bargaing unit are not automatically excluded, the touchstone is whether such matters *vitally affect* terms and conditions of unit Ees; an indirect or incidental impact on unit Ees *is not* sufficient to establish matter as a mandatory subject)

United Technologies Corporation 274 NLRB No. 163
(mandatory subjects include only those matters that *materially or significantly* affect unit Ees' terms and conditions of employment and the phrase *terms and conditions of employment* is to be construed in a limited sense and does not include all subjects that may merely be of interest or concern to the parties)

BASF Wyandotte Corporation 274 NLRB No. 147
(privileges granted to U, i.e. permitting local U chairman to spend 4 hours of paid time each working day conducting U business including grievance processing, use of office, telephoae and duplicating machine, held mandatory, rather than illegal subjects of bargaining which were violative of Sections 302 and 8(a) of LMRA)

Gar Wood-Detroit Truck Equipment, Inc. 274 NLRB No. 023
(failure of E, which was engaged in installation of equipment and accessories on trucks and also selling parts, to bargain over its decision to subcontract its service work, not unlawful, since no specific term of contract was identified as having been modified and decision to subcontract not subject to mandatory bargaining since decision turned not merely on labor costs but on significant change in nature and direction of enterprise with E's essential purpose being to not only reduce overhead costs such as rent and utilities but to also get out of service and installation business and just sell parts)

Gar Wood-Detroit Truck Equipment, Inc. 274 NLRB No. 023
(as stated in *Otis Elevator* 269 NLRB No. 162, critical factor in determining whether specific management decision is subject to mandatory bargaining is essence of decision itself, i.e. whether it turns upon change in nature or direction of business or turns on labor costs; not its effect on Ees nor U's ability to offer alternatives. Further, in *Otis Elevator* Bd specifically stated that *Fibreboard* subcontracting is subject to mandatory bargaining not because decision is labeled *subcontracting* but because decision turns on reduction of labor costs)

Assable Communications, Inc. 273 NLRB No. 166
(cable TV company's unilateral subcontracting installation work, not unlawful, since installations occurred as result of installation of satellite disc which enabled company to offer customers additional channels, thus subcontracting was decision as to handling of increased workload which affected scope of business and thus was not bargainable)

Quality Rails, Inc. JD-189-86
[change in employment policy by eliminating progressive system of discipline held mandatory subject of bargaining]

Victor Wooten, d/b/a Diablo Paving JD-(SF)-90-86
[E's contributions to U's various benefit funds held to constitute mandatory subject of bargaining]

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC JD-288-85
[refusing to bargain about issuance of parking stickers to unit Ees, violation where stickers were indirect remuneration for services and mandatory bargaining subject]

ICI Americas, Inc. JD-328-85
(bargaining for change in scope of unit is *nonmandatory* subject of bargaining; and insistence to bargaining impasse on modification in scope of bargaining unit, whether established by Bd certification or by voluntary recognition, violative)

Embossing Printers, Inc. JD-19-85
(health insurance)

N.L.R.B. v. The Salvation Army of Massachusetts Dorchester Day Care Center ———F.2d——— (C.A. 1, May 1985)
[E's conditioning bargaining on U's acceptance of *religious missions* clause w/i management rights clause, violative, since religious clause was not mandatory subject of bargaining where it did not involve or affect terms and conditions of Ees' employment]

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)
[paid time to U stewards for performance of U duties is mandatory subject of bargaining]

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)
[theme common to mandatory subjects is that they *benefit all of the members of bargaining unit through encouraging the collective bargaining process and vitally affecting the relationship between the E and Ees*]

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)
[examples of mandatory subjects of bargaining are: wage rates, hours of employment, procedures and practices relating to discharge and suspensions, procedures and practices covering safety, sanitation, and health, vacations, holidays, leaves of absences, jury duty and sick levae. In addition, U security and right to present grievances]

Southwestern Steel & Supply, Inc. v. N.L.R.B. 806 F.2d 1111 (C.A. D.C., Dec. 1986)
[use of hiring hall mandatory subject of bargaining[

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 789 F.2d 9 (C.A. D.C., Apr. 1986)
[diversion of unit work is mandatory subject of bargaining]

6050-0140 Permissible subjects defined

Syncor International Corporation 282 NLRB No. 063
[scope of established bargaining unit is *non-mandatory*. However, party may lawfully propose change in scope of unit and parties may in certain circumstances agree to change or change can be accomplished by Bd proceedings, but never by unilateral action by party]

The Idaho Statesman 281 NLRB No. 041
[bargaining to impasse over permissive bargaining subjects is *per se* 8(a)(5) violation, because, in effect, it is refusing to bargain over mandatory bargaining subjects]

The Idaho Statesman 281 NLRB No. 041
[attempt to change mailroom work to work physically done in the mailroom itself relates to description or scope of unit and is therefore permissive bargaining subject]

The Idaho Statesman 281 NLRB No. 041
[proposal to consolidate *A* and *B* trainee classifications into helper classification found attempt to change scope of unit by withdrawing recognition from part of previously recognized unit, *A* trainees, and trying to expand unit to include Ees not previously recognized part of unit, *B* trainees, and both, therefore are permissive bargaining subjects]

The Idaho Statesman 281 NLRB No. 041
[insisting to impasse on permissive bargaining subjects of changing scope of unit by changing U's juriadiction over mailroom work and attempting to restrict or expand unit, violations]

Ashe Brick Company 280 NLRB No. 162
[compensation for damages to E's property is permissive non-mandatory subject of bargaining]

Nazwa Insurance Company 280 NLRB No. 103
[presence of stenographer]

Borden, Inc., Chemical Division Thermoplastic Products 279 NLRB No. 059
[insisting to impasse on permissive bargaining subject by demanding that receipt of severance pay by Ees whose jobs had been terminated be conditioned on their execution of general release of Ees' civil and statutory health and safety complaints, violation, where there was insufficient nexus between permissive subject of general releases and mandatory subject of severance pay to inextricably intertwine the two subjects of bargaining]

Metropolitan Telstronics Corp. 279 NLRB No. 134
[decision to relocate operations not manadatory bargaining subject where it did not turn on labor costs]

Freedom WLNE-TV, Inc. 278 NLRB No. 167
[ratification of contract by U members is nonmandatory subject of bargaining as it is internal U matter]

6050-0140—Cont.

Bozzuto's, Inc. **277 NLRB No. 100**
(insisting to impasse on changing unit scope to eliminate Ees working less than 32 hours a week, a nonmandatory bargaining subject, as condition for new contract, violation)

Hutchinson Fruit Company, Inc. **277 NLRB No. 054**
(use of tape recorder at grievance meeting held not mandatory subject of bargaining and refusal of E to hold grievance meeting unless tape recorder on, violative. Bd held grievance meeting are similar to contract negotiations in both character and methodology and duty to bargain in good faith applies to both types of meetings)

Pennsylvania Telephone Guild and The Philadelphia Division of The Pennsylvania Telephone Guild (Bell Telephone Company of Pennsylvania) **277 NLRB No. 055**
(party fails to bargain in good faith by insisting to impasse on use of recording device during grievance meeting, since Bd's decision in *Bartlett-Collins*, 237 NLRB 770, which held that presence of ct reporter or use of recording device during bargaining negotiations was permissive subject of bargaining that could not be insisted upon to impasse is equally applicable to grievance meetings)

Stone Boat Yard: Stone Boat Yard, Debtor in Possession **276 NLRB No. 130**
(while it is not always necessary to restore *status quo ante* before having bargaining impasse, one cannot have bargained to legal impasse over nonmandatory subject – matter of restoring status quo ante)

Amer-Cal Industries, Inc. **274 NLRB No. 148**
(E's refusal to sign contract on grounds that execution of parties' agreement was contingent upon outcome of decertification proceeding, not violative, notwithstanding contingency was nonmandatory subject of bargaining where U failed to object to E's proposal regarding contingency during negotiations)

Seng Crane & Excavating, Inc. **JD-111-86**
[payment for strike damages not mandatory subject]

Seng Crane & Excavating, Inc. **JD-111-86**
[payment of expenses incurred in negotiations]

My Buddy Products, A Division of S&T Industries, Inc. **JD-114-85**
(mere change in provider of health insurance during contract term, not violative, as it is not mandatory subject of bargaining)

N.L.R.B. v. The Salvation Army of Massachusetts Dorchester Day Care Center **———F.2d———**
(C.A. 1, May 1985)
[E's conditioning bargaining on U's acceptance of *religious missions* clause w/i management rights clause, violative, since religious clause was not mandatory subject of bargaining where it did not involve or affect terms and conditions of Ees' employment]

N.L.R.B. v. Pennsylvania Telephone Guild **799 F.2d 84 (C.A. 3, Aug. 1986)**
[U insisting to impasse that it be allowed to tape record all of grievance meeting, a nonmandatory subject of bargaining, violative, as grievance meeting substantially similar to bargaining negotiations and insistence on tape recorder at latter was held unlawful as it could inhibit free and open discussions]

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**
[subjects which lawfully may be included in labor contract but fall outside area of *wages, hours, and other terms and conditions of employment* are classified as permissive subjects of bargaining]

6050-0160 Prohibited subjects defined

BASF Wyandotte Corporation **274 NLRB No. 147**
(privileges granted to U, i.e. permitting local U chairman to spend 4 hours of paid time each working day conducting U business including grievance processing, use of office, telephone and duplicating machine, held mandatory, rather than illegal subjects of bargaining which were violative of Sections 302 and 8(a) of LMRA)

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**
[E need not bargain over or engage in illegal activity, even if necessary to comply with terms of bargaining agreement]

Sheetmetal Workers, Local Union No. 263 v. N.L.R.B. **——— F.2d———**
(DC N.D. IA, Mar. 1984)
[interest arbitration clause, providing for submission of deadlocked disputes over *new contract proposals* to an arbitrator for final and binding arbitration held nonmandatory subject of bargaining]

6050-0180 Section 8(a)(5) must be construed with 8(d) and 9(a)

United Sheetmetal of Arizona, Inc. **JD-(SF)-97-85**
(E's contention that U did not enjoy majority support because U did not show that 8(f) status had transformed to that of 9(a) representative since no authorization cards had ever been presented and thus it had no duty to bargain, rejected, where E employed at all relevant times a *core* group of Ees so as to constitute a permanent and stable workforce as well as 28 other Ees throughout the season; further, all Ees were U members and E knew that none of its Ees would work with non-U Ees; fact that all Ees at all relevant times were U members is sufficient indicia of majority U support)

6050-0800 Scope and work of unit

Syncor International Corporation **282 NLRB No. 063**
[scope of established bargaining unit is *non-mandatory*. However, party may lawfully propose change in scope of unit and parties may in certain circumstances agree to change or change can be accomplished by Bd proceedings, but never by unilateral action by party]

Maintenance Service Corporation **275 NLRB No. 198**
(no agreement reached where parties could not agree on effect of dropping side bar agreement, that was part of expired agreement from new agreement, in regard to whether foremen could perform unit work, a mandatory subject of bargaining)

ICI Americas, Inc. **JD-328-85**
(bargaining for change in scope of unit is *nonmandatory* subject of bargaining; and insistence to bargaining impasse on modification in scope of bargaining unit, whether established by Bd certification or by voluntary recognition, violative)

6050-0825 Work preservation (see also 530-6067-4022)

G. Zaffino and Sons, Inc. **275 NLRB No. 067**
(no unlawful surface bargaining, where E made various complete contract offers during negotiations, which included wage increases, U security, grievance arbitration procedures, greater health and welfare benefits, notwithstanding contention E's insistence on provision allowing it to subcontract evidenced intention to avoid reaching agreement since subcontracting mandatory subject of bargaining and E may refuse to agree to subcontracting restrictions or insist on right to subcontract)

6050-0825-3300 Economically motivated managerial decisions which have destructive effect on unit (See also 530-6067-4011 and 4022)

Brown Company; Brown Company, Livingston-Graham Division; et al. **278 NLRB No. 113**
[transfer of unit work mandatory subject of bargaining, where motivated by desire to reduce labor costs]

Suburban Transit Corp. and Suburban Trails, Inc. **276 NLRB No. 005**
(no violation when E relocated unit work (single E) and thereby brought unit Ees under different bargaining agreement which was less favorable to these Ees, since contract covering original workstation did not contain any provisions preventing E from making such relocation w/o first obtaining consent of U and E bargained in good faith over decision to relocate)

Everett Yacht Club **JD-(SF)-115-85**
(E's failure to bargain with U over effects of its decision to subcontract its bar and restaurant operations, violative, since U could have accomplished positive and favorable considerations for unit Ees if U had learned of E's intent to subcontract prior to its being put into effect)

6050-0830 Work functions

The Idaho Statesman **281 NLRB No. 041**
[attempt to change mailroom work to work physically done in the mailroom itself relates to description or scope of unit and is therefore permissive bargaining subject]

The Idaho Statesman **281 NLRB No. 041**
[insisting to impasse on permissive bargaining subjects of changing scope of unit by changing U's jurisdiction over mailroom work and attempting to restrict or expand unit, violations]

Taft Broadcasting Company, WBRC–TV **274 NLRB No. 038**
(E did not unlawfully insist to impasse on nonmandatory subject of bargaining where GC failed to satisfy his burden of proof that E conditioned any agreement to mandatory subject on acceptance of its nonmandatory jurisdictional unit proposal; rather such proposal was simply one of several unresolved issues when parties reached impasse generally on mandatory subjects of bargaining)

6050-0875 Composition of unit

Hyatt Regency New Orleans **281 NLRB No. 042**
[repeated expressions of displeasure by E during negotiations over composition of bargaining unit held not to indicate bad faith bargaining, where E never discontinued negotiations nor demanded change in composition of unit, and E's complaints about unit did not impede negotiations in any way]

The Idaho Statesman **281 NLRB No. 041**
[proposal to consolidate *A* and *B* trainee classifications into helper classification found attempt to change scope of unit by withdrawing recognition from

6050-0875—Cont.

part of previously recognized unit, *A* trainees, and trying to expand unit to include Ees not previously recognized part of unit, *B* trainees, and both, therefore are permissive bargaining subjects]

The Idaho Statesman **281 NLRB No. 041**
[insisting to impasse on permissive bargaining subjects of changing scope of unit by changing U's jurisdiction over mailroom work and attempting to restrict or expand unit, violations]

Bozzuto's, Inc. **277 NLRB No. 100**
(insisting to impasse on changing unit scope to eliminate Ees working less than 32 hours a week, a nonmandatory bargaining subject, as condition for new contract, violation)

Kohler Company **273 NLRB No. 195**
(violation by unilaterally removing stock clerk position from bargaining unit; E admitted that it redefined stock clerk position for this purpose, an action which was not a right granted E by contractual management rights clause)

ICI Americas, Inc. **JD-328-85**
(E not free to alter composition of bargaining unit under guise of transfer of unit work after impasse on transfer of unit work to Ees outside unit, a mandatory subject of bargaining on which impasse is allowed)

ICI Americas, Inc. **JD-328-85**
(E's advising U during negotiations that E controlled matter of split in certified unit, when in actuality split was army decision who had contracted work out to E, violative, since E's advice was conscious course of action intending to deceive U; such conduct (of E) was deceptive bargaining with tendency to inhibit process of collective bargaining)

ICI Americas, Inc. **JD-328-85**
]*transfer of unit work*, lawful)

ICI Americas, Inc. **JD-328-85**
(alteration of composition of (certified) bargaining unit *prima facie* unlawful)

6050-0900 Employees outside the unit

United Technologies Corporation **274 NLRB No. 163**
(mandatory subjects of bargaining include only those issues that settle an aspect of relationship between E and Ees and while matters affecting individuals outside bargaing unit are not automatically excluded, the touchstone is whether such matters *vitally affect* terms and conditions of unit Ees; an indirect or incidental impact on unit Ees *is not* sufficient to establish matter as a mandatory subject)

6050-1600 Remuneration and benefits

6050-1612 Wages

Westinghouse Electric Corporation **278 NLRB No. 061**
[obligation to bargain over wages, hours, and terms and conditions of employment, as well as any mid-term changes therein, covers multitude of specific items where terms, conditions of employment, and mid-term changes have effect of cutting wages, decreasing (Ee) take-hom pay or changes in functions and content of (an Ee's) job an asserted waiver of bargaining obligation involves examination of meaning of contract provisions and does not oust Bd of jurisdiction to make that examination]

6050-1612-5800 Indirect wages

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC **JD-288-85**
[refusing to bargain about issuance of parking stickers to unit Ees, violation where stickers were indirect remuneration for services and mandatory bargaining subject]

6050-1612-7100 Fringe benefit payments

Greater Detroit Heating and Cooling, Inc. **JD-116-85**
(E's refusal to make required payments of fringe benefits in compliance with either expired contract or newly negotiated agreement, violative)

6050-1612-8700 Remuneration for time spent in bargaining negotiations or presentation of grievances

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**
[paid time to U stewards for performance of U duties is mandatory subject of bargaining]

6050-1625 Bonuses

Freedom WLNE-TV, Inc. **278 NLRB No. 167**
[conditioning payment of profit sharing and Christmas bonus upon contract ratification, violative]

Advertisers Manufacturing Company **275 NLRB No. 019**
(discontinuing payment of year-end bonus, not unlawful, where E negotiated with U concerning bonus and did not engage in *fait accompli* bargaining, E had economic justification because of low level of business for not paying bonus, and parties deadlocked and were at impasse after full discussion of mutual positions)

Electrical Workers Local 1466 v. N.L.R.B. (Columbus and Southern Ohio Electric Co.) **795 F.2d 150**
[no unilateral change in wages and no requirement that E must bargain when E discontinued its past practice of 40 years of paying Christmas bonus where contract contained zipper clause that stated... contract...*shall be the sole source of all rights or claims which may be asserted in arbitration hereunder or otherwise*.... and contract silent as to Christmas bonus]

6050-1645 Savings plan

American Model & Pattern, Inc. **277 NLRB No. 018**
(E's unilateral discontinuance of end of year IRA payments to Ees, asserted-ly because such payments were *wholly discretionary* and hence not a subject of bargaining, violative, where such payments were routine and regarded by Ees as a regular company benefit)

6050-1662 Pensions and group insurance

Coalite, Inc. **278 NLRB No. 040**
[benefits for laid off Ees mandatory bargaining subject where they were not inextricably entwined in contract with nonmandatory subject of benefits for pensioners and surviving spouses]

6050-1667 Profit-sharing plans

Freedom WLNE-TV, Inc. **278 NLRB No. 167**
[withholding profit sharing payment until bargaining agreement was ratified, violative]

6050-1668 Benefits for retired employees

Coalite, Inc. **278 NLRB No. 040**
[benefits for laid off Ees mandatory bargaining subject where they were not inextricably entwined in contract with nonmandatory subject of benefits for pensioners and surviving spouses]

Coalite, Inc. **278 NLRB No. 040**
[benefits for laid off Ees mandatory bargaining subject where they were not inextricably entwined in contract with nonmandatory subject of benefits for pensioners and surviving spouses]

6050-2500 Tenure and Seniority

6050-2501 Generally

Westinghouse Electric Corporation **278 NLRB No. 061**
[obligation to bargain over wages, hours, and terms and conditions of employment, as well as any mid-term changes therein, covers multitude of specific items where terms, conditions of employment, and mid-term changes have effect of cutting wages, decreasing (Ee) take-hom pay or changes in functions and content of (an Ee's) job an asserted waiver of bargaining obligation involves examination of meaning of contract provisions and does not oust Bd of jurisdiction to make that examination]

6050-2512 Hiring practices

Southwestern Steel & Supply, Inc. v. N.L.R.B. **806 F.2d 1111 (C.A. D.C., Dec. 1986)**
[use of hiring hall mandatory subject of bargaining[

6050-2515 Severance pay

Armour and Company **280 NLRB No. 096**
[whether severance and vacation pay paid to Ees being terminated is to be allocated to specific periods held mandatory subject of bargaining, since effects real value of bargaining agreement and economic well being of Ees, where under state statute E has option to allocate payments to specific periods, and if allocated, rather than lump sum payments, payments will be deemed wages and effect Ees' eligibility for unemployment compensation]

Borden, Inc., Chemical Division Thermoplastic Products **279 NLRB No. 059**
[insisting to impasse on permissive bargaining subject by demanding that receipt of severance pay by Ees whose jobs had been terminated be conditioned on their execution of general release of Ees' civil and statutory health and safety complaints, violation, where there was insufficient nexus between permissive subject of general releases and mandatory subject of severance pay to inextricably intertwine the two subjects of bargaining]

6050-2528 Seniority

6050-2528-7500 Contractually rather than statutorily based

Brown Company; Brown Company, Livingston-Graham Division; et al. **278 NLRB No. 113**

6050-2579 Reinstatement rights of economic strikers

Gaso Pumps, Inc. **274 NLRB No. 076**
(E's insisting to impasse on, and subsequently unilaterally implementing, strike settlement proposal limiting reinstatement rights of striking Ees to 6 months after termination of strike, violative, where U had never agreed to settlement agreement during negotiations and E had not shown that legitimate and substantial business justifications existed for its limitations on strikers' reinstatement rights; Ees may not be deprived of statutory rights in the absence of a clear and unmistakable waiver of those rights)

6050-2528 Seniority

6050-2528-7500 Contractually rather than statutorily based

Brown Company; Brown Company, Livingston-Graham Division; et al. — 278 NLRB No. 113

6050-2579 Reinstatement rights of economic strikers

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(E's insisting to impasse on, and subsequently unilaterally implementing, strike settlement proposal limiting reinstatement rights of striking Ees to 6 months after termination of strike, violative, where U had never agreed to settlement agreement during negotiations and E had not shown that legitimate and substantial business justifications existed for its limitations on strikers' reinstatement rights; Ees may not be deprived of statutory rights in the absence of a clear and unmistakable waiver of those rights)

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor — 785 F.2d 195 (C.A. 7, Mar. 1986)

[successor E's refusal to reinstate striking Ees of predecessor E who had been replaced, violative, and successor held liable for predecessor's ULP which converted strike to ULP strike, since successor purchased business with knowledge of predecessor's ULP; further, successor's contention that ULP charge against predecessor had originally been dismissed and thus it had no notice of potential reinstatement liability, rejected, since it assumed the risk that the actions may later be found unlawful]

6050-3300 Working conditions

Westinghouse Electric Corporation — 278 NLRB No. 061

[obligation to bargain over wages, hours, and terms and conditions of employment, as well as any mid-term changes therein, covers multitude of specific items where terms, conditions of employment, and mid-term changes have effect of cutting wages, decreasing (Ee) take-home pay or changes in functions and content of (an Ee's) job an asserted waiver of bargaining obligation involves examination of meaning of contract provisions and does not oust Bd of jurisdiction to make that examination]

6050-3340 Work schedules

Georgia Pacific Corporation — 275 NLRB No. 017

(work shifts, held mandatory subject of bargaining)

6050-3360 Coffeebreaks

United States Postal Service — 275 NLRB No. 057

(reducing break periods from 15 to 10 minutes on one of its shifts to conform with its established policy--contract silent on issue--w/o bargaining with U, not violative, as all Ees aware of 10 minute break policy and notwithstanding that on this shift, as opposed to other shifts, extended break standard for 15 years except for 2 short periods as Bd considered this partial breach of otherwise uniformly applied work rule inadequate basis from denying E right to uniformly apply work rule to all its Ees)

6050-3380 Health and safety rules

BASF Wyandotte Corporation — 278 NLRB No. 028

[unilateral implementation of respirator seal rule that had effect of prohibiting wearing of facial hair by Ees whose jobs necessitated their wearing respiratory protective equipment, not violation where U waived right to bargain over rule by agreeing to management rights clause allowing E to make and enforce rules deemed necessary or proper for conduct of Ees and operation of plant]

6050-4100 Grievance and dispute resolving procedures

N.L.R.B. v. Pennsylvania Telephone Guild — 799 F.2d 84 (C.A. 3, Aug. 1986)

[U insisting to impasse that it be allowed to tape record all of grievance meeting, a nonmandatory subject of bargaining, violative, as grievance meeting substantially similar to bargaining negotiations and insistence on tape recorder at latter was held unlawful as it could inhibit free and open discussions]

6050-4133 Grievances

6050-4133-3700 Refusal to process or delay in processing (See also 530-6067-2080-6900)

Airport Distributors, Inc. — 280 NLRB No. 091

[E's refusal to recognize U-designated Ee as steward and to accept steward's proffered grievances unlawful; while E's conduct, in absence of other unlawful acts, might be dismissed as temporary release of pent-up emotional frustration in having to deal with U, E's conduct constituted breach of its bargaining obligation in view of E's extensive coercive and retaliatory conduct against Ees, including discrimination against U steward]

Stovall Manufacturing Company, Inc. — 275 NLRB No. 039

(E's refusal to discuss and process Ees' grievances concerning disciplinary action until parties had negotiated a contract, violative, since E is obligated to discuss and process grievances and absence of contract incorporating grievance procedure does not relieve E of such obligation)

6050-4133-8700 Presence of union representative at grievance meeting

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat — 281 NLRB No. 030

[refusing to meet and bargain with international U's representative designated as U's representative for processing grievances at grievance step 2 meeting, violation]

Ground Breakers, Inc. — 280 NLRB No. 014

[E's refusal to allow grievants right to have present at grievance meeting non-Ee representative of U, unlawful, where contract language, relied on by E, was not clear and unmistakable waiver of U's right to designate its representatives for processing grievances, nor did contract specifically limit presence of non-Ee U representative at grievance meeting]

Ground Breakers, Inc. — 280 NLRB No. 014

[no clear and unmistakable waiver of U's right to designate its representative at grievance processing meeting existed since, by naming grievance committee in contract, parties did not necessarily mean to exclude all others, including non-Ee U representative; issue is not so much matter of contract interpretation as matter of Ees' statutory rights; and Ee's right to be represented by representative of his own choosing should not be lightly denied]

Union Carbide Corporation, Nuclear Division — 275 NLRB No. 037

(E soliciting and resolving grievances through *ad hoc* committee formed to review problems in a section of E's plant w/o providing U opportunity to be present at such adjustment violative; further, E's contention that U was present because committee included U's alternate shop steward, rejected, where steward was appointed in capacity of Ee and not as U representative, he was not told he was representing U and steward did not even report what was transpiring at committee meetings to any U official)

Union Carbide Corporation, Nuclear Division — 275 NLRB No. 037

(E's contention that U waived right to be present at adjustment of grievances by *ad hoc* committee formed to review problems in a section of E's plant because E told U official that committee was being formed to look into the general situation, rejected, where E did not tell U that committee would include unit Ees or that committee would interview unit Ees and E did not offer U opportunity to participate on committee; U cannot be said to have received actual notice of committee's planned membership or operations)

6050-4500 Plant relocation

Metropolitan Teletronics Corp. — 279 NLRB No. 134

[decision to relocate operations not manadatory bargaining subject where it did not turn on labor costs]

Phillip A. Hunt Corporation — JD-14-86

[E's decision to relocate certain work performed by unit Ees at plant represented by U to new non-U plant, excluded from limited scope of 8(d) where decision to relocate was not based upon labor costs but instead was based upon change in direction and nature of its business]

6050-5700 Interest arbitration clause

Sheetmetal Workers, Local Union No. 263 v. N.L.R.B. — ——— F.2d ———

(DC N.D. IA, Mar. 1984)

[mtn by Bd and E association to dismiss plaintiff U's action seeking order enforcing arbitration award in attempt to enforce *interest arbitration clause*, granted since under FRCP 12(b)(6) mtn to dismiss should not be granted unless it appears that plaintiff is entitled to no relief under any set of circumstances which could be proved in support of claim; for purposes of mtn, C must be construed in light most favorable to pleader and its allegations taken as true; and interest arbitration clause is unenforceable insofar as it applies, as here, to inclusion of similar clause in new contract]

Sheetmetal Workers, Local Union No. 263 v. N.L.R.B. — ——— F.2d ———

(DC N.D. IA, Mar. 1984)

[in granting mtn to dismiss U's action seeking order enforcing arbitration award in attempt to enforce *interest arbitration clause* in current contract to compel inclusion of similar contract in new contract, ct held it was not necessary to vacate interest arbitration provision of arbitrator's award since no action will lie to enforce it]

6050-5800 Management prerogatives

6050-5825 Promulgation of disciplinary rules

Continental Telephone Company of California — 274 NLRB No. 210

(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

6050-5850 Duties and functions of management personnel

U.S. Postal Service — 280 NLRB No. 080

[choice of representatives (for U) is solely internal affair for U and choice of those agents must be free from E influence. E may not permit his supervi-

6050-5850—Cont.

sors, even low level supervisors, to participate as U representatives in collective-bargaining process]

6050-5875 Management rights clause

Reichhold Chemicals, Inc. **277 NLRB No. 073**

(E's seeking waiver of Ees' right to engage in ULP strikes, as part of no-strike clause, and right to seek redress from Bd or other tribunal for discipline imposed under clause on replaced strikers, not unlawful, since Act does not prohibit Us from waiving Ees' right to strike over ULPs; and proposed waiver of replaced strikers right to Bd's processes, absent other evidence, read as permitting only non-discriminatory application, and does not extend to appeals to Bd on other matters; since this waiver merely derivative of waiver of right to strike a mandatory subject of bargaining, it too is mandatory, thus E could insist to impasse on dual waiver)

6050-6600 Internal union matters

6050-6625 Ratification of contract by employees

Stablex of South Carolina, Inc. **JD-(ATL)-64-86**

[E did not unlawfully refuse to execute agreement to which ratification by Ees or U members was condition precedent, where Ees initially rejected contract by written vote, but then assertedly accepted contract by showing of hands after they were told it was necessary to either vote to strike or accept contract, since, notwithstanding contract ratification procedure does not need to be written and is generally *considered internal U matter not subject to question by E, once having followed procedure, U is not free to ignore results and adopt different procedure*]

6050-7000 Matters relating to nonunit employees

United Technologies Corporation **274 NLRB No. 163**

(E's refusal to bargain over a *summer help program* not violative, since program was not mandatory subject of bargaining where it did not *vitally affect* unit Ees (there was no claim that unit Ees were laid off or denied overtime because of program) and any *benefit* unit Ees may have claimed by E's employment of their offspring was at most indirect and remote; any change in program by E or even its total elimination would be solely w/i control of E)

6050-7900 Support of union activities (paid time off, clerical support, space, etc.)

BASF Wyandotte Corporation **278 NLRB No. 028**

[U time clause mandatory bargaining subject]

BASF Wyandotte Corporation **274 NLRB No. 147**

(privileges granted to U, i.e. permitting local U chairman to spend 4 hours of paid time each working day conducting U business including grievance processing, use of office, telephone and duplicating machine, held mandatory, rather than illegal subjects of bargaining which were violative of Sections 302 and 8(a) of LMRA)

BASF Wyandotte Corporation **274 NLRB No. 147**

(E's grant of privileges to U chairman which included 4 hours of paid time each workday for conducting U business including processing of grievances, use of office, telephone and copying machine, not violative of Section 302 of LMRA, thus not illegal subject of bargaining justifying unilateral withdrawal of privileges since w/i exception set forth in Section 302 (c)(1) in that privileges were granted by reason of chairman's service as Ee of E, nor did such grant of privileges amount to bribery of Ees' representatives at which Section 302 was aimed)

BASF Wyandotte Corporation **274 NLRB No. 147**

(E's contention that its granting of privileges to U i.e. permitting U chairman to spend 4 hours of paid time each workday conducting U business including grievance processing, use of office, telephone, and copying machine, violated Section 8(a)(2) as unlawful support of U, and thus justified unilateral withdrawal of privileges as illegal rather than mandatory subject of bargaining, rejected, since grant of time and property not violative of Section 8(a)(2) where U had been recognized and dealt with at arms length, but merely friendly cooperation of amiable labor management relationship, absent deeper E involvement or intrusion into U affairs)

6050-8400 Work functions

Sonat Marine, Inc. **279 NLRB No. 016**

[E's offer to U to meet and discuss the legal basis upon which E decided certain Ees were supervisors and why E was refusing to bargain concerning those Ees, after U had formally requested E provide it with factual basis for conclusion, was not an offer to provide U with requested information, since E was not offering to provide U with any information but rather was simply adhering to its previously stated view on the matter]

ICI Americas, Inc. **JD-328-85**

(E not free to alter composition of bargaining unit under guise of transfer of unit work after impasse on transfer of unit work to Ees outside unit, a mandatory subject of bargaining on which impasse is allowed)

6050-9000 Most favored nations clause

Food & Commercial Workers, Local 274 (Millco, Inc.) **279 NLRB No. 026**

[E's contention that U bargained in bad faith by not including most-favored-nations clause in final ratified contract, rejected and U's refusal to include such clause not violative, where such clause was never part of E's last and final offer to U, which was accepted, and issue of clause came up only after E realized that U had negotiated lower wages with a competitor, a fact not indicating mistake or fraud]

6067 ACTS CONSTITUTING REFUSAL TO BARGAIN OR INDICATING BAD FAITH

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**

(E did not unlawfully refuse to recognize U nor unlawfully withdraw recognition from U, where E's statements at meeting with U did not commit E to accord recognition to U; rather, E conditioned recognition by explicitly telling U representatives that he would have to take document back to E's board of directors for approval; at the time parties were not seeking to negotiate substantive terms of agreement but were merely negotiating regarding recognition of U and providing U with means of monitoring E's financial status to determine when substantive negotiations would become feasible)

6067-0100 Generally

Hedaya Brothers, Inc. **277 NLRB No. 093**

(in determining whether a party is bargaining in bad faith, Bd looks to totality of circumstances in which bargaining took place. Thus, Bd looks not only at parties' behavior at the bargaining table, but also to conduct away from the table that may affect negotiations)

6067-0150 Good faith is question of fact for Board to determine

6067-0150-8300 Union animus not prerequisite to finding of lack of good faith

Westinghouse Electric Corporation **278 NLRB No. 061**

[fact E's unilateral mid-term changes in Ees' terms and conditions of employment were prompted by economic rather than discriminatory considerations is immaterial if E did not bargain about those changes. Defense that refusal to bargain did not take place in context of overall subjective, bad faith may be available when charge is violation of Section 8(a)(3) of Act, but it is no defense to 8(a)(5) allegation]

6067-2000 Actions taken to avoid reaching agreement

Landmark Industries, Inc. **JD-(SF)-109-85**

6067-2010 Response to bargaining request

Central Broadcast Company **280 NLRB No. 056**

[E's reply to U demand letter asserting doubt of U's majority status, unlawful refusal to recognize and bargain where U had presented letters signed by seven out of eight unit Ees, the authority of which E did not question]

B & P Trucking, Inc. **279 NLRB No. 092**

[failing to reply to U request for recognition and committing hallmark ULPs including discriminatory shutdown of part of operations and discharge of its Ees, violation]

Watson-Rummell Electric Co. **277 NLRB No. 162**

[E's failure to bargain with U following expiration of contract of multi-E association from which E had timely withdrawn, unlawful, where E failed to bargain on individual basis]

Trucking Water Air Corporation **276 NLRB No. 158**

(successor E's reply to U agent's request to meet and discuss *the situation* that E was a *nonunion company* constituted unlawful refusal to bargain where E was aware that predecessor was unionized)

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC **JD-288-85**

[refusing to bargain about issuance of parking stickers to unit Ees, violation where stickers were indirect remuneration for services and mandatory bargaining subject]

6067-2020 Surface bargaining

Port Plastics, Inc. **279 NLRB No. 050**

[E engaged in bad faith surface bargaining where, prior to U election, E told unit Ees he wouldn't give those *bastards* anything during negotiations, E's proposals at table were not merely tough but sought to ensure U no voice in Ees' terms and conditions of employment i.e., management rights clause gave E absolute authority over all terms and conditions of employment, U was excluded from grievance and seniority provisions and was not permitted to grieve E's wage decisions; further, U demonstrated flexibility in important areas while E was unyielding on all major points]

Reichhold Chemicals, Inc. **277 NLRB No. 073**

(E's insistence on broad management rights and no strike clauses with restrictive grievance provision did not evidence intent to frustrate bargaining

6067-2020—Cont.

process or constitute surface bargaining, but rather lawful hard bargaining, in view of totality of E's conduct where it was willing to meet and bargain with U, attended all scheduled meetings, fulfilled procedural obligations, exchanged proposals and made concessions; nor were away-from-the-table statements by supervisors not involved in negotiations regarding futility of bargaining, all but one of which occured outside of Sec. 10(b) period, sufficient to prove E intent to frustrate bargaining process)

G. Zaffino and Sons, Inc. 275 NLRB No. 067
(no unlawful surface bargaining, where E made various complete contract offers during negotiations, which included wage increases, U security, grievance arbitration procedures, greater health and welfare benefits, notwithstanding contention E's insistence on provision allowing it to subcontract evidenced intention to avoid reaching agreement since subcontracting mandatory subject of bargaining and E may refuse to agree to subcontracting restrictions or insist on right to subcontract)

Roman Iron Works, Inc. 275 NLRB No. 066
(E did not engage in surface bargaining, notwithstanding GC presented some evidence which, in another context, might give rise to *prima facie* inference of surface bargaining where E was engaged in bargaining consistent with its relative strength *vis a vis* U)

United Technologies Corporation 274 NLRB No. 163
(E did not engage in surface bargaining, notwithstanding it had adopted unlawful restriction on distribution of literature and refused to provide U with information relevant to collective bargaining, where *totality* of E's conduct evidenced an intent to reach a mutually satisfactory base for agreement and E's conduct was no more than hard bargaining permitted by the Act)

Rescar, Inc. 274 NLRB No. 001
(E's seeking broad management rights and no-strike clauses and restricted grievance arbitration clause provision, not surface or bad faith bargaining, since E may lawfully seek favorable terms, and Bd's duty is to oversee bargaining process, not judge substance of terms offered; nor was failure to include contractual Ees in profit-sharing plan done in bad faith but in exchange for other terms U desired; finally, E's reducing offer in context of changes in the economy of the industry and parties' relative strengths was merely lawfully taking advantage of E's position)

United Sheetmetal of Arizona, Inc. JD-(SF)-97-85
(E conduct during bargaining of referring to many of U's proposals as illegal, i.e., non-mandatory, refusing to discuss U's proposals when indeed some of them were mandatory subjects and offering overly regressive proposals than previously offered to U in areas such as wages and benefits when there had been no change in E's business to justify the regressive proposals, not violative, where U insisted during negotiations of inclusion of non-mandatory subjects in any final contract, i.e., interest arbitration and supervisory work, thus warranting conclusion that U also bargained in bad faith)

Tectonic Industries, Inc. JD-(NY)-100-84
(E's conduct both at bargaining table and away from it demonstrated that E did not desire to enter into bargaining agreement and its actions were designed to frustrate bargaining process by engaging in surface bargaining, where E made misleading proposals, sought to secure U's acceptance of what it had instituted unilaterally, made untrue statements about its financial condition, withdrew prior offer w/o any legitimate reason for doing so, and made proposal substantially reducing benefits which Ees had gained by U representation)

Achilles Construction Co. JD-(NY)-9-85
(E's conduct found not to be w/o intention of reaching agreement, as alleged; E's delay in furnishing U with Ees' addresses was not related to bargaining obligation; its unilateral wage increase was found independent violation; its insistence on right to subcontract was permissible, as subcontracting was a mandatory bargaining subject; and E's request for significant give-backs from last contract, which had expired seven years before, and rejection of U's offers did not show bad faith)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)
[E did not engage in surface bargaining where E's challenged actions did not point to bad faith, E did not adopt one bargaining position, and E properly did not bargain to impasse, but instead later formulated two-year offer whose terms were w/i reopener's scope; offer was also modified in attempt to reach agreement and such efforts constitute meaningful bargaining]

6067-2030 Dilatory and evasive tactics

6067-2030-0100 Generally

ICI Americas, Inc. JD-328-85
(E's advising U during negotiations that E controlled matter of split in certified unit, when in actuality split was army decision who had contracted work out to E, violative, since E's advice was conscious course of action intending to deceive U; such conduct (of E) was deceptive bargaining with tendency to inhibit process of collective bargaining)

6067-2030-1200 Failure to reply, or delay in replying to request to bargain

Leeds Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014
(although joint E met with U on five occasions in order to negotiate contract for E's Ees, Bd found that joint E failed to bargain in good faith with U, since: (1) E failed to respond to U's first two requests for bargaining; (2) as soon as U requested bargaining E proposed closing one of its facilities; (3) E informed U it was not willing to discuss wages until ALJ issued his decision in prior Bd C case involving one of joint Es and same Ees; and (4) other expressions of joint Es' U animus which frustrated bargaining process)

Crest Floors & Plastics, Inc. 274 NLRB No. 185

Best Cast, Inc. JD-(NY)-1-86
[admitted successor E's failure to answer U's request for bargaining, violation where E failed to prove alleged doubt of U majority status]

Alpine Vending, Inc. JD-(SF)-99-85
(E unlawfully refused to bargain regarding processing of grievance since it failed for 5 months to get down to business of selecting arbitrator, failed to respond to U's request for information relevant to grievance, raised spurious defense that U did not represent majority of Ees; nor was problem limited, as E contended, to deadlock over E's suggestion of bifurcating hearing of grievance (first to determine applicability of contractual time bar; next to hear merits), inasmuch as U was willing to have issue of bifurcation decided by any arbitrator selected; E cited no authority suggesting duty to arbitrate could be conditioned on certain arbitration procedure)

6067-2030-1900 Failure to delegate sufficient authority to bargaining representative

Atlas Signs, Inc. JD-476-84
(E's utilizing negotiator who lacked authority to negotiate agreement and failing to disclose to U that its negotiator had only limited authority to do so, unlawful, where E not only failed to clearly communicate to U negotiator's lack of authority or limits on his authority, but also represented to U that he had such authority including authority to sign contract; moreover, E thereafter permitted negotiator to negotiate w/o independent authority in 7 face-to-face negotiations over period of 4-7 months)

6067-2030-2500 Change in position

Arrow Sash and Door Company 281 NLRB No. 149
[E's withdrawal from tentative agreements and concessions previously reached during negotiations, assertedly because it believed U had sanctioned or condoned sick out engaged in by some Ees thus breaching no strike agreement, unlawful. Under totality of circumstances test in *Farm Boy Restaurants*, 279 NLRB No. 13, where, despite apparent progress in negotiations, E not only withdrew from all agreements and prior concessions, but also cancelled next bargaining session, and extension of bargaining agreement, ceased payments to benefit funds, and implemented new health plan; issue is not whether E acted in good faith, but whether E had good cause]

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077
[E's statement to Ees and U negotiators that it would retract its last contract offer and substitute less desirable one if ees rejected offer and struck was not *economic forecast*. Rather, it was threat of retaliation conditioned on Ees exercising their right to strike and would reasonably tend to interfere with free exercise of Ee rights]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[violation, where E withdrew its agreements and offers as done for retaliation after U had filed new ULP charges against it]

Coastside Scavenger Company 273 NLRB No. 198
(nonagreement is not to be equated to bad faith; change of circumstance (U's strike in instant case) can make withdrawal of *offers* lawful)

David Clements Co., Inc. JD-388-85
[withdrawing from almost every agreement reached including agreements set forth in typewritten document which E had given to U, including agreements as to obligations in case of sale, transfer or merger of facilities, overtime, length of work day and work week, meal and rest periods, paydays, other days off when holidays fall on Sunday, receipt of emergency telephone calls, unalwful]

6067-2030-5000 Behavior in negotiations

Toyota of San Francisco 280 NLRB No. 093
[negotiating by drafting final offers capped by final/final offers which contained less favorable terms than in final offer, or issuing proposals not characterized as final but setting short deadlines for their acceptance and in each case E stated that if offer or final offer, whichever it was, was not accepted then E would impose final/final offer, or less beneficial terms, not good faith bargaining as tactic leaves little room for debate and no room for counteroffers]

6067-2030-5000—Cont.

Fox-Art Theatres, Inc. 278 NLRB No. 115
[E not bargaining in good faith where it flippantly responded to U's offer to reduce its wage demands by a dollar per hour per year by offering to raise its proposal by only a nickel and pattern of unlawful conduct]

Unique Knitting, Inc. JD-(NY)-20-86
[E unlawfully sought to frustrate negotiations where, despite U's requests, E never submitted any counterproposal to revised draft contract submitted by U, and displayed lack of intent to reach contract by failing to meet as scheduled, refusing to submit any counterproposal to U's rejection of particular paragraph proposed by E, and by making new proposals after full agreement appeared imminent]

ICI Americas, Inc. JD-328-85
(E's advising U during negotiations that E controlled matter of split in certified unit, when in actuality split was army decision who had contracted work out to E, violative, since E's advice was conscious course of action intending to deceive U; such conduct (of E) was deceptive bargaining with tendency to inhibit process of collective bargaining)

United Sheetmetal of Arizona, Inc. JD-(SF)-97-85
(E conduct during bargaining of referring to many of U's proposals as illegal, i.e., non-mandatory, refusing to discuss U's proposals when indeed some of them were mandatory subjects and offering overly regressive proposals than previously offered to U in areas such as wages and benefits when there had been no change in E's business to justify the regressive proposals, not violative, where U insisted during negotiations of inclusion of non-mandatory subjects in any final contract, i.e., interest arbitration and supervisory work, thus warranting conclusion that U also bargained in bad faith)

6067-2030-5050 Away from bargaining table

Hyatt Regency New Orleans 281 NLRB No. 042
[fact that during course of negotiations with U E met with Ees at their request and made erroneous statement concerning ratification of contract held not to raise inference of bad faith bargaining in view of E's remedial efforts correcting such error]

Port Plastics, Inc. 279 NLRB No. 050
[E engaged in bad faith surface bargaining where, prior to U election, E told unit Ees he wouldn't give those *bastards* anything during negotiations, E's proposals at table were not merely tough but sought to ensure U no voice in Ees' terms and conditions of employment i.e., management rights clause gave E absolute authority over all terms and conditions of employment, U was excluded from grievance and seniority provisions and was not permitted to grieve E's wage decisions; further, U demonstrated flexibility in important areas while E was unyielding on all major points]

Sonat Marine, Inc. 279 NLRB No. 016
[E's proposing to meet with U outside of bargaining negotiations to provide U with information relating to supervisory status of contested unit Ees, held inadequate to satisfy E's obligation to provide U with information, since, by refusing to discuss subject during actual negotiations, E effectively precluded U from having opportunity to bargain over disputed job classifications]

Hedaya Brothers, Inc. 277 NLRB No. 093
(in determining whether a party is bargaining in bad faith, Bd looks to totality of circumstances in which bargaining took place. Thus, Bd looks not only at parties' behavior at the bargaining table, but also to conduct away from the table that may affect negotiations)

Reichhold Chemicals, Inc. 277 NLRB No. 073
(E's insistence on broad management rights and no strike clauses with restrictive grievance provision did not evidence intent to frustrate bargaining process or constitute surface bargaining, but rather lawful hard bargaining, in view of totality of E's conduct where it was willing to meet and bargain with U, attended all scheduled meetings, fulfilled procedural obligations, exchanged proposals and made concessions; nor were away-from-the-table statements by supervisors not involved in negotiations regarding futility of bargaining, all but one of which occured outside of Sec. 10(b) period, sufficient to prove E intent to frustrate bargaining process)

SCA Services of Georgia, Inc. 275 NLRB No. 120
(E's statements away from bargaining table, although violative of 8(a)(1), found insufficient alone to support finding of bad faith)

Landmark Industries, Inc. JD-(SF)-109-85
(in absence of any evidence of bad faith bargaining, or ambiguous conduct at bargaining table, generally conduct away from bargaining table will not convert otherwise lawful conduct into an 8(a)(5) violation)

6067-2030-7500 Failure to make or keep bargaining conference appointments

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[E cancelling 5 bargaining sessions constituted lack of good faith bargaining]

David Clements Co., Inc. JD-388-85
[E's refusal to meet except on date (religious holiday) unacceptable to U's representative and refusal to meet on at least 20 other dates listed as acceptable by U]

6067-2030-8100 Failure to meet at reasonable times and/or places

SCA Services of Georgia, Inc. 275 NLRB No. 120
(cancellation of one negotiating session in context of numerous other bargaining sessions insufficient to prove failure to meet at reasonable times)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(E's agreeing to meet only after delay of seven weeks between meetings and then meeting only one day because of its representative's busy schedule and breaking off negotiations w/o justification against background of ULPs, violative)

Dane County Dairy, Inc. 273 NLRB No. 209
(refusal to agree to a date for further negotiations, violative; unwillingness to negotiate under compulsion of pending ULP proceeding no defense)

Unique Knitting, Inc. JD-(NY)-20-86
[E unlawfully sought to frustrate negotiations where, despite U's requests, E never submitted any counterproposal to revised draft contract submitted by U, and displayed lack of intent to reach contract by failing to meet as scheduled, refusing to submit any counterproposal to U's rejection of particular paragraph proposed by E, and by making new proposals after full agreement appeared imminent]

6067-2040 Bypassing or otherwise undermining representative

The Setterlin Company JD-56-86
[E's status reports describing current status of bargaining listing contract provisions standing in way of agreement, and supporting E's bargaining position, not violation but privileged under 8(c)]

6067-2040-1000 Employer not precluded from noncoercive communication to employees

Putnam Buick, Inc. 280 NLRB No. 101
[in finding that E did not unlawfully attempt to deal directly with unit Ees concerning changes in terms and conditions of employment, Bd held E's communications with Ees during negotiations with U concerning its proposals to U were noncoercive and privileged under Sec. 8(c) for reasons set forth in *United Technologies Corp.* cases (274 NLRB 163 and 274 NLRB No. 87)]

Putnam Buick, Inc. 280 NLRB No. 101
[Act does not countenance negotiating with individuals when they have bargaining representatives; however, under Sec. 8(c), E is entitled to communicate noncoercively with its unit Ees during negotiations since Ees ought to be fully informed as to all issues relevant to negotiations and parties' positions as to those issues, and Ees are fully capable of evaluating relative merits of those positions for themselves; nonetheless, 8(a)(5) violations will be found if E communications are coercive or invite direct bargaining]

Putnam Buick, Inc. 280 NLRB No. 101
[E's communications with Ees during contract negotiations held not unlawful direct dealing with Ees nor tend to undermine E's representative status, since E acted reasonably in reporting status of negotiations to Ees where, in view of partial Ee strike vote on proposals by already struck members of E association, and in order to avoid confusion and misunderstanding of proposals Ees would be voting on, E informed Ees of specific content of proposals it had already presented to U; and U representative conceded that E was not trying to bargain with Ees]

Putnam Buick, Inc. 280 NLRB No. 101
[E's communications with Ees during contract negotiations held not unlawful direct dealing with Ees nor tend to undermine U's representative status where E's statement, made in context of ongoing negotiations, concerning E contributions to IRA funds for each Ee instead of to U pension fund was implicit suggestion that Ees inform U if they wanted IRA; E was merely giving Ees more detailed explanation of IRA proposal already presented to U; and E's statement concerning strike if his proposals were not accepted acknowledged realistic possibility in view of earlier strike vote by Ees]

Hedaya Brothers, Inc. 277 NLRB No. 093
(E's remarks to Ees before bargaining that E would close rather than deal with U, that it would not sign a contract and that it was better for Ees to work w/o U because they would get same benefits but would not get a raise, reflect an unwillingness to engage in serious collective bargaining and imply that E alone would determine terms and conditions of employment)

United Technologies Corporation 274 NLRB No. 163
(E's numerous communications with Ees concerning reopener negotiations which compared E's wages and benefits with those of local competitors, informed Ees of E's bargaining proposals and criticized U's proposals as unrealistic, held not direct dealing and such communications were protected by 8(c); U initially rejected E's proposal to refrain from publicity and at no time did E disseminate proposals or ideas that were not first submitted to U at bargaining table, further, E has a fundamental right protected by 8(c) to communicate with its Ees concerning its position during bargaining negotiations)

Weisser Optical Company 274 NLRB No. 143
(supervisor's telling Ees during meeting that E could look into several different pension and health plans in the event of decertification, not viola-

6067-2040-1000—Cont.

tive, since Ees were never promised increased benefits where Ees were told there were *no guarantees in life* and E was merely informing Ees of alternatives available to it in event of decertification w/o making reference to the level of benefits under alternative plans; further, such statements did not amount to soliciting Ees to bypass U or individual bargaining since statements were all in reference to what *may* occur subsequently in the absence of U representation)

Southwestern Electric Cooperative, Inc. **274 NLRB No. 135**
(letter to Ees *for their information* that no progress is being made to resolve their grievance because U refused to put grievance in writing - oral grievances were permitted under contract - not unlawful attempt to bypass representative by having Ees put pressure on U to put grievance in writing as letter not coercive, did not suggest Ees take any action, or attempt to make separate deal with Ees)

United Technologies Corporation **274 NLRB No. 087**
(E's communications to Ees publicizing terms of contract offer and stating E's preference of contract options, not violative where E's efforts were undertaken in noncoercive manner, publicity fully acknowledged U's rightful role as Ees' statutory bargaining representative, and E did not seek to achieve elimination of U or otherwise alter bargaining relationship)

Hawthorn Mellody, Inc. **275 NLRB No. 055**
(no unlawful bypassing of U and dealing directly with Ees where E met with Ees for purpose of getting acquainted with E's new general manager and only after Ee raised issue of overtime did E discuss it)

Coastside Scavenger Company **273 NLRB No. 198**
(contention that E's sending different *final offer* letters to Ees prior to economic strike against E was attempt to bypass U and direct dealing with Ees, rejected, since sending and distributing such letter in no way disparaged U or Ees' bargaining representative, was not coercive and amounted to *no more than a legitimate tactic of urging the ees to communicate with their representative, to persuade them to tell their negotiators they wanted them to accept the company's newest offer*)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) **789 F.2d 121 (C.A. 2, Apr. 1986)**
[E's communications with Ees held not direct dealing where information was first given to U, language was non-coercive, and U was consistently acknowledged as legitimate bargaining representative; existing ULPs found herein did not so limit U's bargaining power or coerce workers to abandon U in favor of E as to support finding of direct dealing]

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) **789 F.2d 121 (C.A. 2, Apr. 1986)**
[E's proposal of 3 year contract held not direct dealing where offer was made first to U and then presented to Ees in factually correct, non-coercive language]

6067-2040-2000 Bargaining with other groups of representatives

6067-2040-2033 Employer initiated

Earl C. Smith, Inc. **278 NLRB No. 100**
[bypassing U to deal directly with Ees at meeting E called and U refused to attend, violation]

6067-2040-2067 Employee initiated

Hyatt Regency New Orleans **281 NLRB No. 042**
[fact that during course of negotiations with U E met with Ees at their request and made erroneous statement concerning ratification of contract held not to raise inference of bad faith bargaining in view of E's remedial efforts correcting such error]

6067-2040-4000 Bargaining With Individuals or Offers Thereof

United States Postal Service **281 NLRB No. 138**
[E's settling EEO precomplaint at meeting with Ee. w/o notification to or participation by U, violated Sec. 9(a)'s guarantee of U's right to be present at E's and Ee's adjustment of grievances, where subject matter of EEO precomplaint and grievance which U was responsible for processing were the same]

United States Postal Service **281 NLRB No. 139**
[E's settling EEO claim with Ee w/o affording U opportunity to be present, violation where EEO claim and contract grievance involved same subject matter, for reasons stated in *United Postal Service*, 281 NLRB No. 138]

Five M Coal Corporation d/b/a Two M **281 NLRB No. 078**
[offering Ees individual contracts while contract with U in force, violative]

Springfield Transit Management, Inc. **281 NLRB No. 017**
[successor E's refusing to bargain, bypassing U to deal directly with Ees, and offering them unilateral reduction in wages from those paid by predecessor, violations]

Toyota of San Francisco **280 NLRB No. 093**
[E suggesting to Ee that if Ees forfeited coverage under U health and welfare programs, E would open IRAs, unlawful, since amounted to attempt to deal directly with Ees, thereby bypassing U, even if it did not constitute unlawful *promise* of benefit]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. **279 NLRB No. 073**
[violation, where purchaser held alter ego of seller E which had timely withdrawn from multi-E bargaining by offering Ees different terms and conditions of employment from those in bargaining agreement w/o bargaining with U, since still bound by agreement in effect and even if not bound by agreement, E must bargain with U rather than directly with Ees]

Ne Di Construction Co., Inc. **279 NLRB No. 071**
[offering individual wage increases outside scope of contract wages, violation]

Hedaya Brothers, Inc. **277 NLRB No. 093**
(E's remarks to Ees before bargaining that E would close rather than deal with U, that it would not sign a contract and that it was better for Ees to work w/o U because they would get same benefits but would not get a raise, reflect an unwillingness to engage in serious collective bargaining and imply that E alone would determine terms and conditions of employment)

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(E's bypassing U and dealing directly with Ees of its *alter ego* E by offering them employment with different wages and terms and conditions of employment than *alter ego* E's contract with U, violation)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(dealing with Ee spokesman who was member of U bargaining committee rather than U where Ees requested change in shift starting time, violative)

Weldment Corporation and/or R. C. White Co., and/or Ralph C. White Jr., d/b/a Yankee Roller Guide **275 NLRB No. 200**
(offering to transfer Ees to non-U shop)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(E informing Ees that E was suffering from serious financial problems, asking Ees for suggestions as to how E could save money, urging Ees to persuade U to *move off a dime* on E's bargaining proposals, and informed Ees that if Ees went non-U E would give pay increases, equal or better health benefits than U offering, financial assistance to Ees who wished to purchase own trucks, but if U refused to accept E's proposals, E would operate non-U, unlawful; statements not predictions of economic consequences protected by Sec. 8(c) inasmuch as E did not substantiate financial losses and in view of other contemporaneous illegal statements)

Forest Grove Lumber Company **275 NLRB No. 144**
(vice-president informing strikers they ought to listen to company, not just to U, stating that company needed economic concessions, and asking strikers what it would take to get contract signed, unlawful, notwithstanding there were no threats or promises of benefits)

Kansas National Education Association **275 NLRB No. 092**
(E's direct negotiation with individual Ee regarding exchange of positions with another Ee, and its conditioning exchange upon Ee's acceptance of probationary status, not unlawful, where such action was privileged under contract's specific provision addressing Ees' exchange of positions and stating that such exchange is contingent upon E's approval)

Kansas National Education Association **275 NLRB No. 092**
(E's implementing position transfer agreement with individual Ee, which allegedly was contrary to U contract, not unlawful, since U acquesced in transfer as evidenced by U's receipt of notice of proposed transfer agreement approximately month before it became effective, U's actions in promoting transfer, and its failure to request bargaining on issue until month after agreement was implemented)

Kansas National Education Association **275 NLRB No. 092**
(E's dealing directly with individual Ee in negotiating position transfer agreement with Ee, unlawful; U's failure to timely request bargaining with E over issue did not excuse such direct dealing with Ee which involves lack of consent by bargaining representative to E's contacts with Ees and, here, U had no knowledge of E's contacts with Ee until after they were made)

Bozzuto's, Inc. **275 NLRB No. 056**
(bypassing U, dealing directly with Ees, and unilaterally changing payment structure for Ees assigned weekend overtime work, w/o giving U prior notice and affording it opportunity to bargain, violative)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's president informing Ees he would be willing to subcontract with them if U were decertified, showing Ee decertification ptn and seeking to induce Ee to decertify U, unlawful, notwithstanding Ee originated idea of subcontracting)

6067-2040-4000—Cont.

United Technologies Corporation **274 NLRB No. 163**
(E's conducting a wage and benefit survey prior to wage reopener negotiations w/o notice to or bargaining with U and refusing to permit U to attend survey interviews, held not bypassing or direct dealing, since purpose of survey was merely to determine whether E personnel policies and benefit programs were being properly communicated to Ees where Ees were asked if they were aware of how benefits were calculated, if they felt they were properly compensated and on the whole, questions merely solicited Ee sentiment on benefits outside the scope of upcoming reopener negotiations; hence, E did not seek to arm itself for upcoming negotiations)

Weisser Optical Company **274 NLRB No. 143**
(supervisor's telling Ees during meeting that E could look into several different pension and health plans in the event of decertification, not violative, since Ees were never promised increased benefits where Ees were told there were *no guarantees in life* and E was merely informing Ees of alternatives available to it in event of decertification w/o making reference to the level of benefits under alternative plans; further, such statements did not amount to soliciting Ees to bypass U or individual bargaining since statements were all in reference to what *may* occur subsequently in the absence of U representation)

Hawthorn Mellody, Inc. **275 NLRB No. 055**
(no unlawful bypassing of U and dealing directly with Ees where E met with Ees for purpose of getting acquainted with E's new general manager and only after Ee raised issue of overtime did E discuss it)

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC **JD-288-85**
[directly advising Ees of change in merit award criteria before consulting with U, violation]

American Federation of State, County & Municipal Employees **JD-131-85**
(violation where E bypassed U and dealt directly with two grievants to circumvent arbitrator's award by offering one grievant a guarantee of relief from whatever had caused her to bid on the position and the other grievant promotion to a better-paid job in his career path and to secure their written bid waiver as to computer operator position; grievants' bid waiver and alleged accord and satisfaction of grievance thereby, no defense)

M.F. Enterprises, Inc. d/b/a Gopher Restaurant **JD-417-84**
(E proposing to Ees that they enter into collective bargaining agreement with E, apart from U representation, unlawful)

Ace Hardware Corporation **JD-(SF)-218-84**
(violation, where supervisors at E's request asked Ees how they felt towards concessions in regard to wages and benefits, and indicated concessions were necessary if E were to remain open, rather than dealing with U)

N.L.R.B. v. Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **785 F.2d 46 (C.A. 2, Mar. 1986)**
[successor E's bypassing U and bargaining individually with predecessor's Ees by offering them money to quit their jobs, violation]

6067-2040-5000 Bargain with local where international certified or constitutes duly selected representative

The Rath Packing Company **275 NLRB No. 042**
(bypassing international U as exclusive bargaining representative of its unit Ees and dealing directly with its Ees and local U, violative as International revoked any authority local may have had to bargain with E. Assuming, arguendo, local had limited authority to bargain, it exceeded its authority by agreeing to larger deferrals than original contract called for)

6067-2040-7000 Recognition of minority union

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. **282 NLRB No. 001**
[refusal to recognize incumbent U as representative of newly hired Ees, violation where Ees were accreted to existing unit, incumbent U was only U interested in representing Ees in light of disclaimer of interest by assisted U that GC had recognized]

6067-2040-8000 Undermining authority of representative

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's president stating he would not sign new contract with U since could not then compete with non-U manufacturers, and if he signed U contract result would be closing plant doors, unlawful, since comments not limited to consequences of agreeing to any particular contract or contract language, rather in context of bypassing U, he implied that any agreement with U would cause him to close business)

M.F. Enterprises, Inc. d/b/a Gopher Restaurant **JD-417-84**
(E offering to pay Ees exactly same as what they were receiving plus amount equal to health and welfare and pension fund payments required by bargaining contract, unlawful)

6067-2040-8012 Implementing terms of contract other than that of bargaining representative

Koenig Iron Works, Inc. **276 NLRB No. 083**
(implementing unilateral wage increase called for under terms of contract that Bd had abrogated as violative of Sec. 8(a)(2), unlawful, as Bd will not allow E to resurrect unlawful contract since this would frustrate prior Bd order and would undermine Ees' right to be represented by present bargaining representative)

6067-2040-8025 Refusal to recognize employee representative of union

Opelika Foundry **281 NLRB No. 121**
[E's refusal to meet with grievance committee which included individual as member, and subsequently discharging individual allegedly because of his U activity, not unlawful, since individual held to be supervisor]

Airport Distributors, Inc. **280 NLRB No. 091**
[E's refusal to recognize U-designated Ee as steward and to accept steward's proffered grievances unlawful; while E's conduct, in absence of other unlawful acts, might be dismissed as temporary release of pent-up emotional frustration in having to deal with U, E's conduct constituted breach of its bargaining obligation in view of E's extensive coercive and retaliatory conduct against Ees, including discrimination against U steward]

Toyota of San Francisco **280 NLRB No. 093**
[E suggesting to Ee that if Ees forfeited coverage under U health and welfare programs, E would open IRAs, unlawful, since amounted to attempt to deal directly with Ees, thereby bypassing U, even if it did not constitute unlawful *promise* of benefit]

6067-2040-8029 Bargaining directly with employees, or insistence on same

Otten Truck Line; United Star Express, Inc.; and Claude Hayes, an Individual **282 NLRB No. 073**
[E who was held alter ego successor to debtor-in-possession violated Act by dealing directly with Ees and instituting unilateral changes notwithstanding debtor-in-possession repudiated contract. (Modifications of *Bildisco* contained in Bankruptcy Amendments and Federal Judgeship Act of 1984 not applicable to instant case)]

Transport Service Company **282 NLRB No. 011**
[E's meeting directly with its Ees w/o notice to U to convince unit members to accept mid-term concessions under contract, violation]

United States Postal Service **281 NLRB No. 138**
[E's settling EEO precomplaint at meeting with Ee, w/o notification to or participation by U, violated Sec. 9(a)'s guarantee of U's right to be present at E's and Ee's adjustment of grievances, where subject matter of EEO precomplaint and grievance which U was responsible for processing were the same]

United States Postal Service **281 NLRB No. 139**
[E's settling EEO claim with Ee w/o affording U opportunity to be present, violation where EEO claim and contract grievance involved same subject matter, for reasons stated in *United Postal Service*, 281 NLRB No. 138]

United States Postal Service **281 NLRB No. 032**
[bypassing U and dealing directly with Ee by unilaterally adjusting Ee's grievance concerning proposed dismissal of Ee, unlawful, where at time E resolved grievance, while ignoring Ee's request to be accompanied by U representative, E knew that Ee's grievance was pending and that Ee wanted U agent to be present; and Veterans' Preference Act, permitting what would be ULP under Act by giving Ee right to meet with E for discussing problem before being dismissed, did not prevail over Ee's rights under Act]

Hiynota Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 009**
[direct dealing with Ees concerning terms and conditions of employment, not unlawful, where E, as debtor-in-possession, rightfully sought unilateral substitution of modified terms and conditions of employment and had proposed to U same terms subsequently offered to Ees; U's refusal to negotiate until its erroneous belief that E was bound by contract, abrogated by bankruptcy ct, was disproved or substantiated was in essence waiver of U's right to object to imposition of new terms and conditions of employment; and E was under severe time constraints to resume operations]

Putnam Buick, Inc. **280 NLRB No. 101**
[in finding that E did not unlawfully attempt to deal directly with unit Ees concerning changes in terms and conditions of employment, Bd held E's communications with Ees during negotiations with U concerning its proposals to U were noncoercive and privileged under Sec. 8(c) for reasons set forth in *United Technologies Corp.* cases (274 NLRB 163 and 274 NLRB No. 87)]

Putnam Buick, Inc. **280 NLRB No. 101**
[Act does not countenance negotiating with individuals when they have bargaining representatives; however, under Sec. 8(c), E is entitled to communicate noncoercively with its unit Ees during negotiations since Ees ought to be fully informed as to all issues relevant to negotiations and parties' positions as to those issues, and Ees are fully capable of evaluating relative merits of those positions for themselves; nonetheless, 8(a)(5) violations will be found if E communications are coercive or invite direct bargaining]

6067-2040-8029—Cont.

Putnam Buick, Inc. **280 NLRB No. 101**
[E's communications with Ees during contract negotiations held not unlawful direct dealing with Ees nor tend to undermine E's representative status, since E acted reasonably in reporting status of negotiations to Ees where, in view of partial Ee strike vote on proposals by already struck members of E association, and in order to avoid confusion and misunderstanding of proposals Ees would be voting on, E informed Ees of specific content of proposals it had already presented to U; and U representative conceded that E was not trying to bargain with Ees]

Putnam Buick, Inc. **280 NLRB No. 101**
[E's communications with Ees during contract negotiations held not unlawful direct dealing with Ees nor tend to undermine U's representative status where E's statement, made in context of ongoing negotiations concerning E contributions to IRA funds for each Ee instead of to U pension fund was implicit suggestion that Ees inform U if they wanted IRA, E was merely giving Ees more detailed explanation of IRA proposal already presented to U; and E's statement concerning strike if his proposals were not accepted acknowledged resalistic possibility in view of earlier strike vote by Ees]

Earl C. Smith, Inc. **278 NLRB No. 100**
[bypassing U to deal directly with Ees at meeting E called and U refused to attend, violation]

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **273 NLRB No. 189**
(successor E's dealing with Ees by communicating offers of settlement of their status as Ees, negotiating severance pay, and ultimately reaching agreements with all Ees, attempting to make deal with agent who was member of bargaining unit, violative where E did not notify U or obtain any authorization from U to do so)

Phillip A. Hunt Corporation **JD-14-86**
[bypassing U and dealing directly with unit Ees at new plant by negotiating with them terms and conditions of employment, not violative where U was not exclusive bargaining representative of Ees at new plant]

Bronal Electric, Inc. **JD-(NY)-21-84**
[violation, where E after receiving U's demand for recognition and bargaining, asked Ees *what they wanted*, solicited grievances, promised Ees substantial improvements in working conditions, including wage increases and insurance, if they would withdraw support from U, then threatened to close rather than deal with U]

Bowen Enterprises, Inc., d/b/a Indiana Shop 'N Save **JD-275-85**
[E unlawfully bypassed and undermined U's authority by dealing directly with Ees at meetings at which E presented new proposal not offered to U, notwithstanding E's contention that either U representatives or Ee committee members were present at respective meetings, where E, rather than negotiating with U representatives or committee, presented proposal to all Ees; at claimed meeting with committee E had invited all Ees, and not just committee, to be present; and in any event, U informed both E and committee that latter was not authorized to negotiate on behalf of Ees]

Bowen Enterprises, Inc., d/b/a Indiana Shop 'N Save **JD-275-85**
[E unlawfully bypassed and undermined U's authority by dealing directly with Ees at meetings at which E presented new proposals embodying more favorable terms and conditions than those offered to U, where E scheduled meetings in order to put pressure upon U, asked Ees to vote on proposals, and told them it was their decision and not U's; and despite E's disclaimer of any interest in direct bargaining with Ees, E admittedly presented and explained new proposals to Ees, which actions are very substance of collective bargaining]

Gallati Cartage of Michigan, Inc. **JD-311-85**
(demanding Ees' consent to reductions in wages, rates of pay and benefit levels w/o prior notice to or good faith bargaining with U, violative)

Greater Detroit Heating and Cooling, Inc. **JD-116-85**
(bypassing U and dealing directly with Ees, violative)

6067-2040-8037 Refusal to recognize individual designated as representative of union

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat **281 NLRB No. 030**
[refusing to meet and bargain with international U's representative designated as U's representative for processing grievances at grievance step 2 meeting, violation]

6067-2040-8044 Use nonbargaining unit independent contractors

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's president informing Ees he would be willing to subcontract with them if U were decerrtified, showing Ee decertification ptn and seeking to induce Ee to decertify U, unlawful, notwithstanding Ee originated idea of subcontracting)

6067-2040-8050 Promotion of repudiation

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(E informing Ees that E was suffering from serious financial problems, asking Ees for suggestions as to how E could save money, urging Ees to persuade U to *move off a dime* on E's bargaining proposals, and informed Ees that if Ees went non-U E would give pay increases, equal or better health benefits than U offering, financial assistance to Ees who wished to purchase own trucks, but if U refused to accept E's proposals, E would operate non-U, unlawful; statements not predictions of economic consequences protected by Sec. 8(c) inasmuch as E did not substantiate financial losses and in view of other contemporaneous illegal statements)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's president stating he would not sign new contract with U since could not then compete with non-U manufacturers, and if he signed U contract result would be closing plant doors, unlawful, since comments not limited to consequences of agreeing to any particular contract or contract language, rather in context of bypassing U, he implied that any agreement with U would cause him to close business)

Weisser Optical Company **274 NLRB No. 143**
(E's refusal to provide U with relevant and necessary information, assertedly because of good-faith doubt of U's majority status, violative, where E unlawfully encouraged Ees to sponsor decertification ptn thus tainting ptn and E's good-faith doubt)

Southwestern Electric Cooperative, Inc. **274 NLRB No. 135**
(letter to Ees *for their information* that no progress is being made to resolve their grievance because U refused to put grievance in writing - oral grievances were permitted under contract - not unlawful attempt to bypass representative by having Ees put pressure on U to put grievance in writing as letter not coercive, did not suggest Ees take any action, or attempt to make separate deal with Ees)

M.F. Enterprises, Inc. d/b/a Gopher Restaurant **JD-417-84**
(E proposing to Ees that they enter into collective bargaining agreement with E, apart from U representation, unlawful)

6067-2040-8067 Restricting bargaining representative's access to employees

Fashion Furniture Mfg., Inc. **279 NLRB No. 093**
[E's denying U access to E's facility for purposes of policing contract matters and investigation of grievances, violative]

6067-2040-8075 Denying bargaining representative access to employer's premises

NDK Corporation **278 NLRB No. 151**
[E's ejection from its facility of U agents whose access was specifically guaranteed by contract, assertedly because of U's own breach in authorizing unlawful strike, violative, where there was insufficient evidence to establish any unlawful activity by U, and even assuming credibility of testimony adverse to U, business agent's isolated remark to single Ee did not begin to prove that U attempted to instigate unlawful work stoppage]

National Broadcasting Company, Inc. **276 NLRB No. 017**
(applying balancing test enunciated in *Holyoke Water Power Co.* case, Bd held that E's effective denial of access to non-Ee U representative at E's remote facility engaged in broadcasting golf tournament was unlawful, where U needed access to E's facility in order to observe operations for purpose of policing and enforcing its bargaining agreement with E; providing such access would not result in any interference with E's operations; and, on balance, representational interests of Ees outweighed E's property rights which must yield to extent necessary to accomodate such interests)

N.L.R.B. v. National Broadcasting Company, Inc. (Directors Guild of America, Inc.) **798 F.2d 75 (C.A. 2, Aug. 1986)**
[denying U access to remote broadcasting facilities at reasonable time and places, violation where grant of access was past practice, and U's search for information as to whether non-unit Ees were doing unit work was relevant to pending arbitration and continued contract enforcement, and firsthand observation of crew at work was only alternative sufficient to serve U's legitimate purpose; Bd's application of test balancing E's property right against Ees' representational right was rationally connected with NLRA and resolved parties' competing interests]

6067-2050 Commission of ULP

ICI Americas, Inc. **JD-328-85**
(bargaining for change in scope of unit is *nonmandatory* subject of bargaining; and insistence to bargaining impasse on modification in scope of bargaining unit, whether established by Bd certification or by voluntary recognition, violative)

6067-2050-0700 **ULP having only minimal impact on board's election machinery**

Uniontown Hospital Association **277 NLRB No. 144**
(contrary to ALJ, E's failure to respond to U's request for recognition and its unilateral change not found violations where E's ULPs were found herein not to preclude fair election)

6067-2050-1000 Assisting favored union

Roundup Company d/b/a Meyer's Cafe & Konditorei, A Wholly Owned Subsidiary of Fred Meyer, Inc. **282 NLRB No. 001**
[refusal to recognize incumbent U as representative of newly hired Ees, violation where Ees were accreted to existing unit, incumbent U was only U interested in representing Ees in light of disclaimer of interest by assisted U that GC had recognized]

Koenig Iron Works, Inc. **276 NLRB No. 083**
(implementing unilateral wage increase called for under terms of contract that Bd had abrogated as violative of Sec. 8(a)(2), unlawful, as Bd will not allow E to resurrect unlawful contract since this would frustrate prior Bd order and would undermine Ees' right to be represented by present bargaining representative)

6067-2050-1400 Antiunion campaign or actions precluding fair election

B & P Trucking, Inc. **279 NLRB No. 092**
[failing to reply to U request for recognition and committing hallmark ULPs including discriminatory shutdown of part of operations and discharge of its Ees, violation]

Robert W. Wise, d/b/a Robert W. Wise Cabinetry **JD-(SF)-157-85**

6067-2050-3500 Bargaining directly with employees

Transport Service Company **282 NLRB No. 011**
[E's meeting directly with its Ees w/o notice to U to convince unit members to accept mid-term concessions under contract, violation]

Cascade Painting Company, Inc. **277 NLRB No. 103**

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(E informing Ees that E was suffering from serious financial problems, asking Ees for suggestions as to how E could save money, urging Ees to persuade U to *move off a dime* on E's bargaining proposals, and informed Ees that if Ees went non-U E would give pay increases, equal or better health benefits than U offering, financial assistance to Ees who wished to purchase own trucks, but if U refused to accept E's proposals, E would operate non-U, unlawful; statements not predictions of economic consequences protected by Sec. 8(c) inasmuch as E did not substantiate financial losses and in view of other contemporaneous illegal statements)

Bozzuto's, Inc. **275 NLRB No. 056**
(bypassing U, dealing directly with Ees, and unilaterally changing payment structure for Ees assigned weekend overtime work, w/o giving U prior notice and affording it opportunity to bargain, violative)

Coastside Scavenger Company **273 NLRB No. 198**
(contention that E's sending different *final offer* letters to Ees prior to economic strike against E was attempt to bypass U and direct dealing with Ees, rejected, since sending and distributing such letter in no way disparaged U or Ees' bargaining representative, was not coercive and amounted to *no more than a legitimate tactic of urging the ees to communicate with their representative, to persuade them to tell their negotiators they wanted them to accept the company's newest offer*)

Long Island University **JD-263-86**
[no direct dealing with Ees where E implemented wage proposals agreed to by U]

Valley Parcel Service Inc. and Valley Parcel Service, Inc., Debtor In Possession **JD-(SF)-74-85**

Gallati Cartage of Michigan, Inc. **JD-311-85**
(demanding Ees' consent to reductions in wages, rates of pay and benefit levels w/o prior notice to or good faith bargaining with U, violative)

6067-2050-4200 Discrimination or threat thereof

Johns-Manville Sales Corporation **282 NLRB No. 040**
[E possessed good-faith doubt of U majority based on ptn signed by majority of Ees requesting decert election when it withdrew recognition from certified U, notwithstanding E committed ULP when it laid off Ees w/o following seniority where ULP committed 8 months before withdrawal, involved only 3 Ees, E advanced legitimate business reason for not following seniority and E continued to bargain with U until withdrawal

6067-2050-4900 Statements

Hedaya Brothers, Inc. **277 NLRB No. 093**
(E's remarks to Ees before bargaining that E would close rather than deal with U, that it would not sign a contract and that it was better for Ees to work w/o U because they would get same benefits but would not get a raise, reflect an unwillingness to engage in serious collective bargaining and imply that E alone would determine terms and conditions of employment)

Hedaya Brothers, Inc. **277 NLRB No. 093**
(totality of E's conduct demonstrated it bargained in bad faith with U where E made statements to Ees before negotiations violative of 8(a)(1) reflecting an unwillingness to engage in serious collective bargaining, E's proposals to U to freeze or reduce wages was consistent with statements to Ees that, if they rejected U, benefits would be the same and implying a reduction otherwise, E made no counterproposals except to eliminate all vacations and most holidays and did not move from position until final negotiating session and E unilaterally eliminated holidays before impasse which conduct clearly indicated bad faith)

Reichhold Chemicals, Inc. **277 NLRB No. 073**
(E's insistence on broad management rights and no strike clauses with restrictive grievance provision did not evidence intent to frustrate bargaining process or constitute surface bargaining, but rather lawful hard bargaining, in view of totality of E's conduct where it was willing to meet and bargain with U, attended all scheduled meetings, fulfilled procedural obligations, exchanged proposals and made concessions; nor were away-from-the-table statements by supervisors not involved in negotiations regarding futility of bargaining, all but one of which occured outside of Sec. 10(b) period, sufficient to prove E intent to frustrate bargaining process)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(statements of E's president that he intended to go nonU and that he would meet with U representatives but would not sign a contract showed closed mind precluding good faith bargaining)

6067-2050-7000 Lockout or threat thereof

Union Boiler Company **281 NLRB No. 148**
[E's insistence that U allow it to work Ees 10 hours a day w/o overtime as was contractually mandated, and refusing to employ Ees when they refused to work under those conditions, violative and such conduct was an illegal lockout of Ees]

6067-2060 Proposals and demands

6067-2060-1200 Made without adequate explanation or justification

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC **JD-288-85**
[refusing to agree to U's proposal that Ees keep same benefits as previously, because Ees had rejected these benefits by voting U in, violation]

United Sheetmetal of Arizona, Inc. **JD-(SF)-97-85**
(E refusing to supply U with information during bargaining to support insistence on regressive wage proposals, violative and no impasse reached, where E repeatedly bemoaned fact during negotiations that it could not compete with non-U contractors and thus was making a *poverty plea* and its refusal to provide data to U in response to U request for supporting data not only is unlawful but prevents finding of bonafide impasse subsequent to U's request for information)

6067-2060-1600 Less favorable working conditions

Tectonic Industries, Inc. **JD-(NY)-100-84**
(E's contract proposals assertedly made because of adverse economic conditions held regressive and unlawful, where E's proposals in many areas reduced provisions of preceding contract and prior proposals during contract negotiations, and E admitted that it was now in better financial condition than it had been before)

6067-2060-1700 Less favorable wages and benefits

Walter A. Zlogar, Inc. **278 NLRB No. 149**
[base wage rate proposed in E's last offer not so low as to be meaningless and perhaps above rate U allowed competitor operating outside city to pay; nor did E's proposed dispute settlement provision exclude wage determinations from settlement procedure]

Walter A. Zlogar, Inc. **278 NLRB No. 149**
[E's proposed refusal to pay benefits, not manifestation of bad faith]

Fox-Art Theatres, Inc. **278 NLRB No. 115**
[E not bargaining in good faith where it flippantly responded to U's offer to reduce its wage demands by a dollar per hour per year by offering to raise its proposal by only a nickel and pattern of unlawful conduct]

Landmark Industries, Inc. **JD-(SF)-109-85**
(mere fact that proposal (E's modification of peicework provision during contract neogitations) is unacceptable to U is insufficient to establish bad faith if E's insistence is genuinely and sincerely held. Piecework rate change was of prime importance to E and U made not even slightest concession on this issue and any concessions U made on other issues was attempt to avoid modifications to piecework rate)

Ace Hardware Corporation **JD-(SF)-218-84**
(violation, where supervisors at E's request asked Ees how they felt towards concessions in regard to wages and benefits, and indicated concessions were necessary if E were to remain open, rather than dealing with U)

Local 259, Auto Workers v. N.L.R.B. **776 F.2d 23 (C.A. 2, Oct. 1985)**
[Bd well w/i its power in finding *no unlawful refusal to bargain* when E's conduct viewed in its totality, demonstrated *substantial evidence* that (E's) wage offers to replacement workers were not substantially different from, or greater than, those which E had propsed during its negotiations with U]

6067-2060-1800 Less favorable proposals than previously offered

Hyatt Regency New Orleans **281 NLRB No. 042**
[E's counteroffer held not evidence of bad faith bargaining even though it was made 4-1/2 months after preceding proposal had been withdrawn and it represented more demanding bargaining position than withdrawn proposal;

6067-2060-1800—Cont.

party which withdraws proposal is under no obligation to offer another proposal; and justification for more demanding offer was not so illogical in view of waning support for U and its desire to sign contract at earliest possible moment]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**

[E's statement to Ees and U negotiators that it would retract its last contract offer and substitute less desirable one if ees rejected offer and struck was not *economic forecast*. Rather, it was threat of retaliation conditioned on Ees exercising their right to strike and would reasonably tend to interfere with free exercise of Ee rights]

Toyota of San Francisco **280 NLRB No. 093**

[negotiating by drafting final offers capped by final/final offers which contained less favorable terms than in final offer, or issuing proposals not characterized as final but setting short deadlines for their acceptance and in each case E stated that if offer or final offer, whichever it was, was not accepted then E would impose final/final offer, or less beneficial terms, not good faith bargaining as tactic leaves little room for debate and no room for counteroffers]

Rescar, Inc. **274 NLRB No. 001**

(E's seeking broad management rights and no-strike clauses and restricted grievance arbitration clause provision, not surface or bad faith bargaining, since E may lawfully seek favorable terms, and Bd's duty is to oversee bargaining process, not judge substance of terms offered; nor was failure to include contractual Ees in profit-sharing plan done in bad faith but in exchange for other terms U desired; finally, E's reducing offer in context of changes in the economy of the industry and parties' relative strengths was merely lawfully taking advantage of E's position)

United Sheetmetal of Arizona, Inc. **JD-(SF)-97-85**

(E conduct during bargaining of referring to many of U's proposals as illegal, i.e., non-mandatory, refusing to discuss U's proposals when indeed some of them were mandatory subjects and offering overly regressive proposals than previously offered to U in areas such as wages and benefits when there had been no change in E's business to justify the regressive proposals, not violative, where U insisted during negotiations of inclusion of non-mandatory subjects in any final contract, i.e., interest arbitration and supervisory work, thus warranting conclusion that U also bargained in bad faith)

6067-2060-2700 Initial and final proposals essentially the same

Schaeff Namco, Inc. **280 NLRB No. 150**

[E did not fail to bargain in good faith during 14 day wage reopener period, notwithstanding parties had only two short negotiating sessions during period, and E failed to modify its proposals, where E offered to extend negotiations and consider wage build back should its wage cut proposal be implemented, and insistence on bargaining position is not itself refusal to bargain in good faith]

Port Plastics, Inc. **279 NLRB No. 050**

[E engaged in bad faith surface bargaining where, prior to U election, E told unit Ees he wouldn't give those *bastards* anything during negotiations, E's proposals at table were not merely tough but sought to ensure U no voice in Ees' terms and conditions of employment i.e., management rights clause gave E absolute authority over all terms and conditions of employment, U was excluded from grievance and seniority provisions and was not permitted to grieve E's wage decisions; further, U demonstrated flexibility in important areas while E was unyielding on all major points]

SCA Services of Georgia, Inc. **275 NLRB No. 120**

(E's presentation of its final position on wages early in negotiations, especially position for wage increase, not proof of bad faith)

6067-2060-3300 Insistence on illegal or unreasonable provisions

Landmark Industries, Inc. **JD-(SF)-109-85**

6067-2060-3315 Refusing to discuss economic issues until noneconomic issues resolved

John Wanamaker Philadelphia **279 NLRB No. 140**

[E's refusing to discuss economic matters with U until all noneconomic matters were resolved, on grounds U had agreed to this in ground rules, violative and such conduct amounted to bad faith bargaining which had effect of unlawfully fragmenting negotiations, where parties had agreed in ground rules stage to *attempt* to settle noneconomic matters before moving on to economic matters]

6067-2060-3317 Discriminatory seniority clause

Boaz Carpet Yarns, Inc. **280 NLRB No. 004**

[E's proposal that eligibility for layoffs, recalls, promotions, transfers, and job bidding be governed, not by strict seniority, but by such criteria as skill and experience, not indicative of bad faith bargaining where U admitted criteria were pertinent considerations]

6067-2060-3322 Prohibition against filing unfair labor practice charges

Reichhold Chemicals, Inc. **277 NLRB No. 073**

(E's seeking waiver of Ees' right to engage in ULP strikes, as part of no-strike clause, and right to seek redress from Bd or other tribunal for discipline imposed under clause on replaced strikers, not unlawful, since Act does not prohibit Us from waiving Ees' right to strike over ULPs; and proposed waiver of replaced strikers right to Bd's processes, absent other evidence, read as permitting only non-discriminatory application, and does not extend to appeals to Bd on other matters; since this waiver merely derivative of waiver of right to strike a mandatory subject of bargaining, it too is mandatory, thus E could insist to impasse on dual waiver)

6067-2060-3331 Job posting and bidding procedures

Tectonic Industries, Inc. **JD-(NY)-100-84**

6067-2060-3365 Right of exclusive hiring hall

Walter A. Zlogar, Inc. **278 NLRB No. 149**

[alleged proposed elimination of referral clause, not violation, since refusal to include referral clause is not unlawful, and E had always had complete freedom to hire whomever he wanted]

6067-2060-3375 Union security provisions

Boaz Carpet Yarns, Inc. **280 NLRB No. 004**

[E's stand on check-off provision, not indicative of bad faith bargaining where E would allow U access to plant to collect dues but opposed any provision not allowing Ees' revocation of checkoff at any time, and where U had negotiated similar term in contract with predecessor]

American Threat Company **274 NLRB No. 164**

(no violation, where E during negotiations for new contract insisted to impasse that dues check off provision be deleted from bargaining agreement to preclude E knowledge of Ees' U membership in view of large number of grievances filed by Ees alleging discrimination against U members, since E could not be forced to yield to particular provision advanced by U, and E's refusal to agree to provision did not breach duty to bargain, nor did E condition agreement to continuation of checkoff provision on guarantee protected activities would cease; *Markle Mfg. Co* 239 NLRB 1353, revised in part)

Tectonic Industries, Inc. **JD-(NY)-100-84**

(E's contract proposal to eliminate or substantially modify U security clause held *predictably unacceptable*; cts and Bd have held that they will consider reasonableness of proposal made by E in course of bargaining, and that they will not be blinded by surface motions of bargaining)

6067-2060-3385 Right of union access to plant

Landhill Press, Inc., and Rotary Business Systems, Inc., its Alter Ego and Successor **282 NLRB No. 058**

[E's refusal to allow U representatives to speak to Ees in plant, violative, notwithstanding representatives were allowed to speak to Ees individually in owner's office]

Holyoke Water Power Company **273 NLRB No. 168**

(Bd will no longer treat request for access as request for information, but instead, will balance E's property rights against Ees' right to proper representation in reaching decision of allowing access and when access granted, it will be limited to reasonable periods so that U can fulfill its representation duties w/o unwarranted interruption of E's operations)

6067-2060-3392 Work jurisdiction clause

Walter A. Zlogar, Inc. **278 NLRB No. 149**

[E's demand that it be able to assign work w/o jurisdictional lines on $250,000 contract, insufficient to show bad faith]

6067-2060-4700 Change status of employees to those of independent contractors

Engineered Control Systems, Inc. **274 NLRB No. 191**

(E's president informing Ees he would be willing to subcontract with them if U were decertified, showing Ee decertification ptn and seeking to induce Ee to decertify U, unlawful, notwithstanding Ee originated idea of subcontracting)

6067-2060-5500 Unacceptable proposal to place the onus of rupture on union

Seng Crane & Excavating, Inc. **JD-111-86**

[E's demanding as condition to any further bargaining that evening that U, which had agreed to do so, pay up its prorata share for rent of room used for negotiating sessions, unlawful, since e took approach to frustrate bargaining process where E took position during evening bargaining session that it U did not pay up their share of rent it would have to forego further negotiations that evening knowing U could not come up with payment that evening inasmuch as it would be unable to check with its headquarters after business hours as to the status of payments]

6067-2060-6600 Illegal or unreasonable demands

Public Service Electric and Gas Company **280 NLRB No. 048**

[violation where E sought to modify retroactivity clause of old contract by refusing to agree to pay wage increase in new contract effective on expiration date of old contract unless Ees ratified new contract by expiration date and, as part of its final offer, conditioned agreement to new contract on U's consent to abrogation of retroactivity clause; U's urging Ees to ratify new contract not voluntary consent to modification where U advised Ees at same time that it had filed charge with Bd]

6067-2060-6600—Cont.

John Wanamaker Philadelphia 279 NLRB No. 140
[E's refusing to discuss economic matters with U until all noneconomic matters were resolved, on grounds U had agreed to this in ground rules, violative and such conduct amounted to bad faith bargaining which had effect of unlawfully fragmenting negotiations, where parties had agreed in ground rules stage to *attempt* to settle noneconomic matters before moving on to economic matters]

6067-2060-7700 Right of unilateral modification reserved by employer

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital 282 NLRB No. 010
[E's altering job qualifications for unit positions in education instructor job classification, (E required these Ees to possess a Master's Degree rather than Bachelor of Science in Nursing which had previously been required) not violative, since E was priviledged to make such change unilaterally, by terms of Management Rights clause in expired agreement]

6067-2060-8400 Insistence on management rights clause

Bou; Carpet Yarns, Inc. 280 NLRB No. 004
[E's adherence to demand for broad management-rights clause, not evidence of bad faith bargaining in view of its rejection of compulsory arbitration, checkoff and strikt seniority clauses, as contended, where E explained that clause was broadly drafted to avoid appearance of waiver; further, U did not make counter-proposal until thirteenth bargaining session, and E did not propose no-strike or zipper clause]

Port Plastics, Inc. 279 NLRB No. 050
[E engaged in bad faith surface bargaining where, prior to U election, E told unit Ees he wouldn't give those *bastards* anything during negotiations, E's proposals at table were not merely tough but sought to ensure U no voice in Ees' terms and conditions of employment i.e., management rights clause gave E absolute authority over all terms and conditions of employment, U was excluded from grievance and seniority provisions and was not permitted to grieve E's wage decisions; further, U demonstrated flexibility in important areas while E was unyielding on all major points]

Reichhold Chemicals, Inc. 277 NLRB No. 073
(E's insistence on broad management rights and no strike clauses with restrictive grievance provision did not evidence intent to frustrate bargaining process or constitute surface bargaining, but rather lawful hard bargaining, in view of totality of E's conduct where it was willing to meet and bargain with U, attended all scheduled meetings, fulfilled procedural obligations, exchanged proposals and made concessions; nor were away-from-the-table statements by supervisors not involved in negotiations regarding futility of bargaining, all but one of which occured outside of Sec. 10(b) period, sufficient to prove E intent to frustrate bargaining process)

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC JD-288-85
[insisting to impasse on sole control of wages, not violation where U failed to make counterproposal it had indicated it intended to make]

6067-2060-8800 Insistence on no-strike clause

Reichhold Chemicals, Inc. 277 NLRB No. 073
(E's insistence on broad management rights and no strike clauses with restrictive grievance provision did not evidence intent to frustrate bargaining process or constitute surface bargaining, but rather lawful hard bargaining, in view of totality of E's conduct where it was willing to meet and bargain with U, attended all scheduled meetings, fulfilled procedural obligations, exchanged proposals and made concessions; nor were away-from-the-table statements by supervisors not involved in negotiations regarding futility of bargaining, all but one of which occured outside of Sec. 10(b) period, sufficient to prove E intent to frustrate bargaining process)

Reichhold Chemicals, Inc. 277 NLRB No. 073
(E's seeking waiver of Ees' right to engage in ULP strikes, as part of no-strike clause, and right to seek redress from Bd or other tribunal for discipline imposed under clause on replaced strikers, not unlawful, since Act does not prohibit Us from waiving Ees' right to strike over ULPs; and proposed waiver of replaced strikers right to Bd's processes, absent other evidence, read as permitting only non-discriminatory application, and does not extend to appeals to Bd on other matters; since this waiver merely derivative of waiver of right to strike a mandatory subject of bargaining, it too is mandatory, thus E could insist to impasse on dual waiver)

6067-2060-9400 Withdrawal of proposals

Arrow Sash and Door Company 281 NLRB No. 149
[E's withdrawal from tentative agreements and concessions previously reached during negotiations, assertedly because it believed U had sanctioned or condoned sick out engaged in by some Ees thus breaching no strike agreement, unlawful. Under totality of circumstances test in *Farm Boy Restaurants*, 279 NLRB No. 13, where, despite apparent progress in negotiations, E not only withdrew from all agreements and prior concessions, but also cancelled next bargaining session, and extension of bargaining agreement, ceased payments to benefit funds, and implemented new health plan; issue is not whether E acted in good faith, but whether E had good cause]

Toyota of San Francisco 280 NLRB No. 093
[post strike efforts by U to accept offer made by E on condition there would be no strike were nullity as no offer outstanding upon commencement of strike]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[violation, where E withdrew its agreements and offers as done for retaliation after U had filed new ULP charges against it]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda 279 NLRB No. 089
[E, after U lost strike, withdrawing its previous final proposal and seeking to gain even more favorable terms in agreement, not unlawful, since modifications sought in security provision, health and welfare benefits, and giving management discretion to establish work week and hours, not so regressive as to be sign of bad faith bargaining; further, *once U has lost strike during negotiations for bargaining agreement E can capitalize on its new-found economic strength to retreive some of economic benefits lost in prior contracts w/o violating good faith bargaining provisions of Act*]

Merrell M. Williams; Boy's Restaurant, Inc.; Girl's Restaurant; Jumbo's d/b/a Farm Boy Restaurant; Farm Boy Restaurants Nos. 2 and 3 279 NLRB No. 013
[on reconsideration of its earlier decision reported in 265 NLRB 506, Bd found no violation since no intent to frustrate bargaining process or avoid who had ostentsible authority reaching contract, where E's negotiator made offer to U believing he had authority to do so, but subsequently withdrew offer when it became clear E would not approve proposals, gave reason for doing so, offered to open E's books to U to substantiate reasons, and offered to resume bargaining]

Merrell M. Williams; Boy's Restaurant, Inc.; Girl's Restaurant; Jumbo's d/b/a Farm Boy Restaurant; Farm Boy Restaurants Nos. 2 and 3 279 NLRB No. 013
[*In ruling on allegation that party has failed to bargain in good faith, it is well established that Bd looks to totality of circumstances reflecting party's bargaining frame of mind. Unlike refusal to execute agreed upon contract which is per se violation of Section 8(a)(5) of Act because it demonstrates refusal to acknowledge and abide by fruits of bargaining, withdrawal of tentative agreements reached prior to formation of legally enforceable contract represents only one factor to be considered in determining good faith bargaining*]

Luther Manor Nursing Home 277 NLRB No. 007
(E's unilateral withdrawal of previously offered wage proposal which Bd, in prior case, found had been agreed to and accepted by U, resulting in total effective agreement, unlawful)

Luther Manor Nursing Home 277 NLRB No. 007
(where E had unlawfully withdrawn its wage proposal and thereafter had refused to execute agreed-upon contract with U, E's continuing wage and other proposals, which varied from terms and conditions of employment in agreement, unlawful)

David Clements Co., Inc. JD-388-85
[withdrawing from almost every agreement reached including agreements set forth in typewritten document which E had given to U, including agreements as to obligations in case of sale, transfer or merger of facilities, overtime, length of work day and work week, meal and rest periods, paydays, other days off when holidays fall on Sunday, receipt of emergency telephone calls, unalwful]

15th Avenue Iron Works, Inc. JD-(NY)-141-84
(withdrawal of proposals and previously made agreements in retaliation for U's filing new charges, violative)

6067-2070 Imposing conditions

6067-2070-3300 As to bargaining committee

Southern California Edison Company 274 NLRB No. 167
(E's refusal to conduct grievance meetings with Ees or U officials who wore *Stick Your Retro* button concerning retroactive pay raise during contract negotiations between E and U, violative, since wearing of button protected, and no matter what buttons were being worn, E was not privileged to refuse to meet and deal with U on matters being pursued through grievance arbitration process, at least so long as they did not cause unreasonable disruption (of process))

6067-2070-5000 As to procedure in bargaining sessions

Hutchinson Fruit Company, Inc. 277 NLRB No. 054
(use of tape recorder at grievance meeting held not mandatory subject of bargaining and refusal of E to hold grievance meeting unless tape recorder on, violative. Bd held grievance meeting are similar to contract negotiations in both character and methodology and duty to bargain in good faith applies to both types of meetings)

6067-2070-6700 Conditions outside area of mandatory bargaining

6067-2070-6715 Withdrawal of unfair labor practice charge

6067-2070-6715—Cont.

John Wanamaker Philadelphia 279 NLRB No. 140
[E's refusing to sign any agreement with U until U withdrew ULP charges, violative; further, E's informing Ees it would not sign a contract with U until ULP charges were withdrawn, violative]

6067-2070-6730 Employee ratification

Public Service Electric and Gas Company 280 NLRB No. 048
[violation where E sought to modify retroactivity clause of old contract by refusing to agree to pay wage increase in new contract effective on expiration date of old contract unless Ees ratified new contract by expiration date and, as part of its final offer, conditioned agreement to new contract on U's consent to abrogation of retroactivity clause; U's urging Ees to ratify new contract not voluntary consent to modification where U advised Ees at same time that it had filed charge with Bd]

6067-2070-6760 Waiver of rights under Act

Reichhold Chemicals, Inc. 277 NLRB No. 073
(E's seeking waiver of Ees' right to engage in ULP strikes, as part of no-strike clause, and right to seek redress from Bd or other tribunal for discipline imposed under clause on replaced strikers, not unlawful, since Act does not prohibit Us from waiving Ees' right to strike over ULPs; and proposed waiver of replaced strikers right to Bd's processes, absent other evidence, read as permitting only non-discriminatory application, and does not extend to appeals to Bd on other matters; since this waiver merely derivative of waiver of right to strike a mandatory subject of bargaining, it too is mandatory, thus E could insist to impasse on dual waiver)

Gaso Pumps, Inc. 274 NLRB No. 076
(E's insisting to impasse on, and subsequently unilaterally implementing, strike settlement proposal limiting reinstatement rights of striking Ees to 6 months after termination of strike, violative, where U had never agreed to settlement agreement during negotiations and E had not shown that legitimate and substantial business justifications existed for its limitations on strikers' reinstatement rights; Ees may not be deprived of statutory rights in the absence of a clear and unmistakable waiver of those rights)

6067-2070-6770 Appropriate unit

Syncor International Corporation 282 NLRB No. 063
[scope of established bargaining unit is *non-mandatory*. However, party may lawfully propose change in scope of unit and parties may in certain circumstances agree to change or change can be accomplished by Bd proceedings, but never by unilateral action by party]

Bozzuto's, Inc. 277 NLRB No. 100
(insisting to impasse on changing unit scope to eliminate Ees working less than 32 hours a week, a nonmandatory bargaining subject, as condition for new contract, violation)

ICI Americas, Inc. JD-328-85
(bargaining for change in scope of unit is *nonmandatory* subject of bargaining; and insistence to bargaining impasse on modification in scope of bargaining unit, whether established by Bd certification or by voluntary recognition, violative)

6067-2070-6780 Insistence upon stenographic transcript of negotiations

Hutchinson Fruit Company, Inc. 277 NLRB No. 054
(use of tape recorder at grievance meeting held not mandatory subject of bargaining and refusal of E to hold grievance meeting unless tape recorder on, violative. Bd held grievance meeting are similar to contract negotiations in both character and methodology and duty to bargain in good faith applies to both types of meetings)

6067-2070-6795 Payment for strike damages

Ashe Brick Company 280 NLRB No. 162
[E conditioning signing of agreement on U's payment of compensation for damages to E's property, unlawful, since matter is permissive non-mandatory subject of bargaining]

Song Crane & Excavating, Inc. JD-111-86
[E demanding as condition of further bargaining that U agree to pay for alleged damage to E's property occuring during past strike, unlawful, since insistence on nonmandatory subject of bargaining, no relationship to terms and conditions of employment, where demand not mere proposal and E could not demonstrate U was responsible for damages; further, in making demand condition precedent for bargaining, notwithstanding permissible rejection by U, amounted to refusal to bargain regarding mandatory subject]

6067-2070-6799 Other

Borden, Inc., Chemical Division Thermoplastic Products 279 NLRB No. 059
[insisting to impasse on permissive bargaining subject by demanding that receipt of severance pay by Ees whose jobs had been terminated be conditioned on their execution of general release of Ees' civil and statutory health and safety complaints, violation, where there was insufficient nexus between permissive subject of general releases and mandatory subject of severance pay to inextricably intertwine the two subjects of bargaining]

Lenfs Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014
(although joint E met with U on five occasions in order to negotiate contract for E's Ees, Bd found that joint E failed to bargain in good faith with U, since: (1) E failed to respond to U's first two requests for bargaining; (2) as soon as U requested bargaining E proposed closing one of its facilities; (3) E informed U it was not willing to discuss wages until ALJ issued his decision in prior Bd C case involving one of joint Es and same Ees; and (4) other expressions of joint Es' U animus which frustrated bargaining process)

6067-2080 Uncompromising attitude or refusal to make concessions

6067-2080-0100 Generally

Schaeff Namco, Inc. 280 NLRB No. 150
[E did not fail to bargain in good faith during 14 day wage reopener period, notwithstanding parties had only two short negotiating sessions during period, and E failed to modify its proposals, where E offered to extend negotiations and consider wage build back should its wage cut proposal be implemented, and insistence on bargaining position is not itself refusal to bargain in good faith]

6067-2080-1200 Intransigence

Port Plastics, Inc. 279 NLRB No. 050
[E engaged in bad faith surface bargaining where, prior to U election, E told unit Ees he wouldn't give those *bastards* anything during negotiations, E's proposals at table were not merely tough but sought to ensure U no voice in Ees' terms and conditions of employment i.e., management rights clause gave E absolute authority over all terms and conditions of employment, U was excluded from grievance and seniority provisions and was not permitted to grieve E's wage decisions; further, U demonstrated flexibility in important areas while E was unyielding on all major points]

Landmark Industries, Inc. JD-(SF)-109-85
(mere fact that proposal (E's modification of peicework provision during contract neogitations) is unacceptable to U is insufficient to establish bad faith if E's insistence is genuinely and sincerely held. Piecework rate change was of prime importance to E and U made not even slightest concession on this issue and any concessions U made on other issues was attempt to avoid modifications to piecework rate)

6067-2080-2500 Nominal or illusory concessions do not establish good faith

Fox-Art Theatres, Inc. 278 NLRB No. 115
[E not bargaining in good faith where it flippantly responded to U's offer to reduce its wage demands by a dollar per hour per year by offering to raise its proposal by only a nickel and pattern of unlawful conduct]

6067-2080-3100 Refusal to continue predecessor contract until completion of new contract

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital 282 NLRB No. 010
[contract provision providing that E furnish new Ees with copy of bargaining agreement survives expiration of contract]

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital 282 NLRB No. 010
[implementing *budget days* whereby Ees worked reduced work weeks was priviledged under expired contracts' management rights clause]

6067-2080-3700 Wage increases and other unilateral changes in employment terms

Hedaya Brothers, Inc. 277 NLRB No. 093
(totality of E's conduct demonstrated it bargained in bad faith with U where E made statements to Ees before negotiations violative of 8(a)(1) reflecting an unwillingness to engage in serious collective bargaining, E's proposals to U to freeze or reduce wages was consistent with statements to Ees that, if they rejected U, benefits would be the same and implying a reduction otherwise, E made no counterproposals except to eliminate all vacations and most holidays and did not move from position until final negotiating session and E unilaterally eliminated holidays before impasse which conduct clearly indicated bad faith)

6067-2080-4000 Strict seniority clause

Boaz Carpet Yarns, Inc. 280 NLRB No. 004
[E's proposal that eligibility for layoffs, recalls, promotions, transfers, and job bidding be governed, not by strict seniority, but by such criteria as skill and experience, not indicative of bad faith bargaining where U admitted criteria were pertinent considerations]

6067-2080-4300 Union-security provisions

Boaz Carpet Yarns, Inc. 280 NLRB No. 004
[E's stand on check-off provision, not indicative of bad faith bargaining where E would allow U access to plant to collect dues but opposed any provision not allowing Ees' revocation of checkoff at any time, and where U had negotiated similar term in contract with predecessor]

6067-2080-4300—Cont.

American Throat Company 274 NLRB No. 164
(no violation, where E during negotiations for new contract insisted to impasse that dues check off provision be deleted from bargaining agreement to preclude E knowledge of Ees' U membership in view of large number of grievances filed by Ees alleging discrimination against U members, since E could not be forced to yield to particular provision advanced by U, and E's refusal to agree to provision did not breach duty to bargain, nor did E condition agreement to continuation of checkoff provision on guarantee protected activities would cease; *Markle Mfg. Co* 239 NLRB 1353, revised in part)

6067-2080-5000 Failure to give reasons for rejecting proposals

Crest Floors & Plastics, Inc. 274 NLRB No. 185

6067-2080-5600 Failure to make counter-proposals

Hedaya Brothers, Inc. 277 NLRB No. 093
(totality of E's conduct demonstrated it bargained in bad faith with U where E made statements to Ees before negotiations violative of 8(a)(1) reflecting an unwillingness to engage in serious collective bargaining, E's proposals to U to freeze or reduce wages was consistent with statements to Ees that, if they rejected U, benefits would be the same and implying a reduction otherwise, E made no counterproposals except to eliminate all vacations and most holidays and did not move from position until final negotiating session and E unilaterally eliminated holidays before impasse which conduct clearly indicated bad faith)

Excelsior Pet Products Inc. 276 NLRB No. 085
(E bargained in bad faith where, although E sincerely believed that if it made contract with U there would be no possibility that its business would survive due to its economic plight, E simply rejected U's proposals w/o offering any other alternatives other than *contract* which would not cost it a *dime*; E's bargaining intentions were that it would not sign contract so long as company was unprofitable; and E's intentions regarding making of new contract were revealed by its breach of old contract in substantial respects)

6067-2080-5900 Final offer claim

Toyota of San Francisco 280 NLRB No. 093
[negotiating by drafting final offers capped by final/final offers which contained less favorable terms than in final offer, or issuing proposals not characterized as final but setting short deadlines for their acceptance and in each case E stated that if offer or final offer, whichever it was, was not accepted then E would impose final/final offer, or less beneficial terms, not good faith bargaining as tactic leaves little room for debate and no room for counteroffers]

Public Service Electric and Gas Company 280 NLRB No. 048
[violation where E sought to modify retroactivity clause of old contract by refusing to agree to pay wage increase in new contract effective on expiration date of old contract unless Ees ratified new contract by expiration date and, as part of its final offer, conditioned agreement to new contract on U's consent to abrogation of retroactivity clause; U's urging Ees to ratify new contract not voluntary consent to modification where U advised Ees at same time that it had filed charge with Bd]

Hedaya Brothers, Inc. 277 NLRB No. 093
(totality of E's conduct demonstrated it bargained in bad faith with U where E made statements to Ees before negotiations violative of 8(a)(1) reflecting an unwillingness to engage in serious collective bargaining, E's proposals to U to freeze or reduce wages was consistent with statements to Ees that, if they rejected U, benefits would be the same and implying a reduction otherwise, E made no counterproposals except to eliminate all vacations and most holidays and did not move from position until final negotiating session and E unilaterally eliminated holidays before impasse which conduct clearly indicated bad faith)

6067-2080-6200 Insistence on unilateral power to act on matters within employment relationship

Port Plastics, Inc. 279 NLRB No. 050
[E engaged in bad faith surface bargaining where, prior to U election, E told unit Ees he wouldn't give those *bastards* anything during negotiations, E's proposals at table were not merely tough but sought to ensure U no voice in Ees' terms and conditions of employment i.e., management rights clause gave E absolute authority over all terms and conditions of employment, U was excluded from grievance and seniority provisions and was not permitted to grieve E's wage decisions; further, U demonstrated flexibility in important areas while E was unyielding on all major points]

Reichhold Chemicals, Inc. 277 NLRB No. 073
(E's insistence on broad management rights and no strike clauses with restrictive grievance provision did not evidence intent to frustrate bargaining process or constitute surface bargaining, but rather lawful hard bargaining, in view of totality of E's conduct where it was willing to meet and bargain with U, attended all scheduled meetings, fulfilled procedural obligations, exchanged proposals and made concessions; nor were sway-from-the-table statements by supervisors not involved in negotiations regarding futility of bargaining, all but one of which occured outside of Sec. 10(b) period, sufficient to prove E intent to frustrate bargaining process)

Coastside Scavenger Company 273 NLRB No. 198
(E's seeking to change *discharge and suspension language* during contract negotiations with U so that it could exercise *the prerogatives of management*, because of backpay E was required to pay certain discriminatees *not bad faith bargaining*, since E had discussed various proposals (with U) and made concessions and/or agreements on number of issues concerning Ees' conditions of employment)

6067-2080-6900 Refusal to arbitrate, grievance or interference with arbitration machinery

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat 281 NLRB No. 030
[refusing to meet and bargain with international U's representative designated as U's representative for processing grievances at grievance step 2 meeting, violation]

Boaz Carpet Yarns, Inc. 280 NLRB No. 004
[E's rejection of compulsory arbitration as expensive, litigious, and not in reality final, not indicative of bad faith bargaining where E was willing to consider voluntary arbitration and, in return for lack of compulsory arbitration, was willing to forego no-strike clause]

Port Plastics, Inc. 279 NLRB No. 050
[E's refusal to recognize Ee as U's designated shop steward and refusing to meet with him to discuss grievances, violative, notwithstanding E was under no contractual obligation to do so]

Hutchinson Fruit Company, Inc. 277 NLRB No. 054
(use of tape recorder at grievance meeting held not mandatory subject of bargaining and refusal of E to hold grievance meeting unless tape recorder on, violative. Bd held grievance meeting are similar to contract negotiations in both character and methodology and duty to bargain in good faith applies to both types of meetings)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(E's failure and refusal to process Ees' grievances in violation of contract, unlawful)

Southern California Edison Company 274 NLRB No. 167
(E's refusal to conduct grievance meetings with Ees or U officials who wore *Stick Your Retro* button concerning retroactive pay raise during contract negotiations between E and U, violative, since wearing of button protected, and no matter what buttons were being worn, E was not privileged to refuse to meet and deal with U on matters being pursued through grievance arbitration process, at least so long as they did not cause unreasonable disruption (of process))

Southwestern Electric Cooperative, Inc. 274 NLRB No. 135
(E's refusal to arbitrate grievances unless U put them in writing, violative, since contract permitted U to file grievances orally. U and E representatives credibly testified that they had never processed written grievances)

Pittsburgh Penn Oil Company, Inc. JD-44-86
[E's refusal to follow contractual grievance procedure by refusing to meet with U and refusing to arbitrate grievances, violative]

Alpine Vending, Inc. JD-(SF)-99-85
(E unlawfully refused to bargain regarding processing of grievance since it failed for 5 months to get down to business of selecting arbitrator, failed to respond to U's request for information relevant to grievance, raised spurious defense that U did not represent majority of Ees; nor was problem limited, as E contended, to deadlock over E's suggestion of bifurcating hearing of grievance (first to determine applicability of contractual time bar; next to hear merits), inasmuch as U was willing to have issue of bifurcation decided by any arbitrator selected; E cited no authority suggesting duty to arbitrate could be conditioned on certain arbitration procedure)

6067-2080-7500 Refusal to enter into partial agreement

Coastside Scavenger Company 273 NLRB No. 198
(agreements reached on individual items during (contract) negotiations are *not necessarily* final and binding)

6067-2080-8100 Willingness to continue bargaining

Schaeff Namco, Inc. 280 NLRB No. 150
[E did not fail to bargain in good faith during 14 day wage reopener period, notwithstanding parties had only two short negotiating sessions during period, and E failed to modify its proposals, where E offered to extend negotiations and consider wage build back should its wage cut proposal be implemented, and insistence on bargaining position is not itself refusal to bargain in good faith]

Robinson Construction Co., Inc. JD-(SF)-7-85
(E's unilateral changes in wages and fringe benefits, on grounds that impasse had been reached, violative, since no impasse existed where only 2 real bargaining sessions had taken place, U and E both had made changes in their negotiating positions and E declared impasse w/o giving U time to present E's final proposal to its committee for vote)

6067-2090 Totality of conduct

Hyatt Regency New Orleans **281 NLRB No. 042**
[totality of E's conduct in negotiating with U, not unlawful, where E's declaration of impasse, asserted lack of authority on part of E's negotiator and his expressed dissatisfaction with unit composition, E's comments to Ees and counteroffer made to U failed to show bad faith bargaining on part of E who exhibited willingness to meet with U, offered several proposals, made concessions to U, seriously considered U's proposals, and remained willing to negotiate with U]

Boaz Carpet Yarns, Inc. **280 NLRB No. 004**
[E's bargaining not in bad faith, notwithstanding rejection of compulsory arbitration, checkoff, and strict seniority clauses and insistence on broad management rights clause, where its reasons were not disingenuous or insincere, it did not insist on no-strike or zipper clause, it cooperatively provided timely information and counter-proposals and imposed no unilateral changes during negotiations]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. **279 NLRB No. 091**
[E's *entire course of action was lacking in good faith desire to arrive at final agreement with U*, where E failed to provide requested information relevant to bargaining, cancelled five negotiating sessions which had been previously scheduled, withdrew all bargaining proposals and agreements when U filed ULP charges]

Port Plastics, Inc. **279 NLRB No. 050**
[E engaged in bad faith surface bargaining where, prior to U election, E told unit Ees he wouldn't give those *bastards* anything during negotiations, E's proposals at table were not merely tough but sought to ensure U no voice in Ees' terms and conditions of employment i.e., management rights clause gave E absolute authority over all terms and conditions of employment, U was excluded from grievance and seniority provisions and was not permitted to grieve E's wage decisions; further, U demonstrated flexibility in important areas while E was unyielding on all major points]

Merrell M. Williams; Boy's Restaurant, Inc.; Girl's Restaurant; Jumbo's d/b/a Farm Boy Restaurant; Farm Boy Restaurants Nos. 2 and 3 **279 NLRB No. 013**
[*In ruling on allegation that party has failed to bargain in good faith, it is well established that Bd looks to totality of circumstances reflecting party's bargaining frame of mind. Unlike refusal to execute agreed upon contract which is per se violation of Section 8(a)(5) of Act because it demonstrates refusal to acknowledge and abide by fruits of bargaining, withdrawal of tentative agreements reached prior to formation of legally enforceable contract represents only one factor to be considered in determining good faith bargaining*]

Walter A. Zlogar, Inc. **278 NLRB No. 149**
[overall bargaining not in bad faith where E had history of observing U contracts, took lead in arranging negotiating sessions, agreed with various U positions, increased wages offered, made complete contract proposals, and observed procedural requirements of good faith bargaining]

Hedaya Brothers, Inc. **277 NLRB No. 093**
(in determining whether a party is bargaining in bad faith, Bd looks to totality of circumstances in which bargaining took place. Thus, Bd looks not only at parties' behavior at the bargaining table, but also to conduct away from the table that may affect negotiations)

Hedaya Brothers, Inc. **277 NLRB No. 093**
(totality of E's conduct demonstrated it bargained in bad faith with U where E made statements to Ees before negotiations violative of 8(a)(1) reflecting an unwillingness to engage in serious collective bargaining, E's proposals to U to freeze or reduce wages was consistent with statements to Ees that, if they rejected U, benefits would be the same and implying a reduction otherwise, E made no counterproposals except to eliminate all vacations and most holidays and did not move from position until final negotiating session and E unilaterally eliminated holidays before impasse which conduct clearly indicated bad faith)

Reichhold Chemicals, Inc. **277 NLRB No. 073**
(E's insistence on broad management rights and no strike clauses with restrictive grievance provision did not evidence intent to frustrate bargaining process or constitute surface bargaining, but rather lawful hard bargaining, in view of totality of E's conduct where it was willing to meet and bargain with U, attended all scheduled meetings, fulfilled procedural obligations, exchanged proposals and made concessions; nor were away-from-the-table statements by supervisors not involved in negotiations regarding futility of bargaining, all but one of which occured outside of Sec. 10(b) period, sufficient to prove E intent to frustrate bargaining process)

American Fluorescent Corp. **275 NLRB No. 154**
(Bd has indicated that it is necessary to evaluate totality of circumstances including nature of ULPs committed (by parties) and that commission of prior ULPs (by same parties) does not *per se* preclude good-faith doubt)

Coastside Scavenger Company **273 NLRB No. 198**
(essential element of good faith bargaining is *the serious intent of the parties to reach a common ground*. Determination of whether respondent has met the *good-faith* bargaining standard requires consideration of *the totality of respondent's conduct*)

Coastside Scavenger Company **273 NLRB No. 198**
(although E not required to be represented by individual possessing final authority to enter into agreement, this is subject to limitation that it does not inhibit progress of negotiations. Degree of authority possessed by negotiator is factor which may be considered in determining good-faith bargaining)

David Clements Co., Inc. **JD-388-85**
totality of E's conduct including E giving U list of 50 work rules, many of which were new, which E stated it would put into effect next day, refusing to hold negotiating session at U's office, or to share cost of neutral accomodations, and stating U would have to pay E rent if they met on E's premises, unlawful]

Modern Manufacturing Company, Inc. **JD-376-85**
[E's bad faith bargaining, in context of hostility and U animus, shown by total conduct, including refusal to agree to arbitrator's right to award backpay, illusory concessions, intransigence, unreasonable no-strike clause, unreasonable insistence on E's right to control wages and terms and conditions of employment]

Local 259, Auto Workers v. N.L.R.B. **776 F.2d 23 (C.A. 2, Oct. 1985)**
[Bd well w/i its power in finding *no unlawful refusal to bargain* when E's conduct viewed in its totality, demonstrated *substantial evidence* that (E's) wage offers to replacement workers were not substantially different from, or greater than, those which E had propsed during its negotiations with U]

6067-4000 Unilateral change in term or condition of employment

6067-4001 Generally

Superior Container, Inc. **276 NLRB No. 056**
(changes in certain working conditions of Ees, not unlawful where, although 2 of 4 necessary elements of *prima facie* case were present in that conditions were mandatory bargaining subjects and changes were made w/o consulting with U, remaining 2 elements, majority status of U and its request to bargain, were not supported by evidence)

6067-4001-1700 What constitutes change

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**
[E's altering job qualifications for unit positions in education instructor job classification, (E required these Ees to possess a Master's Degree rather than Bachelor of Science in Nursing which had previously been required) not violative, since E was priviledged to make such change unilaterally, by terms of Management Rights clause in expired agreement]

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[institution shortly before end of strike of restrictions on smoking and drinking soft drinks and coffee during reporting time at medical facility, i.e. time during which patients' charts and medical records turned over from outgoing to incoming shifts, not violative, since change was not material, substantial change in practice inasmuch as applied only to overlap of shifts, had existed at times in past, and was justified by business reasons]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally restricting known U supporters' running of football pools to prework, lunch, and break times while continuing to allow non-U supporters to run pools during working hours, violation but not unlawful unilateral change where it only affected two Ees]

Clark Equipment Company **278 NLRB No. 085**
[unilateral change in attendance policy, not violation, since it was not material, substantial, or significant where it was change in procedure, rather than policy, and neither more stringent nor significantly altered but of increased orderliness]

Alamo Cement company **277 NLRB No. 108**
(unilateral change not violation where it is not material, substantial and significant)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilateral promulgation of call-out schedules at new plant, violative where it implied that, contrary to past practice, designated on-call Ees had to be at home and available according to the schedule)

6067-4001-1750 Failure to abide by contract

BASF Wyandotte Corporation **278 NLRB No. 028**
[E's unilateral elimination of and refusal to honor U time clause in contract allowing payment to U president and secretary for four hours daily spent on U business, violation]

Watson-Rummell Electric Co. **277 NLRB No. 162**
[E's failure to honor contract, unlawful, where E failed to submit timely and unequivocal withdrawal to U as required by contract]

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**
(E's recompensing second company's Ees whom it was temporarily employing according to second company's contract with the U rather than E's own

6067-4001-1750—Cont.

contract with the U that called for higher wages and greater fund contributions, violative, since, while working for E, Ees were part of unit covered by E's contract with U)

A & W Foods, Inc. 276 NLRB No. 020
(E's failure to implement wage increase provision in contract negotiated to become effective at future date, unlawful, since U did not agree to reopen contract, notwithstanding its agreement to discuss E's proposed midterm modification and agreeing to take proposal to membership, which rejected it)

Crest Floors & Plastics, Inc. 274 NLRB No. 185
(unilateral changes in terms and conditions of employment for Ees transferred from corporation to sole proprietorship, violative, since transfer did not relieve either E from duty of complying with contract covering transferred Ees where Es were found single E and *alter egos* of each other)

Spears-Guthnecht Enterprises, Inc. JD-(ATL)-62-85
(failure of E to hire through U's exclusive hiring hall as set forth in contract, violative)

Greater Detroit Heating and Cooling, Inc. JD-116-85
(E's failure to abide by terms of E association's bargaining agreement with U and unilaterally changing terms and coaditions of employment, violative)

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)
[E's contention that its unilateral discontinuance, arguably against bargaining agreement, allowing U steward *reasonable time* in which conduct U business, of allowing U steward 4 hours per day of paid time in which to conduct U business, was only contract violation, not ULP, rejected, since contract violation which is also unilateral change in working conditions subject to mandatory bargaining, is both contract violation and violation of Section 8(a)(5) of Act]

N.L.R.B. v. Ford Brothers, Inc. 786 F.2d 232 (C.A. 6, Mar. 1986)
[E unlawfully made unilateral changes by not complying with existing agreement requiring certain wage and cost of living increases and established 48-hour workweek, where E, through membership in E association, was bound by contract and was required to observe its terms; result here is not altered by fact that E obtained approval of Ee majority for its proposed modifications, since E never reached agreement with Us on any changes, nor had it been authorized by U's joint area committee to implement those changes w/o prior approval]

6067-4001-2500 Changes greater than offered union

Service Electric Company 281 NLRB No. 107
[E under no obligation to bargain over employment terms of strike replacements, whether terms better or worse than preexisting terms before strike, whether strike has ended, or not, where no resolution of underlying dispute because no agreement on contract, and there are unreinstated strikers who have not abandoned future employment with E but whose jobs continued to be filled by replacements]

Southwest Forest Industries, Inc., Los Angeles Container Division 278 NLRB No. 031
[E's unilateral implementation of various changes in working conditions and wages different than those in final contract proposal, on grounds U had notice of changes and would have refused to bargain under any circumstances, violative, since U did not have notice where prior to implementation E advised U only that there would be *other changes*, E's changes were in no way a new contract proposal and there was no evidence that U's steadfast refusal to bargain with E was in any way improper]

Forest Grove Lumber Company 275 NLRB No. 144

Brady-Stannard Motor Co., Inc. 273 NLRB No. 178
(Bd found that after impasse wages paid to striker replacements was consistent with E's final offer to U to continue expired contract for 1 year where Bd looked at *actual* earnings received by replacements over 6 month period and it showed they were equal to or lower than what strikers earned in similar period in prior year notwithstanding wage package of replacements different from strikers. Therefore, no violation by offering replacements higher wage formula but where actual wages same, because it was, in effect, offering same contract to replacements as one that expired and which was offered to U)

6067-4001-3300 Effect of announcement or offer of change

Great Plains Furniture Industries, Inc. JD-14-85
(unilateral grant of wage increases by purchaser-successor after bargaining obligation attached, not unlawful, since successor had promised wage increases at time he set initial terms and conditions of employment and at that time no bargaining obligation had ripened; therefore, successor was free to set whatever terms he wished and so long as unilateral changes implemented were encompassed w/i initial terms of employment, no violation arises)

6067-4001-3700 Adequacy of notice of change to permit bargaining

Whirlpool Corporation 281 NLRB No. 007
[U waives right to oppose unilateral change where it is aware of projected change in sufficient time to bargain before change is implemented and fails to request bargaining; U must prosecute its right, not merely protest the change or file ULP charge]

T. Marshall Corp., t/a/ Cliffside Health Care Center 279 NLRB No. 166
[two-day advance notice insufficient]

Metropolitan Teletronics Corp. 279 NLRB No. 134
[E's concealing its decision to relocate operations until after it began to vacate existing facility, violation where E failed to provide U with timely notice, a part of meaningful bargaining, and thus denied it opportunity to bargain at time when it retained some bargaining power as representative of Ees; earlier references to E's financial plight and possible plant closing did not constitute notice, and E gave no reason for concealment, such as emergency, which would have justified late notice]

Metropolitan Teletronics Corp. 279 NLRB No. 134
[timely notice to U of E's decision to relocate is meaningful element of bargaining over effects; rule requiring timely notice is not per se rule, since E may escape liability by demonstrating that emergency circumstances justified late notice, but after-the-fact conjecture that E's conduct reaped no significant gains will not excuse late notice]

Alamo Cement Company d/b/a San Antonio Portland Cement Company 277 NLRB No. 033
(unilaterally hiring new Ees for positions at new plant which, according to E, unit Ees could not fill, and transferring unit Ees from existing plant to new one, violative where E's letter announcing these actions did not state when they would occur or indicate necessity for U to immediately request bargaining, and E's withdrawal of recognition precluded U action; E's assurances during negotiations the transferring the unit Ees would not cause them harm found no defense, and E's failure to bargain about the effects of the transfers and new hires since they occurred found violative)

John's Lumber & Hardware Company JD-199-86
[E's unilateral implementation of reduced wage rate and its failure to make contribution to pension plan after expiration of contract, unlawful, since implementation was w/o giving U reasonable opportunity to bargain, where E did not make any explicit request to bargain of U, which had many agreements expiring during period, until 9 days prior to expiration of agreement that it would implement its 60 page proposal, since no E and U had agreed to bargain after expiration of agreement, U's acquiesence or waiver of its right to bargain]

Indianhead Truck Line, Inc. JD-271-85
(E's failure to notify Us of its decision to terminate its freight operations until after implementation of decision, thus denying Us opportunity to bargain over effects of its decision, unlawful; E's contention its failure to give timely notice was justified by fear of theft and its financial situation, rejected)

6067-4001-4100 Union request for bargaining

Whirlpool Corporation 281 NLRB No. 007
[U waives right to oppose unilateral change where it is aware of projected change in sufficient time to bargain before change is implemented and fails to request bargaining; U must prosecute its right, not merely protest the change or file ULP charge]

Continental Telephone Company of California 274 NLRB No. 210
(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

Indianhead Truck Line, Inc. JD-271-85
(E unlawfully refused to bargain over effects of closure of its freight operations where U's secretary-treasurer stated to E *we have to sit down and work out a closing agreement*, and E replied that agreement *had to be worked out by bankruptcy ct*, since E is not relieved of its obligation to bargain over effects of its decision because it has become debtor-in-possession under Bankruptcy Act and believes it would be unable to meet U's financial demands; E's subsequent invitation to U to bargain did not bar finding of violation and ordering remedy for prior violation)

6067-4001-6700 Unfavorable to employees

Toyota of San Francisco 280 NLRB No. 093
[auto dealer's unilateral implementation of its final offer, not unlawful since E was privileged to implement changes pursuant to *most favored nation* provision of multi-dealer bargaining agreement in effect, which provided that any more favorable terms agreed to by U with any dealer would automatically become part of agreement; however, elimination of Sunday pay which was not consistent with terms of agreement with other dealer which triggered *most favored nation* provision, unlawful, notwithstanding if all changes, considered as a whole, were equivalent to those granted by other dealer]

6067-4001-6700—Cont.

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilateral subcontracting of unit work not violative in absence of showing harm to unit Ees' wages and working conditions)

6067-4001-7500 Changes prior to bargaining obligation

E G & G Florida, Inc. **279 NLRB No. 065**
[successor E's unilateral decisions to eliminate positions and not to hire Ees, not violative]

ICI Americas, Inc. **JD-328-85**
(E's advising U during negotiations that E controlled matter of split in certified unit, when in actuality split was army decision who had contracted work out to E, violative, since E's advice was conscious course of action intending to deceive U; such conduct (of E) was deceptive bargaining with tendency to inhibit process of collective bargaining)

Great Plains Furniture Industries, Inc. **JD-14-85**
(unilateral grant of wage increases by purchaser-successor after bargaining obligation attached, not unlawful, since successor had promised wage increases at time he set initial terms and conditions of employment and at that time no bargaining obligation had ripened; therefore, successor was free to set whatever terms he wished and so long as unilateral changes implemented were encompassed w/i initial terms of employment, no violation arises)

6067-4001-8500 Changes before impasse

Schaeff Namco, Inc. **280 NLRB No. 150**
[E's unilateral implementation of reduction in wages after wage reopener period passed, lawful, even absent impasse, since E had contract specifically left open wages for third year of contract and provided for specified period to negotiate wage rates and provided that E *shall implement* its wage offer if parties failed to reach agreement w/i specified period; nor was unilateral implementation violative Section 8(d) since 8(d) did not apply as no modification of contract rather action in accord with contract]

M & C Vending Co., Inc. and Its Wholly Owned Subsidiary Ada Automatic Sales Company, Inc. **278 NLRB No. 047**
[E's unilateral increase in wages in line with proposal it made during negotiations, unlawful, as no impasse]

Coalite, Inc. **278 NLRB No. 040**
[unilaterally discontinuing contractual insurance benefits for laid-off Ees, violation in absence of impasse]

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**

Southwestern Steel & Supply, Inc. **276 NLRB No. 174**
(E violated Act by paying sums directly to Ees those that he should have paid to U's trust funds under expired contract where E did not possess good faith doubt as to U's majority and no impasse in bargaining)

Dependable Building Maintenance Company; et al. **276 NLRB No. 007**
(Es' initial implementation of their final offer, violative, since there was no impasse where they implemented their offer too soon after complying with U's request for information to test U's alleged rigidity anad determine whether the U would use the information to modify its position; Es' subsequent implementations of their final offer seven and twelve months later, respectively, however, not violative, since there was enough evidence of continued disagreement to support finding of impasse where U made no economic concessions)

SGS Control Services, Inc. **275 NLRB No. 137**
(E's implementation of its final offer in absence of impasse, violative)

Dependable Building Maintenance Company; et al. **274 NLRB No. 037**
(Es' implementation of their final offers violative, where impasse had not occurred, information U had been requesting from Es was relevant to negotiations and U did not have information for sufficient period of time before Es implemented their final offers)

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. **785 F.2d 570 (C.A. 7, Mar. 1986)**
[unilateral changes made by E, violative since they were made prior to reaching *bona fide* bargaining impasse]

Southwestern Steel & Supply, Inc. v. N.L.R.B. **806 F.2d 1111 (C.A. D.C., Dec. 1986)**
[*E's unilateral change in terms and conditions of employment, so called mandatory subjects of bargaining, made after expiration of bargaining agreement, but before E had bargained to impasse with U circumvents duty to bargain*]

6067-4001-8700 Changes after impasse

Inner City Broadcasting Corporation **281 NLRB No. 162**
[terms and conditions of bargaining agreement, exclusive of checkoff of U dues and U security, survive expiration of contract until such time as new agreement is made, impasse is reached, or it is legally discharged in some other manner; and even where bargaining impasse has been reached, E may not change existing conditions of employment w/o prior bargaining on item changed, or in manner inconsistent with its last pre-impasse contract offer]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's unilateral implementation of its flat rate wage with incentive proposal after expiration of bargaining agreement, and rejection by Ees of E's final proposal, not unlawful, since impasse existed where there had been 7 negotiating meetings during which there had been in depth discussions, positions on issues were advanced in good faith, but parties positions on flat rate wage remained unalterably opposite; fact concessions made on other matters did not preclude finding of impasse on flat rate since that issue was of overriding importance and parties were still not close to reaching agreement]

Dependable Building Maintenance Company; et al. **276 NLRB No. 007**
(Es' initial implementation of their final offer, violative, since there was no impasse where they implemented their offer too soon after complying with U's request for information to test U's alleged rigidity anad determine whether the U would use the information to modify its position; Es' subsequent implementations of their final offer seven and twelve months later, respectively, however, not violative, since there was enough evidence of continued disagreement to support finding of impasse where U made no economic concessions)

Hamady Bros. Food Markets, Inc. **275 NLRB No. 183**
(E's unilaterally implementing its proposals, not violative where E had bargained in good faith to impasse; although parties met only 5 times, finding of impasse not precluded where parties engaged in good-faith bargaining; further, E's repeated requests for cost reductions and U's insistence on restoration of benefits were issues of central importance to both parties; after both parties reasserted their respective positions, E announced it would implement its final proposal and received no response from U)

Taft Broadcasting Company, WBRC–TV **274 NLRB No. 038**
(E did not unlawfully insist to impasse on nonmandatory subject of bargaining where GC failed to satisfy his burden of proof that E conditioned any agreement to mandatory subject on acceptance of its nonmandatory jurisdictional unit proposal; rather such proposal was simply one of several unresolved issues when parties reached impasse generally on mandatory subjects of bargaining)

E. F. Mitchler Co., d/b/a Lodi Ready Mix **JD(SF)-91-86**
[E's unilateral implementation of new wage rates and vacation benefits, failure to remit contributions to pension fund, and alteration of seniority system after expiration of contract, unlawful, notwithstanding existence of impasse, since changes *varied* from E's final offer; E's contention that in view of U's rejection of its final offer, it would have been futile to offer less advantageous conditions which it implemented, rejected, inasmuch as had E announced its intent to implement proposals, impasse might have been broken and bargaining continued]

The Setterlin Company **JD-56-86**
[unilateral changes lawful after timely and lawful withdrawal from multi-E association and impasse in bargaining separately with U]

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. **766 F.2d 812 (C.A. 3, July 1985)**
(E's unilateral wage reduction, not violative, since parties were at impasse where E bargained in good faith for wage concessions for 2 months and had presented its bottom line proposal to U at least 3 weeks before implementation and U gave no indication it would agree to any wage concession)

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. **785 F.2d 570 (C.A. 7, Mar. 1986)**
[where Es bargained to impasse over elimination of cost-of-living adjustment, unilateral changes in mandatory subjects of bargaining occuring after *bona fide* impasse had been reached were not violative]

6067-4001-9000 During bankruptcy proceeding

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. **———U.S.——— (U.S. S.Ct, Feb. 1984)**
[Bd is precluded from, in effect, enforcing terms of collective-bargaining agreement by filing ULP charges against debtor-in-possession for violating Sec. 8(d) of NLRA by modifying or terminating unexpired labor agreement. Though Bd's action is nominally one to enforce Sec. 8(d), practical effect of enforcement action would be to require adherence to terms of agreement, but filing of ptn in bankruptcy means that agreement is no longer enforcesble. Consequently, Bd enforcement under these circumstances would run directly counter to express provisions of Bankruptcy Code]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. **———U.S.——— (U.S. S.Ct, Feb. 1984)**
[debtor-in-possession does not commit ULP when, after filing bankruptcy ptn but before Bankruptcy Ct approved rejection of bargaining agreement, it unilaterally modifies or terminates one or more provisions of contract, notwithstanding contract provided that it was binding on parties or successors even though bankruptcy should supervene]

6067-4001-9000—Cont.

Otten Truck Line; United Star Express, Inc.; and Claude Hayes, an Individual **282 NLRB No. 073**
[E who was held alter ego successor to debtor-in-possession violated Act by dealing directly with Ees and instituting unilateral changes notwithstanding debtor-in-possession repudiated contract. (Modifications of *Bildisco* contained in Bankruptcy Amendments and Federal Judgeship Act of 1984 not applicable to instant case)]

Hysots Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[E's unilateral change in contract terms, prior to institution of bankruptcy proceeding, by failing to make required payments to U health and retirement trust funds, unlawful; inability to make payments, claimed but not proved by E, was no defense; however, any finding of violation against E as debtor-in-possession for failing to comply with contract after filing of bankruptcy ptn was barred by S.Ct's *Bildisco* decision (104 S.Ct 1188)]

Hysots Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[alleged refusal by E to bargain with U, not unlawful, where E who, as debtor-in-possession having continuing obligation to bargain over terms of new contract, sought to do so both before and after bankruptcy ct approved rejection of old contract; U made no request to bargain during that period; and it was not E's fault U failed to follow up on his bargaining request]

Hysots Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[direct dealing with Ees concerning terms and conditions of employment, not unlawful, where E, as debtor-in-possession, rightfully sought unilateral substitution of modified terms and conditions of employment and had proposed to U same terms subsequently offered to Ees; U's refusal to negotiate until its erroneous belief that E was bound by contract, abrogated by bankruptcy ct, was disproved or substantiated was in essence waiver of U's right to object to imposition of new terms and conditions of employment; and E was under severe time constraints to resume operations]

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**
(withholding U dues from wages of all Ees in bargaining unit but not remitting dues to U w/o bargaining, violative where change was made during term of valid bargaining agreement, but before date E filed ptn in bankruptcy)

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**
(E's failure to remit pension fund contribution as required by bargaining agreement, w/o bargaining, violative where change was made during term of valid bargaining agreement, but before date E filed ptn in bankruptcy)

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**
(E's post bankruptcy ptn conduct consisting of implementation of unilateral changes in bargaining agreement, layoff of seven Ees, and subcontracting of unit work, not violative in light of S.Ct's decision in *Bildisco*)

Tucson Yellow Cab, Inc., A Debtor In Possession **275 NLRB No. 032**
(no violation, where E unilaterally failed to make payments into U's pension trust fund after it had filed ptn in bankruptcy, in view of *NLRB v. Bildisco and Bildisco* 104 S.Ct 1188, 115 LRRM 2805)

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**
(E as debtor-in-possession did not unlawfully make unilateral changes in Ees' terms and conditions of employment since, under S.Ct's *Bildisco* decision, debtor-in-possession, while obligated to bargain with U for new contract, is free to make unilateral changes; although E and U had no contract but only bargaining relationship when bankruptcy ptn was filed, thus arguably making *Bildisco* inapplicable, it would be totally incongruous and illogical to find an E with contract free to make unilateral changes while finding E herein to have unlawfully taken similar unilateral action)

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**
(new corporation, herein found to constitute alter ego of bankrupt E, held to have been formed at least in part to avoid latter's bargaining relationship with U and to evade responsibilities under Act to recognize and bargain with U concerning unilateral changes, where bankrupt E had been embroiled in dispute with U for some time over U benefits and means by which E could lower its benefits costs; and before bankruptcy ptn was filed and at time relatively close to formation of new corporation, principals of E were considering going *non-U*)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**
(bankruptcy ct can enjoin Bd from filing or processing ULP charges arising from modification of contract since, if Bd can neither file charges against nor find debtor-in-possession guilty of ULP for unilaterally rejecting or modifying contract, certainly it cannot proceed with hearings on ULP charges arising under that contract)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**
(bankruptcy ct may, upon mtn by debtor, enjoin Bd from proceeding with hearings on ULP charges which arise from debtor's unilateral modification or rejection of collective-bargaining agreement, when those proceedings would threaten assets of debtor's estate)

6067-4001-9100 Changes after expiration of contract

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**
[E's altering job qualifications for unit positions in education instructor job classification, (E required these Ees to possess a Master's Degree rather than Bachelor of Science in Nursing which had previously been required) not violative, since E was priviledged to make such change unilaterally, by terms of Management Rights clause in expired agreement]

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**
[contract provision providing that E furnish new Ees with copy of bargaining agreement survives expiration of contract]

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**
[implementing *budget days* whereby Ees worked reduced work weeks was priviledged under expired contracts' management rights clause]

Inner City Broadcasting Corporation **281 NLRB No. 162**
[terms and conditions of bargaining agreement, exclusive of checkoff of U dues and U security, survive expiration of contract until such time as new agreement is made, impasse is reached, or it is legally discharged in some other manner; and even where bargaining impasse has been reached, E may not change existing conditions of employment w/o prior bargaining on item changed, or in manner inconsistent with its last pre-impasse contract offer]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's unilateral implementation of its flat rate wage with incentive proposal after expiration of bargaining agreement, and rejection by Ees of E's final proposal, not unlawful, since impasse existed where there had been 7 negotiating meetings during which there had been in depth discussions, positions on issues were advanced in good faith, but parties positions on flat rate wage remained unalterably opposite; fact concessions made on other matters did not preclude finding of impasse on flat rate since that issue was of overriding importance and parties were still not close to reaching agreement]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**
[unilateral cessation of pension and welfare fund contributions violation, notwithstanding contract expiration and E's reliance on provision in Trust Fund agreement stating that E should continue to pay fund contributions as long as E was obligated pursuant to collective bargaining agreement, where provision was not clear and unmistakable waiver of Ees' right to receive contributions and U's right to bargain over E's ceasing to make them on expiration of contract, since section did not deal with termination of E's obligation to contribute, and under Bd law E's obligation survived contract]

Watson-Rummell Electric Co. **277 NLRB No. 162**
[E's failure to continue to implement terms of expired contract found unilateral change, since, notwithstanding timely and unequivocal notice of withdrawal from multi-E association terminated E's duty to bargain through association, E failed to fulfill its duty to bargain thereafter with U on individual basis]

Telford & Doolen, Inc. **277 NLRB No. 112**
(failure to recall laid-off Ee pursuant to seniority provisions of expired contract, unlawful, since E thereby unilaterally changed term or condition of employment w/o bargaining with U

Lithochrome Corporation **276 NLRB No. 132**
(E's refusal to process grievance, not unlawful, where language of arbitration clause in expired contract indicated parties did not intend arbitration clause to survive contract, and no agreement had been reached on new contract)

Excelsior Pet Products Inc. **276 NLRB No. 085**
(E's termination of its contractually obligated payments to U's welfare fund after contract expired, unlawful, since contract provisions, exclusive of checkoff and U security provisions, survive expiration of contract until new agreement is made, or impasse is reached, or E is legally discharged in some other manner from its bargaining obligations; and here, since E did not bargain in good faith, no impasse was reached, and there was no evidence of any other factor which would have relieved E of its obligation to bargain with U)

Weathercraft Company of Topeka, Inc. **276 NLRB No. 052**
(E's unilateral contract modification after its expiration, unlawful where, although E appropriately notified U of withdrawal from multi-E bargaining and of desire for separate negotiations with U, E failed to give appropriate 8(d) notices to federal and state agencies; even if U's letter to E proposed modification of contract's expiration date, E, and not U, was *initiating party* responsible for 8(d) notices, since prior to U's letter E had notified U of desire to renegotiate contract and before that executed settlement agreement reserving its right to separate negotiations with U)

General Tire & Rubber Company **274 NLRB No. 083**
(E's unilaterally ceasing payments for supplemental agreement benefits for unit Ees 90 days after expiration of supplemental agreement, violative, notwithstanding provision in agreement that benefits shall be provided for 90

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days following termination of agreement, where nowhere in contract provision is there mention of what is to occur to benefits after 90 days have expired; thus, there was no clear and unmistakable waiver of right to bargain over supplemental benefits after 90-day period)

United Artists Communications, Inc. 274 NLRB No. 017
(E's implementing its final contract offer w/o giving mediation services notice of dispute with local Us, not violative, since local Us were the parties initiating contractual modification under Sec. 8(d)(1), and they, according to the statute's language and legislative history, had the exclusive responsibility for notification of the mediation services; *Hooker Chemicals Corp.* and *Peoria Painting Contractors* overruled)

John's Lumber & Hardware Company JD-199-86
[E's unilateral implementation of reduced wage rate and its failure to make contribution to pension plan after expiration of contract, unlawful, since implementation was w/o giving U reasonable opportunity to bargain, where E did not make any explicit request to bargain of U, which had many agreements expiring during period, until 9 days prior to expiration of agreement that it would implement its 60 page proposal, since no E and U had agreed to bargain after expiration of agreement, U's acquiesence or waiver of its right to bargain]

E. F. Mitchler Co., d/b/a Lodi Ready Mix JD-(SF)-91-86
[E's unilateral implementation of new wage rates and vacation benefits, failure to remit contributions to pension fund, and alteration of seniority system after expiration of contract, unlawful, notwithstanding existence of impasse, since changes *varied* from E's final offer; E's contention that in view of U's rejection of its final offer, it would have been futile to offer less advantageous conditions which it implemented, rejected, inasmuch as had E announced its intent to implement proposals, impasse might have been broken and bargaining continued]

N.L.R.B. v. General Tire and Rubber Company 795 F.2d 585 (C.A. 6, July 1986)
[E's unilateral discontinuance of benefits, following expiration of 90-day period after contract's termination during which benefits were to be continued, unlawful, where contract was silent on treatment of benefits after 90-day period, and neither contractual language nor prior conduct of parties demonstrated *clear and unmistakable* intent to waive U's right to bargain over payment of benefits]

Southwestern Steel & Supply, Inc. v. N.L.R.B. 806 F.2d 1111 (C.A. D.C., Dec. 1986)
[*E's unilateral change in terms and conditions of employment, so called mandatory subjects of bargaining, made after expiration of bargaining agreement, but before E had bargained to impasse with U circumvents duty to bargain*]

Southwestern Steel & Supply, Inc. v. N.L.R.B. 806 F.2d 1111 (C.A. D.C., Dec. 1986)
[E's unilateral refusal to continue to use U hiring hall after expiration of contract, unlawful; E's contention that hiring hall provision did not survive contract, rejected]

6067-4001-9500 During pendency of postelection objections

Advertiser's Manufacturing Company 280 NLRB No. 128
[absent compelling economic reasons, E makes unilateral changes while objections to election are pending at his peril]

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilateral change not excused by fact it was made before certification]

Kentucky Fried Chicken of the Virgin Islands, Inc. 278 NLRB No. 086
[unilaterally modifying pracatices regarding food privileges; unilaterally implementing use of new Ee manual; unilaterally implementing new policy holding all packers accountable for chicken shortages; and unilaterally instituting new insurance and health plan during pendency of post-election objections, violative]

6067-4001-9800 Prior to certification

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)
[unilateral layoff violates 8(a)(5) even when it occurs before U's certification by NLRB]

6067-4011 Failure to bargain before making economically motivated operating decision which has effect on unit

6067-4011-0100 Generally

6067-4011-0133 Nondestructive effect on unit

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[institution shortly before end of strike of restrictions on smoking and drinking soft drinks and coffee during reporting time at medical facility, i.e. time during which patients' charts and medical records turned over from outgoing to incoming shifts, not violative, since change was not material, substantial change in practice inasmuch as applied only to overlap of shifts, had existed at times in past, and was justified by business reasons]

Alamo Cement Company d/b/a San Antonio Portland Cement Company 277 NLRB No. 033
(unilateral subcontracting of unit work not violative in absence of showing harm to unit Ees' wages and working conditions)

6067-4011-0167 Destructive effect on unit

Alamo Cement company 277 NLRB No. 108
(unilaterally hiring new Ee as temporary laborer and utliziaing supervisors to operate certain equipment when it was again put into use, violations)

Alamo Cement company 277 NLRB No. 108
(unilaterally using a supervisor to operate a crane and establishing a regular schedule for him to do so eight hours a week, not violations where no contractual provisions prohibited such assignment, and supervisors had performed crane operations before)

6067-4011-0183 Actions taken during strike or lockout

Brady-Stannard Motor Co., Inc. 273 NLRB No. 178
(Bd found that after impasse wages paid to striker replacements was consistent with E's final offer to U to continue expired contract for 1 year where Bd looked at *actual* earnings received by replacements over 6 month period and it showed they were equal to or lower than what strikers earned in similar period in prior year notwithstanding wage package of replacements different from strikers. Therefore, no violation by offering replacements higher wage formula but where actual wages same, because it was, in effect, offering same contract to replacements as one that expired and which was offered to U)

6067-4011-1100 Subcontracting unit work

Pan American Grain Company, Inc. and Bulk Terminal Operations, Inc. 281 NLRB No. 019
[unilaterally subcontracting stevedoring to avoid employing larger U gang as required by contract, violation where decision did not involve change in nature or direction of operations and was amenable to resolution by collective bargaining in view of U control over size of gang]

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. 280 NLRB No. 021
[E's unilateral suddeny increase in subcontracting of unit work, unlawful, where increase resulted from E's unlawful layoff of Ees in preparation for organization of company, held to be alter ego, in order to reduce labor costs by avoiding obligations of collective bargaining agreement]

Mar-Kay Cartage, Inc. and Contemporary Delivery Systems, Inc. 277 NLRB No. 152
(violation, where trucking company which was held alter ego to another company subcontracted driving positions by entering into contract with labor broker to provide it with drivers w/o bargaining with U which had represented driver Ees of its alter ego)

Alamo Cement Company d/b/a San Antonio Portland Cement Company 277 NLRB No. 033
(unilateral subcontracting of unit work not violative in absence of showing harm to unit Ees' wages and working conditions)

Handy Andy Associates, Inc. 277 NLRB No. 029
(E's decision to subcontract warehouse and delivery operations not violative where decision was permitted by bargaining agreement containing subcontracting clause specifying in part that in event dispute went to arbitration, E agreed not to contract out said work until award was received; both parties agreed to be bound by arbitrator's decision which was intended to resolve contractual dispute over subcontracting and was fair and regular)

Teledyne Wisconsin Motor, A Division of Teledyne Industries, Inc. 275 NLRB No. 076
(no violation by e's unilateral subcontracting piston production for engines where U contractually waived its right to bargain over E's decision to contract out production work when doing the work on E's premises cost substantially more than having an outside contractor do it, as here)

Griffith-Hope Company 275 NLRB No. 073
(subcontracting unit work w/o notifying or bargaining with U about either decision to subcontract or its effects, unlawful, since decision to subcontract turned upon labor costs w/i meaning of *Otis Elevator*, 269 NLRB 891; such decision concerned mandatory subject of bargaining; and E viewed subcontracting program as temporary one that did not effec fundamental change in nature of its operation)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(unilaterally subcontracting night shift work and using temporary Ees supplied by an employment agency rather than recalling former night shift workers on layoff, violative)

Pennsylvania Energy Corporation 274 NLRB No. 174
(E's concealment from U of nature and extent of its subcontracting arrangement, violative where E deprived U of opportunity to bargain about decision to subcontract work or effects of such decision on bargaining unit Ees)

Clinton's Ditch Cooperative Co., Inc. 274 NLRB No. 103
(E's unilateral decision to subcontract its trucking operations, a decision reached after it was unable to reach agreement with its joint E who was

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supplying those trucking operations over an increase in labor costs, w/o notice to or bargaining with U, violative, since E's decision turned on labor costs and did not turn upon a change in the nature or direction of the business and was mandatory subject of bargaining where correspondence between E and new subcontractor indicated E was looking for decreased labor costs and E still used the same equipment and leased drivers as it had done with its former joint E)

Gar Wood-Detroit Truck Equipment, Inc. 274 NLRB No. 023
(failure of E, which was engaged in installation of equipment and accessories on trucks and also selling parts, to bargain over its decision to subcontract its service work, not unlawful, since no specific term of contract was identified as having been modified and decision to subcontract not subject to mandatory bargaining since decision turned not merely on labor costs but on significant change in nature and direction of enterprise with E's essential purpose being to not only reduce overhead costs such as rent and utilities but to also get out of service and installation business and just sell parts)

Kohler Company 273 NLRB No. 195
(no violation by E's unilaterally contracting out janitorial work in view of broad management rights clause)

Ausable Communications, Inc. 273 NLRB No. 166
(cable TV company's unilateral subcontracting installation work, not unlawful, since installations occurred as result of installation of satellite disc which enabled company to offer customers additional channels, thus subcontracting was decision as to handling of increased workload which affected scope of business and thus was not bargainable)

Ingersoll-Rand Company JD-(NY)-48-85
(E's subcontracting unit work w/o bargaining with U, not violative, since U clearly and unmistakably waived right to object where contract specifically provided that E could unilaterally subcontract unit work, E had past practice of subcontracting unit work and U president acknowledged there was nothing U could do about E's decision)

R.L. Polk & Co. JD-5-85
(subcontracting work by print shop to which additional work had previously been lawfully transferred from another of E's print shops, not unlawful, even if transfer of work caused overload which necessitated subcontracting)

Clinton's Ditch Cooperative Co., Inc. v. N.L.R.B. 778 F.2d 132 (C.A. 2, Dec. 1985)
[U's contention that E was joint-E with subcontractor who took over E's trucking operations and E had duty to bargain when it chose another subcontractor, rejected and E's unilateral decision to change subcontractors not violative, since E did not have sufficient control over Ees of first subcontractor where E did not continue to play any role in hiring or firing, E did not directly administer discipline to drivers, subcontractor provided almost all benefits to drivers and E had only indirect, limited connection to problems of pay and other aspects of labor relations]

6067-4011-2200 Change to reliance on independent contractors or franchisors

Engineered Control Systems, Inc. 274 NLRB No. 191
(violation, where E unilaterally changed Ee's status from Ee to independent contractor, ceased making payments to pension trust fund, and changed work duties of Ees w/i classification, after it had unlawfully withdrawn recognition from U upon expiration of contract)

6067-4011-4200 Spinoff or transfer of operations

Oak Rubber Company 277 NLRB No. 148
(E's refusal to bargain over decision to relocate part of its operations and the effects of that decision, violative, where just at time U was offering concessions in an attempt to meet E's expressed financial needs over labor costs, E closed the door to further negotiations before impasse by announcing that it had finalized plans to relocate; further, E is under obligation to do more than present U with list of predetermined effects of relocation and ask U for comments)

Hawthorn Mellody, Inc. 275 NLRB No. 055
(E had no duty to bargain with U over its decision to close plant and transfer production to plant 90 miles away as decision turned upon change in nature or operation of business percipitated by loss of contract with major customer who provided 50-70% of business. Labor costs was one motivating factor, but decision did not *turn upon* it)

6067-4011-4400 Partial termination of operation

Desota, Inc. 278 NLRB No. 114
[E's unilaterally closing plant and transferring work to its other facilities, not violation, where contractual labor costs were not a factor in decision, which was based on economy and effeciency of closing one plant and reallocating work to plants with unused production capacity, and decision was thus not amenable to bargaining]

6067-4011-4600 Transferring work

ABS Industries, Inc. 275 NLRB No. 145
[unilateral decision to close plant and relocate remaining work, not violation, as there was no duty to bargain where decision was nonmandatory bargaining subject in view of fact it turned, not on reduction of labor costs but on restructuring of company due to heavy losses and requirements of lenders]

Morco Industries, Inc. And All Southern Fabricators, A division of Morco Industries, Inc. 279 NLRB No. 100
[E's transferring work from one plant to another w/o bargaining with U about transfer, not violative where decision turned entirely on need to expand E's metal fabrication facilities, which involved change in nature and scope of facet of enterprise; E did not seek to undermine status of U or escape labor costs embodied in contract]

Brown Company; Brown Company, Livingston-Graham Division; et al. 278 NLRB No. 113
[E's unilateral midterm transfer of unit work to wholly owned subsidiary in violation of work preservation clause, unlawful, since transfer of work was motivated by desire to reduce labor costs, hence mandatory subject of bargaining]

Desota, Inc. 278 NLRB No. 114
[E's unilaterally closing plant and transferring work to its other facilities, not violation, where contractual labor costs were not a factor in decision, which was based on economy and effeciency of closing one plant and reallocating work to plants with unused production capacity, and decision was thus not amenable to bargaining]

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos 278 NLRB No. 091
[E's contention that its alleged double breasted operation allowed it to transfer unit work from one business to the other, rejected, since Es were found to be single E and alter egos and thus, work was never transferred out of bargaining unit]

Nurminco, Inc. d/b/a University Health Care Center 274 NLRB No. 112
(E's refusal to bargain with U about layoff of Ees, as well as its distribution of their work to nonunit bargaining Ees, violative)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 789 F.2d 9 (C.A. D.C., Apr. 1986)
[owner of a unionized and a nonunionized facility violated Act by diverting work from former to latter facility w/o giving U opportunity to bargain]

6067-4011-5500 Termination of operations

ABS Industries, Inc. 275 NLRB No. 145
[unilateral decision to close plant and relocate remaining work, not violation, as there was no duty to bargain where decision was nonmandatory bargaining subject in view of fact it turned, not on reduction of labor costs but on restructuring of company due to heavy losses and requirements of lenders]

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. 280 NLRB No. 021
[E's layoff of Ees from business it was terminating unlawful where it immediately began new business, held to be alter ego of teminated business, and induced laid off Ees to become Ees of new company under non-U conditions]

6067-4011-6200 Layoffs and discharges

Aquaslide 'N' Dive Corporation 281 NLRB No. 034
[E's delay in notifying U prior to layoffs and subsequent recalls, not unlawful, since necessity for layoffs was clear where, as result of E's filing of ptn in bankruptcy, its assets were frozen thereby causing layoffs, and there was no showing how prior notice could have influenced layoffs or recalls]

Advertiser's Manufacturing Company 280 NLRB No. 128

Central Broadcast Company 280 NLRB No. 056
[unilateral layoff of eight announcers purportedly because of automation of radio station, violation]

Alamo Cement Company d/b/a San Antonio Portland Cement Company 277 NLRB No. 033
(failure to bargain over layoffs, unlawful, notwithstanding E's defense of economic necessity)

American Model & Pattern, Inc. 277 NLRB No. 018
(in absence of contract provision E's unilateral layoff of Ees w/o notifying or bargaining with U, violative; E's bargaining duty includes both the criteria for selection and the application of such criteria to particular Ees)

Nurminco, Inc. d/b/a University Health Care Center 274 NLRB No. 112
(E's refusal to bargain with U about layoff of Ees, as well as its distribution of their work to nonunit bargaining Ees, violative)

Rockne L. Alexander, Rockne Alexander, II, Debrah Nelson, Douglas Nelson and Tami DeGeorgis, d/b/a Alexander Packaging Co. JD-(SF)-5-86
[E's unilateral actions regarding changes in working conditions, job discipline and termination, occurring at time when E was obligated to notify and bargain with U concerning effects of such actions, violative]

6067-4011-6600 Introduction of automated methods

Central Broadcast Company 280 NLRB No. 056
[unilateral layoff of eight announcers purportedly because of automation of radio station, violation]

6067-4011-6900 Change in manner of operation

City Cab Company of Orlando, Inc.; et al. d/b/a Yellow Cab Company and Dixie Cab Company 273 NLRB No. 131
(taxi company's unilateral changes in various charges, surcharges, late penalties drivers were required to pay, in bidding procedure and in minimum number of shifts required unlawful, where company had not committed itself to any fixed practice; company's contention U had failed to protest changes for inordinate amount of time, rejected, since U had alleged unlawful unilateral changed in first charge, and since Region was attempting to get company to comply with its promise not to engage in any further changes, it would have been useless for U to protest each change)

6067-4011-7700 Relocation of operations

Central Soya Company, Inc. 281 NLRB No. 173
[E's consolidation/relocation of facilities to a different part of town, withdrawal of recognition from U at new location once Ees at old locations had been transferred to new location and refusal to bargain with U over effects of decision to consolidate/relocate, violative, where there was no substantial change in operations following the consolidation/relocation and once Ees were transferred to new location with other unrepresented Ees, those transferred constituted a majority of Ees who still desired U representation]

ABS Industries, Inc. 275 NLRB No. 145
[unilateral decision to close plant and relocate remaining work, not violation, as there was no duty to bargain where decision was nonmandatory bargaining subject in view of fact it turned, not on reduction of labor costs but on restructuring of company due to heavy losses and requirements of lenders]

Metropolitan Teletronics Corp. 279 NLRB No. 134
[failure to bargain over decision to close operation in one city and relocate to another, not violation where motivated by foreclosure action on building in which operations were located, new facility's lower mortgage interest rate and more spacious quarters, and prospect of state assistance through issuance of tax-exempt developement bonds; decision did not turn on labor costs at facility that was closed and thus was not mandatory bargaining subject]

Safelite, Division of Lear Siegler, Inc. 277 NLRB No. 080
(new plant opened by E assertedly for operational efficiency which replaced old plant and was located only a few miles therefrom, held to be accretion of old plant and E's withdrawal of recognition from U at old plant and failure to bargain over effects of opening new plant violative, where Ees at new plant performed work identical to old plant, supervisors at both plants reported to the same management and two plants were only 20 minutes away from each other; further, E's asserted good faith doubt of U's majority status at new plant was groundless since E hired majority of Ees from old plant to staff new plant)

National Metalcrafters, Inc. and National Lock Corp. and Keystone Consolidated Industries, Inc. 276 NLRB No. 014
(E's refusal to bargain with U over decision to relocate department not violative where bargaining history and contractual provisions evidenced that parties intended for clause to mean what it said—that E had obligation to discuss with U contemplated relocation but not to bargain over that decision)

American Fluorescent Corp. 275 NLRB No. 154
(withdrawal of recognition of U as exclusive Ee bargaining agent, not violative where there is no evidence that E took any action to inhibit transfer of former bargaining unit members, and no evidence to refute evidence of proferred assistance by E. E terminated its operations in one city and resumed operations in another 35 miles north of first city in another county where U did not represent majority of E's work force)

Inland Steel Container Company 275 NLRB No. 129
(E's failure to bargain over its decision to relocate its steel drum plant, not violative, since labor costs were not sole or predominate motivating factor in its decision, but rather E was primarily motivated by cost of operations, along with low volume and limitations of plant and facilities, notwithstanding contractual labor costs precipitating factor in E's search for new facility, in view of smallness of building, non-availability of land surrounding plant, and flooding of plant which necessiated use of oiled rather than dry steel to protect against rust)

Hawthorn Mellody, Inc. 275 NLRB No. 055
(E had no duty to bargain with U over its decision to close plant and transfer production to plant 90 miles away as decision turned upon change in nature or operation of business percipitated by loss of contract with major customer who provided 50-70% of business. Labor costs was one motivating factor, but decision did not *turn upon* it)

R.L. Polk & Co. JD-5-85
(E's failure to bargain regarding transfer of machinery and unit work from one of its print shops to another of its print shops, not unlawful, since while labor costs were a factor, decision did not turn on labor costs, but upon change in nature and direction of business, where decision precipitated by increasingly automated procedures requiring less space and fewer Ees and plants, thus transfer not w/i ambit of mandatory bargaining; notwithstanding remarks by E that move and consolidation motivated by desire to rid itself of labor costs incurred under contract with U representing Ees at plant from which transferred)

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) 802 F.2d 969 (C.A. 7, Oct. 1986)
[ct held Bd improperly found that E did not unlawfully refuse to bargain over relocation of operations because U waived its statutory right to bargain over move, since Bd incorrectly assumed that contractual relocation provision supplanted statutory right to bargain over relocation decision based at least in part on labor costs; Bd omitted mention of traditionally stringent test for waiver of statutory right, and disregarded evidence pertinent to construing wording of applicable contract provision; and Bd failed to consider parol evidence rule and evidence favoring its own position]

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) 802 F.2d 969 (C.A. 7, Oct. 1986)
[E must bargain if decision to relocate is significantly motivated by concern over labor costs, though not if it is based mainly on factors other than labor, such as desire to economize on shipping costs]

6067-4011-8800 Reallocation or consolidation of operations

Central Soya Company, Inc. 281 NLRB No. 173
[E's consolidation/relocation of facilities to a different part of town, withdrawal of recognition from U at new location once Ees at old locations had been transferred to new location and refusal to bargain with U over effects of decision to consolidate/relocate, violative, where there was no substantial change in operations following the consolidation/relocation and once Ees were transferred to new location with other unrepresented Ees, those transferred constituted a majority of Ees who still desired U representation]

United Technologies Corporation 274 NLRB No. 087
(E's unilaterally splitting department into 3 separate departments, not violative where bargaining agreement reserved to E exclusive right to determine manner, means and processes of manufacturing which encompassed right to establish or rearrange its own organizational structure and to change and rearrange its manufacturing departments as it saw fit; when E split department, it was w/i its contractual rights to do so and U waived any right it might otherwise have had to bargain over that subject matter; moreover, there was bargaining over effects of decision on Ees)

R.L. Polk & Co. JD-5-85
(E's failure to bargain regarding transfer of machinery and unit work from one of its print shops to another of its print shops, not unlawful, since while labor costs were a factor, decision did not turn on labor costs, but upon change in nature and direction of business, where decision precipitated by increasingly automated procedures requiring less space and fewer Ees and plants, thus transfer not w/i ambit of mandatory bargaining; notwithstanding remarks by E that move and consolidation motivated by desire to rid itself of labor costs incurred under contract with U representing Ees at plant from which transferred)

6067-4022 Failure to bargain over effect on unit of economically motivated operational decisions

6067-4022-0100 Generally

6067-4022-0133 Nondestructive effect on unit

ICI Americas, Inc. JD-328-85
(notwithstanding E's deceptive course in negotiations prevented U from finding out until tenth negotiating session that unit was split w/o any unlawful action on part of E, E did not need to bargain over effects of decision to split since early on parties were bargaining over split unit and E supplied U with all information about new unit (wages, hours and conditions of employment) so that U was not inhibited in its bargaining)

6067-4022-0183 Actions taken during strike or lockout

Challenge-Cook Brothers of Ohio, Inc. 282 NLRB No. 002
[lockout of Ees in order to further E's bargaining position after reaching impasse in contract negotiations with U held not equivalent to layoff and, consequently, denial of pension withdrawal benefits to Ees throughout lockout period held not unlawful, since retirement plan, providing for pension withdrawal rights to Ees *laid off temporarily for lack of work*, did not include locked out Ees]

Challenge-Cook Brothers of Ohio, Inc. 282 NLRB No. 002
[denial of pension withdrawal benefits during period of scheduled 2-week holiday layoff which was cancelled because lockout occurred contemporaneously with scheduled layoff, not unlawful, where E viewed lockout from its inception as being of indefinite duration; and timing of lockout first working day after U rejected E's latest contract proposal raised inference that purpose of lockout was to place economic pressure on U to accept E's bargaining position and not to overlap with prescheduled layoff so as to deprive Ees of benefits to which they otherwise would have been entitled]

6067-4022-1100 Subcontracting unit work

Airport Distributors, Inc. **280 NLRB No. 091**
[unilateral subcontracting of unit work while failing to recall from layoff unit Ees to perform such work, unlawful, notwithstanding E's claim that decision to subcontract was *entrepreneurial*; while S.Ct has exempted certain bona fide decisions of Es from bargaining obligation, discriminatorily motivated subcontracting, coupled with refusal to bargain, is unlawful]

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**
[subject of discriminatorily motivated contracting was specifically excluded from sweep of *Otis Elevator Co.* 269 NLRB 891, 892 where contracting out held permissable under certain circumstances. Further, such contracting decision for admitted purpose of reducing labor costs constitutes mandatory subject of bargaining]

Handy Spot, Inc. **279 NLRB No. 177**
[E's failure to bargain with U over effects of its decision to subcontract its delivery routes in metropolitan area to independent contractors resulting in layoff or termination of its Ees unlawful notwithstanding E's contention that U waived its right to bargain, where E never advised U of sale of any of E's routes until well after sales had taken place]

Griffith-Hope Company **275 NLRB No. 073**
(subcontracting unit work w/o notifying or bargaining with U about either decision to subcontract or its effects, unlawful, since decision to subcontract turned upon labor costs w/i meaning of *Otis Elevator*, 269 NLRB 891; such decision concerned mandatory subject of bargaining; and E viewed subcontracting program as temporary one that did not effec fundamental change in nature of its operation)

Pennsylvania Energy Corporation **274 NLRB No. 174**
(E's concealment from U of nature and extent of its subcontracting arrangement, violative where E deprived U of opportunity to bargain about decision to subcontract work or effects of such decision on bargaining unit Ees)

Clinton's Ditch Cooperative Co., Inc. **274 NLRB No. 103**
(E's unilateral decision to subcontract its trucking operations, a decision reached after it was unable to reach agreement with its joint E who was supplying those trucking operations over an increase in labor costs, w/o notice to or bargaining with U, viclative, since E's decision turned on labor costs and did not turn upon a change in the nature or direction of the business and was mandatory subject of bargaining where correspondence between E and new subcontractor indicated E was looking for decreased labor costs and E still used the same equipment and leased drivers as it had done with its former joint E)

Gar Wood-Detroit Truck Equipment, Inc. **274 NLRB No. 023**
(violation, where E which was engaged in installing equipment and accessories on trucks failed to bargain regarding effects of subcontracting on unit Ees since E only informed U of its decision to subcontract after it executed subcontracting agreement)

Everett Yacht Club **JD-(SF)-115-85**
(E's failure to bargain with U over effects of its decision to subcontract its bar and restaurant operations, violative, since U could have accomplished positive and favorable considerations for unit Ees if U had learned of E's intent to subcontract prior to its being put into effect)

6067-4022-4200 Spinoff or transfer of operations

Drummond Coal Company, Inc. **277 NLRB No. 177**
[E's transfer of repair work caused primarily by fundamental change in nature and direction of E's operations and not costs from city to onsite location at mine and closing city repair shop w/o notice to or bargaining with U over decision and its effects, not violative]

Oak Rubber Company **277 NLRB No. 148**
(E's refusal to bargain over decision to relocation part of its operations and the effects of that decision, violative, where just at time U was offering concessions in an attempt to meet E's expressed financial needs over labor costs, E closed the door to further negotiations before impasse by announcing that it had finalized plans to relocate; further, E is under obligation to do more than present U with list of predetermined effects of relocation and ask U for comments)

Mack Trucks, Inc. **277 NLRB No. 084**
(E's decision to *transfer and consolidate work* being performed at truck assembly facility to another facility *not mandatory* bargaining subject, since E's decision did not turn on bargaining unit labor costs, but on serious losses for year 1980 and projected future losses because of E's excess productive capacity which led E to believe E had over invested in capital assets and such transfer to larger and more modern facility would cut freight and overhead costs)

Mack Trucks, Inc. **277 NLRB No. 084**
(alleged failure of E to bargain with U over effects of its decision to close one plant and transfer work of truck assembling to another facility, not violative, since record fails to show E refused to bargain over effects of E's decision to close its facility. Local and international U's as well as E's proposals were discussed at numerous negotiating sessions. Record warrants determination that E was willing to discuss closure and transfer problems with U representatives w/i framework of E and U's master agreement)

Hawthorn Mellody, Inc. **275 NLRB No. 055**
(E did not unlawfully refuse to bargain over effects of its decision to close facility and transfer production to plant 90 miles away. While no formal notice given to U, U had substantial information from which it must inevitably have been aware of E's intentions but never requested bargaining over effects of its decision, thereby waiving its right to do so)

6067-4022-4400 Partial termination of operation

Desota, Inc. **278 NLRB No. 114**
[no violation by refusing to bargain about effects of plant closing and transfer of work to E's other facilities where E adequately bargained about effects and remained willing to discuss them but U chose to discuss decision to close, rather than effects, and was therefore responsible for lack of more extensive effects bargaining]

6067-4022-4800 Transfer of work

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[while E has right w/o U participation to change scope and direction of his business especially when it relates to decision whether to be in business at all, E does not enjoy same independence with respect to U concerns over effects of such decision and, consequently, under all circumstances herein, E's rejection of bargaining over effects of relocation of unit work to another plant held unlawful]

Morco Industries, Inc. And All Southern Fabricators, A division of Morco Industries, Inc. **279 NLRB No. 100**
[violation, where E refused to discuss layoffs caused by E's economally motivated decision to transfer work out of bargaining unit]

Desota, Inc. **278 NLRB No. 114**
[no violation by refusing to bargain about effects of plant closing and transfer of work to E's other facilities where E adequately bargained about effects and remained willing to discuss them but U chose to discuss decision to close, rather than effects, and was therefore responsible for lack of more extensive effects bargaining]

Mack Trucks, Inc. **277 NLRB No. 084**
(E's decision to *transfer and consolidate work* being performed at truck assembly facility to another facility *not mandatory* bargaining subject, since E's decision did not turn on bargaining unit labor costs, but on serious losses for year 1980 and projected future losses because of E's excess productive capacity which led E to believe E had over invested in capital assets and such transfer to larger and more modern facility would cut freight and overhead costs)

Mack Trucks, Inc. **277 NLRB No. 084**
(alleged failure of E to bargain with U over effects of its decision to close one plant and transfer work of truck assembling to another facility, not violative, since record fails to show E refused to bargain over effects of E's decision to close its facility. Local and international U's as well as E's proposals were discussed at numerous negotiating sessions. Record warrants determination that E was willing to discuss closure and transfer problems with U representatives w/i framework of E and U's master agreement)

Suburban Transit Corp. and Suburban Trails, Inc. **276 NLRB No. 005**
(no violation when E relocated unit work (single E) and thereby brought unit Ees under different bargaining agreement which was less favorable to these Ees, since contract covering original workstation did not contain any provisions preventing E from making such relocation w/o first obtaining consent of U and E bargained in good faith over decision to relocate)

Jaydon, Inc. **273 NLRB No. 199**
(transfer of unit work to new location allegedly contrary to terms of existing contract and w/o U's prior consent in order to avoid paying contract wage rates and in retaliation for U's refusal to make or accept mid-term contract modifications, not unlawful, in view of rule, estabflished by *Milwaukee II* and retroactively applied therein, that relocations such as that herein are not unlawful in absence of contract language expressly forbidding such moves)

ICI Americas, Inc. **JD-328-85**
]*transfer of unit work*, lawful)

6067-4022-5500 Termination of operations

Armour and Company **280 NLRB No. 096**
[E's refusal to bargain as to whether severance and vacation pay to Ees being terminated is to be allocated to specific periods and thus under state statute allocated payments be deemed wages and effect Ees eligibility for unemployment compensation, unlawful, since mandatory subject of bargaining; E's contention payment of unemployment benefits exclusively w/i province of state, rejected, since statute provided for allocation of termination pay by E; E's further contentions of lack of demand for bargaining, waiver of right to bargaining, and bar by existing bargaining agreement, rejected]

Strawsine Manufacturing Co., Inc., et al. **280 NLRB No. 063**
[E's failure to bargain over effects of decision to shutdown and relocate plant, on grounds U waived right to bargain by failing to request bargaining, violative, where U had attempted to talk E into keeping the plant open but E simply said decision was final and irrevocable]

6067-4022-5500—Cont.

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos **277 NLRB No. 39**

(E unlawfully failed to afford U opportunity to bargain regarding effects of E's cessation of operations and layoff of Ees, which resulted from garnishment of its bank account to satisfy judgment obtained by U trust fund, where E failed to give U clear and timely notice of its decision to close)

GHR Foundry Division of Dayton Malleable, Inc. **275 NLRB No. 099**

(E did not violate Act by refusing to bargain with U regarding effects of its plant shutdown where E notified U of shutdown well in advance of its implementation, gave U opportunity to bargain over effects of shutdown, and adequately responded to limited demands made by U during bargaining)

The Cross Company **274 NLRB No. 065**

(failure to bargain over closure of plant and donation of it to city, violative)

Indianhead Truck Line, Inc. **JD-271-85**

(E's failure to notify Us of its decision to terminate its freight operations until after implementation of decision, thus denying Us opportunity to bargain over effects of its decision, unlawful; E's contention its failure to give timely notice was justified by fear of theft and its financial situation, rejected)

Indianhead Truck Line, Inc. **JD-271-85**

(E unlawfully refused to bargain over effects of closure of its freight operations where U's secretary-treasurer stated to E *we have to sit down and work out a closing agreement,* and E replied that agreement *had to be worked out by bankruptcy ct,* since E is not relieved of its obligation to bargain over effects of its decision because it has become debtor-in-possession under Bankruptcy Act and believes it would be unable to meet U's financial demands; E's subsequent invitation to U to bargain did not bar finding of violation and ordering remedy for prior violation)

6067-4022-6200 Layoffs or discharges

Morco Industries, Inc. And All Southern Fabricators, A division of Morco Industries, Inc. **279 NLRB No. 100**

[violation, where E refused to discuss layoffs caused by E's economally motivated decision to transfer work out of bargaining unit]

Intersystems Design and Technology Corp. **278 NLRB No. 111**

[E's unilateral layoff of Ees w/o notice to or bargaining with U, violative; further, E's contention that make whole remedy is inappropriate because U waived opportunity to bargain over effects of decision after learning of layoffs because U did not demand effects bargaining, rejected, where U was faced with fait accompli because it did not receive any notice of layoffs and any bargaining demand by U would have been futile where E wrote U a letter in relation to layoffs maintaining it had no obligation to bargain over decision or choice of Ees for layoff]

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos **277 NLRB No. 39**

(E unlawfully failed to afford U opportunity to bargain regarding effects of E's cessation of operations and layoff of Ees, which resulted from garnishment of its bank account to satisfy judgment obtained by U trust fund, where E failed to give U clear and timely notice of its decision to close)

6067-4022-6600 Introduction of automated methods

Central Broadcast Company **280 NLRB No. 056**

[unilaterally installing new automatic machinery at radio station, violation]

6067-4022-7700 Relocation of operations

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**

[E unlawfully refused to bargain over effects of interplant transfer of unit work, where E's actions went beyond merely reducing workforce and, instead, involved far-reaching consequences not covered by parties' contract, thereby obligating E to bargain with U over collateral effects of its decision to relocate unit work; contract's management rights clause did not constitute waiver of U's right to bargain over consequences resulting from work transfer, and zipper clause likewise did not preclude effects bargaining]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**

[management rights clause, authorizing E to relocate work from one plant to another at will, held not waiver of U's right to bargain about consequences resulting from such work transfer; while management rights clause conferred upon E exclusive decision-making authority regarding relocation of unit work, contract was silent over consequences of such decision; and contract's broad management rights clause, in absence of specific waiver language, did not waive U's right to bargain over effects of E's relocation decision]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**

[*zipper clause* held not to constitute clear and unmistakeable waiver of U's right to bargain over effects of E's interplant transfer of unit work since, unlike case in which zipper clause constituted waiver of U's right to bargain over new benefit for non-bargaining unit personnel, leaving unit Ees unaffected, no such waiver could be read into parties' zipper clause herein, since transfer of work struck directly at one of the most critical of Ee concerns--availability of jobs elsewhere when unit work had been lost]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**

[absent express language in contract waiving parties' bargaining obligations, Bd examines totality of circumstances surrounding making of contract, including prior bargaining history, to determine whether waiver may be implied; here, parties engaged in no discussion bearing on effects of relocation of unit work, and U's silence may not be construed as waiver; in absence of express language or unambiguous bargaining history, forfeiture of important right, such as bargaining over effects of decision to relocate Ees' work, will not be implied]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**

[while E has right w/o U participation to change scope and direction of his business especially when it relates to decision whether to be in business at all, E does not enjoy same independence with respect to U concerns over effects of such decision and, consequently, under all circumstances herein, E's rejection of bargaining over effects of relocation of unit work to another plant held unlawful]

Central Soya Company, Inc. **281 NLRB No. 173**

[E's consolidation/relocation of facilities to a different part of town, withdrawal of recognition from U at new location once Ees at old locations had been transferred to new location and refusal to bargain with U over effects of decision to consolidate/relocate, violative, where there was no substantial change in operations following the consolidation/relocation and once Ees were transferred to new location with other unrepresented Ees, those transferred constituted a majority of Ees who still desired U representation]

Central Soya Company, Inc. **281 NLRB No. 173**

[E violated duty to engage in effects bargaining over decision to relocate where U was presented with fait accompli i.e., E told U that Ees could transfer to new location but new operation would be non-U, thus, U had no obligation to present counterproposals or request bargaining]

Strawsine Manufacturing Co., Inc., et al. **280 NLRB No. 063**

[E's failure to bargain over effects of decision to shutdown and relocate plant, on grounds U waived right to bargain by failing to requ... bargaining, violative, where U had attempted to talk E into keeping the plant open but E simply said decision was final and irrevocable]

Metropolitan Teletronics Corp. **279 NLRB No. 134**

[E's concealing its decision to relocate operations until after it began to vacate existing facility, violation where E failed to provide U with timely notice, a part of meaningful bargaining, and thus denied it opportunity to bargain at time when it retained some bargaining power as representative of Ees; earlier references to E's financial plight and possible plant closing did not constitute notice, and E gave no reason for concealment, such as emergency, which would have justified late notice]

Mack Trucks, Inc. **277 NLRB No. 084**

(alleged failure of E to bargain with U over effects of its decision to close one plant and transfer work of truck assembling to another facility, not violative, since record fails to show E refused to bargain over effects of E's decision to close its facility. Local and international U's as well as E's proposals were discussed at numerous negotiating sessions. Record warrants determination that E was willing to discuss closure and transfer problems with U representatives w/i framework of E and U's master agreement)

Suburban Transit Corp. and Suburban Trails, Inc. **276 NLRB No. 005**

(no violation when E relocated unit work (single E) and thereby brought unit Ees under different bargaining agreement which was less favorable to these Ees, since contract covering original workstation did not contain any provisions preventing E from making such relocation w/o first obtaining consent of U and E bargained in good faith over decision to relocate)

Jaydon, Inc. **273 NLRB No. 199**

(transfer of unit work to new location allegedly contrary to terms of existing contract and w/o U's prior consent in order to avoid paying contract wage rates and in retaliation for U's refusal to make or accept mid-term contract modifications, not unlawful, in view of rule, established by *Milwaukee II* and retroactively applied therein, that relocations such as that herein are not unlawful in absence of contract language expressly forbidding such moves)

6067-4022-8800 Reallocation or consolidation of operations

Central Soya Company, Inc. **281 NLRB No. 173**

[E's consolidation/relocation of facilities to a different part of town, withdrawal of recognition from U at new location once Ees at old locations had been transferred to new location and refusal to bargain with U over effects of decision to consolidate/relocate, violative, where there was no substantial change in operations following the consolidation/relocation and once Ees were transferred to new location with other unrepresented Ees, those transferred constituted a majority of Ees who still desired U representation]

Central Soya Company, Inc. **281 NLRB No. 173**

[E violated duty to engage in effects bargaining over decision to relocate where U was presented with fait accompli i.e., E told U that Ees could transfer to new location but new operation would be non-U, thus, U had no obligation to present counterproposals or request bargaining]

6067-4033 Unilateral change in remuneration or benefits (See also 530-6050-1600)

SFTT The Santa Fe Trail Transportation Company/ BN transport JD-377-85
[unilaterally failing to make pension and health and welfare fund contributions, to pay wages, to pay vacation, holiday and sick pay, violation, despite alleged economic hardship]

6067-4033-1300 Uniforms, etc.

Alamo Cement Company 281 NLRB No. 110
[E's unilateral 25-cent increase in rental fees charged by third-party supplier for uniforms furnished to Ees who opted to wear uniforms but were not required to do so, not unlawful since, assuming matter was mandatory subject of bargaining, increase did not constitute material, substantial, and significant change in terms and conditions of employment]

6067-4033-1900 Savings plan

American Model & Pattern, Inc. 277 NLRB No. 018
(E's unilateral discontinuance of end of year IRA payments to Ees, assertedly because such payments were *wholly discretionary* and hence not a subject of bargaining, violative, where such payments were routine and regarded by Ees as a regular company benefit)

6067-4033-2200 Profit sharing or joint earnings plans

Freedom WLNE-TV, Inc. 278 NLRB No. 167
[profit sharing payments became term and condition of employment of unit Ees where E issued memorandum to Ees unconditionally announcing E's decision to make profit-sharing payments]

6067-4033-2500 Wage

St. John's General Hospital of Allegheny County— ADR Center 281 NLRB No. 157
[E's unilateral institution of different compensation system for replacements for striking counselors at its alcohol and drug treatment facility, unlawful, notwithstanding E's contention newly instituted system had been in effect at its main hospital and this grid system for determining compensation more accurately and equitably reflected counselors' education, experience and seniority, since change not justified by use of system at hospital where hospital different enterprise with its Ees constituting separate unit, and while new system might be more logical, its adoption at other facility not justified by necessity]

St. John's General Hospital of Allegheny County— ADR Center 281 NLRB No. 157
[E's failure to bargain over discretionary aspects of amount of wage increases given its RNs and LPNs, not its unilateral implementation of established policy, unlawful, where in past wage increases of varying percentages had been given at same time of year, but herein increases were larger than had been in past to reflect shortage of nurses]

Alamo Cement Company 281 NLRB No. 110
[unilaterally granting wage increase and refusing to bargain about discharge of Ee, unlawful]

Cal-Am Partners d/b/a Amscot Coal 281 NLRB No. 027
[successor E's unilaterally implementing new wage rates, violation]

Little Mining, Inc. 280 NLRB No. 073
[refusing to pay minimum daily wages in contract and to pay premiums for individual E's benefit plan, unlawful, notwithstanding dissenting Bd member's argument that ULP charge was nothing more than attempt to have Bd enforce contract and collect delinquent wages and benefits]

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilaterally changing Ees from hourly to piece-work rate as basis for payment, violation, notwithstanding none of Ees lost money, where change required them to work harder for same amount of money and exposed them to possibility of discharge for failure to meet production quotas]

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilaterally changing Ees from hourly to piece-work rate as basis for payment, violation, notwithstanding none of Ees lost money, where change required them to work harder for same amount of money and exposed them to possibility of discharge for failure to meet production quotas]

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilaterally determining amount of annual wage increase, violation]

Advertiser's Manufacturing Company 280 NLRB No. 128
[unilaterally changing pay rates for house samples, violation notwithstanding not all Ees lost money as result nor was there any improper motivation behind change]

Tri-State Culvert Manufacturing, Inc. 280 NLRB No. 087
[unilaterally granting wage increase to Ees, not unlawful, where E's lawfully conducted poll of Ees indicted majority of Ees did not desire U representation, and E thereupon lawfully withdrew recognition from U prior to granting of increase]

American Press, Inc. 280 NLRB No. 109
[successor E's departure from rates of pay and benefits w/o prior bargaining with incumbent U, unlawful, where E unlawfully discriminated against predecessor's former Ees by refusing to hire them because of their U affiliation; and absent its unlawful purpose, E would have retained substantially all of these Ees and therefore E was not entitled to set initial terms of employment unilaterally]

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011
[E's unilateral changes including wage increase, health, pension and benefit fund contributions, and grievance procedure, unlawful since based on unlawful withdrawal of recognition which was preceeded by E solicitation of resignations from U]

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. 280 NLRB No. 021
[ostentsibly non-U E, held to be alter ego of unionized E, unilaterally changing hours, wages, work rules, job classifications, unlawful]

T. Marshall Corp., t/a/ Cliffside Health Care Center 279 NLRB No. 166
[unilateral grant of wage increase and new holiday, violation where U received only two days advance notice]

The Cincinnati Enquirer, Inc., A Division of Gannat, Inc. 279 NLRB No. 149

H.H.H. Enterprises, Inc., d/b/a Stephenson Haus 279 NLRB No. 139
[successor E's unilateral institution of new job classification and wage scale, unlawful, where successor had hired all Ees of predecessor and initially had adhered to prior conditions and terms of employment]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda 279 NLRB No. 089
[E's unilateral implementation of its flat rate wage with incentive proposal after expiration of bargaining agreement, and rejection by Ees of E's final proposal, not unlawful, since impasse existed where there had been 7 negotiating meetings during which there had been in depth discussions, positions on issues were advanced in good faith, but parties positions on flat rate wage remained unalterably opposite; fact concessions made on other matters did not preclude finding of impasse on flat rate since that issue was of overriding importance and parties were still not close to reaching agreement]

Fashion Furniture Mfg., Inc. 279 NLRB No. 095
[E's failure to implement increase in wages required under contract that it unlawfully refused to sign, violative]

Specialty Steel Treating, Inc. 279 NLRB No. 067
[unilaterally granting discretionary, rather than regularly scheduled, wage increases and bonuses while objections to election were pending, violation]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066
[unilateral change in contract wage rate to that comparable to practice in trade, as well as otherwise refusing to comply with contract wage rate by paying recalled Ee wages higher than contract rate but w/o fringe benefits, violation]

Ventura County Star-Free Press 279 NLRB No. 064
[unilaterally withholding step increases from eligible Ees not unlawful where U failed to timely demand bargaining and merely protested]

M & C Vending Co., Inc. and Its Wholly Owned Subsidiary Ada Automatic Sales Company, Inc. 278 NLRB No. 047
[E's unilateral increase in wages in line with proposal it made during negotiations, unlawful, as no impasse]

Alamo Cement company 277 NLRB No. 108
(unilaterally changing method of compensating certain Ees from hourly pay to salary and granting across-the-board increase, violations)

Cascade Painting Company, Inc. 277 NLRB No. 103
(Es who withdrew from multi-E bargaining following expiration of contract held to have unlawfuily made unilateral changes in existing wages and in discontinuing contributions to fringe benefit funds under contract, since Es were required to maintain status quo upon expiration of contract; contract pension, health and welfare plans survived expiration of contract and could not be altered w/o bargaining; and Es were duty bound to bargain with U while continuing in effect all terms and conditions of expired contract until new agreement was negotiated or true bargaining impasse was reached)

Cowin & Co., Inc. 277 NLRB No. 082
(E's refusal to provide U with requested financial information during bargaining, violative, since E's statements to U in course of bargaining amounted to claim of inability to pay where at outset of negotiations E advised U that there was *real question* whether E would be in business at termination of contract and E raised as justification for wage reduction proposals its financial losses for previous 3 years; further, because of this finding, E's claim of impasse rejected and its unilateral wage reduction and change in work rules, violative)

San Antonio Portland Cement Company 277 NLRB No. 036
(wage increase, violative)

6067-4033-2500—Cont.

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(across-the-board wage increase, violative even when given pursuant to E's policy of giving annual wage increases)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilateral change in pay status of certain positions from salaried to hourly, violative, notwithstanding E's defense that positions were supervisory and entailed no duty to bargain)

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**
(E's unilateral changes in wage rates and fringe benefits in contract, violative where E was bound by bargaining agreement entered into between U and E's alter ego with which E and third E constituted single E)

Koenig Iron Works, Inc. **276 NLRB No. 083**
(implementing unilateral wage increase called for under terms of contract that Bd had abrogated as violative of Sec. 8(a)(2), unlawful, as Bd will not allow E to resurrect unlawful contract since this would frustrate prior Bd order and would undermine Ees' right to be represented by present bargaining representative)

Koenig Iron Works, Inc. **276 NLRB No. 083**
(where E proposed minimum of 75 cent increase with some Ees getting more, to which U responded by asking for list as to how each Ee would fare under proposal and w/i 10 days of U receiving list E implemented wage increases w/o speaking to U representative, violative)

Angelica Corporation **276 NLRB No. 038**
(unilaterally promulgating and implementing improvements in wages and working conditions, violative where done prior to issuance of certification of results of decertification election that U lost)

Excelsior Pet Products Inc. **276 NLRB No. 085**
(E unlawfully breached its contract with U when it failed to put into effect full amount of wage increase as provided in contract; while U agreed to waive E's change in contract provided full wage increase was later given, E refused U's request at expiration of specified period to give full amount of contractual wage increase)

A & W Foods, Inc. **276 NLRB No. 020**
(E's failure to implement wage increase provision in contract negotiated to become effective at future date, unlawful, since U did not agree to reopen contract, notwithstanding its agreement to discuss E's proposed midterm modification and agreeing to take proposal to membership, which rejected it)

O. Voorhees Painting Co. and O.V. International, Inc. **275 NLRB No. 114**
(concealment of overtime hours worked and straight time payments made to Ees for overtime work for purpose of avoiding one of joint E's bargaining agreement with U through use of joint E arrangement, violative)

Roman Iron Works, Inc. **275 NLRB No. 066**
(interim unilateral wage increases granted during course of bargaining, violative where such increases were isolated individual wage adjustments, were not in accordance with practice of granting periodic increases, were granted in absence of impasse, and were granted w/o affording U opportunity to bargain about changes; E's contention that U waived its right to bargain over changes, rejected)

Hawthorn Mellody, Inc. **275 NLRB No. 055**
(paying rehired drivers different wage rates than those in expired contract, violative, since drivers still picked up their trucks to start deliveries w/i U's jurisdiction, though different location because local plant closed and for convenience of drivers E was having trucks loaded at plant 90 miles away and driven by other drivers to pick up point, drivers performed identical work as before, and no evidence that U lacked majority status or E had good faith doubt as to lack of majority status by U)

Armored Transport of California, Inc. **JD-(SF)-132-86**
[unilaterally introducing new wage scales and withholding or delaying wage increases, violation]

Long Island University **JD-263-86**
[no direct dealing with Ees where E implemented wage proposals agreed to by U]

Kite, Inc. **JD-(ATL)-47-86**
[E's unilateral failure to pay wage increase pursuant to independent contract, violation where E had signed memorandum of understanding obligating it to pay wage increase in independent contract]

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-6-86**
[upon reconsideration in light of *NLRB* v. *Bildisco*, 459 U.S. 1145, debtor-in-possession unilateral changes in provisions regarding U's access to plant and wages and benefits prior to expiration of contract, and prior to filing of bankruptcy ptn, unlawful, since debtor in possession assumed contract post ptn]

The Cincinnati Enquirer, Inc. **JD-171-85**
(violation, where E withdrew recognition of U after expiration of contract and unilaterally implemented wage increases and other benefits, since E's doubt of U's majority not asserted in good faith inasmuch as untitled, ambiguous purported anti-U ptn did not constitute objective basis for doubt, particularly where E failed to verify signatures on paper, ignored Ees' assertions that their signatures did not signify desire not to have U representation, and unlawfully threatened to discharge Ee for soliciting solicitation cards)

Achilles Construction Co. **JD-(NY)-9-85**
(granting unilateral wage increase duirng bargaining, violative in absence of impasse or of showing that increases were isolated, individual wage adjustments or in accordance with pattern or practice of granting periodic increases)

Great Plains Furniture Industries, Inc. **JD-14-85**
(unilateral grant of wage increases by purchaser-successor after bargaining obligation attached, not unlawful, since successor had promised wage increases at time he set initial terms and conditions of employment and at that time no bargaining obligation had ripened; therefore, successor was free to set whatever terms he wished and so long as unilateral changes implemented were encompassed w/i initial terms of employment, no violation arises)

FMC Corporation, Marine and Rail Equipment Division **JD-(SF)-222-84**
(E's unilaterally ceasing to comply with provisions of bargaining agreement, violative where E agreed to accept, to be bound by, and to comply with terms and conditions of successive bargaining agreements between U and E association)

Szabo Food Service, Inc. **JD-434-84**
(E's failure to recognize U and bargain with it after E received written demand for recognition from U and E's unilaterally implementing new wages and employment conditions, violative)

6067-4033-2700 Wage decrease

Rappazzo Electric Co., Inc. **281 NLRB No. 075**
[E's unilaterally discontinuing payment of pension and other fringe benefits and lowering Ee wages w/o negotiating changes with U, violative notwithstanding E's assertion that parties bargained to impasse, since E never provided U with opportunity to bargain regarding changes prior to implementing them]

Springfield Transit Management, Inc. **281 NLRB No. 017**
[successor E's refusing to bargain, bypassing U to deal directly with Ees, and offering them unilateral reduction in wages from those paid by predecessor, violations]

Schaeff Namco, Inc. **280 NLRB No. 150**
[E's unilateral implementation of reduction in wages after wage reopener period passed, lawful, even absent impasse, since E had contract specifically left open wages for third year of contract and provided for specified period to negotiate wage rates and provided that E *shall implement* its wage offer if parties failed to reach agreement w/i specified period; nor was unilateral implementation violative Section 8(d) since 8(d) did not apply as no modification of contract rather action in accord with contract]

Burroughs Interstate Services Credit Union **280 NLRB No. 034**
[E's unilaterally filling position at less than wage specified in contract, violative]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. **279 NLRB No. 073**
[E's failure to make health and welfare contributions, and instituting unilateral changes in wages and other conditions of employment, unlawful, notwithstanding its alter ego's midterm withdrawal from multi-E bargaining unit timely and effective, since alter ego E still bound by agreement executed prior to alter ego's withdrawal and still in effect; further, even if not bound by terms of agreement, its failure to bargain regarding mandatory subjects of bargaining, prior to change, unlawful]

Ne Di Construction Co., Inc. **279 NLRB No. 071**
[unilaterally ceasing to make health and welfare contributions, instituting new and lower wage rate for new hires, and ceasing to abide by obligation to use U as source for Ees, violation where E was still bound by expired master contract, pursuant to its automatic renewal term, and then by new contract, notwithstanding E's alleged notice of termination, since notice was untimely, and U had not waived it as requirement]

Walter A. Zlogar, Inc. **278 NLRB No. 149**
[implementation of final offer reducing wages after impasse, not violation]

Fox-Art Theatres, Inc. **278 NLRB No. 115**
[reduction of contract wage rate after E had refused to execute new negotiated contract, unlawful unilateral modification of contract]

Earl C. Smith, Inc. **278 NLRB No. 100**
[unilateral decrease in contractual wage rate, violation; any alleged agreement of unit Ees to decrease was unlawfully secured by E's dealing directly with Ees in U's absence]

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M & C Vending Co., Inc. and Its Wholly Owned Subsidiary Ada Automatic Sales Company, Inc. **278 NLRB No. 047**
[violation, where when time came to make pension contributions per agreement E unilaterally reduced wages by amount of pension contributions, seeking by this means to pass cost of pension contributions on to Ees; E's contention U was privileged to reduce wages since reduction in effect cancellation of prior unlawful wage increases, rejected]

Southwest Forest Industries, Inc., Los Angeles Container Division **278 NLRB No. 031**
[E's unilateral implementation of various changes in working conditions and wages different than those in final contract proposal, on grounds U had notice of changes and would have refused to bargain under any circumstances, violative, since U did not have notice where prior to implementation E advised U only that there would be *other changes*, E's changes were in no way a new contract proposal and there was no evidence that U's steadfast refusal to bargain with E was in any way improper]

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**
(E's recompensing second company's Ees whom it was temporarily employing according to second company's contract with the U rather than E's own contract with the U that called for higher wages and greater fund contributions, violative, since, while working for E, Ees were part of unit covered by E's contract with U)

The Rath Packing Company **275 NLRB No. 042**
(bypassing international U as exclusive bargaining representative of its unit Ees and dealing directly with its Ees and local U, violative as International revoked any authority local may have had to bargain with E. Assuming, arguendo, local had limited authority to bargain, it exceeded its authority by agreeing to larger deferrals than original contract called for)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(unilaterally changing contract by paying starting unit Ees at less than contractual wage rates, violative, since E was still obligated to comply with terms of expired contract where it had notified U of intention to terminate contract w/o offering to negotiate new one or notifying U of intention to modify contract's specific terms)

Dane County Dairy, Inc. **273 NLRB No. 209**

Vincent Bach Division of The Selmer Company **JD-237-86**
[E's unilaterally modifying bargaining agreement at midterm by reducing wage rates of certain Ees, violative]

Armored Transport of California, Inc. **JD-(SF)-132-86**
[unilaterally reducing existing wages, violation]

BASF Wyandotte Corporation **JD-(NY)-91-86**
[unilaterally reducing wage rates of probationary Ees, violative]

John's Lumber & Hardware Company **JD-199-86**
[E's unilateral implementation of reduced wage rate and its failure to make contribution to pension plan after expiration of contract, unlawful, since implementation was w/o giving U reasonable opportunity to bargain, where E did not make any explicit request to bargain of U, which had many agreements expiring during period, until 9 days prior to expiration of agreement that it would implement its 60 page proposal, since no E and U had agreed to bargain after expiration of agreement, U's acquiesence or waiver of its right to bargain]

Valley Parcel Service, Inc. and Valley Parcel Service, Inc., Debtor In Possession **JD-(SF)-74-86**

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E's unilateral change in working conditions by rearranging operations and lowering Ees' wage and fringe benefits, unlawful, where E continued his enterprise through another company, which was E's own business creation, because E desired to escape from his lawful obligations under multi-E agreement, and there was no significant hiatus between alleged cessation in E's work and that done by created company which was E's alter ego and disguised continuance of E's operation]

Gallati Cartage of Michigan, Inc. **JD-311-85**
(reducing wages, rates of pay and medical insurance benefits w/o prior notice to or bargaining in good faith with U, violative)

LeRic Floor Covering, Inc., and Richard E. Fackler d/b/a REF Carpet Service and Installation Alter Egos **JD-79-85**
(no unlawful failure of unionized E to pay contractual wage rates and benefit contributions for part of Ees' hours of work for non-U E, where Es were neither *alter egos* nor joint Es, and Ees' work for non-U E was not a disguise for portion of work for unionized E)

N.L.R.B. v. Auto Fast Freight, Inc. **793 F.2d 1126 (C.A. 9, July 1986)**

6067-4033-2900 Per diem and travel expenses or subsistence payments

Hydro-Air Equipment, Inc. d/b/a Lanco **277 NLRB No. 012**
(E unilaterally instituting payment of commuting expenses to new location upon relocation of plant, unlawful)

6067-4033-3100 Overtime pay

Architectural Woodwork Corporation **280 NLRB No. 108**
[unilateral change in overtime payment policy, violation, notwithstanding expiration of contract, where presumption of continued majority status was not rebutted by good faith doubt based on decertification ptn that was unlawfully induced by E]

Alamo Cement company **277 NLRB No. 108**
(unilaterally changing manner of paying overtime to certain Ees by eliminating regular time and using only straight time, violation)

O. Voorhees Painting Co. and O.V. International, Inc. **275 NLRB No. 114**
(concealment of overtime hours worked and straight time payments made to Ees for overtime work for purpose of avoiding one of joint E's bargaining agreement with U through use of joint E arrangement, violative)

Bozzuto's, Inc. **275 NLRB No. 056**
(bypassing U, dealing directly with Ees, and unilaterally changing payment structure for Ees' assigned weekend overtime work, w/o giving U prior notice and affording it opportunity to bargain, violative)

Conte Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(unilateral failure of Es to adhere to overtime pay terms of contract for which they were found liable herein as successors to, single E with, and alter egos of E which had contract with U)

6067-4033-4100 Cost of living raises

Burroughs Interstate Services Credit Union **280 NLRB No. 034**
[E's unilateral modification of current agreement by eliminating certain cost of living adjustments (COLAS) that had been incorporated into Ees' rates of pay and failing to pay any unit Ees COLA due them on certain date, violative]

Earl C. Smith, Inc. **278 NLRB No. 100**
[unilaterally failing to pay cost-of-living increase pursuant to contract, violation notwithstanding increase was not due to take effect until day after contract was due to expire]

American Stores Packing Company, A Division of Acme Markets, Inc. **277 NLRB No. 190**
[unilaterally withholding cost of living adjustment (COLA), violative since such conduct constituted repudiation of bargaining agreement and under 8(d) E is not permitted to make such contract modifications absent consent of U]

N.L.R.B. v. Harrstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. **785 F.2d 570 (C.A. 7, Mar. 1986)**
[Es not required to pay cost-of-living adjustment provided for in contract where date increase was to take effect occurred after expiration of contracts and adjustment in question *never* became effective]

6067-4033-4400 Holiday pay

Transport Service Company **282 NLRB No. 011**
[E's refusal to pay premium pay for holiday and Sunday work pursuant to contract, violation]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally changing customary effective date of annual increase with resulting lack of traditional increase in hourly workers' holiday pay due to Ees' U activity, violation]

T. Marshall Corp., t/a/ Cliffside Health Care Center **279 NLRB No. 166**
[unilateral grant of wage increase and new holiday, violation where U received only two days advance notice]

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(unilaterally reducing number of paid holidays, violative, since E was still obligated to comply with expired contract where it had notified U of intention to terminate contract w/o offering to negotiate new one or notifying U of intention to modify specific terms of contract)

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's converting 2-day Ee holiday to single-day holiday with additional day of personal leave, not violative, where E's actions conformed to its stated practice prior to instance where Ees were granted 2-day holidays during one holiday season; furthermore, E's actions did not result in loss of holiday time by Ees)

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Custer Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(E's unilateral failure to adhere to holiday pay terms of contract for which Ees were found liable herein as successors to, single E with, and alter egos of E which had contract with U)

6067-4033-5000 Bonus

Cal-Am Partners d/b/a Amscot Coal **281 NLRB No. 027**
[successor E's unilaterally implementing cash bonus incentive system, violation]

Specialty Steel Treating, Inc. **279 NLRB No. 067**
[unilaterally granting discretionary, rather than regularly scheduled, wage increases and bonuses while objections to election were pending, violation]

Freedom WLNE-TV, Inc. **278 NLRB No. 167**
[E's practice of providing Ees with Christmas bonus was mandatory subject of bargaining where: (1) E maintained practice, for 3 years preceding sale of E, of making cash Christmas bonus payments; (2) Christmas bonus was made pursuant to formula inextricably tied to Ee's wages and seniority; (3) Christmas bonus was negotiated between E and U, resulting in contractual obligation; (4) instant E contractually assumed terms of bargaining agreement upon its purchase of E; (5) E acknowledged its contractual commitment to pay Christmas bonus by its memorandum that advised Ees payments would be made]

Sahara Datsun, Inc. **278 NLRB No. 148**
[unilaterally discontinuing variable weekly incentive bonuses for three weeks in retaliation for representation ptn, violation]

Radio Electric Service Company **278 NLRB No. 078**
[unilaterally discontinuing longstanding practice of granting Ees Christmas bonus unlawful, since there was little, if any, bargaining on part of parties, and such bargaining was insufficient to conclude that they bargained to impasse on discontinuance of bonus]

Stovall Manufacturing Company, Inc. **275 NLRB No. 039**
(unilaterally denying Ees their usual Christmas bonus because of their U activities, violative)

Advertisers Manufacturing Company **275 NLRB No. 019**
(E's payment of year-end bonus, assertedly unlawfully discontinued, held to constitute wages and terms and conditions of employment, notwithstanding absence of formula for determining bonus amount or of prior formal pronouncement or fact that amounts varied, where bonus was uninterruptedly paid for 30 years; Ees considered bonus as established benefit and had continued expectation of receiving it; and nonpayment of bonus in proceeding year did not establish that bonus constituted discretionary gift)

Advertisers Manufacturing Company **275 NLRB No. 019**
(while payment of year-end bonus, assertedly unlawfully discontinued, was established condition of employment, it id not constitute accrued bonus, where Ees qualified for its payment if employed at time of distribution, there was no past practice of set time for its distribution, and no Ee leaving employment prior to distribution period had received bonus as earned for work previously performed)

Electrical Workers Local 1466 v. N.L.R.B. (Columbus and Southern Ohio Electric Co.) **795 F.2d 150**
[no unilateral change in wages and no requirement that E must bargain when E discontinued its past practice of 40 years of paying Christmas bonus where contract contained zipper clause that stated... contract...*shall be the sole source of all rights or claims which may be asserted in arbitration hereunder or otherwise*.... and contract silent as to Christmas bonus]

6067-4033-5500 Sick leave pay

Hamady Bros. Food Markets, Inc. **275 NLRB No. 183**
(E's asserted failure to restore benefits agreed to by E and U in prior letter of understanding, not violative where, because of nature of benefits, there was no way to accurately test whether E failed to restore benefits and there was no evidence that Ees were denied any of benefits)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(unilaterally reducing paid sick leave allowances, violative, since E was still obligated to comply with expired contract where it had notified U of intention to terminate contract w/o offering to negotiate new one or notifying U of intention to modify specific terms of contract)

6067-4033-5600 Severance pay

6067-4033-5600 Severance pay

Inner City Broadcasting Corporation **281 NLRB No. 162**
[E's failure to apply, and unilateral termination of, severance pay terms of contract upon its expiration, unlawful, where E did so w/o having first bargained about such changes with U]

6067-4033-5900 Vacation scheduling and pay

Government Employees (Office Employees, Local No. 2) **278 NLRB No. 085**
[U-E's discriminatory and unilateral withholding of scheduled annual leave from Ees participating in strike, violation, since inherently destructive of significant employee rights]

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 190**
(E's failure and refusal to grant vacation time pay in violation of contract, unlawful)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(unilaterally modifying vacation pay policy, violative, since E was still obligated to comply with expired contract where it had notified U of intention to terminate contract w/o offering to negotiate new one or notifying U of intention to modify specific terms of contract)

American Threat Company **274 NLRB No. 164**
(E's unilateral changes in grievance procedure, insurance and vacation benefits, not unlawful, where E had lawfully withdrawn recognition upon receipt of notice from majority of Ees that they no longer wished to be represented by U)

Custer Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(E's unilateral failure to adhere to vacation pay terms of contract for which they were found liable herein as successors to, single E with, and alter egos of E which had contract with U)

Dane County Dairy, Inc. **273 NLRB No. 209**
(unilaterally discontinuing long-established system of vacation pay, violative)

6067-4033-6700 Merit wage increase

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally changing customary effective date of annual increase with resulting lack of traditional increase in hourly workers' holiday pay due to Ees' U activity, violation]

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC **JD-288-85**
[unilaterally changing criteria for merit awards, violation]

6067-4033-7100 Incentive wage plans

Cal-Am Partners d/b/a Amscot Coal **281 NLRB No. 027**
[successor E's unilaterally implementing cash bonus incentive system, violation]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 089**
[E's unilateral implementation of its flat rate wage with incentive proposal after expiration of bargaining agreement, and rejection by Ees of E's final proposal, not unlawful, since impasse existed where there had been 7 negotiating meetings during which there had been in depth discussions, positions on issues were advanced in good faith, but parties positions on flat rate wage remained unalterably opposite; fact concessions made on other matters did not preclude finding of impasse on flat rate since that issue was of overriding importance and parties were still not close to reaching agreement]

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
(E held not privileged to institute wage incentive plan on ground that U agreed thereto, since U representative's offhand remark during negotiations about inclusion of plan in contract if contract rate was not violated cannot reasonably be construed as consent to E's implementation of plan, absent overall contract agreement; and U opposed such action on ground it was unlawful unilateral change and took further action by filing charge)

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**
(E held not privileged to institute wage incentive plan on ground that, while there was no overall bargaining impasse at time plan was implemented, impasse existed on when implementation should be accomplished; bargaining does not contemplate piecemeal implementation of each item, and *impasse* contemplates deadlock in negotiations over prospects of concluding complete agreement; assuming impasse existed over plan's implementation, no finding could be made that such issue had crippled prospects for reaching agreement or was sole impediment thereto; and here parties continued to negotiate over other items)

6067-4033-7600 Tips arrangement

H.H.H. Enterprises, Inc., d/b/a Stephenson Haus **279 NLRB No. 139**
[successor E's unilateral change in policy regarding division of banquet tips between bartenders and waitresses by successor E, unlawful, where successor had hired all Ees of predecessor and initially continued existing policy]

6067-4033-8600 Dues

Duramyre Motor Express, Inc. and/or Duramyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**
(withholding U dues from wages of all Ees in bargaining unit but not remitting dues to U w/o bargaining, violative where change was made during term of valid bargaining agreement, but before date E filed ptn in bankruptcy)

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(E's failure and refusal to forward dues withheld from Ee pay checks to U in violation of contract, unlawful)

6067-4033-8800 Free food, beverages or food, beverages at reduced cost

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's unilaterally posting notice telling Ees that from that time on kitchen facilities and food products in freezer stored there could no longer be used by Ees for their lunch, violative, since they had always been allowed to do so before)

6067-4033-9100 Pensions and group benefits

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[lockout of Ees in order to further E's bargaining position after reaching impasse in contract negotiations with U held not equivalent to layoff and, consequently, denial of pension withdrawal benefits to Ees throughout lockout period held not unlawful, since retirement plan, providing for pension withdrawal rights to Ees *laid off temporarily for lack of work*, did not include locked out Ees]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[denial of pension withdrawal benefits during period of scheduled 2-week holiday layoff which was cancelled because lockout occurred contemporaneously with scheduled layoff, not unlawful, where E viewed lockout from its inception as being of indefinite duration; and timing of lockout first working day after U rejected E's latest contract proposal raised inference that purpose of lockout was to place economic pressure on U to accept E's bargaining position and not to overlap with prescheduled layoff so as to deprive Ees of benefits to which they otherwise would have been entitled]

Arrow Sash and Door Company **281 NLRB No. 149**
[E's refusal to make contributions to pension and health funds after it withdrew from all tentative agreements reached and concessions made during negotiations, and broke off negotiations, assertedly because of sick out by some Ees in violation of no strike agreement, unlawful, since E's actions not justified in totality of circumstances as evidence failed to establish that Us either sanctioned, condoned, or in any other way encouraged Ees to engage in sickout]

International Distribution Centers, Inc. **281 NLRB No. 111**
[E's failure to remit pursuant to checkoff deducted dues and contributions to health and welfare fund, unlawful, inasmuch as E's alleged poor financial condition rejected as defense]

Rappazzo Electric Co., Inc. **281 NLRB No. 075**
[E's unilaterally discontinuing payment of pension and other fringe benefits and lowering Ee wages w/o negotiating changes with U, violative notwithstanding E's assertion that parties bargained to impasse, since E never provided U with opportunity to bargain regarding changes prior to implementing them]

Little Mining, Inc. **280 NLRB No. 073**
[refusing to pay minimum daily wages in contract and to pay premiums for individual E's benefit plan, unlawful, notwithstanding dissenting Bd member's argument that ULP charge was nothing more than attempt to have Bd enforce contract and collect delinquent wages and benefits]

Hinote Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[in finding unlawful E's unilateral change in contract terms by failing to make required payments to U health and retirement trust funds, Bd held there was no basis for finding violation unwarranted because E's unilateral action assertedly represented only delinquency or temporary failure to make timely payments where, following settlement of grievance and agreement to make back payments, E never resumed payments; there was nothing *temporary* about E's failure to honor contract nor any support for finding E merely *delinquent* when in fact payments were never made]

Hinote Fuel Co., Inc., Debtor-In-Possession, et al. **280 NLRB No. 089**
[E's unilateral change in contract terms, prior to institution of bankruptcy proceeding, by failing to make required payments to U health and retirement trust funds, unlawful; inability to make payments, claimed but not proved by E, was no defense; however, any finding of violation against E as debtor-in-possession for failing to comply with contract after filing of bankruptcy ptn was barred by S.Ct's *Bildisco* decision (104 S.Ct 1188)]

American Press, Inc. **280 NLRB No. 109**
[successor E's departure from rates of pay and benefits w/o prior bargaining with incumbent U, unlawful, where E unlawfully discriminated against predecessor's former Ees by refusing to hire them because of their U affiliation; and absent its unlawful purpose, E would have retained substantially all of these Ees and therefore E was not entitled to set initial terms of employment unilaterally]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[E's unilateral changes including wage increase, health, pension and benefit fund contributions, and grievance procedure, unlawful since based on unlawful withdrawal of recognition which was preceeded by E solicitation of resignations from U]

Imperial House Condominium, Inc. **279 NLRB No. 154**
[ceasing contributions to Ees' health benefit fund and unilaterally initiating new benefit fund, unlawful, notwithstanding E's contention that letter it received from U concerning fund was not invitation to bargain but was instead unilateral modification of benefit plan, since ultimate characterization of letter was not dispositive factor, where gravamen of E's unlawful act was its cessation of contribution to benefit plan w/o providing U with opportunity to bargain, nor could E cease contributions and establish entirely new plan w/o providing U opportunity to bargain over modification in Ees' terms and conditions of employment]

EPI Corporation d/b/a Rockford Manor Intermediate Care Facility **279 NLRB No. 170**
[U waived its interest in bargaining with respect to carrier induced changes in health benefit plan, notwithstanding parties did not specifically address issue of mid-term adjustment in health program during their contract deliberations where it was clear that they negotiated complete agreement, and it was also clear that parties desired to commit unresolved issues to management prerogatives as they existed upon entry of agreement]

Fashion Furniture Mfg., Inc. **279 NLRB No. 095**
[E's failure to implement increases in health and welfare payments required under contract which it unlawfully refused to sign, violative]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. **279 NLRB No. 073**
[E's failure to make health and welfare contributions, and instituting unilateral changes in wages and other conditions of employment, unlawful, notwithstanding its alter ego's midterm withdrawal from multi-E bargaining unit timely and effective, since alter ego E still bound by agreement executed prior to alter ego's withdrawal and still in effect; further, even if not bound by terms of agreement, its failure to bargain regarding mandatory subjects of bargaining, prior to change, unlawful]

Ne Di Construction Co., Inc. **279 NLRB No. 071**
[unilaterally ceasing to make health and welfare contributions, instituting new and lower wage rate for new hires, and ceasing to abide by obligation to use U as source for Ees, violation where E was still bound by expired master contract, pursuant to its automatic renewal term, and then by new contract, notwithstanding E's alleged notice of termination, since notice was untimely, and U had not waived it as requirement]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[unilateral failure to make pension fund contributions, violation]

NDK Corporation **278 NLRB No. 151**
[E's unilateral refusal to contribute to fringe benefit funds and to make its payroll records available for audit by trustees of funds, unlawful, where E's admissions provided proof requisite to establish GC's prima facie case, and E was not permitted to escape liability, under federal labor law and conventional common law principles, on ground that its consent to execution of contract was unlawfully induced by U official's false representation that contract would not be enforced]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**
[unilateral cessation of pension and welfare fund contributions violation, notwithstanding contract expiration and E's reliance on provision in Trust Fund agreement stating that E should continue to pay fund contributions as long as E was obligated pursuant to collective bargaining agreement, where provision was not clear and unmistakable waiver of Ees' right to receive contributions and U's right to bargain over E's ceasing to make them on expiration of contract, since section did not deal with termination of E's obligation to contribute, and under Bd law E's obligation survived contract]

M & C Vending Co., Inc. and Its Wholly Owned Subsidiary Ada Automatic Sales Company, Inc. **278 NLRB No. 047**
[notwithstanding settlement whereby U agreed to look to E for prospective future payments into U's pension plan, the breach and subsequent withdrawal of settlement agreement allowed C to allege failure to make payments into pension plan going back to period covered in original charge that led to settlement agreement]

Watson-Rummell Electric Co. **277 NLRB No. 162**
[unilateral discontinuation of pension, vacation, health and welfare, and other trust fund contributions contained in multi-E association contract, violation where E's notice of withdrawal from multi-E association was untimely]

Telford & Doolen, Inc. **277 NLRB No. 112**
(E held not to have unlawfully refused to consent to audit of its fringe benefit fund payments under contract, where E eventually complied fully with its contractual commitments by paying amounts determined to be due, thereby indicating that E did not unilaterally change terms and conditions of

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contract; fact that E did not act as rapidly as it should have is no basis for finding violation, since contract did not set forth time limits for audit, and lack of urgency on part of fund contributed to delay)

Cascade Painting Company, Inc. **277 NLRB No. 103**
(Es who withdrew from multi-E bargaining following expiration of contract held to have unlawfully made unilateral changes in existing wages and in discontinuing contributions to fringe benefit funds under contract, since Es were required to maintain status quo upon expiration of contract; contract pension, health and welfare plans survived expiration of contract and could not be altered w/o bargaining; and Es were duty bound to bargain with U while continuing in effect all terms and conditions of expired contract until new agreement was negotiated or true bargaining impasse was reached)

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. **277 NLRB No. 078**
(unilaterally introducing new dental and vision plans, violations)

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(unilateral elimination of benefits and failure to make pension and health and welfare contributions required by expired U contract of E's *alter ego* E, violation)

San Antonio Portland Cement Company **277 NLRB No. 036**
(changing health and medical benefits, violative)

American Model & Pattern, Inc. **277 NLRB No. 018**
(E's unilateral discontinuance of end of year IRA payments to Ees, assertedly because such payments were *wholly discretionary* and hence not a subject of bargaining, violative, where such payments were routine and regarded by Ees as a regular company benefit)

Southwestern Steel & Supply, Inc. **276 NLRB No. 174**
(E violated Act by paying sums directly to Ees those that he should have paid to U's trust funds under expired contract where E did not possess good faith doubt as to U's majority and no impasse in bargaining)

Leslie Oldsmobile, Inc., Leslie Volkswagen, Inc., and Dupage Leslie Oldsmobile, Inc. **276 NLRB No. 148**
(E's unilateral changes in wage rates and fringe benefits in contract, violative where E was bound by bargaining agreement entered into between U and E's alter ego with which E and third E constituted single E)

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**
(E's recompensing second company's Ees whom it was temporarily employing according to second company's contract with the U rather than E's own contract with the U that called for higher wages and greater fund contributions, violative, since, while working for E, Ees were part of unit covered by E's contract with U)

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**
(E's failure to remit pension fund contribution as required by bargaining agreement, w/o bargaining, violative where change was made during term of valid bargaining agreement, but before date E filed ptn in bankruptcy)

Tucson Yellow Cab, Inc., A Debtor In Possession **275 NLRB No. 032**
(no violation, where E unilaterally failed to make payments into U's pension trust fund after it had filed ptn in bankruptcy, in view of *NLRB v. Bildisco and Bildisco* 104 S.Ct 1188, 115 LRRM 2805)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(violation, where E unilaterally changed Ee's status from Ee to independent contractor, ceased making payments to pension trust fund, and changed work duties of Ees w/i classification, after it had unlawfully withdrawn recognition from U upon expiration of contract)

Prime Time Post, Inc. **274 NLRB No. 218**
(successor E held not obligated to contribute to international's health and welfare fund pursuant to U's agreement with predecessor E and cessation of contributions not violative, where successor E at no time assumed obligations of predecessor E and entered into contract with local U of international which did not require it to make contributions to the fund; further, international waived right to bargain over fund contributions when it never requested successor E to bargain and was aware that local U was bargaining with E and entered into contract which did not provide for fund contributions)

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(E's failure and refusal to make pension plan contributions in violation of contract, unlawful)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(unilateral discontinuance of contributions to pension, health and welfare, and other trust funds, violative, since E was still obligated to follow terms of expired contract where it had notified U of intention to terminate contract w/o offering to negotiate new one w/o notifying U of intention to change conditions of employment)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**
(unilaterally discontinuing health insurance and pension fund contributions for Ees transferred to another E, violative, since Es were not relieved of duty to comply with contract where they were found single E and *alter egos* of each other)

Conte Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(E's unilateral failure to contribute to U funds as they were found liable to do herein as successors to, single E with, and alter egos of E which had contract with U)

San Juan Hotel Corporation d/b/a El San Juan Hotel **274 NLRB No. 083**
(E's discontinuance of contributions to Ees' pension fund required by contract, not unlawful, since contract was unenforceable during relevant period of time as result of E's filing of bankruptcy ptn where, by operation of law, upon conversion of case from Chapter 11 reogranization to Chapter 7 liquidation proceeding, contract was automatically rejected 60 days after conversion)

Dane County Dairy, Inc. **273 NLRB No. 209**
(unilateral cessation of contributions to health and welfare and pension funds, violative)

Mead Packaging **273 NLRB No. 181**
(E's unilateral discontinuance of insurance and pension benefits to U officers on leaves of absence for purpose of holding U office, not violative; granting such benefits to U officers alone under provision of contract would violate 8(a)(3) and 8(b)(2), since granting such benefits to U officers did not further effective administration of E's bargaining agreement where U officers were on U's payroll and acted as representatives of Ees at other Es premises, engaging in engotiations and arbitrations, and generally monitored compliance with U's bargaining agreements and further, granting of such benefits was not available to other Ees on an equal basis)

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**
[construction subcontractor's failure to make contributions to U's various benefit funds pursuant to 8(f) contract held unlawful unilateral change in terms and conditions of employment where, shortly after E signed pre-hire agreement with U which incorporated master agreement containing U security provision, U achieved majority status among Ees at project; and after completion of work thereat, E followed pattern of Ee carryover from job to job, thereby establishing permanent and stable work force of unit Ees during contract term]

R. M. Eyre & Associates, Inc. **JD-(SF)-79-86**
[E's refusal to pay fringe benefit contributions, on behalf of its Ees who were represented by U, to various contractually established fringe benefits trust funds after expiration of its bargaining agreement with U, violative where not only did E's duty to bargain with U survive expiration of agreement but its obligation to continue making payments to fringe benefit funds continued]

The Setterlin Company **JD-56-86**
[E's unilateral cessation of contributions to U's health and welfare and pension funds and implementation of contributions to alternate plans, lawful where E had lawfully and timely withdrawn from multi-E association; negotiations with U had reached impasse; E, fearing continued contributions to U funds would be evidence of assent to be bound by multi-E association contract, had notified U of intent to implement new benefit plans if impasse continued; and U had not only failed to request bargaining but avoided it in attempt to bind E to multi-E association contract]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[E's unilateral change in working conditions by rearranging operations and lowering Ees' wage and fringe benefits, unlawful, where E continued his enterprise through another company, which was E's own business creation, because E desired to escape from his lawful obligations under multi-E agreement, and there was no significant hiatus between alleged cessation in E's work and that done by created company which was E's alter ego and disguised continuance of E's operation]

Stroman Construction Company **JD-367-85**
[failure to timely pay fringe benefits, to timely file proper fringe benefit reports, to pay liquidated damages for delay in payment, and to provide proper books and records for audit, as required by contract, violation and unilateral mid-term modification of contract]

Coos-Bend, Inc., d/b/a The Sawmill Restaurant & Lounge **JD-(SF)-156-85**
(unilaterally ceasing to make contributions to trust for compensable hours worked by unit Ees, violative)

Bertolucci's Fender and Body Shop, Inc. **JD-(SF)-143-85**
(violation where E unilaterally ceased making contractually mandated welfare and pension payments and instituted its own health and welfare plan)

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U. S. Truck Company, Inc. JD-111-85
(no violation where E, who was debtor-in-possession, ceased making contributions to health, welfare and pension funds after effective date of bankruptcy ct order authorizing rejection of bargaining agreement)

LaRic Floor Covering, Inc., and Richard E. Fackler d/b/a REF Carpet Service and Installation Alter Egos JD-79-85
(no unlawful failure of unionized E to pay contractual wage rates and benefit contributions for part of Ees' hours of work for non-U E, where Es were neither *alter egos* nor joint Es, and Ees' work for non-U E was not a disguise for portion of work for unionized E)

Tax Manshack, Inc. JD-(SF)-64-85
(unilateral failure to make accurate reports and required payments to contractual pension, health and welfare and other trust funds, violative)

My Buddy Products, A Division of S&T Industries, Inc. JD-114-85
(E's unilaterally passing on increased health insurance premiums to its Ees, violative)

Melcolunity, Inc., and Melvin Collings and Ed Collins, a partnership t/a Collins & Collins Associates JD-(NY)-111-83
(violation for refusing to furnish U with information and to remit dues and fringe benefits payable under contract signed by E in construction industry and who, with consent of U, signed in name of defunct entity and not name of entity U was certified for, thereby, giving rise to inference that contract applied to members working at specific jobsite and no other)

N.L.R.B. v. General Tire and Rubber Company 795 F.2d 585 (C.A. 6, July 1986)
[E's unilateral discontinuance of benefits, following expiration of 90-day period after contract's termination during which benefits were to be continued, unlawful, where contract was silent on treatment of benefits after 90-day period, and neither contractual language nor prior conduct of parties demonstrated *clear and unmistakable* intent to waive U's right to bargain over payment of benefits]

N.L.R.B. v. General Tire and Rubber Company 795 F.2d 585 (C.A. 6, July 1986)
[E's unilateral discontinuance of benefits, unlawful, notwithstanding E's contention that U waived its right to bargain over benefits by failing to demand bargaining on issue following E's announcement of its intent to terminate benefits, where E did not raise waiver issue until it moved for reconsideration by Bd, which Bd properly denied since E improperly attempted to rely on new theory and on asserted facts not in stipulation entered into by parties]

Southwestern Steel & Supply, Inc. v. N.L.R.B. 806 F.2d 1111 (C.A. D.C., Dec. 1986)
[E's unilateral termination of payments to welfare plan and pension trust after expiration of bargaining agreement, unlawful; E's contention U waived right to bargain over such payments by provision in payment agreement between E and fund trustees prescribing how and when revocation was permissible between E and trustees, rejected]

6067-4033-9500 Insurance

Kolman Division of Athey Products Corporation 282 NLRB No. 029
[E made unilateral changes to health benefit plan where in attempt to stave off raise in premiums it allowed insurer to raise the major medical deductible and out of pocket expenses that need to be incurred before all expenses would be covered]

Arrow Sash and Door Company 281 NLRB No. 149
[E's unilateral implementation of new health plan, after withdrawing from all tentative agreements reached and concessions made during negotiations, and breaking off negotiations, assertedly because of sick out by some Ees in violation of no strike agreement, unlawful, since E's actions not justified in totality of circumstances as evidence failed to establish Us in anyway involved in sickout]

H.H.H. Enterprises, Inc., d/b/a Stephenson Hous 279 NLRB No. 139
[successor E's failure to submit payments to U's medical insurance, fund and unilaterally instituting its own insurance plan, unlawful]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables 279 NLRB No. 097
[E's unilateral termination of Ees' group insurance coverage, unlawful, notwithstanding E's contention that U waived its right to bargain on ground no U representative ever requested E to bargain over the matter, where U did not learn of insurance coverage change until after it occurred; and U business agent, upon learning of the change, immediatelv protested to E]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables 279 NLRB No. 097
[E violated Act by unilaterally terminating Ees' group insurance coverage, where U did not waive its right to bargain about coverage; parties had not reached impasse in bargaining; and E was not excused, on ground it would have been futile to notify U of termination, from not giving U advance notice thereof, since E had no way of knowing whether U would in fact have refused to bargain about ending insurance, E owed U reasonable notice of proposed change in insurance, and E made no claim that any emergency compelled it to end insurance suddenly]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables 279 NLRB No. 097
[E's unilateral reinstitution of Ees' group insurance coverage, following its unlawful termination unilaterally by E, unlawful, where reinstituted insurance was markedly different from old insurance since carrier was different, benefits were changed and, most importantly, only small percentage of unit Ees were covered]

Buckley Belt Service, Inc., d/b/a Buckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066
[unilateral failure to pay health insurance, violation]

Alamo Cement Company 279 NLRB No. 063
[E's implementing group health care insurance benefit changes w/o bargaining with U, violative]

United Technologies Corporation 278 NLRB No. 041
[E's unilateral implementation of 1-year program]*Correct-A-Bill*) to reward its Ees for detecting health care overcharges, not violative, since any change in benefits implemented by E must be *substantial material, and significant* affecting terms and conditions of employment of bargaining unit Ees. E's implementation of program did not amount to such change in terms and conditions of employment of unit Ees, thus E not obligated to bargain with U. Program merely provided Ees with incentive to review their hospital or surgical center bills to detect overbilling]

Coalite, Inc. 278 NLRB No. 040
[unilaterally discontinuing contractual insurance benefits for laid-off Ees, violation in absence of impasse]

Suffolk Child Development Center, Inc. 277 NLRB No. 158
(unilaterally reducing Ee benefits under health insurance plan, violation, where E alone decided how to meet increased cost of plan, contract's lack of specificity as to plan did not indicate E's right to unilaterally change it or U's consent thereto, statute not contract governs duty to bargain over mandatory subjects, change had vital effect on Ees and U did not waive right to bargain by failing to have plan specified in contract or object to prior changes or by agreeing to management rights clause or zipper clause)

Garrett Flexible Products, Inc. 276 NLRB No. 073
(E's unilaterally passing on increase in insurance premiums to unit Ees w/o notice to or bargaining with newly certified U, on grounds that U had not yet requested bargaining with E, violative, where E had no past practice of passing on increases in premiums and retained complete discretion in allocating costs of insurance and E was well aware U was certified and could easily have ascertained who from U to contact concerning bargaining)

Angelica Corporation 276 NLRB No. 038
(E's directly announcing to Ees that it would soon implement life insurance program for Ees during decertification election campaign, violative)

Excelsior Pet Products Inc. 276 NLRB No. 085
(E's refusal to make payments to Blue Cross-Blue Shield, as required by U contract, unlawful, where cancellation of policy by carrier, which offered to help E in straightening out the problem, was viewed by E as being a blessing in disguise, and he admittedly had no intention of working out the problem or of resuming medical coverage for his Ees)

Arno Moccasin Company 274 NLRB No. 222
(E's unilateral termination of health and life insurance coverage which E had pursuant to expired contract and substitution of significantly different policy w/o notice and w/o offering U opportunity to bargain, violative)

Crest Floors & Plastics, Inc. 274 NLRB No. 185
(unilaterally discontinuing health insurance and pension fund contributions for Ees transferred to another E, violative, since Es were not relieved of duty to comply with contract where they were found single E and *alter egos* of each other)

American Thread Company 274 NLRB No. 164
(E's unilateral changes in grievance procedure, insurance and vacation benefits, not unlawful, where E had lawfully withdrawn recognition upon receipt of notice from majority of Ees that they no longer wished to be represented by U)

Lake Castings, Inc. 274 NLRB No. 040
(mtn for summary judgment granted, in view of E's trustee in bankruptcy failure to file answer, insofar as complaint alleged violation of Sections 8(a)(5) and (1) by failing to make premium payments for medical insurance for unit Ees prior to filing of bankruptcy ptn; however, mtn denied and that portion of complaint remanded to RD which alleged violation by failure to make insurance premium payments on or after date of filing bankruptcy ptn in view of *Bildisco* 104 S.Ct 1188, which held debtor-in-possession does not committ ULP when it unilaterally rejects or modifies bargaining agreement before bankruptcy ct approves formal rejection)

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Mead Packaging **273 NLRB No. 181**
(E's unilateral discontinuance of insurance and pension benefits to U officers on leaves of absence for purpose of holding U office, not violative; granting such benefits to U officers alone under provision of contract would violate 8(a)(3) and 8(b)(2), since granting such benefits to U officers did not further effective administration of E's bargaining agreement where U officers were on U's payroll and acted as representatives of Ees at other Es premises, engaging in engotiations and arbitrations, and generally monitored compliance with U's bargaining agreements and further, granting of such benefits was not available to other Ees on an equal basis)

The Satterlin Company **JD-56-86**
[E's unilateral cessation of contributions to U's health and welfare and pension funds and implementation of contributions to alternate plans, lawful where E had lawfully and timely withdrawn from multi-E association; negotiations with U had reached impasse; E, fearing continued contributions to U funds would be evidence of assent to be bound by multi-E association contract, had notified U of intent to implement new benefit plans if impasse continued; and U had not only failed to request bargaining but avoided it in attempt to bind E to multi-E association contract]

Garratt Flexible Products, Inc. **JD-21-86**
[E's making and announcing decision to cancel health insurance benefits w/o giving U opportunity to bargain regarding this term and condition of employment, unlawful]

Gallati Cartage of Michigan, Inc. **JD-311-85**
(reducing wages, rates of pay and medical insurance benefits w/o prior notice to or bargaining in good faith with U, violative)

Big Ten Corporation **JD-274-85**
(E's unilateral discontinuance of contractual health benefits for laid-off Ees on date contract expired, violative notwithstanding contention that action was justified because of economic shutdown, since any change in benefits short circuits E's obligation to bargain; moreover, even if E's layoff of Ees was part of closure process, contract clearly provided for situation by means of provisions for extended health insurance benefits)

U. S. Truck Company, Inc. **JD-111-85**
(no violation where E, who was debtor-in-possession, implemented new helath insurance plan after effective date of bankruptcy ct order authorizing rejection of bargaining agreement)

Embossing Printers, Inc. **JD-19-85**
(E's duty to bargain over health insurance changes (non-contributory to contributory), suspended, where U explicitly rejected opportunity to seek bargaining over changes after receiving adequate notice that changes contemplated (6 months) and also waited 11 months to either request bargaining or protect changes)

N.L.R.B. v. Auto Fast Freight, Inc. **793 F.2d 1126 (C.A. 9, July 1986)**
[unilaterally instituting new medical insurance plan, violation]

6067-4033-9700 Safety

Edgar Springs, Inc. d/b/a Spring Industries **274 NLRB No. 149**
(maintaining and enforcing individual lease equipment agreement with Ee whereby Ee leased certain safety equipment from E at such times as her work was covered by *project agreement* between E and U, which provided that all necessary safety equipment would be provided by E, violative)

6067-4044 Unilateral change in tenure or seniority (See also 530-6050-2500)

6067-4044-2300 Recall

Barnett Supply Company, Inc. **278 NLRB No. 146**
[E's failure to recall Ees according to predecessor E's seniority list, unlawful, since husband of E's president adoption of seniority list was imputed to E where E held him out as agent and his actions were ratified by president/wife]

Westinghouse Electric Corporation **278 NLRB No. 061**
[recall of laid off Ees to lower classified positions w/o bargaining with representative, not violative unless contract provision provides that Ee has right to be recalled to grade he vacated as recall to work cannot be considered reclassification over which bargaining must ensure]

Telford & Dooley, Inc. **277 NLRB No. 112**
(failure to recall laid-off Ee pursuant to seniority provisions of expired contract, unlawful, since E thereby unilaterally changed term or condition of employment w/o bargaining with U

Engineered Control Systems, Inc. **274 NLRB No. 191**
(E's refusal to recall Ee from layoff under provisions of expired contract, unlawful unilateral change, where refusal after E's unlawful withdrawal of recognition, notwithstanding layoff was lawful and failure to recall was not unlawfully motivated, since Ee would have received seniority rights and been recalled pursuant to those seniority rights under expired contract)

6067-4044-4000 Discharge

Alamo Cement Company **281 NLRB No. 110**
[unilaterally granting wage increase and refusing to bargain about discharge of Ee, unlawful]

Lockheed Shipbuilding and Construction Company **278 NLRB No. 006**
[discharge of Ees pursuant to policy of testing Ees for medical fitness for particular job assignments, assertedly because OSHA required such medical tests, violative, where Bd had rejected this defense in previous ULP case involving same parties and E had expressly agreed by contract that such testing would not adversely affect Ees' employment]

Telford & Dooley, Inc. **277 NLRB No. 112**
(discharge of Ee assertedly w/o following seniority provisions of expired contract, thereby unilaterally changing terms and conditions of employment w/o bargaining with U, not unlawful, where reprimands to Ee supported E's explanation that discharge was for cause, thus making seniority provisions inapplicable; and 3-month delay between last reprimand and Ee's discharge did not evidence attempt to avoid impact of seniority provisions, nor constitute toleration of poor worker, since Ee, laid off and not working, could not jeopardize E's operations with poor work performance)

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(unilaterally changing *alter ego* E's work rule resulting in Ee discharge for failing to report for work on first day of E's operations, unlawful where, for purposes of the Act, Ee was deemed employed by E because of prior employment with *alter ego* E, and *alter ego* E had never terminated Ee for missing work w/o reporting off)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(E's failure and refusal to conduct hearing required by contract before discharging Ees, unlawful)

6067-4044-5000 Layoff

Sandpiper Convalescent Center and Sandpiper Village **279 NLRB No. 147**
[hospital's failure to bargain with U regarding lay off of Ees allegedly because of cuts in Medicaid, and concerning effects of lay off, unlawful, since not justified by compelling economic considerations and new Ees hired after lay off and after Medicaid reductions effective; contention lay offs not mandatory subject of bargaining, rejected]

Alamo Cement Company **277 NLRB No. 035**
(unilateral economic layoffs, violative)

American Model & Pattern, Inc. **277 NLRB No. 018**
(in absence of contract provision E's unilateral layoff of Ees w/o notifying or bargaining with U, violative; E's bargaining duty includes both the criteria for selection and the application of such criteria to particular Ees)

Felbro, Inc. **274 NLRB No. 186**
(layoff of Ees w/o notice to or bargaining with newly certified U, violative)

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**
[E's failure to bargain regarding layoffs, unlawful; contentions that U had waived right to bargain regarding layoffs where it received notice of impending layoffs from other sources but did not request bargaining, and that layoffs did not constitute unilateral change as in accordance with past practice, rejected, since U's information received prior to actual layoffs was conjecture and formal notice required, and E's layoff policy was ad hoc and highly discretionary]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**
[unilateral layoff violates 8(a)(5) even when it occurs before U's certification by NLRB]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**
[economic layoffs would seem to be inherently discretionary, involving subjective judgments of timing, future business, productivity and reallocation of work. Thus, we doubt that the Katz exception can ever apply to an economic layoff]

6067-4044-6700 Seniority

Dravo Corporation, Dravo Marine Equipment Company **276 NLRB No. 128**
(C dismissed where record insufficient to establish that U's vice-president and members of U's negotiating team were entitled to *contractual superseniority*, since they did not perform steward-like on-the-job grievance processing or contract administration; majority of negotiating meetings involved bargaining over such matters as contract concessions and subcontracting out work)

6067-4044-7500 Reinstatement rights of economic strikers

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-6-86**
[upon reconsideration in light of *NLRB v. Bildisco*, 459 U.S. 1145, debtor-in-possession's changes in provisions in regard to permanent replacement of strikers after expiration of contract, but prior to filing of bankruptcy ptn, unlawful since debtor-in-possession had assumed contract post ptn]

6067-4055 Unilateral change in working conditions (See also 530-6050-3300)

Angelica Corporation **276 NLRB No. 038**
(unilaterally promulgating and implementing improvements in wages and working conditions, violative where done prior to issuance of certification of results of decertification election that U lost)

6067-4055-0100 Generally

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. **281 NLRB No. 128**
[E's refusal to recognize U as representative of driver-salesmen, repudiation of contract and unilateral changes, following operational change in which E had eliminated job category's duties into new driver-salesman category, unlawful, notwithstanding E contention that creation of new category created qcr, where change was not technological and required no major hiring, job was similar to former category, no other U claimed to represent the E's, and Ees from old category substantially outnumbered additional driver-salesmen, who are viewed as accretion to old unit]

Westinghouse Electric Corporation **278 NLRB No. 061**
[fact E's unilateral mid-term changes in Ees' terms and conditions of employment were prompted by economic rather than discriminatory considerations is immaterial if E did not bargain about those changes. Defense that refusal to bargain did not take place in context of overall subjective, bad faith may be available when charge is violation of Section 8(a)(3) of Act, but it is no defense to 8(a)(5) allegation]

6067-4055-1500 Cleanup time

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally eliminating washup time, violation]

6067-4055-2100 Employee handbook

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[unilateral implementation of Ee handbook, unlawful, where E was under obligation to recognize and bargain with U in accord with recent holding of Bd in prior case involving parties herein]

6067-4055-2500 Use of rest rooms

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's institution of rule requiring that Ees clock out when use of restroom would involve *in excess of 2 or 3 minutes* not violative where Ees had always been required to clock in and out for numerous breaks)

6067-4055-2700 Holidays

Hamady Bros. Food Markets, Inc. **275 NLRB No. 183**
(E's asserted failure to restore benefits agreed to by E and U in prior letter of understanding, not violative where, because of nature of benefits, there was no way to accurately test whether E failed to restore benefits and there was no evidence that Ees were denied any of benefits)

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's converting 2-day Ee holiday to single-day holiday with additional day of personal leave, not violative, where E's actions conformed to its stated practice prior to instance where Ees were granted 2-day holidays during one holiday season; furthermore, E's actions did not result in loss of holiday time by Ees)

GTE Sylvania, Inc./GTE Products Corp. **JD-480-84**
(E's announcement of new *Administrative Guidelines* for E-plan which allowed certain Ees to take extended sick leave and personal holidays violative, where, although U did not contest E's right to administer plan, instant guidelines had effect of decreasing current benefits under existing plan rather than dealing solely with administrative matters)

6067-4055-3000 Hours worked

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**
[implementing *budget days* whereby Ees worked reduced work weeks was priviledged under expired contracts' management rights clause]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally reducing Ees' workweek, violation where work was available]

Central Broadcast Company **280 NLRB No. 056**
[unilaterally changing working hours, violation]

Central Broadcast Company **280 NLRB No. 056**
[unilaterally limiting certain work to specified hours of the day, violation]

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. **280 NLRB No. 021**
[ostentsibly non-U E, held to be alter ego of unionized E, unilaterally changing hours, wages, work rules, job classifications, unlawful]

Alamo Cement Company **277 NLRB No. 034**
(unilaterally implementing new second shift and new rotating shift and changing another shift, violative)

San Antonio Portland Cement Company **277 NLRB No. 036**
(unilaterally eliminating a swing shift, violative)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(fact E unilaterally changed shift starting time at Ees' request, no defense to failure to bargain solely with its Ees' *statutory representative and no other person or group*)

Stovall Manufacturing Company, Inc. **275 NLRB No. 039**
(reduction in work hours to make good prior warning that E would make it rough on Ees if U came in, violative)

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's prohibiting Ees from leaving work unless they had completed their jobs or obtained permission of their supervisors, not violative, since E's action did not change established term and condition of employment since record will not support finding that E applied new policy as to overtime, and accordingly, E was not obligated to bargain with U)

6067-4055-3300 Break periods

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally discontinuing practice of letting Ees take breaks and lunch periods in loading dock area in retaliation for U support, violation]

United States Postal Service **275 NLRB No. 057**
(reducing break periods from 15 to 10 minutes on one of its shifts to conform with its established policy--contract silent on issue--w/o bargaining with U, not violative, as all Ees aware of 10 minute break policy and notwithstanding that on this shift, as opposed to other shifts, extended break standard for 15 years except for 2 short periods as Bd considered this partial breach of otherwise uniformly applied work rule inadequate basis from denying E right to uniformly apply work rule to all its Ees)

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's institution of rule requiring that Ees clock out when use of restroom would involve *in excess of 2 or 3 minutes* not violative where Ees had always been required to clock in and out for numerous breaks)

6067-4055-3500 Assignment of work

St. John's General Hospital of Allegheny County--- ADR Center **281 NLRB No. 157**
[E's unilateral reassignment of duty of recording patients temperatures, pulse rates and respirations from unit secretaries to nurses aides upon onset of strike and continuing policy after end of strike, violative of Section 8(a)(5), where E was not compelled to make the substantial and material change]

H.H.H. Enterprises, Inc., d/b/a Stephenson Haus **279 NLRB No. 139**
[successor E's unilateral change in policy regarding assigning Ees to serving banquets, unlawful, successor had hired all Ees of predecessor and initially continued existing policy]

San Antonio Portland Cement Company **277 NLRB No. 036**
(unilaterally transferring certain Ees and assigning them different functions resulting in change of duties and reassignment of other Ees to lower paying classifications, violative)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilateral assignment of job duties of unilaterally eliminated unit job classification to other job classifications, violative)

Engineered Control Systems, Inc. **274 NLRB No. 191**
(violation, where E unilaterally changed Ee's status from Ee to independent contractor, ceased making payments to pension trust fund, and changed work duties of Ees w/i classification, after it had unlawfully withdrawn recognition from U upon expiration of contract)

6067-4055-3600 Performance of unit work by supervisor

The Cincinnati Enquirer, Inc., A Division of Gannat, Inc. **279 NLRB No. 149**
[unilaterally assigning unit work to newly-created supervisory position, violation]

Telford & Doolen, Inc. **277 NLRB No. 112**
(E did not unilaterally change terms and conditions of expired contract by assigning unit work to department supervisor, where all Ees in department had been laid off; and contract provision relating to unit work did not specifically address situation arising herein, nor did parties in negotiating provision contemplate such situation; consequently, it is not clear that provision prohibited E from utilizing supervisor to do incidental unit work that needed to be done, rather than closing department when work level dropped below that warranting retention of at least 1 Ee)

6067-4055-3600—Cont.

Maintenance Service Corporation **275 NLRB No. 198**
(no agreement reached where parties could not agree on effect of dropping side bar agreement, that was part of expired agreement from new agreement, in regard to whether foremen could perform unit work, a mandatory subject of bargaining)

6067-4055-3700 Job classification

H.H.H. Enterprises, Inc., d/b/a Stephenson Haus **279 NLRB No. 139**
[successor E's unilateral institution of new job classification and wage scale, unlawful, where successor had hired all Ees of predecessor and initially had adhered to prior conditions and terms of employment]

Alamo Cement company **277 NLRB No. 108**
(unilateral change in Ee's job classification not violation, where Ee was not made a supervisor and had same duties as before except that he also sporadically substituted for the supervisor in latter's absence, assisted the supervisor with a monthly report, and received a slight wage increase; change in classification was thus not material, substantial, and significant change in term or condition of employment)

Alamo Cement Company **277 NLRB No. 034**
(unilateral transfer and reclassification of Ee, violative)

Alamo Cement Company **277 NLRB No. 034**
(unilaterally changing job classification title from operator to supervisor, violative)

San Antonio Portland Cement Company **277 NLRB No. 036**
(unilaterally eliminating certain job classifications resulting in transferring some Ees to lower paying job classifications, eliminating one job, and relcassifying Ee to lower paying job, all violative)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilateral elimination of certain unit job classifications and addition of others, violative)

BASF Wyandotte Corporation **276 NLRB No. 175**
(E's making workers in its new automated steamroom facility salaried *utility technicians* rather than hourly *boiler operators*, thereby removing those workers from bargaining unit, not violative)

Armored Transport of California, Inc. **JD-(SF)-132-86**
[unilaterally withholding or delaying promotion of certain Ees into new job classifications, violation]

6067-4055-3800 Transfer

Alamo Cement Company **277 NLRB No. 034**
(unilateral transfer and reclassification of Ee, violative)

San Antonio Portland Cement Company **277 NLRB No. 036**
(unilaterally transferring certain Ees and assigning them different functions resulting in change of duties and reassignment of other Ees to lower paying classifications, violative)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilaterally hiring new Ees for positions at new plant which, according to E, unit Ees could not fill, and transferring unit Ees from existing plant to new one, violative where E's letter announcing these actions did not state when they would occur or indicate necessity for U to immediately request bargaining, and E's withdrawal of recognition precluded U action; E's assurances during negotiations the transferring the unit Ees would not cause them harm found no defense, and E's failure to bargain about the effects of the transfers and new hires since they occurred found violative)

6067-4055-3900 Absentee rules (See also 530-4055-5000)

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(unilaterally changing *alter ego* E's work rule resulting in Ee discharge for failing to report for work on first day of E's operations, unlawful where, for purposes of the Act, Ee was deemed employed by E because of prior employment with *alter ego* E, and *alter ego* E had never terminated Ee for missing work w/o reporting off)

6067-4055-4000 Working rules or schedules

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**
[implementing *budget days* whereby Ees worked reduced work weeks was priviledged under expired contracts' management rights clause]

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[institution shortly before end of strike of restrictions on smoking and drinking soft drinks and coffee during reporting time at medical facility, i.e. time during which patients' charts and medical records turned over from outgoing to incoming shifts, not violative, since change was not material, substantial change in practice inasmuch as applied only to overlap of shifts, had existed at times in past, and was justified by business reasons]

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[E's unilateral change from permanent assignment of nurses aides and unit secretaries to certain wing of facility to rotating assignments from one wing to another during strike at E's alcohol and drug treatment center, and continuing policy after strike, violative of Section 8(a)(5), since E obligated to bargain about this substantial and material change]

Goren Printing Co., Inc. **280 NLRB No. 064**
[E's unilaterally requiring all finished work to be signed by supervisor, not violative, since such decision was management's right to control the quality of its work product under E's management rights clause]

Central Broadcast Company **280 NLRB No. 056**
[unilaterally introducing requirement that Ees provide E with details on hours worked each day, violation]

Central Broadcast Company **280 NLRB No. 056**
[unilaterally limiting certain work to specified hours of the day, violation]

Amatyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. **280 NLRB No. 021**
[ostentaibly non-U E, held to be alter ego of unionized E, unilaterally changing hours, wages, work rules, job classifications, unlawful]

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. **277 NLRB No. 078**
(unilaterally changing work rules so as to deny Ees working a 4-day week the right to bump less senior Ees for a fifth day of work and so as to require Ees to remain at work performing other tasks during machine breakdowns instead of allowing them the option of going home or remaining at work, violations)

Alamo Cement Company **277 NLRB No. 034**
(unilaterally posting and implementing new hourly work and shift schedules, violative)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilateral change from oral to written method of communicating work schedules not unlawful change in schedules but in method of communicating them)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilateral promulgation of call-out schedules at new plant, violative where it implied that, contrary to past practice, designated on-call Ees had to be at home and available according to the schedule)

Alamo Cement Company d/b/a San Antonio Portland Cement Company **277 NLRB No. 033**
(unilateral promulgation of work rules at new plant, violative where none had previously existed)

City Cab Company of Orlanda, Inc.; et al. d/b/a Yellow Cab Company and Dixie Cab Company **273 NLRB No. 131**
(taxi company's unilateral changes in various charges, surcharges, late penalities drivers were required to pay, in bidding procedure and in minimum number of shifts required unlawful, where company had not committed itself to any fixed practice; company's contention U had failed to protest changes for inordinate amount of time, rejected, since U had alleged unlawful unilateral changed in first charge, and since Region was attempting to get company to comply with its promise not to engage in any further changes, it would have been useless for U to protest each change)

6067-4055-4100 Maternity or other leaves of absence

BASF Wyandotte Corporation **JD-(NY)-91-86**
[unilaterally making changes in personal leave policies, violative]

6067-4055-4200 Removing work from unit or relocating unit work

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[E's unilateral change from permanent assignment of nurses aides and unit secretaries to certain wing of facility to rotating assignments from one wing to another during strike at E's alcohol and drug treatment center, and continuing policy after strike, violative of Section 8(a)(5), since E obligated to bargain about this substantial and material change]

Griffith-Hope Company **275 NLRB No. 073**
(subcontracting unit work w/o notifying or bargaining with U about either decision to subcontract or its effects, unlawful, since decision to subcontract turned upon labor costs w/i meaning of *Otis Elevator*, 269 NLRB 891; such decision concerned mandatory subject of bargaining; and E viewed subcontracting program as temporary one that did not effec fundamental change in nature of its operation)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **789 F.2d 9 (C.A. D.C., Apr. 1986)**
[owner of a unionized and a nonunionized facility violated Act by diverting work from former to latter facility w/o giving U opportunity to bargain]

6067-4055-4300 Job requirements

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**
[E's altering job qualifications for unit positions in education instructor job classification, (E required these Ees to possess a Master's Degree rather than Bachelor of Science in Nursing which had previously been required) not violative, since E was priviledged to make such change unilaterally, by terms of Management Rights clause in expired agreement]

Central Broadcast Company **280 NLRB No. 056**
[unilaterally instituting new job requirements and duties, violation]

Central Broadcast Company **280 NLRB No. 056**
[unilaterally changing method whereby work was to be accomplished, by substituting pushing of buttons to play prerecorded tapes for live on-air announcing]

The Cincinnati Enquirer, Inc., A Division of Gannet, Inc. **279 NLRB No. 149**

Alamo Cement Company **277 NLRB No. 034**
(unilaterally transferring certain job duties from one job classification to another, violative)

Alamo Cement Company **277 NLRB No. 035**
(unilateral and permanent addition of new duties to Ees' existing duties, violative; unilateral change in duties w/o change in job classification or pay rate, lawful, however in absence of showing of material and substantial change from past practice)

6067-4055-4700 Rules governing entering, leaving, and movement within plant

Goren Printing Co., Inc. **280 NLRB No. 064**
[E's requiring Ees to give their supervisor a written note if they were leaving work early when past practice was only to have Ees orally inform supervisors, not violative, since rule itself remained intach and procedural change had only an *inconsequential impact* on Ees]

6067-4055-5000 Rules governing absenteeism and tardiness

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally instituting more restrictive tardiness policy as result of Ees' support of U, violation]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally instituting new rules as to Ees' taking time-off for personal reasons to penalize Ees for choosing U, violation]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[unilateral implementation of new leave policy, not violation where E had no bargaining obligation at that time, because, although U had card majority, E's ULPs did not preclude fair election]

Clark Equipment Company **278 NLRB No. 085**
[unilateral change in attendance policy, not violation, since it was not material, substantial, or significant where it was change in procedure, rather than policy, and neither more stringent nor significantly altered but of increased orderliness]

Continental Telephone Company of California **274 NLRB No. 210**
(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

Fontaine Truck Equipment Company **JD-160-85**
(E's unilateral implementation of attendance policy governing discipline for unexcused tardiness and absences and subsequent revision of policy, both violative)

6067-4055-6000 Lunch period

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally discontinuing practice of letting Ees take breaks and lunch periods in loading dock area in retaliation for U support, violation]

6067-4055-6300 Physical examinations

Lockheed Shipbuilding and Construction Company **278 NLRB No. 006**
[discharge of Ees pursuant to policy of testing Ees for medical fitness for particular job assignments, assertedly because OSHA required such medical tests, violative, where Bd had rejected this defense in previous ULP case involving same parties and E had expressly agreed by contract that such testing would not adversely affect Ees' employment]

6067-4055-6500 Medical services

United Technologies Corporation **278 NLRB No. 041**
[E's unilateral implementation of 1-year program]*Correct-A-Bill*) to reward its Ees for detecting health care overcharges, not violative, since any change in benefits implemented by E must be *substantial material, and significant* affecting terms and conditions of employment of bargaining unit Ees. E's implementation of program did not amount to such change in terms and conditions of employment of unit Ees, thus E not obligated to bargain with U. Program merely provided Ees with incentive to review their hospital or surgical center bills to detect overbilling]

6067-4055-6700 Paid sick leave

GTE Sylvania, Inc./GTE Products Corp. **JD-486-84**
(E's announcement of new *Administrative Guidelines* for E-plan which allowed certain Ees to take extended sick leave and personal holidays violative, where, although U did not contest E's right to administer plan, instant guidelines had effect of decreasing current benefits under existing plan rather than dealing solely with administrative matters)

6067-4055-7000 Vending machines and cafeteria services

Bazzuto's, Inc. **277 NLRB No. 100**
(unilaterally instituting hot-lunch program, violation)

Americana Healthcare Center **273 NLRB No. 213**
(unilaterally terminating sick leave program, unlawful, where parties had agreed to sick leave provision and had further agreed that it was to be incorporated into written agreement, but by mutual mistake of parties provision was not included in agreement)

6067-4055-7500 Privileges

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[institution shortly before end of strike of restrictions on smoking and drinking soft drinks and coffee during reporting time at medical facility, i.e. time during which patients' charts and medical records turned over from outgoing to incoming shifts, not violative, since change was not material, substantial change in practice inasmuch as applied only to overlap of shifts, had existed at times in past, and was justified by business reasons]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[barring leading U activists from parking in front row of parking lot in retaliation for U activities, violation in context of other ULPs harassing them, but insufficient to reach level of unilateral change about which E was obligated to bargain]

Valley Parcel Service, Inc. and Valley Parcel Service, Inc., Debtor In Possession **JD-(SF)-74-86**
[E's unilaterally ceasing its prior practice of providing credit cards to Ees for purchase of gasoline, violative]

6067-4055-7700 Change in personnel practices and procedures

BASF Wyandotte Corporation **JD-(NY)-91-86**
[E's unilaterally making changes in bid card system for filling job positions, violative]

6067-4055-8000 Telephones, radios, etc.

Advertiser's Manufacturing Company **280 NLRB No. 128**
[unilaterally ceasing practice of letting Ees make free local telephone calls and receive telephone calls during working hours, violation]

Port Plastics, Inc. **279 NLRB No. 050**
[E's implementation of change in telephone procedures by no longer permitting Ees to answer personal telephone calls, immediately after U won election, violative]

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's issuing notice which informed Ees that they could make and receive telephone calls only during their work breaks and restricted their incoming calls during work to emergencies, not violative where outgoing calls had been restricted previously)

6067-4055-8200 Safety rules

BASF Wyandotte Corporation **278 NLRB No. 028**
[unilateral implementation of respirator seal rule that had effect of prohibiting wearing of facial hair by Ees whose jobs necessitated their wearing respiratory protective equipment, not violation where U waived right to bargain over rule by agreeing to management rights clause allowing E to make and enforce rules deemed necessary or proper for conduct of Ees and operation of plant]

6067-4055-8500 Disciplinary system

Whirlpool Corporation **281 NLRB No. 007**
[E's failure to produce confidential police informant at suspension hearing as accusing witness as requested, not unilateral change in suspension hearing procedure where it was not established practice for E to produce accuser-eyewitness on U demand]

Sahara Datsun, Inc. **278 NLRB No. 148**
[unilaterally instituting, one week after receipt of U ptn, system of written warnings that could be placed in Ees' files for rule infractions rather than oral ones]

Continental Telephone Company of California **274 NLRB No. 210**
(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

6067-4055-8500—Cont.

Quality Rolls, Inc. **JD-189-86**
[E's unilateral change in eliminating progressive system of discipline, not unlawful, where U was not misinformed as to specifics of contemplated change, and its impact upon Ees was clearly conveyed and readily perceptible; accordingly, notification of change afforded by E to U was in accord with good faith bargaining, and U's failure to respond imposed no further obligations upon E; moreover, notice afforded U was not too short--11 days--to preclude bargaining on U's part]

Italo II Casa Romana Restaurant, Inc. **JD-(SF)-50-86**

Rockne L. Alexander, Rockne Alexander, II, Debrah Nelson, Douglas Nelson and Tami DeGeorgia, d/b/a Alexander Packaging Co. **JD-(SF)-5-86**
[E's unilateral actions regarding changes in working conditions, job discipline and termination, occurring at time when E was obligated to notify and bargain with U concerning effects of such actions, violative]

6067-4055-8900 Overtime

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**
[E's unilateral implementation of new overtime guidelines for its nurses not violative, since action was effort to improve efficiency which did not conflict with any established practices or published rules and standards w/i management's prerogative, policy was expressly privileged by terms of management, rights clause and E's direction that nurses advise their supervisors of need for overtime imposed no substantial burden on them]

Union Boiler Company **281 NLRB No. 148**
[E's insistence that U allow it to work Ees 10 hours a day w/o overtime as was contractually mandated, and refusing to employ Ees when they refused to work under those conditions, violative and such conduct was an illegal lockout of Ees]

Central Broadcast Company **280 NLRB No. 056**
[unilaterally requiring prior management clearance of overtime work, violation]

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's unilateral implementation of new rule requiring night-shift Ees to submit memoranda justifying necessity for overtime, violative, where prior to new rule Ees worked overtime as required by job with no explanation required, and such change constitutes change in *wages, hours and terms and other conditions of employment* as defined by Sec. 8(d))

Chef's Pantry, Inc. **274 NLRB No. 117**
(E's prohibiting Ees from leaving work unless they had completed their jobs or obtained permission of their supervisors, not violative, since E's action did not change established term and condition of employment since record will not support finding that E applied new policy as to overtime, and accordingly, E was not obligated to bargain with U)

6067-4060 Restrictions on plant access by nonemployee representative

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[unilateral sever restriction of U agent's access to plant by implementing previously unenforced requirement that he obtain pass, unlawful since, while restriction was in accord with wording of expired contract, it was change from existing practice, as recognized by E in its letter to U detailing agent's new access right]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks **279 NLRB No. 121**
[E's refusal to admit U representative to plant and on another occasion ordering her off premises and following her around plant and making abusive remarks, unlawful]

Asarco, Incorporated, Tennessee Mines Division **276 NLRB No. 155**
(denial of mine access to U's industrial hygienist for purpose of investigating fatal accident to Ee, unlawful under *Holyoke* test, since access to accident site by experienced investigator is fundamental to compiling complete report and is critical in absence of witnesses as here; local U's representatives who examined accident site had no accident investigation experience; while other sources enabled hygienist to make report with recommendations, visual observation of site was essential; and safety concerns over conditions resulting in accident are as compelling as those which present only potential hazard)

National Broadcasting Company, Inc. **276 NLRB No. 017**
(denial of access to non-Ee U representative at E's remote facility engaged in broadcasting golf tournament held not unlawful unilateral change where E had no practice of permitting U representative unlimited access to remote facilities; the few occasions in past when U representative visited remote facility merely after obtaining credentials to enter property on which sports event was located was insufficient to establish longstanding practice, particularly since U representative was limited by E to 10 minutes during live broadcast at golf course)

National Broadcasting Company, Inc. **276 NLRB No. 017**
(applying balancing test enunciated in *Holyoke Water Power Co.* case, Bd held that E's effective denial of access to non-Ee U representative at E's remote facility engaged in broadcasting golf tournament was unlawful, where U needed access to E's facility in order to observe operations for purpose of policing and enforcing its bargaining agreement with E; providing such access would not result in any interference with E's operations; and, on balance, representational interests of Ees outweighed E's property rights which must yield to extent necessary to accomodate such interests)

Holyoke Water Power Company **273 NLRB No. 168**
(E's denial of access to fan room by U's hygienist to test noise level, violative, notwithstanding E provided U with information it possessed on subject and had allowed business agent access to fan room since here, in balancing property right versus Ees' right to proper representation, Bd found that health and safety conditions are terms of employment which E must bargain about on request)

Holyoke Water Power Company **273 NLRB No. 168**
(Bd will no longer treat request for access as request for information, but instead, will balance E's property rights against Ees' right to proper representation in reaching decision of allowing access and when access granted, it will be limited to reasonable periods so that U can fulfill its representation duties w/o unwarranted interruption of E's operations)

Frontier Linen Supply, Inc., Debtor in Possession and Raymond Foley, Its Alter Ego **JD-(NY)-4-86**
[upon reconsideration in light of *NLRB v. Bildisco*, 459 U.S. 1145, debtor-in-possession unilateral changes in provisions regarding U's access to plant and wages and benefits prior to expiration of contract, and prior to filing of bankruptcy ptn, unlawful, since debtor in possession assumed contract post ptn]

N.L.R.B. v. National Broadcasting Company, Inc. (Directors Guild of America, Inc.) **798 F.2d 75 (C.A. 2, Aug. 1986)**
[denying U access to remote broadcasting facilities at reasonable time and places, violation where grant of access was past practice, and U's search for information as to whether non-unit Ees were doing unit work was relevant to pending arbitration and continued contract enforcement, and firsthand observation of crew at work was only alternative sufficient to serve U's legitimate purpose; Bd's application of test balancing E's property right against Ees' representational right was rationally connected with NLRA and resolved parties' competing interests]

6067-4066 Unilateral change in grievance and dispute resolving procedures (See also 530-6050- 4100)

Kolman Division of Athey Products Corporation **282 NLRB No. 029**
[violation where E refused to have arbitrator selected from panel of 5 names furnished by FMCS pursuant to contract because some of the potential arbitrators had belonged to a U]

Kolman Division of Athey Products Corporation **282 NLRB No. 029**
[violation where E refused to accept grievances for processing because contract called for president of U to bring grievance to attention of U and vice president acting as president pursuant to U's bylaws which called for VP to assume the presidency when president became incapacitated]

Appalachian Power Company John E. Amos Plant **282 NLRB No. 036**
[no violation over failure to processing grievances where Bd order required E to process grievances accumulated between time of certification and time of execution of contract in accordance with procedures in Ee personnel manual, but U failed to follow time requirements contained therein]

Whirlpool Corporation **281 NLRB No. 007**
[E's failure to produce confidential police informant at suspension hearing as accusing witness as requested, not unilateral change in suspension hearing procedure where it was not established practice for E to produce accuser-eyewitness on U demand]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[E's unilateral changes including wage increase, health, pension and benefit fund contributions, and grievance procedure, unlawful since based on unlawful withdrawal of recognition which was preceeded by E solicitation of resignations from U]

Buckley Belt Service, Inc., d/b/a Buckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[refusing to accept, sign and process grievance pursuant to contract, violation]

Asociacion Hospital Del Maestro, Inc. **279 NLRB No. 063**

6067-4066—Cont.

Hutchinson Fruit Company, Inc. 277 NLRB No. 054
(use of tape recorder at grievance meeting held not mandatory subject of bargaining and refusal of E to hold grievance meeting unless tape recorder on, violative. Bd held grievance meeting are similar to contract negotiations in both character and methodology and duty to bargain in good faith applies to both types of meetings)

Sorrell Manufacturing Company, Inc. 275 NLRB No. 039
(E's refusal to discuss and process Ees' grievances concerning disciplinary action until parties had negotiated a contract, violative, since E is obligated to discuss and process grievances and absence of contract incorporating grievance procedure does not relieve E of such obligation)

Union Carbide Corporation, Nuclear Division 275 NLRB No. 037
(E soliciting and resolving grievances through *ad hoc* committee formed to review problems in a section of E's plant w/o providing U opportunity to be present at such adjustment violative; further, E's contention that U was present because committee included U's alternate shop steward, rejected, where steward was appointed in capacity of Ee and not as U representative, he was not told he was representing U and steward did not even report what was transpiring at committee meetings to any U official)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(E's refusal to confer with U concerning complaints about Ee wages and working conditions, although not presented in form of contractual grievances, unlawful)

Southern California Edison Company 274 NLRB No. 167
(E's refusal to conduct grievance meetings with Ees or U officials who wore *Stick Your Retro* button concerning retroactive pay raise during contract negotiations between E and U, violative, since wearing of button protected, and no matter what buttons were being worn, E was not privileged to refuse to meet and deal with U on matters being pursued through grievance arbitration process, at least so long as they did not cause unreasonable disruption (of process))

American Thread Company 274 NLRB No. 164
(E's unilateral changes in grievance procedure, insurance and vacation benefits, not unlawful, where E had lawfully withdrawn recognition upon receipt of notice from majority of Ees that they no longer wished to be represented by U)

Southwestern Electric Cooperative, Inc. 274 NLRB No. 135
(E's refusal to arbitrate grievances unless U put them in writing, violative, since contract permitted U to file grievances orally. U and E representatives credibly testified that they had never processed written grievances)

Hawthorn Mellody, Inc. 275 NLRB No. 055
(E's failure to process grievances filed by Us regarding layoffs, vacation pay, performance of unit work by supervisor, which occurred prior to expiration of bargaining contract, not violative, where E's failure to answer greivances not contrary to contractual grievance procedure or otherwise unusual, U did not proceed to next step of grievance procedure and contention exhaustion of grievance procedure would be futile, and that E had repudiated bargaining agreement by unlawful refusal to bargain, rejected)

Pittsburgh Penn Oil Company, Inc. JD-44-86
[E's refusal to follow contractual grievance procedure by refusing to meet with U and refusing to arbitrate grievances, violative]

N.L.R.B. v. Pennsylvania Telephone Guild 799 F.2d 84 (C.A. 3, Aug. 1986)
[U insisting to impasse that it be allowed to tape record all of grievance meeting, a nonmandatory subject of bargaining, violative, as grievance meeting substantially similar to bargaining negotiations and insistence on tape recorder at latter was held unlawful as it could inhibit free and open discussions]

N.L.R.B v. Southwestern Electric Cooperative, Inc. 794 F.2d 276 (C.A. 7, June 1986)
[E unlawfully modified contract's grievance-arbitration terms unilaterally by refusing to process grievances until U put them in writing, where there was no express contractual requirement that grievances be put in writing; contract's terms on their face contemplated that prior to arbitration parties' disagreements will be resolved orally and informally; parties' long and consistent interpretations of contract showed that right to file oral grievances was *contained* in contract; and common practice and common grievance arbitration procedures must operate flexibly to foster prompt dispute resolution]

N.L.R.B v. Southwestern Electric Cooperative, Inc. 794 F.2d 276 (C.A. 7, June 1986)
[in finding that E unlawfully refused unilaterally to process grievances until U put them in writing, ct held E had no statutory right under Sec. 8(d) to impose such requirement, since right to information does not include right to dictate form that information comes in; there is no obligation to furnish relevant information in exact form requested; and it is sufficient if information is made available in manner not so burdensome or time-consuming, as to impede bargaining process]

6067-4066-5000 Restrictions on employee representative in preparation of grievances

BASF Wyandotte Corporation 278 NLRB No. 028
[unilaterally restricting U representatives to cafeteria, rather than allowing them to walk around plant, and prohibiting them from talking to supervisors during U time, not violation, where alleged past practice of walking about plant was not proved, nor was it controlling where there was *complete agreement* clause that abolished past practices, and restrictions did not have substantial impact on U representatives' ability to investigate grievances or represent Ees]

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)
[E's unilateral discontinuance of allowing U steward 4 hours per day of paid company time, office and telephone in order to conduct U business, unlawful, since grant of company time and facilities to U mandatory subject of bargaining and bargaining agreement provided for *reasonable amount of paid time* for U business and practice over last 5 years had been to grant above priviledges to steward; E's contentions that privileges were personal to predecessor steward, that contract provision illegal under Sec. 302 of LMRA and Sec. 8(a)(2) of NLRA, and that at any rate, there was only contract violation, rejected]

6067-4077 Unilateral change in union-security and checkoff (See also 530-6050-5000)

International Distribution Centers, Inc. 281 NLRB No. 111
[E's failure to remit pursuant to checkoff deducted dues and contributions to health and welfare fund, unlawful, inasmuch as E's alleged poor financial condition rejected as defense]

Fashion Furniture Mfg., Inc. 279 NLRB No. 095
[E's failure to withhold and remit dues to U as required under contract that it unlawfully refused to sign, violative]

Barnett Supply Company, Inc. 278 NLRB No. 146
[E's failure to remit checked off dues to U, unlawful, since signing agreement with checkoff provision by husband of E's president imputed to E where E held him out as agent and his actions were ratified by president/wife]

Watson-Rummell Electric Co. 277 NLRB No. 162
[E's unilaterally discontinuing dues checkoff provision of contract after expiration date, not violation]

M.F. Enterprises, Inc. d/b/a Gopher Restaurant JD-417-84
(E's failing to deduct U dues and forward to U, unlawful)

6067-4088 Unilateral change in hiring policies

Ne Di Construction Co., Inc. 279 NLRB No. 071
[unilaterally ceasing to make health and welfare contributions, instituting new and lower wage rate for new hires, and ceasing to abide by obligation to use U as source for Ees, violation where E was still bound by expired master contract, pursuant to its automatic renewal term, and then by new contract, notwithstanding E's alleged notice of termination, since notice was untimely, and U had not waived it as requirement]

Southwestern Steel & Supply, Inc. v. N.L.R.B. 806 F.2d 1111 (C.A. D.C., Dec. 1986)
[E's unilateral refusal to continue to use U hiring hall after expiration of contract, unlawful; E's contention that hiring hall provision did not survive contract, rejected]

6067-4090 Unilateral changes to support of union activities (paid time off, clerical support, space, etc.)

BASF Wyandotte Corporation 278 NLRB No. 028
[E's unilateral elimination of and refusal to honor U time clause in contract allowing payment to U president and secretary for four hours daily spent on U business, violation]

BASF Wyandotte Corporation 276 NLRB No. 175
(E's unilaterally deciding to discontinue paying U committeeman for release time spent administering bargaining agreement, violative)

BASF Wyandotte Corporation 274 NLRB No. 147
(E's unilateral withdrawal of privileges granted to U; i.e., permitting local U chairman to spend 4 hours of paid time each work day conducting U business including processing of grievances, use of office, telephone, and copying machine and requiring permission of E before engaging in U busines, unlawful; E's contention unilateral withdrawal not unlawful since grnating of privileges was violative of Sections 302 and 8(a)(2) of LMRA, thus illegal rather than mandatory subjects of bargaining, rejected, as grant was to U chairman as Ee of E to U which had been recognized and dealt with at arms length)

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)
[E's unilateral discontinuance of allowing U steward 4 hours per day of paid company time, office and telephone in order to conduct U business, unlawful, since grant of company time and facilities to U mandatory subject of

6067-4088—Cont.

Southwestern Steel & Supply, Inc. v. N.L.R.B. **806 F.2d 1111 (C.A. D.C., Dec. 1986)**

[E's unilateral refusal to continue to use U hiring hall after expiration of contract, unlawful; E's contention that hiring hall provision did not survive contract, rejected]

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BASF Wyandotte Corporation **274 NLRB No. 147**

(E's unilateral withdrawal of privileges granted to U; i.e., permitting local U chairman to spend 4 hours of paid time each work day conducting U business including processing of grievances, use of office, telephone, and copying machine and requiring permission of E before engaging in U busines, unlawful; E's contention unilateral withdrawal not unlawful since granting of privileges was violative of Sections 302 and 8(a)(2) of LMRA, thus illegal rather than mandatory subjects of bargaining, rejected, as grant was to U chairman as Ee of E to U which had been recognized and dealt with at arms length)

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**

[E's unilateral discontinuance of allowing U steward 4 hours per day of paid company time, office and telephone in order to conduct U business, unlawful, since grant of company time and facilities to U mandatory subject of bargaining and bargaining agreement provided for *reasonable amount of paid time* for U business and practice over last 5 years had been to grant above priviledges to steward; E's contentions that privileges were personal to predecessor steward, that contract provision illegal under Sec. 302 of LMRA and Sec. 8(a)(2) of NLRA, and that at any rate, there was only contract violation, rejected]

6067-6000 Duty to furnish information

6067-6001 Generally

The Nielsen Lithographing Co. **279 NLRB No. 118**

[if E claims *poverty* or *inability to pay* then, upon request from U, E is required to produce or disclose financial data to support its claim of poverty or *inability to pay*]

United Technologies Corporation **277 NLRB No. 070**

(where production of information is appropriate in response to U demand, data is not to be withheld because of some technical deficiency in manner in which it is designated in request; if E understands nature of information requested, and it is otherwise producible, E may not withhold it because U has incorrectly identified or improperly described its title, form, or author)

N.L.R.B. v. Local Union 497, Electrical Workers **795 F.2d 836 (C.A. 9, July 1986)**

[parties to bargaining must disclose information that aids in bargaining process. A broad discovery standard is used for relevance. However, bare assertion that information is needed to process grievance does not oblige party from whom it is requested to turn it over. Moreover, S.Ct has rejected Bd's position that interests in arguably relevant information must always predominate over all other interests. Bd's responsibility is to balance arguable relevance of material against any harm that will stem from disclosure]

6067-6001-1200 For bargaining is statutory

Boise Cascade Corp., Paper Group **279 NLRB No. 074**

[whether information is relevant or not is determined by probability that desired information would be of use to U in carrying out its statutory duties and responsibilities. Standard for determining whether information is relevant is liberal one much akin to that applied in discovery proceedings, and party must disclose information that has any bearing on subject matter of particular case. Burden of proving relevance of information shifts according to nature of information sought]

United States Postal Service **276 NLRB No. 143**

]E's obligation to furnish information upon request, absent special circumstances, is not relieved merely because U may have access to information from other sources. Herein, U adequately demonstrated copies of desired information needed for process of grievances beyond local level, notwithstanding U had access to information which was posted on bulletin board)

6067-6001-2000 Specificity and/or clarity

Super Valu Stores, Inc. **279 NLRB No. 005**

[where E, after purchase of facility, exercised its option under purchase agreement to require seller to repurchase facility whose operations were then terminated, ALJ held E's refusal to comply with U's request for copies of both purchase agreements to permit U to more effectively represent Ees in effects bargaining not unlawful, since U's stated reason, standing alone, was inadequate; U's theory of relevance must be reasonably specific, and general avowals of reliance, such as *to bargain intelligently* and similar boilerplate, are insufficient]

Super Valu Stores, Inc. **279 NLRB No. 005**

[U's theory of relevance must be reasonably specific and general avowals of reliance, such as *to bargain intelligently* and similar boilerplate, are insufficient]

United States Steel Corporation **JD-189-85**

(E's refusal to supply information requested by U for purpose of processing grievances covering reassignment of personnel and contracting out, not violative, as request made for information regarding reassignment grievance had to do with subcontracting and U failed to show relevancy of data requested to process grievance concerning reassignment; as to relevance of information for processing contracting out grievance, there is none either, as E's intent is not in issue but admitted to be department closure, and no issue as to availability of work or Ees ability to perform. The real issue is department closure which E claims management right to do so)

6067-6001-3700 Standard for furnishing is relevancy of information to union's role as bargaining agent

M & C Vending Co., Inc. and Its Wholly Owned Subsidiary Ada Automatic Sales Company, Inc. **278 NLRB No. 047**

[E's refusal to furnish U copy of pension plan, unlawful, since required by U in order for U to perform its representation functions]

Walter N. Yoder & Sons, Inc. **754 F.2d 531 (C.A. 4, Feb. 1985)**

(substantial evidence supported Bd's finding on critical facts establishing that U sought relevant information from double-breasted E upon having received confirmed reports that Ees of unionized E had worked at non-U shop, leading president of local U to gather information which pointed to single E or alter ego and gave rise to reasonable belief that contract might well be applied to non-U Ees)

N.L.R.B. v. Electrical Workers, Local 309 (Pfizer, Inc.) **———F.2d——— (C.A. 7, June 1985)**

[in determining whether E is obligated to supply information, Bd need only find probability that information is relevant and that it will be of use to U in carrying out its statutory duties; relevance in this context is determined under *discovery-type* standard, not trial-type standard, and thus *broad range of potentially useful information should be allowed U for purpose of effectuating bargaining process*]

6067-6001-3701 Generally

Sonat Marine, Inc. **279 NLRB No. 016**

[E's refusal to provide U with information concerning its conclusion that certain Ees in bargaining unit were supervisory and E was refusing to bargain over those Ees, violative, where U had represented contested Ees for years and had formally requested E's factual basis for its conclusion; further, nowhere does the Act require that the U must accept w/o any verification an E's claim that bargaining unit Ees are now out of the bargaining unit]

Super Valu Stores, Inc. **279 NLRB No. 005**

[U's request for copy of purchase agreement between E and seller whereby E acquired facility, and for Ee manual held not presumptively relevant to U's representation function, since requested information did not relate directly to terms and conditions of employment of Ees represented by U; and in such instance, U is under burden to establish relevance of requested information]

Federated Publications, Inc. d/b/a The Daily Olympian **275 NLRB No. 011**

(C dismissed where GC did not meet *his* burden of establishing that information (U) sought was relevant to U's role as collective-bargaining representative of unit Ees since GC failed to establish that U represented these unit Ees)

6067-6001-3710 Relevance to campaigning for election

Sandpiper Convalescent Center and Sandpiper Village **279 NLRB No. 147**

6067-6001-3720 Relevance to bargaining negotiations

Cal-Am Partners d/b/a Amscot Coal **281 NLRB No. 027**

[refusing U's request for information concerning ownership, supervision, equipment, operation and service of E to determine E's possible relationship with former owner as successor or alter ego and consequent bargaining obligation, violation]

Schaeff Namco, Inc. **280 NLRB No. 150**

[E's failure to furnish U financial information to aid in U's consideration of E's wage reduction offer made during negotiations pursuant to wage reopener provision, not unlawful, since request received after reopener period had ended, bargaining had ceased, and E was obligated under terms of reopener provision to implement its wage offer where parties had not reached agreement or instituted action]

6067-6001-3720—Cont.

U.S. Postal Service 280 NLRB No. 080
[E's refusal to furnish information requested by U concerning names of U's officers and stewards who requested supervisory positions with E, violative, since information sought relates to U's role as Ees' exclusive bargaining representative. U merely prescribing qualifications or limitations of those who will be its agents, and felt it would be conflict of interest if its negotiators were also applying for supervisory positions]

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147
[E's refusal to furnish U with names of unit Ees, hire date or seniority dates, Ees' earnings for past year including amount of overtime paid, hourly pay rates, ages, telephone numbers, complete list of Ee benefits including medical plan description and retirement plan, unlawful, since information necessary and relevant to U's performance of its function as bargaining representative in preparing for negotiations]

Sonat Marine, Inc. 279 NLRB No. 016
[E's refusal to provide U with information concerning its conclusion that certain Ees in bargaining unit were supervisory and E was refusing to bargain over those Ees, violative, where U had represented contested Ees for years and had formally requested E's factual basis for its conclusion; further, nowhere does the Act require that the U must accept w/o any verification an E's claim that bargaining unit Ees are now out of the bargaining unit]

American Stores Packing Company, A Division of Acme Markets, Inc. 277 NLRB No. 190
[refusal to provide U with information requested for bargaining about E's decision to close plant and subcontract unit work, not violative where U had waived right to bargain over such decision; U also had no right to requested information for bargaining about new contract or about effects of decision to close plant because once E had decided to close plant and lay off all unit Ees, E had no further duty to bargain about new contract and U never stated that it was requesting information for effects bargaining]

H & H Pretzel Company 277 NLRB No. 143
(E's refusal to grant U's *dilatory request* to examine its books, not violation where U had rejected E's prior offer to let U examine its books to substantiate E's claims of economic problems, and parties had reached impasse due to U's refusal to make any concessions)

Indiana Cabinet Company, Inc. 275 NLRB No. 169
(E's failure to timely respond to U's request for information solely in preparation for negotiations over contract renewal, violative)

Hawaiian Flour Mill, Inc. 274 NLRB No. 161
(mtn for summary judgment that E had unlawfully refused to supply U with requested information, granted where U was properly certified, requested information was presumptively relevant to collective bargaining, and E failed to rebut presumption or to raise issue of relevance or lack of necessity in denying U's request)

6067-6001-3730 Relevance to finding of race or sex discrimination

Fairfield Publishing Company d/b/a Fairfield Daily Republic 275 NLRB No. 002
(no summary judgment where mtn relates to U requests for nonunit Ees' data and discrimination complaints, since such information is *not presumptively relevant* and, on state of record before Bd, GC has not established requisite relevancy to entitle U to such information. Portion of instant case relating to U's request for nonunit Ees data and discrimination remanded for further processing of C, including evidentiary hearing before ALJ concerning exact scope of information request and relevancy issues with regard to nonunit Ees' data and discrimination C's, if GC wishes to further proceed on these matters)

6067-6001-3740 Relevance to policing agreement

Pence Construction Corporation 281 NLRB No. 049
[information concerning *double-breasted* or alter ego operation not presumptively relevant; rather, U must show existence of enough facts to give rise to reasonable belief that two companies were single E, but need not show requested information would establish existence of *double-breasted* or alter ego operation and a contract violation; E must supply information relevant to informed administration of contract, and U is entitled to information to determine whether to file a grievance or bargain about a dispute]

Boise Cascade Corp., Paper Group 279 NLRB No. 074
[E's refusal to furnish U with surveys used to formulate maintenance improvement program at one of its facilities, which would combine some duties to be performed by Ees, reduce craft classifications, change wage structure, projected savings and efficiency calculations, and any survey comparing maintenance efficiency and cost at facility at which program to be instituted with E's other facilities, unlawful, since relevant to bargaining, grievance and possible arbitration; however, portions of study alluding to how E would carry out its supervisory responsibilities or constituting legal opinion protected from disclosure]

Ben Franklin National Bank 278 NLRB No. 136
[E's refusal to furnish U with names, addresses, wage rates, and classifications of unit Ees, unlawful, where E and U had reached agreement on contract terms w/i certification year prior to any rebutting of U's majority status; E thus was obligated to sign agreement, and information requested was relevant to U's duty to represent Ees under bargaining agreement]

Elevator Sales and Service, Inc. 278 NLRB No. 094
[Es' refusal to furnish on request information concerning E's relationship with alter ego, violative where U showed probable relevance of information to possible circumvention of contract]

Boyd-Mulford Construction Co. 277 NLRB No. 180
[requested information relevant to policing contract with E to ascertain E whether was evading agreement by *double-breasting*]

The E. W. Buschman Company 277 NLRB No. 021
(refusal to supply financial and production information requested by U in order to process grievance over E's cancellation of Christmas bonus due to alleged lack of cash flow, violative where U could not adequately represent Ees at arbitration of grievance w/o introducing the information)

Clinchfield Coal Company 275 NLRB No. 189
(E's refusal to provide, pursuant to U's request, information regarding contracting out of maintenance and repair work relevant to policing contractual provisions on work jurisdiction and subcontracting and processing grievances as to contractual jurisdiction over such work, violative)

Kansas National Education Association 275 NLRB No. 092
(E's failure to comply promptly with U's request for information in form of documents memorializing extra-contractual agreements with individual Ees, unlawful, since information, which concerned transfer of unit Ees to other positions, was presumptively relevant to and necessary for U's performance of its representative duties; and E's contentions that it was not obligated to release management-related information to U because U believed it was significant, and that matter was moot inasmuch as information had since been provided, rejected)

N.L.R.B. v. National Broadcasting Company, Inc. (Directors Guild of America, Inc.) 798 F.2d 75 (C.A. 2, Aug. 1986)
[denying U access to remote broadcasting facilities at reasonable time and places, violation where grant of access was past practice, and U's search for information as to whether non-unit Ees were doing unit work was relevant to pending arbitration and continued contract enforcement, and firsthand observation of crew at work was only alternative sufficient to serve U's legitimate purpose; Bd's application of test balancing E's property right against Ees' representational right was rationally connected with NLRA and resolved parties' competing interests]

6067-6001-3745 Relevance to layoff and/or recall policies

Aquaslide 'N' Dive Corporation 281 NLRB No. 034
[E's delay in notifying U prior to layoffs and subsequent recalls, not unlawful, since necessity for layoffs was clear where, as result of E's filing of ptn in bankruptcy, its assets were frozen thereby causing layoffs, and there was no showing how prior notice could have influenced layoffs or recalls]

6067-6001-3750 Relevance to processing grievances

Whirlpool Corporation 281 NLRB No. 007
[E's failure to produce confidential police informant as accusing witness at suspension hearing pursuant to U request, not unlawful failure to provide grievance-related information, since E was not bound by past practice to produce the accusing witness at such hearing, general obligation to provide requested information does not include statements of witnesses, and producing a witness to make a written or oral statement is parallel to and covered by witness statements exception]

Boise Cascade Corp., Paper Group 279 NLRB No. 074
[E's refusal to furnish U with surveys used to formulate maintenance improvement program at one of its facilities, which would combine some duties to be performed by Ees, reduce craft classifications, change wage structure, projected savings and efficiency calculations, and any survey comparing maintenance efficiency and cost at facility at which program to be instituted with E's other facilities, unlawful, since relevant to bargaining, grievance and possible arbitration; however, portions of study alluding to how E would carry out its supervisory responsibilities or constituting legal opinion protected from disclosure]

The E. W. Buschman Company 277 NLRB No. 021
(refusal to supply financial and production information requested by U in order to process grievance over E's cancellation of Christmas bonus due to alleged lack of cash flow, violative where U could not adequately represent Ees at arbitration of grievance w/o introducing the information)

United States Postal Service 276 NLRB No. 143
(E has duty to provide, upon request, information relevant in carrying out its statutory responsibilities. Whether requested information is relevant and necessary is determined by factual circumstances on case by case basis. Information need not be dispotive of issue between parties it need only have some bearing on it)

United States Postal Service 276 NLRB No. 143
(violation, where E failed to timely furnish U with time and attendance information for purpose of establishing whether E had scheduled Ees to

6067-6001-3750—Cont.

work overtime in violation of contract and to process grievance in that regard. E's contention no factual dispute regarding contractual provision for assignment of overtime and thus no need for information, because it agreed with U's contractual interpretation, rejected, inasmuch as U had right to evaluate specific information sought to determine its position for further processing of grievance already filed, nor was E's failure justified by steward's inexperience in framing request)

Clinchfield Coal Company **275 NLRB No. 189**
(E's refusal to provide, pursuant to U's request, information regarding contracting out of maintenance and repair work relevant to policing contractual provisions on work jurisdiction and subcontracting and processing grievances as to contractual jurisdicition over such work, violative)

O. Voorhees Painting Co. and O.V. International, Inc. **275 NLRB No. 114**
(joint Es' refusal to furnish U relevant information, violative where information was necessary to process grievance, to enable U to verify whether proper contributions were made to pension and welfare plan, and information was relevant to allegations of failure to pay contractual wages and contributions)

Conoco Chemicals Company, Division of Conoco, Inc. **275 NLRB No. 009**
(prearbitration disclosure of witness statements not required)

United Technologies Corporation **274 NLRB No. 072**
(E's refusal to provide U with Ee promotion and production records relevant to processing two grievances over E's promotion, transfer and award policies, on grounds that dispute was not *arbitrable* violative; before a U is put to the effort of arbitrating even the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievance has merit)

United Technologies Corporation **274 NLRB No. 072**
(test for relevancy is whether information assists in evaluating the merits of the grievance and the propriety of pursuing the grievance to arbitration, and U's defenses on behalf of a grievant do not constitute a waiver of the right to information)

United Technologies Corporation **274 NLRB No. 072**
(U did not waive its right to information, which included supervisor audit reports, audit departmental procedures and investigations of an Ee, by narrowing its defense of Ee's suspension and discharge before arbitration, to issue of improper supervision rather than Ee's actual guilt, since, regardless of U's defenses, it is still permitted to ascertain if disciplinary action complied with applicable contractual standards)

United States Steel Corporation **JD-189-85**
(E's refusal to supply information requested by U for purpose of processing grievances covering reassignment of personnel and contracting out, not violative, as request made for information regarding reassignment grievance had to do with subcontracting and U failed to show relevancy of data requested to process grievance concerning reassignment; as to relevance of information for processing contracting out grievance, there is none either, as E's intent is not in issue but admitted to be department closure, and no issue as to availability of work or Ees ability to perform. The real issue is department closure which E claims management right to do so)

Roadway Express, Inc. **JD-(SF)-78-85**
(E's failure to provide U with photocopies of supervisory report and of other records relevant to U's pending grievances, violative since it is generally established that, at least where, as here, U will stand costs of copying, and production of copies will not itself pose undue burden on E, U is entitled upon request to retain photocopies of company records otherwise relevant to pending grievances)

N.L.R.B. v. National Broadcasting Company, Inc. (Directors Guild of America, Inc.) **798 F.2d 75 (C.A. 2, Aug. 1986)**
[denying U access to remote broadcasting facilities at reasonable time and places, violation where grant of access was past practice, and U's search for information as to whether non-unit Ees were doing unit work was relevant to pending arbitration and continued contract enforcement, and firsthand observation of crew at work was only alternative sufficient to serve U's legitimate purpose; Bd's application of test balancing E's property right against Ees' representational right was rationally connected with NLRA and resolved parties' competing interests]

Salt River Valley Water Users' Association v. N.L.R.B. **769 F.2d 639 (C.A. 9, Aug. 1985)**
(under Sections 8(a)(1) and 8(a)(5), failure of either E or U to give other information necessary to enable requesting party intelligently to evaluate grievances filed *may* constitute ULP)

6067-6001-3755 Relevance to subcontracted or transferred work

United States Steel Corporation **JD-189-85**
(E's refusal to supply information requested by U for purpose of processing grievances covering reassignment of personnel and contracting out, not violative, as request made for information regarding reassignment grievance had to do with subcontracting and U failed to show relevancy of data requested to process grievance concerning reassignment; as to relevance of information for processing contracting out grievance, there is none either, as E's intent is not in issue but admitted to be department closure, and no issue as to availability of work or Ees ability to perform. The real issue is department closure which E claims management right to do so)

United States Steel Corporation **JD-176-85**
(E's refusal to supply U with items of information on contracting out of maintenance work that was involved in number of grievances, violative)

6067-6001-3760 Wage and related information presumptively relevant

United Graphics, Inc. **281 NLRB No. 070**
[E's refusal to supply information requested by U about temporary workers' names, addresses, wages, and fringe benefits, violative]

Pittsburgh Testing Laboratory **279 NLRB No. 173**

Sandpiper Convalescent Center and Sandpiper Village **279 NLRB No. 147**

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. **279 NLRB No. 091**
[E's failure to provide U complete information regarding unit Ees' names, addresses, date of hire, classification, job descriptions, wages, and benefits including vacations, holidays, medical coverage, pensions, and sick leave, unlawful, since presumptively relevant for bargaining and notwithstanding some partial information was supplied]

Boise Cascade Corp., Paper Group **279 NLRB No. 074**
[*where information sought covers terms and conditions of employment pertaining to Ees w/i bargaining unit, information is presumptively relevant and no specific showing of relevance normally required. Where request is for information with respect to matters outside unit, standard is narrower and U must demonstrate somewhat more precisely that information is relevant*]

Washington Materials, Inc., t/a Buffalo Concrete; et al. **276 NLRB No. 040**
(some information is presumed relevant such as information concerning the terms and conditions of employment of Ees represented by the U, however, this presumption of relevance does not apply to information concerning financial data and the relevance of that type of information must be established by the U)

United Technologies Corporation **274 NLRB No. 163**
(E's refusal to provide U upon request with a copy of results of wage and benefit survey conducted with its Ees prior to reopener negotiations violative; such information is presumptively relevant to collective bargaining)

Health Care Service-California d/b/a Valley Oaks Health Care Center **JD-(SF)-198-85**
[U is presumptively entitled to payroll records and work schedules of unit Ees; further, U's claim that information will help determine whether there are supervisors in unit reinforces relevance]

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC **JD-288-85**
[refusal to supply information, including wages, concerning disputed job classifications, violation, since information was presumptively relevant and would permit resolution of unit placement issue of whether individuals were Ees or supervisors]

Embossing Printers, Inc. **JD-19-85**
(11-month delay in response to U's request for names, addresses and job classifications of unit Ees, as well as 3 month lapse in response to U request for wage data concerning unit Ees, violative, since these delays unquestionably impeded and frustrated bargaining process. U needed wage information so that it could intelligently and informedly respond to E's wage proposal during contract negotiations)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) **789 F.2d 121 (C.A. 2, Apr. 1986)**
[E's refusal to disclose to U upon request results of wage and benefit survey conducted with its Ees prior to reopener negotiations, violative since such information is presumptively relevant to U's duties as exclusive bargaining agent; E's contention that it could not reveal survey results because it told Ees that responses would be confidential, rejected where E could not identify any substantial reason why information should remain confidential]

6067-6001-3770 Names and addresses of unit employees presumptively relevant

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**

United Graphics, Inc. **281 NLRB No. 070**
[E's refusal to supply information requested by U about temporary workers' names, addresses, wages, and fringe benefits, violative]

6067-6001-3770—Cont.

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[E's failure to provide U complete information regarding unit Ees' names, addresses, date of hire, classification, job descriptions, wages, and benefits including vacations, holidays, medical coverage, pensions, and sick leave, unlawful, since presumptively relevant for bargaining and notwithstanding some partial information was supplied]

Embossing Printers, Inc. JD-19-85
(11-month delay in response to U's request for names, addresses and job classifications of unit Ees, as well as 3 month lapse in response to U request for wage data concerning unit Ees, violative, since these delays unquestionably impeded and frustrated bargaining process. U needed wage information so that it could intelligently and informedly respond to E's wage proposal during contract negotiations)

6067-6001-3780 Relevancy of other data must be demonstrated

Super Valu Stores, Inc. 279 NLRB No. 005
[U's request for copy of purchase agreement between E and seller whereby E acquired facility, and for Ee manual held not presumptively relevant to U's representation function, since requested information did not relate directly to terms and conditions of employment of Ees represented by U; and in such instance, U is under burden to establish relevance of requested information]

Southern Nevada Home Builders Association, Inc. 274 NLRB No. 048
(E association's refusal to furnish U names and addresses of remaining builder members who were not bound by master or memorandum agreement negotiated by association, not violative, since U did not sustain burden of demonstrating probability that roster of all builder members is relavent and of use in fulfilling U's statutory duties. Surmise and suspicion not enough. No record evidence or allegation that any builder member engaged in, or was encouraged by Respondent to engage in, alter ego or double-breasted operations or that builder members were not making trust fund contributionsrequired by master or memorandum agreement)

6067-6001-3785 Reasonable or probable relevance of relationship between companies must be demonstrated

Corson and Gruman Company 278 NLRB No. 048
[E's refusal to furnish U information pertaining to its relationship with other companies, violative where requested information was clearly relevant to siagle E and alter ego issues raised by U and U had reasonable basis for suspecting that contract violation had occurred]

Conte Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. 274 NLRB No. 082
(where E had transferred parts of its operations to spinoff companies, and U had filed grievance about E's cessation of contributions to U funds, U's requests for information were reasonable, since circumstances indicated that spinoff companies were successors to E and possibly single E with, and alter egos of E liable for the contributions which were the subject of the grievance)

Walter N. Yoder & Sons, Inc. 754 F.2d 531 (C.A. 4, Feb. 1985)
(U need only make formal request based on reasonable belief that information is necessary and show that it is relevant in order to trigger E's obligation to give information; U need not be satisfied with E's assurances that there is no violation once duty to provide information has been triggered; reasonableness of U's belief in making request may not be called into question in light of post hoc information provided by E outside confines of formal response to request; therefore ALJ properly excluded cross examination of U president of what he knew about relationship between 2 entities (alter ego) or could easily have determined)

6067-6001-3790 Relevancy of wage and fringe benefits of employees outside bargaining unit must be demonstrated

United Graphics, Inc. 281 NLRB No. 070
[E's refusal to supply information requested by U about temporary workers' names, addresses, wages, and fringe benefits, violative]

Boise Cascade Corp., Paper Group 279 NLRB No. 074
[*where information sought covers terms and conditions of employment pertaining to Ees w/i bargaining unit, information is presumptively relevant and no specific showing of relevance normally required. Where request is for information with respect to matters outside unit, standard is narrower and U must demonstrate somewhat more precisely that information is relevant*]

Fairfield Publishing Company d/b/a Fairfield Daily Republic 275 NLRB No. 002
(no summary judgment where mtn relates to U requests for nonunit Ees' data and discrimination complaints, since such information is *not presumptively relevant* and, on state of record before Bd, GC has not established requisite relevancy to entitle U to such information. Portion of instant case relating to U's request for nonunit Ees data and discrimination remanded for further processing of C, including evidentiary hearing before ALJ concerning exact scope of information request and relevancy issues with regard to nonunit Ees' data and discrimination C's, if GC wishes to further proceed on these matters)

Health Care Service-California d/b/a Valley Oaks Health Care Center JD-(SF)-198-85
[E's refusal to provide U with payroll records and work schedules of nonunit Ees, violative, where U did not know whether Ees were employed by E or what their work duties were]

N.L.R.B. v. Electrical Workers, Local 309 (Pfizer, Inc.) ———F.2d——— (C.A. 7, June 1985)
[U's claim that information it requested concerning discharge grievance about Ee outside of bargaining unit was relevant, accepted where U met burden of showing relevance]

6067-6001-8000 Alternative methods available to obtain requested information

Sonat Marine, Inc. 279 NLRB No. 016
[information relating to supervisory status of Ees U had traditionally represented but whom E was now refusing to bargain over, was not protected from disclosure by attorney-client or attorney work-product privilege; further, U's ability to receive information through its own sources does not defeat its right to receive information from E]

United States Postal Service 276 NLRB No. 143
]*E's obligation to furnish information upon request, absent special circumstances, is not relieved merely because U may have access to information from other sources.* Herein, U adequately demonstrated copies of desired information needed for process of grievances beyond local level, notwithstanding U had access to information which was posted on bulletin board)

N.L.R.B. v. Holyoke Water Power Company 778 F.2d 49 (C.A. 1, Nov. 1985)
[E's refusal to grant U's industrial hygenist access to room in plant to conduct noise study, on grounds that information was irrelevant since Ees had not complained to E, E had provided U with copies of its own study and U must attempt to pursue other means of obtaining information, violative, since information was clearly relevant to health and safety of unit Ees, Ees had complained to U, E's study could be *inherently subjective* thus justifying U's need for its own study and information not readily obtainable from any other source]

6067-6033 Form and circumstances in which information supplied

6067-6033-2500 Adequacy

Ne Di Construction Co., Inc. 279 NLRB No. 071
[no unlawful refusal to furnish requested information where E promptly attempted to comply by forwarding information it had compiled, quickly reviewed its records when U alleged some information was missing and offered to do so again but received no further request from U]

Sonat Marine, Inc. 279 NLRB No. 016
[E's proposing to meet with U outside of bargaining negotiations to provide U with information relating to supervisory status of contested unit Ees, held inadequate to satisfy E's obligation to provide U with information, since, by refusing to discuss subject during actual negotiations, E effectively precluded U from having opportunity to bargain over disputed job classifications]

Sonat Marine, Inc. 279 NLRB No. 016
[ALJ's conclusion that remedial order was unwarranted for E's refusal to provide U with requested information, since much of what U sought was presented in evidence at ULP hearing over E's failure to provide information, rejected, since this in no way excuses E's unlawful conduct nor does it constitute an adequate substitute, in law or fact, for direct and prompt compliance with proper request for information]

15th Avenue Iron Works, Inc. JD-(NY)-141-84
(E found to have unlawfully refused to provide U with requested information where it provided incomplete information, some of which was later changed, and sent the information to the Bd with indication that a copy was sent to U's attorney, which copy was not shown to have been received by U's attorney or the U)

N.L.R.B v. Southwestern Electric Cooperative, Inc. 794 F.2d 276 (C.A. 7, June 1986)
[in finding that E unlawfully refused unilaterally to process grievances until U put them in writing, ct held E had no statutory right under Sec. 8(d) to impose such requirement, since right to information does not include right to dictate form that information comes in; there is no obligation to furnish relevant information in exact form requested; and it is sufficient if information is made available in manner not so burdensome or time-consuming as to impede bargaining process]

6067-6033-4000 Inspection of document

Roadway Express, Inc. 275 NLRB No. 156
(E's refusal to furnish requesting U a *photocopy* of customer's letter that was basis for Ee's discharge (for being discourteous and abusive to E's customers) and was relevant to processing of grievance Ee filed over his discharge, not violative, since *it is sufficient if the information is made available in a*

6067-6033-4000—Cont.

manner not so burdensome or time-consuming as to impede - process of bargaining: here, E permitted on-premise exam and note-taking of single-page letter)

6067-6033-5000 Oral information insufficient

Sonat Marine, Inc. **279 NLRB No. 016**
[E's offer to U to meet and discuss the legal basis upon which E decided certain Ees were supervisors and why E was refusing to bargain concerning those Ees, after U had formally requested E provide it with factual basis for conclusion, was not an offer to provide U with requested information, since E was not offering to provide U with any information but rather was simply adhering to its previously stated view on the matter]

6067-6033-6000 Copy of document

Roadway Express, Inc. **275 NLRB No. 156**
(E's refusal to furnish requesting U a *photocopy* of customer's letter that was basis for Ee's discharge (for being discourteous and abusive to E's customers) and was relevant to processing of grievance Ee filed over his discharge, not violative, since *it is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede - process of bargaining:* here, E permitted on-premise exam and note-taking of single-page letter)

Roadway Express, Inc. **JD-(SF)-78-85**
(E's failure to provide U with photocopies of supervisory report and of other records relevant to U's pending grievances, violative since it is generally established that, at least where, as here, U will stand costs of copying, and production of copies will not itself pose undue burden on E, U is entitled upon request to retain photocopies of company records otherwise relevant to pending grievances)

6067-6033-7500 Plant access

Hercules Incorporated **281 NLRB No. 130**
[refusing to allow U industrial hygienist access to plant to investigate industrial accident and conduct health and safety inspection and tests for toxic or hazardous fumes, violation where information was not obtainable through alternative means, hygienist could execute trade secret agreement like other non-Ees allowed access, and his presence would not disrupt production or discipline or substantially interfere with normal operations]

Hercules Incorporated **281 NLRB No. 130**
[Bd balances E's property right against U's right to information in determining whether U should be granted access to E's property to gather information on health and safety matters and evaluates availability of alternative means, nature of E's operation, impact on production and discipline, extent to which other, non-Ees are granted access to E's property, nature of information sought, and the particular location on the E's property to which access is sought]

N.L.R.B. v. Holyoke Water Power Company **778 F.2d 49 (C.A. 1, Nov. 1985)**
[E's refusal to grant U's industrial hygenist access to room in plant to conduct noise study, on grounds that information was irrelevant since Ees had not complained to E, E had provided U with copies of its own study and U must attempt to pursue other means of obtaining information, violative, since information was clearly relevant to health and safety of unit Ees, Ees had complained to U, E's study could be *inherently subjective* thus justifying U's need for its own study and information not readily obtainable from any other source]

N.L.R.B. v. Holyoke Water Power Company **778 F.2d 49 (C.A. 1, Nov. 1985)**
[safety and health conditions are conditions of employment about which Es must bargain upon request; however, U is not invariably entitled to enter E's plant to obtain information and when the E presents a legitimate, good faith objection on grounds of burdensomeness and offers to cooperate with U in reaching acceptable accommodation, U must compromise with E as to form, extent or timing of disclosure]

6067-6033-8000 Delay in furnishing information

Stovall Manufacturing Company, Inc. **275 NLRB No. 039**
(violation where E delayed supplying U with contract for subcontracting its reinstituted night-shift work, asserting that it was merely oral contract, and then finally supplying written document that was slightly different from executed contract)

Union Carbide Corporation, Nuclear Division **275 NLRB No. 037**
(E's delay of 10-1/2 months in responding to U's request for information not violative, where w/i 10 days of receiving request E commenced what ultimately proved to be difficult, time-consuming and expensive task of gathering requested data, i.e. response included some 250,000 pages, response involved comprehensive review of proprietary information and there was no showing that E was dilatory in its actual handling of request)

6067-6050 Availability of Information Sought

Asarco, Incorporated, Tennessee Mines Division **276 NLRB No. 155**
(denial of U's request for copies of photographs of site of fatal accident to Ee in E's mine, which U sought for full investigation of accident and prevention of recurrences, unlawful, where photographs were relevant and necessary to an understanding of accident and its possible causes; and availability of photographs from federal mine safety agency was no defense)

6067-6062 Qualifications of individual to receive information

N.L.R.B. v. St. Joseph's Hospital **755 F.2d 260 (C.A. 2, Feb. 1985)**
(hospital refusing to allow CPA selected by U to examine its books in order to substantiate hospital's claim of inability to pay wage increase, but rather insisting that CPA who examined books have familiarity with state reimbursement procedure, since hospital's fear that mistaken audit might adversely affect bargaining process was reasonable, and U never accepted hospital's offer to discuss any objectionable criteria for CPA selection)

6067-6067 Nature of information to be supplied

6067-6067-2000 Financial data substantiating claim of economic hardship

The Nielsen Lithographing Co. **279 NLRB No. 118**
[E telling U that jobs would be lost and that E would go out of business unless economic concessions were made (by U) triggers duty to disclose financial information because by its words and conduct E conveyed to U an inability to pay w/i meaning of *Atlanta Hilton & Tower* 271 NLRB 1600 (1984) and not just mere unwillingness to continue to pay cost of its collective bargaining agreement]

The Nielsen Lithographing Co. **279 NLRB No. 118**
[if E claims *poverty* or *inability to pay* then, upon request from U, E is required to produce or disclose financial data to support its claim of poverty or *inability to pay*]

Fox-Art Theatres, Inc. **278 NLRB No. 115**
[E's refusal to furnish financial records to substantiate financial hardship justifying wage reduction in new contract, unlawful]

Coalite, Inc. **278 NLRB No. 040**

H & H Pretzel Company **277 NLRB No. 143**
(E's refusal to grant U's *dilatory request* to examine its books, not violative where U had rejected E's prior offer to let U examine its books to substantiate E's claims of economic problems, and parties had reached impasse due to U's refusal to make any concessions)

Cowin & Co., Inc. **277 NLRB No. 082**
(E's refusal to provide U with requested financial information during bargaining, violative, since E's statements to U in course of bargaining amounted to claim of inability to pay where at outset of negotiations E advised U that there was *real question* whether E would be in business at termination of contract and E raised as justification for wage reduction proposals its financial losses for previous 3 years; further, because of this finding, E's claim of impasse rejected and its unilateral wage reduction and change in work rules, violative)

American Model & Pattern, Inc. **277 NLRB No. 010**
(E's refusal to disclose financial data to U and allow a U audit of relevant financial information, violative, where E announced at bargaining table it was discontinuing some Ee benefits because of its bad financial condition and was proposing across the board pay cuts to remain competitive, and thus was making a claim of inability to pay)

The E. W. Buschman Company **277 NLRB No. 021**
(refusal to supply requested financial information concerning cancellation of Christmas bonus for lack of cash flow that was necessary in processing grievance, violative)

Washington Materials, Inc., t/a Buffalo Concrete; et al. **276 NLRB No. 040**
(some information is presumed relevant such as information concerning the terms and conditions of employment of Ees represented by the U, however, this presumption of relevance does not apply to information concerning financial data and the relevance of that type of information must be established by the U)

Washington Materials, Inc., t/a Buffalo Concrete; et al. **276 NLRB No. 040**
(Es' refusal to provide U with financial information based on U's claim that E was *pleading poverty*, not violative, where at no time during bargaining did Es assert they were unable to pay but rather consistently maintained they wanted to obtain a more competitive position in the industry and thus were conveying a simple unwillingness to pay which cannot be viewed as an inability to do so)

E. I. Du Pont De Nemours & Company **276 NLRB No. 034**
(E's failure to supply U with data on production costs on per unit basis at plant, plus known comparative per unit costs at other plants operated by both E and its competitors, violative notwithstanding E did not claim economic hardship, where such information was otherwise relevant to bargaining over job restructure proposal)

E. I. Du Pont De Nemours & Company **276 NLRB No. 034**
(E's failure to supply U with income statements and supporting schedules showing E's labor costs, violative notwithstanding E did not claim economic hardship, where information was otherwise relevant to bargaining over job restructure proposal)

6067-6067-2000—Cont.

Advertisers Manufacturing Company 275 NLRB No. 019

(*in. Atlanta Hilton*, 271 NLRB No. 214, Bd observed that in determining whether E, under S.Ct's *Truit Mfg. Co.* decision, is obligated to provide information pertaining to its financial condition, critical distinction must be made between E's expressed *inability* and mere *unwillingness* to do so; only E's expressed inability to pay gives rise to duty to provide financial information; and although no magic words are required to express inability to pay, words and conduct must be specific enough to convey such meaning)

Advertisers Manufacturing Company 275 NLRB No. 019

(refusal to supply U's requested financial information justifying E's nonpayment of bonus, not unlawful, where E expressly and unequivocally disavowed any plea of financial inability to pay but simply expressed *unwillingness* rather than *inability* to pay; in addition to its *level of business* justification, E provided several other related reasons demonstrating managerial unwillingness rather than economic inability to pay bonus; and no meaningful distinction existed between E's *level of business* reference and *vague references* in *Atlanta Hilton*, 271 NLRB No. 214, to occupancy rate and economy in general)

Dane County Dairy, Inc. 273 NLRB No. 209

(refusal to supply requested information about E's costs for Ees' sick leave, jury-duty leave, and funderal leave and data concerning E's plea of poverty with confirmatory audit access to E's books and records as explicity promised, and as needed by U, violative)

United Shortmetal of Arizona, Inc. JD-(SF)-97-85

(E refusing to supply U with information during bargaining to support insistence on regressive wage proposals, violative and no impasse reached, where E repeatedly bemoaned fact during negotiations that it could not compete with non-U contractors and thus was making a *poverty plea* and its refusal to provide data to U in response to U request for supporting data not only is unlawful but prevents finding of bonafide impasse subsequent to U's request for information)

N.L.R.B. v. St. Joseph's Hospital 755 F.2d 260 (C.A. 2, Feb. 1985)

]*U is not automatically entitled to substantiating information in exact manner requested in every case where E claims inability to pay wage increase. Inquiry must always be whether or not under circumstances of particular case statutory obligation to bargain has been met. Neither cts nor NLRB have ever ruled E is under obligation to bare his books to U*)

N.L.R.B. v. St. Joseph's Hospital 755 F.2d 260 (C.A. 2, Feb. 1985)

(hospital refusing to allow CPA selected by U to examine its books in order to substantiate hospital's claim of inability to pay wage increase, but rather insisting that CPA who examined books have familiarity with state reimbursement procedure, since hospital's fear that mistaken audit might adversely affect bargaining process was reasonable, and U never accepted hospital's offer to discuss any objectionable criteria for CPA selection)

Washington Materials, Inc., t/a Buffalo Concrete et al. v. N.L.R.B. 803 F.2d 1333 (C.A. 4, Oct. 1986)

[Es' refusal to furnish U financial information requested by U to justify Es' requests for give-backs during negotiations for new agreement, not unlawful, since E's assertions that they were operating at competitive disadvantage viz-a-viz non-U Es did not constitute claim of inability to pay which would require furnishing U substantiating documentation]

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. 785 F.2d 570 (C.A. 7, Mar. 1986)

[only in situation where E communicated that it *could not* rather than *would not* pay Ees' proposed demands, has it made claim of inability to pay]

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. 785 F.2d 570 (C.A. 7, Mar. 1986)

[although Es acknowledged, in response to U inquiries, that they could lose money and eventually go out of business if their competitive position did not improve, they never communicated to U that they were unable to pay U's proposed demands and there was no substantial evidence to support Bd's conclusion that Es bargained in bad faith by refusing to provide substantiating financial data after pleading inability to pay]

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. 785 F.2d 570 (C.A. 7, Mar. 1986)

[U's oral request, *show us your books* held adequate to give rise to E's disclosure obligation]

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. 785 F.2d 570 (C.A. 7, Mar. 1986)

[general consensus today is that *for all practical purposes* refusal to disclose alone constitutes failure to bargain in good faith; accordingly, there was substantial evidence to support Bd's conclusion that E's refusal to disclose its financial records was violative]

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. 785 F.2d 570 (C.A. 7, Mar. 1986)

[E pleaded inability to pay by conceding point in answer to Bd's C]

6067-6067-2300 Internally prepared report

Boise Cascade Corp., Paper Group 279 NLRB No. 074

[E's refusal to furnish U with surveys used to formulate maintenance improvement program at one of its facilities, which would combine some duties to be performed by Ees, reduce craft classifications, change wage structure, projected savings and efficiency calculations, and any survey comparing maintenance efficiency and cost at facility at which program to be instituted with E's other facilities, unlawful, since relevant to bargaining, grievance and possible arbitration; however, portions of study alluding to how E would carry out its supervisory responsibilities or constituting legal opinion protected from disclosure]

Mack Trucks, Inc. 277 NLRB No. 084

(denial of request of E for supportive documentation, related to E's plant closure decision, not violative, since documentation lacked relevance to any subject with respect to which E could legitimately, be considered required to bargain as decision did not turn on labor costs)

6067-6067-2500 Financial data to justify modification of contract

Schaeff Namco, Inc. 280 NLRB No. 150

[E's failure to furnish U financial information to aid in U's consideration of E's wage reduction offer made during negotiations pursuant to wage reopener provision, not unlawful, since request received after reopener period had ended, bargaining had ceased, and E was obligated under terms of reopener provision to implement its wage offer where parties had not reached agreement or instituted action]

BASF Wyandotte Corporation 276 NLRB No. 175

(E's distribution of information to Ees on salaried benefits not unlawful where E was given authorization by U representatives to distribute information)

Valley Parcel Service, Inc. and Valley Parcel Service, Inc., Debtor In Possession JD-(SF)-74-86

6067-6067-2800 Audit of financial records

NDK Corporation 278 NLRB No. 151

[E's unilateral refusal to contribute to fringe benefit funds and to make its payroll records available for audit by trustees of funds, unlawful, where E's admissions provided proof requisite to establish GC's prima facie case, and E was not permitted to escape liability, under federal labor law and conventional common law principles, on ground that its consent to execution of contract was unlawfully induced by U official's false representation that contract would not be enforced]

American Model & Pattern, Inc. 277 NLRB No. 018

(E's refusal to disclose financial data to U and allow a U audit of relevant financial information, violative, where E announced at bargaining table it was discontinuing some Ee benefits because of its bad financial condition and was proposing across the board pay cuts to remain competitive, and thus was making a claim of inability to pay)

Dane County Dairy, Inc. 273 NLRB No. 209

(refusal to supply requested information about E's costs for Ees' sick leave, jury-duty leave, and funderal leave and data concerning E's plea of poverty with confirmatory audit access to E's books and records as explicity promised, and as needed by U, violative)

N.L.R.B. v. St. Joseph's Hospital 755 F.2d 260 (C.A. 2, Feb. 1985)

]*U is not automatically entitled to substantiating information in exact manner requested in every case where E claims inability to pay wage increase. Inquiry must always be whether or not under circumstances of particular case statutory obligation to bargain has been met. Neither cts nor NLRB have ever ruled E is under obligation to bare his books to U*)

N.L.R.B. v. St. Joseph's Hospital 755 F.2d 260 (C.A. 2, Feb. 1985)

(hospital refusing to allow CPA selected by U to examine its books in order to substantiate hospital's claim of inability to pay wage increase, but rather insisting that CPA who examined books have familiarity with state reimbursement procedure, since hospital's fear that mistaken audit might adversely affect bargaining process was reasonable, and U never accepted hospital's offer to discuss any objectionable criteria for CPA selection)

6067-6067-2900 Data concerning transferred work

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[while E had no obligation to furnish U information concerning its decision to relocate unit work to another plant, E's failure to furnish U requested information bearing on effects of E's decision to do so held unlawful]

Davis Acoustical Co., Inc. **280 NLRB No. 168**
[E's refusal to furnish U information regarding its relationship with another E unlawful, since request met test of relevance, where U had reasonable grounds to believe through job site visits that diversion of unit work to other E had occurred, U had received information from state Secretary of State that formed reasonable basis for believing that other E was *corporate fiction*, that E might be conducting double breasted operation, and in its request U cited parts of contract it believed to have been violated and basis for its concern, but E answered in conclusionary terms, refusing to show U support for its statements until U withdrew charge]

United States Steel Corporation **JD-176-85**
(E's refusal to disclose to U, information regarding its purchase of semi-finished steel from another company, not violative where U failed to establish potential relevance of information since no reasonable factual basis supported its suspicions that E's representations as to nature of purchase were false)

6067-6067-3000 Data concerning contracted out work

Davis Acoustical Co., Inc. **280 NLRB No. 168**
[E's refusal to furnish U information regarding its relationship with another E unlawful, since request met test of relevance, where U had reasonable grounds to believe through job site visits that diversion of unit work to other E had occurred, U had received information from state Secretary of State that formed reasonable basis for believing that other E was *corporate fiction*, that E might be conducting double breasted operation, and in its request U cited parts of contract it believed to have been violated and basis for its concern, but E answered in conclusionary terms, refusing to show U support for its statements until U withdrew charge]

Coalite, Inc. **278 NLRB No. 040**

American Stores Packing Company, A Division of Acme Markets, Inc. **277 NLRB No. 190**
[refusal to provide U with information requested for bargaining about E's decision to close plant and subcontract unit work, not violative where U had waived right to bargain over such decision; U also had no right to requested information for bargaining about new contract or about effects of decision to close plant because once E had decided to close plant and lay off all unit Ees, E had no further duty to bargain about new contract and U never stated that it was requesting information for effects bargaining]

Clinchfield Coal Company **275 NLRB No. 189**
(E's refusal to provide, pursuant to U's request, information regarding contracting out of maintenance and repair work relevant to policing contractual provisions on work jurisdiction and subcontracting and processing grievances as to contractual jurisdicition over such work, violative)

United States Steel Corporation **JD-223-85**
(violation where E failed to provide requested information as to work actually contracted out – as well as notice of work planned to be contracted out –, reasons why there was an emergency necessitating contracting out, and documentation to enable U to verify E's representations)

United States Steel Corporation **JD-223-85**
(E's failure to provide U with requested information as to identity of subcontractors on a specific job so as to enable U to verify E's representations as to the number of Ees involved and E's compliance with subcontracting notice requirements, violative)

United States Steel Corporation **JD-223-85**
(E's failure to provide U with requested information as to the actual commencement date of work that was contracted out, as well as the intended date, so as to enable U to verify E's notification to U of duration of work contracted out as required by the contract, violative)

United States Steel Corporation **JD-223-85**
(E's failure to provide U with requested information as to equipment needed for work that was being subcontracted, violative where the information would enable the U to determine whether equipment that was in storage could be used instead)

United States Steel Corporation **JD-223-85**
(E's failure to provide U with requested information as to identity of subcontractors on a specific job so as to enable U to verify E's representations as to number of Ees involved and E's compliance with subcontracting notice requirements, violative)

United States Steel Corporation **JD-223-85**
(E's failure to provide U with requested information as to what special skills were required to perform work that was being contracted out, violative)

United States Steel Corporation **JD-223-85**
(E's failure to provide documentation to verify the fact that work being contracted out was warranty work not done by unit Ees and show its scope, limitations and duration, violative)

United States Steel Corporation **JD-223-85**
(E's failure to provide more than limited and sporadic requested information as to its use of unit Ees during period when it was contracting out work to be done by outside Ees, violative)

United States Steel Corporation **JD-223-85**
(E's failure to provide requested documentation involved in contracting out work so as to enable U to verify correctness of its suspicions that, contrary to E's assertions, cost was motivating factor in E's contracting-out decision, to propose alternatives, and to evaluate feasibility of and assist in grieving, violative)

United States Steel Corporation **JD-223-85**
(E's failure to provide requested authoritative, reliable, and definitive information as to unit Ees on layoff or reduced work schedule who were potentially affected by E's subcontracting out of work so as to enable U to verify E's representations and assist in grieving, violation; U's request was not made in bad faith where there was evidence to support its suspicion that E was violating the contract pursuant to an economically motivated policy of contracting out unit work)

United States Steel Corporation **JD-189-85**
(E's refusal to supply information requested by U for purpose of processing grievances covering reassignment of personnel and contracting out, not violative, as request made for information regarding reassignment grievance had to do with subcontracting and U failed to show relevancy of data requested to process grievance concerning reassignment; as to relevance of information for processing contracting out grievance, there is none either, as E's intent is not in issue but admitted to be department closure, and no issue as to availability of work or Ees ability to perform. The real issue is department closure which E claims management right to do so)

United States Steel Corporation **JD-176-85**
(E's refusal to supply U with items of information on contracting out of maintenance work that was involved in number of grievances, violative)

6067-6067-3100 Information concerning employer's relationship with other companies

Cal-Am Partners d/b/a Amscot Coal **281 NLRB No. 027**
[refusing U's request for information concerning ownership, supervision, equipment, operation and service of E to determine E's possible relationship with former owner as successor or alter ego and consequent bargaining obligation, violation]

Elevator Sales and Service, Inc. **278 NLRB No. 094**
[Es' refusal to furnish on request information concerning E's relationship with alter ego, violative where U showed probable relevance of information to possible circumvention of contract]

Corson and Gruman Company **278 NLRB No. 048**
[E's refusal to furnish U information pertaining to its relationship with other companies, violative where requested information was clearly relevant to single E and alter ego issues raised by U and U had reasonable basis for suspecting that contract violation had occurred]

Boyd-Mulford Construction Co. **277 NLRB No. 180**
[refusal to supply information pertinent to E with whom E had contract and related companies that U believed constituted single E and precise nature of work performed by related companies, violation where U had legimate purpose in requesting information in policing its agreement with E]

Conte Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. **274 NLRB No. 082**
(violation where E which had transferred parts of its operations to spinoff companies refused to supply U with requested information concerning its possible successorship, single E, and alter ego relationship with those companies)

Walter N. Yoder & Sons, Inc. **754 F.2d 531 (C.A. 4, Feb. 1985)**
(U need only make formal request based on reasonable belief that information is necessary and show that it is relevant in order to trigger E's obligation to give information; U need not be satisfied with E's assurances that there is no violation once duty to provide information has been triggered; reasonableness of U's belief in making request may not be called into question in light of post hoc information provided by E outside confines of formal response to request; therefore ALJ properly excluded cross examination of U president of what he knew about relationship between 2 entities (alter ego) or could easily have determined)

Walter N. Yoder & Sons, Inc. **754 F.2d 531 (C.A. 4, Feb. 1985)**
(substantial evidence supported Bd's finding on critical facts establishing that U sought relevant information from double-breasted E upon having received confirmed reports that Ees of unionized E had worked at non-U shop, leading president of local U to gather information which pointed to single E or alter ego and gave rise to reasonable belief that contract might well be applied to non-U Ees)

6067-6067-3200 Data concerning double-breasted operations

Peace Construction Corporation **281 NLRB No. 049**
[refusing to supply requested information regarding business relationship of E and affiliate, violation where U established reasonable objective basis for believing E was operating *double-breasted* or alter ego operation in derogation of U contract based on E's threat that, if U's carpenters did not preduce, non-U affiliate E would be brought in; E's use of job materials labeled for affiliate; fact affiliate was fully owned subsidiary of E and shared its address and one officer; report that E and affiliate had been jointly awarded a job; and fact E's jobs in area ceased, and affiliate was to do work thereafter]

Peace Construction Corporation **281 NLRB No. 049**
[information concerning *double-breasted* or alter ego operation not presumptively relevant; rather, U must show existence of enough facts to give rise to reasonable belief that two companies were single E, but need not show requested information would establish existence of *double-breasted* or alter ego operation and a contract violation; E must supply information relevant to informed administration of contract, and U is entitled to information to determine whether to file a grievance or bargain about a dispute]

Davis Acoustical Co., Inc. **280 NLRB No. 168**
[E's refusal to furnish U information regarding its relationship with another E unlawful, since request met test of relevance, where U had reasonable grounds to believe through job site visits that diversion of unit work to other E had occurred, U had received information from state Secretary of State that formed reasonable basis for believing that other E was *corporate fiction*, that E might be conducting double breasted operation, and in its request U cited parts of contract it believed to have been violated and basis for its concern, but E answered in conclusionary terms, refusing to show U support for its statements until U withdrew charge]

Proctor Mechanical Corporation **279 NLRB No. 033**
[E unlawfully refused to give U requested information pertaining to alleged double-breasted operation of U-E, where issue was not whether E was engaging in such operation but whether U had actual cause for asking relevant questions; and U had factual basis, and not suspicion, for belief that U-E was simultaneously engaged in non-U operation with which E shared offices, equipment, supplies, and bidding information; and since U attempted to implement grievance under contract, it had right to request information both as to U and non-U operations]

Proctor Mechanical Corporation **279 NLRB No. 033**
[in finding that E unlawfully refused to give U requested information pertaining to alleged double-breasted operation of E, ALJ held E's asserted defenses dealt with existence or nonexistence of such operation which was not in issue; rather, sole issues were whether U had reasonable belief such operations were being conducted and whether information bought was relevant thereto; and since it was found in the affirmative to both issues, E's defenses did not relieve it from granting U requested information]

Coalite, Inc. **278 NLRB No. 040**
[refusal to provide identity of Ees performing unit work at non-U operations]

Boyd-Mulford Construction Co. **277 NLRB No. 180**
[refusal to supply information pertinent to E with whom E had contract and related companies that U believed constituted single E and precise nature of work performed by related companies, violation where U had legimate purpose in requesting information in policing its agreement with E]

Washington Materials, Inc., t/a Buffalo Concrete; et al. **276 NLRB No. 040**
(Es' refusal to provide U with information concerning any possible double-breasted operations, violative, where Es took the position during concession bargaining that non-U contractors were cutting into their business and U had received reports from various U members that indicated Es themselves were responsible for some of the non-U competition, thus establishing relevancy)

Washington Materials, Inc., t/a Buffalo Concrete; et al. v. N.L.R.B. **803 F.2d 1333 (C.A. 4, Oct. 1986)**
[Es' refusal during negotiations for new contract to furnish information requested by U regarding possible double breasted operations was sufficient to trigger Es' duty to disclose relevant data where Ees of unionized Es had reported working on same jobs with Ees of non-U E whom they believed to be controlled by unionized Es; issue of double-breasted operations was discussed through out negotiations and U's requests made well in advance of subsequent strike provided adequate notice to Es that such information was being sought]

6067-6067-3300 Documents in personnel file

U.S. Postal Service **280 NLRB No. 080**
[E's refusal to furnish information requested by U concerning names of U's officers and stewards who requested supervisory positions with E, violative, since information sought relates to U's role as Ees' exclusive bargaining representative. U merely prescribing qualifications or limitations of those who will be its agents, and felt it would be conflict of interest if its negotiators were also applying for supervisory positions]

Bloomsburg Craftsmen, Inc. **276 NLRB No. 043**
(E's refusal to provide U with discharged Ee's personnel file which was relevant to pending grievance, violative)

David Clements Co., Inc. **JD-388-85**
[E's failure to furnish U information regarding its proposed insurance program, updated list of Ees' name, job classifications, pay and piece rates, hire date, and fringe benefits, and list of all Ees who been disciplined as result of implementation by E of certain rules, unlawful]

6067-6067-3400 Witness's statement

Whirlpool Corporation **281 NLRB No. 007**
[E's failure to produce confidential police informant as accusing witness at suspension hearing pursuant to U request, not unlawful failure to provide grievance-related information, since E was not bound by past practice to produce the accusing witness at such hearing, general obligation to provide requested information does not include statements of witnesses, and producing a witness to make a written or oral statement is parallel to and covered by witness statements exception]

Conoco Chemicals Company, Division of Conoco, Inc. **275 NLRB No. 009**
(prearbitration disclosure of witness statements not required)

Ralph's Grocery Company **JD-(SF)-144-85**
(E's refusal to provide U with security reports and other statements which led to discharge of Ees where U requested information to decide whether or not to grieve those discharges, violative; however, E's refusal to provide witness statements, not violative)

6067-6067-3700 Results of employee survey

United Technologies Corporation **274 NLRB No. 163**
(E's refusal to provide U upon request with a copy of results of wage and benefit survey conducted with its Ees prior to reopener negotiations violative; such information is presumptively relevant to collective bargaining)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) **789 F.2d 121 (C.A. 2, Apr. 1986)**
[E's refusal to disclose to U upon request results of wage and benefit survey conducted with its Ees prior to reopener negotiations, violative since such information is presumptively relevant to U's duties as exclusive bargaining agent; E's contention that it could not reveal survey results because it told Ees that responses would be confidential, rejected where E could not identify any substantial reason why information should remain confidential]

6067-6067-4000 Production and/or sales data

Coalite, Inc. **278 NLRB No. 040**

The E. W. Buschman Company **277 NLRB No. 021**
(refusal to supply requested production records for U to assess E's claim that Christmas bonus was cancelled due to lack of cash flow, relevant and necessary to processing grievance, violative)

E. I. Du Pont De Nemours & Company **276 NLRB No. 034**
(E's failure to supply U with data on production costs on per unit basis at plant, plus known comperative per unit costs at other plants operated by both E and its competitors, violative notwithstanding E did not claim economic hardship, where such information was otherwise relevant to bargaining over job restructure proposal)

United Technologies Corporation **274 NLRB No. 072**
(E's refusal to provide U with Ee promotion and production records relevant to processing two grievances over E's promotion, transfer and award policies, on grounds that dispute was not *arbitrable* violative; before a U is put to the effort of arbitrating even the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievance has merit)

6067-6067-4200 Substances used in manufacturing process

Hercules Incorporated **281 NLRB No. 130**
[refusing to allow U industrial hygienist access to plant to investigate industrial accident and conduct health and safety inspection and tests for toxic or hazardous fumes, violation where information was not obtainable through alternative means, hygienist could execute trade secret agreement like other non-Ees allowed access, and his presence would not disrupt production or discipline or substantially interfere with normal operations]

6067-6067-4500 Wage and/or employment data

Pittsburgh Testing Laboratory **279 NLRB No. 173**
[mtn for summary judgment granted since no material issues of fact existed where E refused to provide U with requested Ees' wage and employment information which was presumptively relevant for bargaining purposes and must be furnished on request, and E failed to rebut relevance of such information]

Sandpiper Convalescent Center and Sandpiper Village **279 NLRB No. 147**
[E's refusal to furnish U with names of unit Ees, hire date or seniority dates, Ees' earnings for past year including amount of overtime paid, hourly pay

6067-6067-4500—Cont.

rates, ages, telephone numbers, complete list of Ee benefits including medical plan description and retirement plan, unlawful, since information necessary and relevant to U's performance of its function as bargaining representative in preparing for negotiations]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[E's failure to provide U complete information regarding unit Ees' names, addresses, date of hire, classification, job descriptions, wages, and benefits including vacations, holidays, medical coverage, pensions, and sick leave, unlawful, since presumptively relevant for bargaining and notwithstanding some partial information was supplied]

Coalite, Inc. 278 NLRB No. 040

Alamo Cement company 277 NLRB No. 108
(refusal to supply requested information as to Ees' wage classifications, violation)

E. I. Du Pont De Nemours & Company 276 NLRB No. 034
(E's failure to supply U with feasibility studies, surveys or reports performed internally or commissioned to outside consultants and inter- and intra-company memoranda, reports, communications, votes or records related to E's proposal to restructure unit jobs, violative notwithstanding E did not claim economic hardship, where such information was otherwise relevant to bargaining)

E. I. Du Pont De Nemours & Company 276 NLRB No. 034
(E's failure to supply U with income statements and supporting schedules showing E's labor costs, violative notwithstanding E did not claim economic hardship, where information was otherwise relevant to bargaining over job restructure proposal)

Hennessy Products, Inc. 273 NLRB No. 190
(in agreeing with ALJ that no violation existed under *Telautograph Corp.*, Bd noted that, while overruling *Telautograph* in *Dresser Industries*, it decided to apply *Dresser* prospectively and would not find unlawful actions taken while *Telautograph* was law; accordingly, E's refusal, because of decertification ptn filed during strike, to furnish U Ees' names, addresses, work classifications and wage rates and information concerning status of laid off strikers was not unlawful, specifically because of unusual factual matrix herein and lack of any pending grievance or existence of current or recently expired contract)

Health Care Service-California d/b/a Valley Oaks Health Care Center JD-(SF)-198-85
[U is presumptively entitled to payroll records and work schedules of unit Ees; further, U's claim that information will help determine whether there are supervisors in unit reinforces relevance]

Southern Indiana Gas & Electric Company JD-300-85
(refusal to provide U with internal documents prepared for supervisors concerning overtime policies violative, notwithstanding E's claim that information was confidential, since requested information related to mandatory subject of bargaining)

Columbus Maintenance and Service Company, Inc. v. N.L.R.B. 758 F.2d 1125 (C.A. 6, Apr. 1985)

6067-6067-4900 Plant closing or relocation

Challenge-Cook Brothers of Ohio, Inc. 282 NLRB No. 002
[while E had no obligation to furnish U information concerning its decision to relocate unit work to another plant, E's failure to furnish U requested information bearing on effects of E's decision to do so held unlawful]

American Stores Packing Company, A Division of Acme Markets, Inc. 277 NLRB No. 190
[refusal to provide U with information requested for bargaining about E's decision to close plant and subcontract unit work, not violative where U had waived right to bargain over such decision; U also had no right to requested information for bargaining about new contract or about effects of decision to close plant because once E had decided to close plant and lay off all unit Ees, E had no further duty to bargain about new contract and U never stated that it was requesting information for effects bargaining]

6067-6067-5200 Confidential nature of information

Asarco, Incorporated, Tennessee Mines Division 276 NLRB No. 155
(refusal to provide U with E's internal report concerning fatal accident to Ee, sought by U for full investigation of accident and prevention of recurrences, on grounds report was prepared in anticipation of litigation and disclosure would have harmful impact upon future candor of E's reporting processes, unlawful, where no litigation was pending at time of U's request, and it was not shown that report would not have been prepared even in complete absence of some liability on E's part for accident; consequently. E's interest in maintaining confidentiality of report did not outweigh U's right to relevant information in report)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)
[E's refusal to disclose to U upon request results of wage and benefit survey conducted with its Ees prior to reopener negotiations, violative since such information is presumptively relevant to U's duties as exclusive bargaining agent; E's contention that it could not reveal survey results because it told Ees that responses would be confidential, rejected where E could not identify any substantial reason why information should remain confidential]

6067-6067-5201 Generally

U.S. Postal Service 280 NLRB No. 080
[information in E's records (in instant case) may be disclosed under NLRA, to U as a *routine use* exception to Privacy Act in view of E's own acknowledged, published *routine use* exception under Privacy Act and its (E's) specific warning to applicants]

E. I. Du Pont De Nemours & Company 276 NLRB No. 034
(where E contended that supplying bargaining agent with requested information would compromise confidentiality of proprietary information, Bd ordered E to furnish requested information subject to bargaining in good faith regarding conditions under which information would be furnished, so that access would be provided in manner consistent with monitoring appropriate safeguards protective of E's confidentiality concerns)

6067-6067-5233 Trade secret

Hercules Incorporated 281 NLRB No. 130
[refusing to allow U industrial hygienist access to plant to investigate industrial accident and conduct health and safety inspection and tests for toxic or hazardous fumes, violation where information was not obtainable through alternative means, hygienist could execute trade secret agreement like other non-Ees allowed access, and his presence would not disrupt production or discipline or substantially interfere with normal operations]

6067-6067-5283 Study prepared in contemplation of litigation

Ralph's Grocery Company JD-(SF)-144-85

6067-6067-5300 Payment of bonus

Advertisers Manufacturing Company 275 NLRB No. 019
(refusal to supply U's requested financial information justifying E's nonpayment of bonus, not unlawful, where E expressly and unequivocally disavowed any plea of financial inability to pay but simply expressed *unwillingness* rather than *inability* to pay; in addition to its *level of business* justification, E provided several other related reasons demonstrating managerial unwillingness rather than economic inability to pay bonus; and no meaningful distinction existed between E's *level of business* reference and *vague references* in *Atlanta Hilton*, 271 NLRB No. 214, to occupancy rate and economy in general)

6067-6067-5400 Insurance plans

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147
[E's refusal to furnish U with names of unit Ees, hire date or seniority dates, Ees' earnings for past year including amount of overtime paid, hourly pay rates, ages, telephone numbers, complete list of Ee benefits including medical plan description and retirement plan, unlawful, since information necessary and relevant to U's performance of its function as bargaining representative in preparing for negotiations]

Coalite, Inc. 278 NLRB No. 040

General Electric Company JD-188-86
[U's blanket request for information relating to *reasonable, necessary and customary* medical charges, held not relevant and E's refusal to provide such information not violative, where U's request was inconsistent with benefit package in contract, E was unable to comply since information was under insurance carrier's control who was not agent of E and E had agreed to provide U with information on case-by-case basis rather than in blanket form]

David Clements Co., Inc. JD-388-85
[E's failure to furnish U information regarding its proposed insurance program, updated list of Ees' name, job classifications, pay and piece rates, hire date, and fringe benefits, and list of all Ees who been disciplined as result of implementation by E of certain rules, unlawful]

6067-6067-6000 Specific individual wage and/or employment data

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[E's failure to provide U complete information regarding unit Ees' names, addresses, date of hire, classification, job descriptions, wages, and benefits including vacations, holidays, medical coverage, pensions, and sick leave, unlawful, since presumptively relevant for bargaining and notwithstanding some partial information was supplied]

Ben Franklin National Bank 278 NLRB No. 136
[E's refusal to furnish U with names, addresses, wage rates, and classifications of unit Ees, unlawful, where E and U had reached agreement on

6067-6067-6000—Cont.

contract terms w/i certification year prior to any rebutting of U's majority status; E thus was obligated to sign agreement, and information requested was relevant to U's duty to represent Ees under bargaining agreement]

BASF Wyandotte Corporation JD-(NY)-91-86
[E's refusal to furnish U with probationary Ee information, violative]

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC JD-288-85
[refusal to supply names of persons issued parking stickers, violation where stickers were indirect remuneration for services and mandatory bargaining subject]

David Clements Co., Inc. JD-388-85
[E's failure to furnish U information regarding its proposed insurance program, updated list of Ees' name, job classifications, pay and piece rates, hire date, and fringe benefits, and list of all Ees who been disciplined as result of implementation by E of certain rules, unlawful]

6067-6067-6017 Non-unit employees or supervisors

Sonat Marine, Inc. 279 NLRB No. 016
[E's refusal to provide U with information concerning its conclusion that certain Ees in bargaining unit were supervisory and E was refusing to bargain over those Ees, violative, where U had represented contested Ees for years and had formally requested E's factual basis for its conclusion; further, nowhere does the Act require that the U must accept w/o any verification an E's claim that bargaining unit Ees are now out of the bargaining unit]

6067-6067-6033 Confidential nature of information

U.S. Postal Service 280 NLRB No. 080
[rule in *NLRB v. Detroit Edison Co.* 440 U.S. 301 (1979), where E promised Ees that information requested would remain private, not applicable to instant case where both on weighing basis and on failure of record to demonstrate E assurance of, or Ee request for, confidentiality, requested information was not considered *confidential* w/i meaning of Section 8(a)(5) of Act]

Sonat Marine, Inc. 279 NLRB No. 016
[information relating to supervisory status of Ees U had traditionally represented but whom E was now refusing to bargain over, was not protected from disclosure by attorney-client or attorney work-product privilege; further, U's ability to receive information through its own sources does not defeat its right to receive information from E]

Southern Indiana Gas & Electric Company JD-300-85
(refusal to provide U with internal documents prepared for supervisors concerning overtime policies violative, notwithstanding E's claim that information was confidential, since requested information related to mandatory subject of bargaining)

Salt River Valley Water Users' Association v. N.L.R.B. 769 F.2d 639 (C.A. 9, Aug. 1985)
(ct rejected privacy defense and ordered E to turn over to U Ees' disciplinary records and evaluations for grievance processing. *Boston Edison* 440 U.S. 301, distinguished by: 1) information here did not bear on *basic competence* of Ees; 2) Ees did not expect records to remain confidential under such circumstances since E made no pledge of confidentiality; 3) employment records, unlike aptitude tests, are frequently introduced as evidence in grievance proceedings; and 4) E made use of Ee files in defending its actions in this grievance proceeding)

6067-6067-6067 Confidential privilege to refuse disclosure on behalf of employees

U.S. Postal Service 280 NLRB No. 080
[rule in *NLRB v. Detroit Edison Co.* 440 U.S. 301 (1979), where E promised Ees that information requested would remain private, not applicable to instant case where both on weighing basis and on failure of record to demonstrate E assurance of, or Ee request for, confidentiality, requested information was not considered *confidential* w/i meaning of Section 8(a)(5) of Act]

U.S. Postal Service 280 NLRB No. 080
[information in E's records (in instant case) may be disclosed under NLRA, to U as a *routine use* exception to Privacy Act in view of E's own acknowledged, published *routine use* exception under Privacy Act and its (E's) specific warning to applicants]

6067-6067-6100 Extra-contractual agreement with individual employees

Kansas National Education Association 275 NLRB No. 092
(E's failure to comply promptly with U's request for information in form of documents memorializing extra-contractual agreements with individual Ees, unlawful, since information, which concerned transfer of unit Ees to other positions, was presumptively relevant to and necessary for U's performance of its representative duties; and E's contentions that it was not obligated to release management-related information to U because U believed it was significant, and that matter was moot inasmuch as information had since been provided, rejected)

6067-6067-6500 Attendance records of employees

United States Postal Service 276 NLRB No. 143
(violation, where E failed to timely furnish U with time and attendance information for purpose of establishing whether E had scheduled Ees to work overtime in violation of contract and to process grievance in that regard. E's contention no factual dispute regarding contractual provision for assignment of overtime and thus no need for information, because it agreed with U's contractual interpretation, rejected, inasmuch as U had right to evaluate specific information sought to determine its position for further processing of grievance already filed, nor was E's failure justified by steward's inexperience in framing request)

6067-6067-7100 Employee misconduct and/or disciplinary actions taken

Roadway Express, Inc. 275 NLRB No. 156
(E's refusal to furnish requesting U a *photocopy* of customer's letter that was basis for Ee's discharge (for being discourteous and abusive to E's customers) and was relevant to processing of grievance Ee filed over his discharge, not violative, since *it is sufficient if the information is made available in a manner not so burdensome or time-consuming as to impede - process of bargaining;* here, E permitted on-premise exam and note-taking of single-page letter)

United Technologies Corporation 274 NLRB No. 072
(U clearly and unmistakably waived its statutory right to a letter between supervisors assessing an Ee's attitude, performance and which discussed Ee's immediate supervisor's version of incident giving rise to a disciplinary warning, notwithstanding U anticipated filing grievance over that disciplinary warning, where *letter of understanding* supplementing partys' bargaining agreement gave U the right to certain records w/o prior advance requests (which did not include written communications between supervisors) and in exchange for this information, U relinquished its right to all other information with certain exceptions not herein relevant)

Southern Indiana Gas & Electric Company JD-300-85
(refusal to provide U with copies of all discipline issued to unit Ees for failing to work mandatory overtime violative, notwithstanding E's contention that withheld materials were irrelevant to U in preparing to arbitrate grievance that did not refer to discipline, where U needed relevant disciplinary records showing whether E was uniformly effectuating its overtime enforcement procedures)

Salt River Valley Water Users' Association v. N.L.R.B. 769 F.2d 639 (C.A. 9, Aug. 1985)
(ct rejected privacy defense and ordered E to turn over to U Ees' disciplinary records and evaluations for grievance processing. *Boston Edison* 440 U.S. 301, distinguished by: 1) information here did not bear on *basic competence* of Ees; 2) Ees did not expect records to remain confidential under such circumstances since E made no pledge of confidentiality; 3) employment records, unlike aptitude tests, are frequently introduced as evidence in grievance proceedings; and 4) E made use of Ee files in defending its actions in this grievance proceeding)

6067-6067-7200 Efficiency ratings of employees and/or standards

United Technologies Corporation 274 NLRB No. 072
(U clearly and unmistakably waived its statutory right to a letter between supervisors assessing an Ee's attitude, performance and which discussed Ee's immediate supervisor's version of incident giving rise to a disciplinary warning, notwithstanding U anticipated filing grievance over that disciplinary warning, where *letter of understanding* supplementing partys' bargaining agreement gave U the right to certain records w/o prior advance requests (which did not include written communications between supervisors) and in exchange for this information, U relinquished its right to all other information with certain exceptions not herein relevant)

Salt River Valley Water Users' Association v. N.L.R.B. 769 F.2d 639 (C.A. 9, Aug. 1985)
(ct rejected privacy defense and ordered E to turn over to U Ees' disciplinary records and evaluations for grievance processing. *Boston Edison* 440 U.S. 301, distinguished by: 1) information here did not bear on *basic competence* of Ees; 2) Ees did not expect records to remain confidential under such circumstances since E made no pledge of confidentiality; 3) employment records, unlike aptitude tests, are frequently introduced as evidence in grievance proceedings; and 4) E made use of Ee files in defending its actions in this grievance proceeding)

6067-6067-7300 Data concerning employee benefits

Getty Refining and Marketing Co. 279 NLRB No. 126
[E's refusal to furnish information requested by U about E recreational fund partially supporting social events and group recreational activities, unlawful, since fund constituted existing employment condition subject to mandatory bargaining]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[E's failure to provide U complete information regarding unit Ees' names, addresses, date of hire, classification, job descriptions, wages, and benefits including vacations, holidays, medical coverage, pensions, and sick leave,

6067-6067-7300—Cont.

unlawful, since presumptively relevant for bargaining and notwithstanding some partial information was supplied]

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC JD-288-85
[refusal to supply names of persons issued parking stickers, violation where stickers were indirect remuneration for services and mandatory bargaining subject]

6067-6067-7500 Pension plan and funding

Super Valu Stores, Inc. 279 NLRB No. 005
[where E, after purchase of facility, exercised its option under purchase agreement to require seller to repurchase facility, ALJ held E's refusal to permit U to ascertain which E was liable for unfunded liability due to multi-E pension fund unlawful since, among other reasons, pension rights related directly to terms and conditions of employment of Ees who sought to ascertain what they were entitled to receive as result of participation of both Es in pension fund, and information was relevant to U's obligation to assure that E or Es made required pension contributions]

Super Valu Stores, Inc. 279 NLRB No. 005
[where E, after purchase of facility, exercised its option under purchase agreement to require seller to repurchase facility, ALJ held E's refusal to permit U to ascertain which E was liable for unfunded liability due to multi-E pension fund unlawful since, among other reasons, failure of individual Es to make required contributions would affect all fund beneficiaries, and E failed to demonstrate legitimate business reason for its refusal]

NDK Corporation 278 NLRB No. 151
[E's unilateral refusal to contribute to fringe benefit funds and to make its payroll records available for audit by trustees of funds, unlawful, where E's admissions provided proof requisite to establish GC's prima facie case, and E was not permitted to escape liability, under federal labor law and conventional common law principles, on ground that its consent to execution of contract was unlawfully induced by U official's false representation that contract would not be enforced]

M & C Vending Co., Inc. and Its Wholly Owned Subsidiary Ada Automatic Sales Company, Inc. 278 NLRB No. 047
[E's refusal to furnish U copy of pension plan, unlawful, since required by U in order for U to perform its representation functions]

6067-6067-7600 Health and safety matters

Hercules Incorporated 281 NLRB No. 130
[refusing to allow U industrial hygienist access to plant to investigate industrial accident and conduct health and safety inspection and tests for toxic or hazardous fumes, violation where information was not obtainable through alternative means, hygienist could execute trade secret agreement like other non-Ees allowed access, and his presence would not disrupt production or discipline or substantially interfere with normal operations]

Hercules Incorporated 281 NLRB No. 130
[Bd balances E's property right against U's right to information in determining whether U should be granted access to E's property to gather information on health and safety matters and evaluates availability of alternative means, nature of E's operation, impact on production and discipline, extent to which other, non-Ees are granted access to E's property, nature of information sought, and the particular location on the E's property to which access is sought]

Asarco, Incorporated, Tennessee Mines Division 276 NLRB No. 155
(denial of U's request for copies of photographs of site of fatal accident to Ee in E's mine, which U sought for full investigation of accident and prevention of recurrences, unlawful, where photographs were relevant and necessary to an understanding of accident and its possible causes; and availability of photographs from federal mine safety agency was no defense)

Asarco, Incorporated, Tennessee Mines Division 276 NLRB No. 155
(refusal to provide U with E's internal report concerning fatal accident to Ee, sought by U for further investigation of accident and prevention of recurrences, unlawful, where report, not prepared by attorney or with attorney's assistance, did not qualify for exemption from disclosure on basis of attorney-client privilege or attorney work product)

Asarco, Incorporated, Tennessee Mines Division 276 NLRB No. 155
(refusal to provide U with E's internal report concerning fatal accident to Ee, sought by U for full investigation of accident and prevention of recurrences, on grounds report was prepared in anticipation of litigation and disclosure would have harmful impact upon future candor of E's reporting processes, unlawful, where no litigation was pending at time of U's request, and it was not shown that report would not have been prepared even in complete absence of some liability on E's part for accident; consequently, E's interest in maintaining confidentiality of report did not outweigh U's right to relevant information in report)

Holyoke Water Power Company 273 NLRB No. 168
(E's denial of access to fan room by U's hygienist to test noise level, violative, notwithstanding E provided U with information it possessed on subject and had allowed business agent access to fan room since here, in balancing property right versus Ees' right to proper representation, Bd found that health and safety conditions are terms of employment which E must bargain about on request)

N.L.R.B. v. Holyoke Water Power Company 778 F.2d 49 (C.A. 1, Nov. 1985)
[E's refusal to grant U's industrial hygenist access to room in plant to conduct noise study, on grounds that information was irrelevant since Ees had not complained to E, E had provided U with copies of its own study and U must attempt to pursue other means of obtaining information, violative, since information was clearly relevant to health and safety of unit Ees, Ees had complained to U, E's study could be *inherently subjective* thus justifying U's need for its own study and information not readily obtainable from any other source]

N.L.R.B. v. Holyoke Water Power Company 778 F.2d 49 (C.A. 1, Nov. 1985)
[safety and health conditions are conditions of employment about which Es must bargain upon request; however, U is not invariably entitled to enter E's plant to obtain information and when the E presents a legitimate, good faith objection on grounds of burdensomeness and offers to cooperate with U in reaching acceptable accommodation, U must compromise with E as to form, extent or timing of disclosure]

6067-6067-7700 Severance plans

Super Valu Stores, Inc. 279 NLRB No. 005
[E's refusal to give U Ee manual which defined E's relationship with its non-U Ees, not unlawful, where nothing in record showed that U requested that E supply it with such manufal; even assuming such request was made, U's announced reason for request, that it wanted to know how E was treating non-U Ees on termination, was insufficient to establish that Ee manual was relevant to U's performance of its bargaining function; and U did obtain manual prior to hearing]

6067-6067-7800 Names of employer-association members

Southern Nevada Home Builders Association, Inc. 274 NLRB No. 048
(E association's refusal to furnish U names and addresses of remaining builder members who were not bound by master or memorandum agreement negoitated by association, not violative, since U did not sustain burden of demonstrating probability that roster of all builder members is relavent and of use in fulfilling U's statutory duties. Surmise and suspicion not enough. No record evidence or allegation that any builder member engaged in, or was encouraged by Respondent to engage in, alter ego or double-breasted operations or that builder members were not making trust fund contributionsrequired by master or memorandum agreement)

6067-6067-7900 Statistical data (race, sex, etc.)

Coalite, Inc. 278 NLRB No. 040

6067-6067-8000 Names, addresses and/or telephone numbers, of employees or former employees

Landhill Press, Inc., and Rotary Business Systems, Inc., its Alter Ego and Successor 282 NLRB No. 058
[E's refusal to furnish U with names and addresses of unit Ees, unlawful]

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147
[E's refusal to furnish U with names of unit Ees, hire date or seniority dates, Ees' earnings for past year including amount of overtime paid, hourly pay rates, ages, telephone numbers, complete list of Ee benefits including medical plan description and retirement plan, unlawful, since information necessary and relevant to U's performance of its function as bargaining representative in preparing for negotiations]

15th Avenue Iron Works, Inc., and Abitat Builders and Management Corp. 279 NLRB No. 091
[E's failure to provide U complete information regarding unit Ees' names, addresses, date of hire, classification, job descriptions, wages, and benefits including vacations, holidays, medical coverage, pensions, and sick leave, unlawful, since presumptively relevant for bargaining and notwithstanding some partial information was supplied]

Ben Franklin National Bank 278 NLRB No. 136
[E's refusal to furnish U with names, addresses, wage rates, and classifications of unit Ees, unlawful, where E and U had reached agreement on contract terms w/i certification year prior to any rebutting of U's majority status; E thus was obligated to sign agreement, and information requested was relevant to U's duty to represent Ees under bargaining agreement]

Alamo Cement company 277 NLRB No. 108
(refusal to supply requested names, addresses and telephone numbers of Ees, violation)

Bozzuto's, Inc. 275 NLRB No. 056
(E's failure to provide U with list of unit members' addresses violative where contract did not clearly and unmistakably waive U's right to such list)

Storall Manufacturing Company, Inc. 275 NLRB No. 039
(refusal to supply U with requested information as to names and addresses of all Ees hired since E had terminated its night shift and laid off night-shift Ees, and addresses of all current temporary Ees whom E had unlawfully

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hired when it reinstituted night-shift and supcontracted that work using temporary Ees, unlawful)

Hennessy Products, Inc. 273 NLRB No. 190
(in agreeing with ALJ that no violation existed under *Telautograph Corp.*, Bd noted that, while overruling *Telautograph* in *Dresser Industries*, it decided to apply *Dresser* prospectively and would not find unlawful actions taken while *Telautograph* was law; accordingly, E's refusal, because of decertification ptn filed during strike, to furnish U Ees' names, addresses, work classifications and wage rates and information concerning status of laid off strikers was not unlawful, specifically because of unusual factual matrix herein and lack of any pending grievance or existence of current or recently expired contract)

Columbus Maintenance and Service Company, Inc. v. N.L.R.B. 758 F.2d 1125 (C.A. 6, Apr. 1985)

6067-6067-8100 Grievances

Whirlpool Corporation 281 NLRB No. 007
[E's failure to produce confidential police informant as accusing witness at suspension hearing pursuant to U request, not unlawful failure to provide grievance-related information, since E was not bound by past practice to produce the accusing witness at such hearing, general obligation to provide requested information does not include statements of witnesses, and producing a witness to make a written or oral statement is parallel to and covered by witness statements exception]

Ground Breakers, Inc. 280 NLRB No. 014
[E's refusal, after expiration of contract, to furnish U requested information pertaining to processing of grievances, unlawful, since matter clearly fell w/i parameter of Bd's analysis in *United Technologies Corp.*, 274 NLRB No. 72, and while, on merits, grievance may have been untimely as claimed by E, such outcome is irrelevant to issue of whether E is required to furnish information so that U can represent Ees filing grievances, since E's duty under Act is not relieved by showing, after the fact, that U might not have prevailed had it been given information in timely manner]

United Technologies Corporation 277 NLRB No. 070
(refusal to furnish U requested reports pertaining to grievance arising from discharge of Ee assertedly for gross negligence in reviewing x-ray films for defects in engine parts, unlawful, where reports were not *witnesses' statements* shielded from discharge under *Anheuser-Busch*; even if they were, identity of persons was known and disclosure could not result in recantation or modification of facts stated in them by intimidation of investigators who furnished them or anyone named in them, since film, and not incidents, had been investigated and intimidation could not change contents of film)

United Technologies Corporation 277 NLRB No. 070
(refusal to furnish U requested reports pertaining to grievance arising from discharge of Ee assertedly for gross negligence in reviewing x-ray films for defects in engine parts, unlawful; unlike *Anheuser-Busch*, in which disclosure of information was shielded, E impeded U's investigation by making available only small part of film Ee had worked on and refused to furnish complete reports of investigators concerning all of Ee's film; moreover, E's failure to assert any reasonable need to keep reports confidential left it w/o any reasonable rationale for its refusal)

Southern Indiana Gas & Electric Company JD-300-85
(refusal to provide U with copies of all discipline issued to unit Ees for failing to work mandatory overtime violative, notwithstanding E's contention that withheld materials were irrelevant to U in preparing to arbitrate grievance that did not refer to discipline, where U needed relevant disciplinary records showing whether E was uniformly effectuating its overtime enforcement procedures)

N.L.R.B. v. National Broadcasting Company, Inc. (Directors Guild of America, Inc.) 798 F.2d 75 (C.A. 2, Aug. 1986)
[denying U access to remote broadcasting facilities at reasonable time and places, violation where grant of access was past practice, and U's search for information as to whether non-unit Ees were doing unit work was relevant to pending arbitration and continued contract enforcement, and firsthand observation of crew at work was only alternative sufficient to serve U's legitimate purpose; Bd's application of test balancing E's property right against Ees' representational right was rationally connected with NLRA and resolved parties' competing interests]

N.L.R.B. v. Electrical Workers, Local 309 (Pfizer, Inc.) ———F.2d——— (C.A. 7, June 1985)
[refusal to supply information relevant to processing grievance, unlawful, notwithstanding U's contention that information pertaining to Ees outside of bargaining unit was irrelevant and information from Ee personnel files was confidential]

Salt River Valley Water Users' Association v. N.L.R.B. 769 F.2d 639 (C.A. 9, Aug. 1985)
(under Sections 8(a)(1) and 8(a)(5), failure of either E or U to give other information necessary to enable requesting party intelligently to evaluate grievances filed *may* constitute ULP)

6067-6067-8150 Confidential nature of information

The E. W. Buschman Company 277 NLRB No. 021
(defense of confidential nature of requested financial and production data rejected where E produced no evidence thereof and made no distinction between the kinds of information requested when refusing the requests)

N.L.R.B. v. Electrical Workers, Local 309 (Pfizer, Inc.) ———F.2d——— (C.A. 7, June 1985)
[E's defense of confidentiality to its refusal to provide Ee personnel file, rejected where E did not attempt to make any showing that personnel file, or any part of it, contained sensitive information, or that it treated information in file as confidential]

6067-6067-8200 Discipline

Salt River Valley Water Users' Association v. N.L.R.B. 769 F.2d 639 (C.A. 9, Aug. 1985)
(ct rejected privacy defense and ordered E to turn over to U Ees' disciplinary records and evaluations for grievance processing. *Boston Edison* 440 U.S. 301, distinguished by: 1) information here did not bear on *basic competence* of Ees; 2) Ees did not expect records to remain confidential under such circumstances since E made no pledge of confidentiality; 3) employment records, unlike aptitude tests, are frequently introduced as evidence in grievance proceedings; and 4) E made use of Ee files in defending its actions in this grievance proceeding)

6067-6067-8900 Information concerning laid-off employees

Hennessy Products, Inc. 273 NLRB No. 190
(in agreeing with ALJ that no violation existed under *Telautograph Corp.*, Bd noted that, while overruling *Telautograph* in *Dresser Industries*, it decided to apply *Dresser* prospectively and would not find unlawful actions taken while *Telautograph* was law; accordingly, E's refusal, because of decertification ptn filed during strike, to furnish U Ees' names, addresses, work classifications and wage rates and information concerning status of laid off strikers was not unlawful, specifically because of unusual factual matrix herein and lack of any pending grievance or existence of current or recently expired contract)

6067-6067-9000 Seniority, layoff, and/or recall

6067-6067-9000 Seniority, layoff, and/or recall

Aquaslide 'N' Dive Corporation 281 NLRB No. 034
[failure to provide U requested seniority list, unlawful, where no explanation was offered by E why list was not provided before E filed bankruptcy ptn; although matters became hectic after E filed ptn, E continued to hold out to U that list would be provided and never advised U that it was unable to do so; and U's use of previously supplied list, as suggested by E, would not show up-to-date personnel actions taken by E]

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147
[E's refusal to furnish U with names of unit Ees, hire date or seniority dates, Ees' earnings for past year including amount of overtime paid, hourly pay rates, ages, telephone numbers, complete list of Ee benefits including medical plan description and retirement plan, unlawful, since information necessary and relevant to U's performance of its function as bargaining representative in preparing for negotiations]

Super Valu Stores, Inc. 279 NLRB No. 005
[where E, after purchase of facility, exercised its option under purchase agreement to require seller to repurchase facility whose operations were then terminated, ALJ held E's refusal to permit U to ascertain seniority, layoff, and recall rights not unlawful, since all of E's Ees were terminated, and U was aware that repurchaser had no intention of reopening facility and rehiring E's Ees; hence, Ees had no seniority, layoff, or recall rights]

Alamo Cement company 277 NLRB No. 108
(refusal to supply requested information as to Ees' seniority, violation)

6067-6067-9100 Promotion data

U.S. Postal Service 280 NLRB No. 080
[E's refusal to furnish information requested by U concerning names of U's officers and stewards who requested supervisory positions with E, violative, since information sought relates to U's role as Ees' exclusive bargaining representative. U merely prescribing qualifications or limitations of those who will be its agents, and felt it would be conflict of interest if its negotiators were also applying for supervisory positions]

United Technologies Corporation 274 NLRB No. 072
(E's refusal to provide U with Ee promotion and production records relevant to processing two grievances over E's promotion, transfer and award policies, on grounds that dispute was not *arbitrable* violative; before a U is

6067-6067-9100—Cont.

put to the effort of arbitrating even the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievance has merit)

6067-6067-9500 Copies of contract or correspondence between employer and third parties

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital 282 NLRB No. 010
[contract provision providing that E furnish new Ees with copy of bargaining agreement survives expiration of contract]

6067-6067-9600 Changes in working conditions

Boise Cascade Corp., Paper Group 279 NLRB No. 074
[E's refusal to furnish U with surveys used to formulate maintenance improvement program at one of its facilities, which would combine some duties to be performed by Ees, reduce craft classifications, change wage structure, projected savings and efficiency calculations, and any survey comparing maintenance efficiency and cost at facility at which program to be instituted with E's other facilities, unlawful, since relevant to bargaining, grievance and possible arbitration; however, portions of study alluding to how E would carry out its supervisory responsibilities or constituting legal opinion protected from disclosure]

6067-6067-9800 Job vacancies

BASF Wyandotte Corporation JD-(NY)-91-86
[E's refusal to furnish U with requested information regarding Ee bid card system for filling vacant job positions, violative]

6067-6067-9900 Sale of business

Super Valu Stores, Inc. 279 NLRB No. 005
[where E, after purchase of facility, exercised its option under purchase agreement to require seller to repurchase facility whose operations were then terminated, ALJ held E's refusal to comply with U's request for copies of both purchase agreements to permit U to more effectively represent Ees in effects bargaining not unlawful, since U's stated reason, standing alone, was inadequate; U's theory of relevance must be reasonably specific, and general avowals of reliance, such as *to bargain intelligently* and similar boilerplate, are insufficient]

Super Valu Stores, Inc. 279 NLRB No. 005
[where E, after purchase of facility, exercised its option under purchase agreement to require seller to repurchase facility, ALJ held E's refusal to permit U to ascertain which E was liable for unfunded liability due to multi-E pension fund unlawful since, among other reasons, pension rights related directly to terms and conditions of employment of Ees who sought to ascertain what they were entitled to receive as result of participation of both Es in pension fund, and information was relevant to U's obligation to assure that E or Es made required pension contributions]

Super Valu Stores, Inc. 279 NLRB No. 005
[where E, after purchase of facility, exercised its option under purchase agreement to require seller to repurchase facility, ALJ held E's refusal to permit U to ascertain which E was liable for unfunded liability due to multi-E pension fund unlawful since, among other reasons, failure of individual Es to make required contributions would affect all fund beneficiaries, and E failed to demonstrate legitimate business reason for its refusal]

Coalite, Inc. 278 NLRB No. 040

6067-7000 Repudiation of contract

D & D Development Co., Inc. d/b/a Anaheim Town and Country Inn 282 NLRB No. 034
[E's refusal to honor contract, not unlawful, since U did not represent uncoerced majority at time recognition was granted and contract was executed, where U authorization cards were tainted by company manager's conduct in going well beyond any ministerial help to U or any benign cooperation in U effort by participating in organizational drive from start to finish and engaging in such conduct as calling in U, promising benefits if Ees joined, U coercively interrogating whether Ees signed cards, using supervisors to check cards, and precipitously executing contract]

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. 281 NLRB No. 128
[E's refusal to recognize U as representative of driver-salesmen, repudiation of contract and unilateral changes, following operational change in which E had eliminated job category's duties into new driver-salesman category, unlawful, notwithstanding E contention that creation of new category created qcr, where change was not technological and required no major hiring, job was similar to former category, no other U claimed to represent the E's, and Ees from old category substantially outnumbered additional driver-salesmen, who are viewed as accretion to old unit]

Public Service Electric and Gas Company 280 NLRB No. 048
[violation where E sought to modify retroactivity clause of old contract by refusing to agree to pay wage increase in new contract effective on expiration date of old contract unless Ees ratified new contract by expiration date and, as part of its final offer, conditioned agreement to new contract on U's consent to abrogation of retroactivity clause; U's urging Ees to ratify new contract not voluntary consent to modification where U advised Ees at same time that it had filed charge with Bd]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066
[unilateral change in contract wage rate to that comparable to practice in trade, as well as otherwise refusing to comply with contract wage rate by paying recalled Ee wages higher than contract rate but w/o fringe benefits, violation]

EPE, Inc. 273 NLRB No. 169
(E's re-opening contract for purpose of obtaining U's agreement to raising insurance premiums and granting wage increase and then unilaterally repudiating contract when U did not agree to its proposals, violative, where E's action in re-opening contract was attempt to coerce U into accepting proposals which had been found violative in prior Bd hearing and further, because of E's bad faith in re-opening contract, it could not rely on provision allowing for repudiation of contract if no agreement was reached during re-opener negotiations as grounds for repudiating contract)

St. Charles Interiors Inc.; d/b/a GML Drywall, etc. JD-447-84
(E held to have unlawfully repudiated U contract where E decided to pay some Ees in bargaining unit on piece-rate basis rather than contractual rate and not to make fringe benefit contributions; and to extent such was considered subcontracting, it was likewise prohibited by contract)

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) 764 F.2d 739 (C.A. 10, June 1985)
(E's repudiation of bargaining agreements reached through multi-E bargaining, violative notwithstanding E's contention that negotiations were entered and agreements reached w/o E's real or apparent authority, where E allowed its managers to sign authorizations for association to bargain on E's behalf over three-year period, observed terms of agreements negotiated by association, and used lawyer recommended by association to negotiate settlement agreement with U)

6083 REQUIREMENTS FOR TERMINATION OR MODIFICATION OF CONTRACTS - 8(d) PROVISO

6083-0100 Generally

6083-0125 No obligation to discuss or agree to modification during fixed contract term

Armour and Company 280 NLRB No. 096
[contention that since allocation of severance and vacation payments to Ees being terminated upon closing of plant to specific periods was bargained for between parties, and was matter which bargaining agreement controlled, neither party had further obligation to bargain during term of bargaining agreement, rejected, since U is not seeking to discuss any modification of terms or conditions of contract and contract silent on issue, notwithstanding parties reached agreement on other matters concerning closing of plant, where no zipper clause, no clear and unmistakable waiver of matter, and absent evidence issue was subject of prior bargaining]

Westinghouse Electric Corporation 278 NLRB No. 061
[fact E's unilateral mid-term changes in Ees' terms and conditions of employment were prompted by economic rather than discriminatory considerations is immaterial if E did not bargain about those changes. Defense that refusal to bargain did not take place in context of overall subjective, bad faith may be available when charge is violation of Section 8(a)(3) of Act, but it is no defense to 8(a)(5) allegation]

Suburban Transit Corp. and Suburban Trails, Inc. 276 NLRB No. 005
(no violation when E relocated unit work (single E) and thereby brought unit Ees under different bargaining agreement which was less favorable to these Ees, since contract covering original workstation did not contain any provisions preventing E from making such relocation w/o first obtaining consent of U and E bargained in good faith over decision to relocate)

6083-0150 Obligation to refrain from termination or modification without notice and bargaining

Westinghouse Electric Corporation 278 NLRB No. 061
[obligation to bargain over wages, hours, and terms and conditions of employment, as well as any mid-term changes therein, covers multitude of specific items where terms, conditions of employment, and mid-term changes have effect of cutting wages, decreasing (Ee) take-home pay or changes in functions and content of (an Ee's) job an asserted waiver of bargaining obligation involves examination of meaning of contract provisions and does not oust Bd of jurisdiction to make that examination]

Italo II Casa Romana Restaurant, Inc. JD-(SF)-50-86
[E's ignoring contract and unilaterally modifying its provisions or scope of its coverage except with respect to few Ees who were U members, violative]

6083-0150-2500 Operates independently of any contractual notice requirements

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) **JD-(SF)-87-85**

(signatory to memorandum agreement gave proper notice of termination of agreement and agreement terminated at expiration date of agreement notwithstanding U and E association prematurely negotiated new contract prior to time that proper notice could be sent (60 days), since signatories could not be bound to mid-term modification as it is wording of memorandum agreement rather than contract incorporated by reference that controls termination dates)

6083-0150-5000 Modification of terms without bargaining

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. **281 NLRB No. 128**

[E's refusal to recognize U as representative of driver-salesmen, repudiation of contract and unilateral changes, following operational change in which E had eliminated job category's duties into new driver-salesman category, unlawful, notwithstanding E contention that creation of new category created qcr, where change was not technological and required no major hiring, job was similar to former category, no other U claimed to represent the E's, and Ees from old category substantially outnumbered additional driver-salesmen, who are viewed as accretion to old unit]

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Desota, Inc. **278 NLRB No. 114**

[E's closing plant and transferring work to its other facilities, not 8(d) contract modification where action did not constitute relocation of plant prohibited by contract, and transferring work to other plants was consistent with contract]

A & W Foods, Inc. **276 NLRB No. 020**

(E's failure to implement wage increase provision in contract negotiated to become effective at future date, unlawful, since U did not agree to reopen contract, notwithstanding its agreement to discuss E's proposed midterm modification and agreeing to take proposal to membership, which rejected it)

Crest Floors & Plastics, Inc. **274 NLRB No. 185**

(unilateral changes violative, since E was still bound by expired contract where it had notified U of intention to terminate contract but had not offered to negotiatea new one or notified U of intention to change terms and conditions of employment existing at time of expiration of old contract)

Stroman Construction Company **JD-367-85**

[failure to timely pay fringe benefits, to timely file proper fringe benefit reports, to pay liquidated damages for delay in payment, and to provide proper books and records for audit, as required by contract, violation and unilateral mid-term modification of contract]

Everett Yacht Club **JD-(SF)-115-85**

(E's failure to bargain with U over effects of its decision to subcontract its bar and restaurant operations, violative, since U could have accomplished positive and favorable considerations for unit Ees if U had learned of E's intent to subcontract prior to its being put into effect)

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) **JD-(SF)-87-85**

(signatory to memorandum agreement gave proper notice of termination of agreement and agreement terminated at expiration date of agreement notwithstanding U and E association prematurely negotiated new contract prior to time that proper notice could be sent (60 days), since signatories could not be bound to mid-term modification as it is wording of memorandum agreement rather than contract incorporated by reference that controls termination dates)

LeRic Floor Covering, Inc., and Richard E. Fackler d/b/a REF Carpet Service and Installation Alter Egos **JD-79-85**

(no unlawful failure of unionized E to pay contractual wage rates and benefit contributions for part of Ees' hours of work for non-U E, where Es were neither *alter egos* nor joint Es, and Ees' work for non-U E was not a disguise for portion of work for unionized E)

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**

[fact dispute over E's discontinuance of allowing U steward 4 hours of paid company time per day in which to conduct U business plus use of office and telephone, and over legality of steward's privileges, arose during term of bargaining agreement that provided that steward be granted *reasonable time* to conduct U business, did not bar E's obligation regarding grant of time and facilities to U; Sec. 8(d) of Act provides that E must bargain in good faith with respect to questions arising under existing agreements and questions of contract interpretation, as well as requested modification of bargaining agreement]

6083-0150-6700 Cancellation of contract

NDK Corporation **278 NLRB No. 151**

[E unlawfully repudiated contract with U in midterm, where E's admissions provided requisite proof to establish GC's *prima facie* case, and E was not permitted to escape liability under federal labor policy and conventional common law principles on ground that E's consent to execution of contract was unlawfully induced by U official's false representation that contract would not be enforced]

6083-0175 Obligation to bargain regarding interpretation of terms

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al.

U.S.——(U.S. S.Ct, Feb. 1984)

[Bd is precluded from, in effect, enforcing terms of collective-bargaining agreement by filing ULP charges against debtor-in-possession for violating Sec. 8(d) of NLRA by modifying or terminating unexpired labor agreement. Though Bd's action is nominally one to enforce Sec. 8(d), practical effect of enforcement action would be to require adherence to terms of agreement, but filing of ptn in bankruptcy means that agreement is no longer enforceable. Consequently, Bd enforcement under these circumstances would run directly counter to express provisions of Bankruptcy Code]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al.

——U.S.——(U.S. S.Ct, Feb. 1984)

[debtor-in-possession does not need to comply with mid-term contract modification procedures set forth in Sec. 8(d) because bargaining agreement is not enforceable contract w/i meaning of 8(d); therefore, because modification accomplished by operation of law (Bankuptcy Code) and not by unilateral action of E, it follows that debtor-in-possession need not comply with provisions of Sec. 8(d) prior to seeking Bankruptcy Ct's permission to reject agreement]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al.

——U.S.——(U.S. S.Ct, Feb. 1984)

[debtor-in-possession does not commit ULP when, after filing bankruptcy ptn but before Bankruptcy Ct approved rejection of bargaining agreement, it unilaterally modifies or terminates one or more provisions of contract, notwithstanding contract provided that it was binding on parties or successors even though bankruptcy should supervene]

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**

(withholding U dues from wages of all Ees in bargaining unit but not remitting dues to U w/o bargaining, violative where change was made during term of valid bargaining agreement, but before date E filed ptn in bankruptcy)

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**

(E's failure to remit pension fund contribution as required by bargaining agreement, w/o bargaining, violative where change was made during term of valid bargaining agreement, but before date E filed ptn in bankruptcy)

Dunmyre Motor Express, Inc. and/or Dunmyre Motor Express, Inc., Debtor-In-Possession **275 NLRB No. 044**

(E's post bankruptcy ptn conduct consisting of implementation of unilateral changes in bargaining agreement, layoff of seven Ees, and subcontracting of unit work, not violative in light of S.Ct's decision in *Bildisco*)

GMW, Inc. **274 NLRB No. 214**

(summary judgment was inappropriate in C proceeding alleging E violated 8(a)(1), (5) and 8(d) of Act, notwithstanding E failed to file ans but rather informed GC it had filed for bankruptcy under Chapter 7, where nothing in record showed when E filed for bankruptcy, whether alleged violations occurred before or after filing date, whether trustee formally assumed or rejected contract and whether Bankruptcy Court permitted rejection of contract; such information is critical in deciding whether E violated Act)

Nicholas, Inc. and Nicholas, Inc., Debtor in Possession **JD-(NY)-31-86**

[in cases arising before 10 July 1984, trustee (in bankruptcy), *subject to court approval*, may assume or reject any executory, contract such as an unexpired collective-bargaining agreement. Debtor in possession under Chapter 11 (Bankruptcy Code) may unilaterally reject or modify agreement until formal rejection is approved or denied by ct. See *NLRB v. Bildisco & Bildisco* 104 S.Ct 1188 (1984), 115 LRRM 2805]

6083-0175—Cont.

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**

(E as debtor-in-possession did not unlawfully make unilateral changes in Ees' terms and conditions of employment since, under S.Ct's *Bildisco* decision, debtor-in-possession, while obligated to bargain with U for new contract, is free to make unilateral changes; although E and U had no contract but only bargaining relationship when bankruptcy ptn was filed, thus arguably making *Bildisco* inapplicable, it would be totally incongruous and illogical to find an E with contract free to make unilateral changes while finding E herein to have unlawfully taken similar unilateral action)

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**

(while requiring, as part of remedy, alter ego to abide by contract between bankrupt *predecessor* acting as debtor-in-possession and U seems incongruous in light of S.Ct's *Bildisco* decision, which provides that once bankruptcy ptn is filed contract is not enforceable, S.Ct, however, recognized in *Bildisco* that debtor-in-possession is required to recognize and bargain with U)

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**

[fact dispute over E's discontinuance of allowing U steward 4 hours of paid company time per day in which to conduct U business plus use of office and telephone, and over legality of steward's privileges, arose during term of bargaining agreement that provided that steward be granted *reasonable time* to conduct U business, did not bar E's obligation regarding grant of time and facilities to U; Sec. 8(d) of Act provides that E must bargain in good faith with respect to questions arising under existing agreements and questions of contract interpretation, as well as requested modification of bargaining agreement]

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(bankruptcy ct can enjoin Bd from filing or processing ULP charges arising from modification of contract since, if Bd can neither file charges against nor find debtor-in-possession guilty of ULP for unilaterally rejecting or modifying contract, certainly it cannot proceed with hearings on ULP charges arising under that contract)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(ct should deny debtor's mtn to enjoin Bd proceedings on charge if ULP charge stems from debtor's failure to bargain in good faith over terms and conditions of new contract)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(bankruptcy ct may, upon mtn by debtor, enjoin Bd from proceeding with hearings on ULP charges which arise from debtor's unilateral modification or rejection of collective-bargaining agreement, when those proceedings would threaten assets of debtor's estate)

6083-2000 Notice requirements

6083-2001 Generally

6083-2001-1700 Applicable only as prerequisite to strike, lockout, modification, or termination

Schaeff Namco, Inc. **280 NLRB No. 150**

[E's unilateral implementation of reduction in wages after wage reopener period passed, lawful, even absent impasse, since E had contract specifically left open wages for third year of contract and provided for specified period to negotiate wage rates and provided that E *shall implement* its wage offer if parties failed to reach agreement w/i specified period; nor was unilateral implementation violative Section 8(d) since 8(d) did not apply as no modification of contract rather action in accord with contract]

Schaeff Namco, Inc. **280 NLRB No. 150**

[E's unilateral implementation of its wage reduction proposal only 9 days after U notified FMCS of its intent to strike not violation of Section 8(d)(4) since 8(d) inapplicable inasmuch as wage reduction implemented after bargaining pursuant to wage reopener provision for purpoe of setting wage rates for third year of contract, thus implementation was not modification or termination of contract but rather was pursuant to contract terms, where reopener provision provided that E *shall* implement its wage offer if parties fail to reach agreement or initiate economic action]

Schaeff Namco, Inc. **280 NLRB No. 150**

[U voting to strike not equivalent to *initiating economic action* under contract provision which provided that E *shall implement its wage offer if parties... or initiate economic action* since U could have struck E over implementation of wage reduction as such implementation in accord with contract, where wages were not established for third year, therefore implementation not a modification or termination of contract to which Sec. 8(d) applies, and notice to FMCS not required before striking]

6083-2001-2500 Modification of agreement by mutual consent permissible without notice

Public Service Electric and Gas Company **280 NLRB No. 048**

[violation where E sought to modify retroactivity clause of old contract by refusing to agree to pay wage increase in new contract effective on expiration date of old contract unless Ees ratified new contract by expiration date and, as part of its final offer, conditioned agreement to new contract on U's consent to abrogation of retroactivity clause; U's urging Ees to ratify new contract not voluntary consent to modification where U advised Ees at same time that it had filed charge with Bd]

6083-2001-5000 Actual notice required

Stage Employees IATSE District No. 2 Locals, et al. v. N.L.R.B. (United Artists Communications, Inc.) **779 F.2d 552 (C.A. 9, Dec. 1985)**

[where initiating parties (here Us) to termination or modification of contract failed to timely notify FMCS as required by Sec. 8(d)(3) of Act, and nowithstanding FMCS knew of dispute and participated in negotiations, non-initiating party (here E) was free to implement new terms and conditions of employment as initiating party has responsibility of notice; thus, non-initiating party is free to implement new terms of employment]

6083-2001-5050 Commencement of negotiations for new contract does not excuse failure to give notice

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) **JD-(SF)-87-85**

(signatory to memorandum agreement gave proper notice of termination of agreement and agreement terminated at expiration date of agreement notwithstanding U and E association prematurely negotiated new contract prior to time that proper notice could be sent (60 days), since signatories could not be bound to mid-term modification as it is wording of memorandum agreement rather than contract incorporated by reference that controls termination dates)

Stage Employees IATSE District No. 2 Locals, et al. v. N.L.R.B. (United Artists Communications, Inc.) **779 F.2d 552 (C.A. 9, Dec. 1985)**

[Us' contention that they were not initiating party to terminate or modify contract and therefore did not need to notify FMCS under 8(d)(3), rejected, where Us acted first by notifying E that they wished to continue contract for 1 year which, in effect, was notice to terminate or modify contract]

6083-2067 Thirty-day notice to mediation services

6083-2067-0100 Generally

6083-2067-0112 Notice obligation on party initiating modification

Weathercraft Company of Topeka, Inc. **276 NLRB No. 052**

(E's unilateral contract modification after its expiration, unlawful where, although E appropriately notified U of withdrawal from multi-E bargaining and of desire for separate negotiations with U, E failed to give appropriate 8(d) notices to federal and state agencies; even if U's letter to E proposed modification of contract's expiration date, E, and not U, was *initiating party* responsible for 8(d) notices, since prior to U's letter E had notified U of desire to renegotiate contract and before that executed settlement agreement reserving its right to separate negotiations with U)

United Artists Communications, Inc. **274 NLRB No. 017**

(the burden of notifying the mediation services of a dispute under Sec. (3) and (4) rests exclusively with the party initiating contractual modification or termination under Sec. 8(d)(1), and initiating party's failure to file such notice cannot serve to preclude non-initiating party from lawful resort to economic weapons or implementation of new contractual terms; *Hooker Chemicals Crop.* and *Peoria Painting Contractors* overruled)

Stage Employees IATSE District No. 2 Locals, et al. v. N.L.R.B. (United Artists Communications, Inc.) **779 F.2d 552 (C.A. 9, Dec. 1985)**

[Us' contention that they were not initiating party to terminate or modify contract and therefore did not need to notify FMCS under 8(d)(3), rejected, where Us acted first by notifying E that they wished to continue contract for 1 year which, in effect, was notice to terminate or modify contract]

Stage Employees IATSE District No. 2 Locals, et al. v. N.L.R.B. (United Artists Communications, Inc.) **779 F.2d 552 (C.A. 9, Dec. 1985)**

[where initiating parties (here Us) to termination or modification of contract failed to timely notify FMCS as required by Sec. 8(d)(3) of Act, and nowithstanding FMCS knew of dispute and participated in negotiations, non-initiating party (here E) was free to implement new terms and conditions of employment as initiating party has responsibility of notice; thus, non-initiating party is free to implement new terms of employment]

6083-6000 Obligation to continue contract in effect until later of 60 days after notice or contract expiration date

Schaeff Namco, Inc. **280 NLRB No. 150**

[E's unilateral implementation of its wage reduction proposal only 9 days after U notified FMCS of its intent to strike not violation of Section 8(d)(4) since 8(d) inapplicable inasmuch as wage reduction implemented after bar-

6083-6000—Cont.

gaining pursuant to wage reopener provision for purpose of setting wage rates for third year of contract, thus implementation was not modification or termination of contract but rather was pursuant to contract terms, where reopener provision provided that E *shall* implement its wage offer if parties fail to reach agreement or initiate economic action]

United Artists Communications, Inc. 274 NLRB No. 017

(E's implementing its final contract offer w/o giving mediation services notice of dispute with local Us, not violative, since local Us were the parties initiating contractual modification under Sec. 8(d)(1), and they, according to the statute's language and legislative history, had the exclusive responsibility for notification of the mediation services; *Hooker Chemicals Corp.* and *Peoria Painting Contractors* overruled)

United Artists Communications, Inc. 274 NLRB No. 017

(E's implementing its final offer more than 60 days after contract expired but before it formally notified mediation services under Sec. 8(d)(3), not violative of Sec. 8(d)(4), since E was not party initiating contract modification under Sec. 8(d)(1) and had no duty to notify the services; although Sec. 8(d)(4) 60-day waiting period must be extended 30 days where Sec. 8(d)(3) notice was late, as here, E as noninitiating party cannot be foreclosed by failure of local Us, initiating parties herein, to notify the services, which is their exclusive responsibility; *Peoria Painting Contractors* and *Hooker Chemicals Corp.* overruled)

Stage Employees IATSE District No. 2 Locals, et al. v. N.L.R.B. (United Artists Communications, Inc.) 779 F.2d 552 (C.A. 9, Dec. 1985)

[where initiating parties (here Us) to termination or modification of contract failed to timely notify FMCS as required by Sec. 8(d)(3) of Act, and nowithstanding FMCS knew of dispute and participated in negotiations, noninitiating party (here E) was free to implement new terms and conditions of employment as initiating party has responsibility of notice; thus, non-initiating party is free to implement new terms of employment]

6083-8000 Strike before expiration of 60 day notice period

Schaeff Namco, Inc. 280 NLRB No. 150

[U voting to strike not equivalent to *initiating economic action* under contract provision which provided that E *shall implement its wage offer if parties... or initiate economic action* since U could have struck E over implementation of wage reduction as such implementation in accord with contract, where wages were not established for third year, therefore implementation not a modification or termination of contract to which Sec. 8(d) applies, and notice to FMCS not required before striking]

8000 AFFIRMATIVE DEFENSES

8001 GENERALLY

U.S. Postal Service 280 NLRB No. 080

[*Privacy Act* constitutes *a defense* to request for information under Section 8(a)(5) and (1) of Act *unless* disclosure of (requested) record would be for *routine use*]

8004 SUBSEQUENT PERFORMANCE OF OBLIGATION

Indianhead Truck Line, Inc. JD-271-85

(E unlawfully refused to bargain over effects of closure of its freight operations where U's secretary-treasurer stated to E *we have to sit down and work out a closing agreement*, and E replied that agreement *had to be worked out by bankruptcy ct*, since E is not relieved of its obligation to bargain over effects of its decision because it has become debtor-in-possession under Bankruptcy Act and believes it would be unable to meet U's financial demands; E's subsequent invitation to U to bargain did not bar finding of violation and ordering remedy for prior violation)

8005 DOUBT OF BOARD'S JURISDICTION

8005-5000 No defense where Board has jurisdiction

Volunteers of America-Minnesota-Bar None Boys Ranch v. N.L.R.B. 752 F.2d 345 (C.A. 8, Jan. 1985)

(Bd properly asserted jurisdiction over religiously affiliated residential treatment center for children since treatment center essentially secular and differed significantly from parochial schools over which Bd has refused to assert jurisdiction, inasmuch as it had as its primary purpose care of children rather than parochial school's purpose of propagation of faith; nor did E demonstrate that its commitment to serving as many children as possible would bring it into conflict with U, or that its secular objectives would be impaired by U representation)

8007 LACK OF KNOWLEDGE OF UNION'S MAJORITY STATUS

Ednor Home Care, Inc. 276 NLRB No. 042

(E did not unlawfully withdraw recognition since E never recognized U, where upon being presented with authorization cards by U's business representative, E's owner never acknowledged, nor did U representative claim U represented majority of Ees. U's contention that there was initial discussion regarding terms of proposed contract delivered with economic terms left blank, and absent evidence of any statement by E connoting recognition, or explicit testimony of U representative concerning plans for negotiating meetings, nor was U representative's behavior consistent with belief U was recognized)

Crest Industries Corp. 276 NLRB No. 067

(E's refusal to bargain with U, and comply with U's demand for recognition, violative where E, by polling its Ees, had determined that majority of Ees wished to be represented by U)

Dukes Industries JD-167-85

(no violation where E decided to shut down operations and communicated decision to Ees prior to having any knowledge of U activity. Furthermore, U waived its perogative to bargain with E where, other than delivering its demand letter, it has made absolutely no attempt to meet and negotiate over effects of closing)

8009 DOUBT AS TO UNION'S MAJORITY STATUS (SEE ALSO 530-4080-5000)

8009-0100 Generally

The Hearst Corporation, San Antonio Light Division 281 NLRB No. 113

[E may not lawfully withdraw recognition from an incumbent U because of asserted doubt of U's majority status unless such doubt is based on objective considerations sufficient to afford E a reasonable ground for believing that its Ees no longer desire to be represented by the U; the asserted doubt, however, may not be raised in the context of any E activities aimed at causing Ee disaffection with the U]

Wilder Construction 276 NLRB No. 104

(computatioon to determine majority status of U must include both strikers and strike replacements at time of withdrawal of recognition)

8009-1100 Good-faith doubt of majority status justifies refusal to recognize

Stop N' Go Inc. 279 NLRB No. 052

[8(a)(5) violation finding and bargaining order inappropriate, notwithstanding E's numerous ULPs, where 27 cards of alleged 41-card majority in 69-Ee unit were not properly authenticated]

Bryan Memorial Hospital 279 NLRB No. 039

[withdrawal of recognition unlawful notwithstanding decert ptn filed and E furnished with 11 affidavits from unit members stating they no longer wanted U to represent them and that these 11 affiants knew that majority of unit members did not want U to represent them any longer but would not furnish their names as they requested anonymity, since E's receipt of Ees' unverified assertions that majority of Ees no longer support their U representative, is insufficient to create reasonable based doubt that claimed desire of those Ees is factual]

Cuello Industries, Inc., d/b/a Scroll Casual A Wholly Owned Subsidiary of Sunline Industries, Inc. 278 NLRB No. 005

[successor E's refusal to recognize and bargain with U unlawful, notwithstanding assertion of doubt of majority status because U's demand allegedly predated hire of representative complement of Ees where from start of operations all skills and work functions were in place, all anticipated production departments active and manned w/i two weeks, at time of demand and refusal to bargain U had presumption of continuing majority status in work force that remained relatively stable to date of ULP hearing, and prospect of real augmentation of workforce was mere speculation]

Redok Enterprises, Inc. 277 NLRB No. 101

(E receipt of Ee's unverified assertions that majority of Ees no longer support their U representative is insufficient to create *reasonably based conviction that the claimed desire of those Ees to be rid of U* is factual)

Wilder Construction 276 NLRB No. 104

(while normally incumbent U enjoys presumption of majority support, in construction industry certain contracts are lawful even in absence of majority support; therefore, presumption of continued majority does not always apply)

Wilder Construction 276 NLRB No. 104

(presumption rebutted where there is conflict of interest between strikers and their replacements (lawfully discharged strikers and their replacements))

Indiana Cabinet Company, Inc. 275 NLRB No. 169

(E's refusal to bargain over contract renewal based on good faith doubt of U's majority support, not violative where anti-U ptn which was source of E's good-faith doubt was unblemished by any ULP and contained signatures of majority of Ees)

8009-1100—Cont.

Jackie Lee Enterprise, Inc. and Jackie Lee, Limited, Inc. **JD-246-85**

(no unlawful refusal to bargain by purchaser with U which represented Ees of seller E whom it was hiring, even assuming successor E, since E had objective basis for good faith doubt of U's majority prior to setting initial terms and conditions of employment, where all unit Ees informing E that they no longer desired U representation, but wanted *to cut their own deal*, notwithstanding Ees' retention of U membership to retain pension rights and other benefits, since their request for withdrawal cards after executing private employment agreement with E showed Ees had no desire to retain U as bargaining agent)

Abramo Fish Co. Ltd. **JD-222-85**

(purchaser not obligated to assume seller's contract and permitted to raise good-faith doubt of U's majority status where, although purchaser committed himself to retain all of seller's Ees, nothing in written agreements between it and seller revealed agreement to assume contract between seller and U)

Abramo Fish Co. Ltd. **JD-222-85**

(purchaser's asserted good-faith doubt of U's majority status justified its refusal to recognize and bargain with U representing seller's Ees; although unsuccessful attempts by 5 of 9 unit Ees to withdraw from U was not sufficient by itself to support claim of good-faith doubt, Ees' dissatisfaction with U was further signified when attempted withhdrawals are considered in context of pre-hire conversation with E which provided reasonable basis for concluding withdrawals expressed Ees' agreement with E's stated desire to operate non-U, which was fortified when Ees told E of their attempted withdrawals)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**

(E did not unlawfully refuse to recognize U at new store notwithstanding after-acquired stores clause in labor contract and that all unit Ees in meat department were U members because evidence showed that unit Ees did not wish U to represent them, E told them before they transferred that department would be non-U to start out with and still they volunteered to go and these Ees resigned from U)

8009-1500 Good-faith doubt of majority status justifies refusal to bargain after certification year

Harley-Davidson Transportation Co., Inc. **273 NLRB No. 192**

[successor lawfully withdrew from bargaining after 3 sessions and of voluntarily recognizing U that had been certified over year during predecessor's time on basis of good faith doubt evidenced by ptn signed by majority of Ees stating they no longer wanted U to be its representative. Change of ownership not treated as equivalent of certification or voluntary recognition of U following organizational drive since relationship between U and Ees not disturbed so all U has is presumption of majority status that may be rebutted at anytime w/o waiting reasonable period. Signatures on ptn need not be authenticated)

J. L. Davidson Company **JD-(SF)-186-85**

[E's refusal to execute contract, not violation where E was aware that Ees withdrew U's authority to represent them]

Landmark International Trucks, Inc. v. N.L.R.B. **775 F.2d 148 (C.A. 6, Oct. 1985)**

[successor E's withdrawing recognition from U, not violation, notwithstanding Bd's finding that E's letter requesting Ees to advise E of resignation from U provided no reasonable basis for E's decision that U had lost majority status, where there was abundant evidence, known to E at time of decision, of U's loss of majority status, including uncontradicted testimony that Bd had not considered because Bd found it hearsay]

8009-1550 Doubt not defense within certification year

Molded Acoustical Products, Inc. **280 NLRB No. 163**

[E's refusal to recognize and bargain with U w/i certification year after E relocated its operations, violative notwithstanding reduction in work force from 130 to 118, turnover in Ees, and E's reliance on statements from some Ees that they would not support strike and wanted to resign their U membership]

IMS Manufacturing Company, Inc. **278 NLRB No. 079**

[successor E's refusal to bargain with U on grounds U had not made prompt demand (10 months later) and in any event E had good faith doubt of U's majority status, violative, since U demanded recognition during recertification year after winning decertification election at predecessor E and thus enjoyed irrebuttable presumption of majority status and E's alleged good faith doubt was based only on subjective beliefs and hearsay from unit Ees and a ptn purportedly signed by Ees denouncing U which E received *after* refusing to bargain with U]

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor **785 F.2d 195 (C.A. 7, Mar. 1986)**

[successor E's contention that it should not be ordered to bargain with U since predecessor's strike replacements should not be presumed to support U, rejected, since one year had not elapsed since U was certified and successor itself was responsible for not reinstating strikers, which itself was a ULP and thus, it cannot rely on that to support U's loss of majority status]

N.L.R.B. v. Best Products Co., Inc. **765 F.2d 903 (C.A. 9, July 1985)**

(defense of U's alleged loss of majority support due to Ee turnover, rejected in view of irrebuttable presumption of continuing majority status for one year running from date of certification, which in instant case has been ordered to run from date that E begins good faith bargaining)

8009-2200 Doubt not defense if in fact refusal otherwise motivated

The Cincinnati Enquirer, Inc. **JD-171-85**

(E did not act in good faith where it withdrew recognition from U based on purported anti-U ptn, since it did not investigate or verify Ee signatures on untitled, obscure document, ignored Ee protests of its actions, soliciting authorization cards, and unilaterally implemented wage increases and other benefits)

8009-2700 Doubt no defense where employer has knowledge of union majority

Without Reservation **280 NLRB No. 165**

[refusing to bargain with U pursuant to agreement to be bound by card count, which showed U represented majority of Ees, violation where E, by avoiding completion of verification of signatures procedures, sought to repudiate previously agreed on method of determining whether U majority existed]

Central Broadcast Company **280 NLRB No. 056**

[E's reply to U demand letter asserting doubt of U's majority status, unlawful refusal to recognize and bargain where U had presented letters signed by seven out of eight unit Ees, the authority of which E did not question]

Crest Industries Corp. **276 NLRB No. 067**

(E's refusal to bargain with U, and comply with U's demand for recognition, violative where E, by polling its Ees, had determined that majority of Ees wished to be represented by U)

Royal Vending Services, Ltd. **275 NLRB No. 173**

(successor's contention of doubt of U's majority status rejected where successor knew at time it took over business that predecessor had been transmitting dues to U for six of eight Ees in unit)

White-Rodgers, Division of Emerson Electric Company **JD-(ATL)-4-86**

[E's withdrawal of recognition from U, assertedly because it had been presented ptn signed by majority of Ees renouncing U which established its good faith doubt, violative, since ptn was tainted by E's ULPs where E impliedly promised two Ees improvements in wages and pensions and threatened to freeze wages and benefits if they didn't support ptn and those two Ees then signed ptn which gave E a bare majroity to rely on in withdrawing recognition]

United Sheetmetal of Arizona, Inc. **JD-(SF)-97-85**

(E's contention that U did not enjoy majority support because U did not show that 8(f) status had transformed to that of 9(a) representative since no authorization cards had ever been presented and thus it had no duty to bargain, rejected, where E employed at all relevant times a *core* group of Ees so as to constitute a permanent and stable workforce as well as 28 other Ees throughout the season; further, all Ees were U members and E knew that none of its Ees would work with non-U Ees; fact that all Ees at all relevant times were U members is sufficient indicia of majority U support)

8009-4400 Filing of representation or decertification petition

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**

[filing of decertification ptn, *standing alone*, does not permit E to make unilateral changes]

Architectural Woodwork Corporation **280 NLRB No. 108**

[unilateral change in overtime payment policy, violation, notwithstanding expiration of contract, where presumption of continued majority status was not rebutted by good faith doubt based on decertification ptn that was unlawfully induced by E]

Hydro Conduit Corporation **278 NLRB No. 164**

[Bd has consistently refused to allow litigation of RD's administrative determination as to objective considerations in support of RM ptn on grounds that this protects confidentiality of data submitted in support of ptn and permits expeditious resolution of issues concerning Ee choice of representative; however, an administrative determination that objective considerations support RM ptn is not determinative of E's obligation to engage in further bargaining]

Engineered Control Systems, Inc. **274 NLRB No. 191**

(E's withdrawal of recognition of U at expiration of contract, unlawful, notwithstanding its contention that U had lost majority status, and any ULPs designed to undermine U were committed after ptn, as decertification ptn on which E relied as basis for loss of majority did not constitute valid basis for

8009-4400—Cont.

good faith doubt of majority status, since only 1 out of 3 Ees in unit had signed ptn and ULPs committed after ptn were such that it may have been reason Ee refused to support U)

Weiser Optical Company — 274 NLRB No. 143
(E's refusal to provide U with relevant and necessary information, assertedly because of good-faith doubt of U's majority status, violative, where E unlawfully encouraged Ees to sponsor decertification ptn thus tainting ptn and E's good-faith doubt)

Rescar, Inc. — 274 NLRB No. 001
(E's advising U that a decertification ptn had been filed and that it would not bargain further until that qcr was resolved, not violative under *Telautograph* rule, which was not overruled by *Dresser Industries* until after E's refusal to bargain in instant case, since *Dresser* was not applied retroactively)

Kelly Broadcasting Company d/b/a DCRA--TV — 273 NLRB No. 206
(notwithstanding that under *Dresser*, 264 NLRB 1088, E and incumbent U required to bargain and execute any agreed upon contract even though decertification ptn filed, E and U may by mutual agreement defer effective and execution date of any contract reached until decertification ptn is resolved, and refusal of E to sign this contract with incumbent U until such resulution, not violative)

Hennessy Products, Inc. — 273 NLRB No. 190
(in agreeing with ALJ that no violation existed under *Telautograph Corp.*, Bd noted that, while overruling *Telautograph* in *Dresser Industries*, it decided to apply *Dresser* prospectively and would not find unlawful actions taken while *Telautograph* was law; accordingly, E's refusal, because of decertification ptn filed during strike, to furnish U Ees' names, addresses, work classifications and wage rates and information concerning status of laid off strikers was not unlawful, specifically because of unusual factual matrix herein and lack of any pending grievance or existence of current or recently expired contract)

Radisson Muehlebach Hotel — 273 NLRB No. 183
(fact certification of results of decertification election was pending before Bd at time E refused to process grievances through arbitration found no defense to refusal, since, under *Telautograph Corporation*, which governs this case, E could cease to bargain until decertification matter was resolved, but must permit U to continue to administer its contract and process grievances)

Spring Valley Farms, Inc. — JD-(ATL)-54-86
[filing of decertification ptn w/i certification year did not serve to remove E's legal obligation to sign agreement reached, where agreement reached w/ i certification year]

Benjamin Pontiac Inc. — JD-(NY)-82-85
(U's contention that E's refusal to bargain based on filing of decertification ptn signed by majority of unit Ees not valid basis for E's good faith doubt of U's majority, because signatures on ptn were obtained with promises of improved pension benefits by one of E's car salesmen allegedly cloaked by E with authority to act in E's interest, rejected, where salesman's only duty beyond that of other salesmen was purely clerical and ministerial function of filling out salesmen's commission statements)

N.L.R.B. v. Auto Fast Freight, Inc. — 793 F.2d 1126 (C.A. 9, July 1986)
[decertification ptn no defense to E's unilateral changes where it was filed after unlawful cessation of health and welfare fund payments, institution of new medical plan, reduction in wages, and constructive discharges of Ees for refusing to resign from U]

8009-5300 Indicia of bad faith in asserting doubt

8009-5517 Antiunion conduct

Manhattan Eye, Ear and Throat Hospital — 280 NLRB No. 011
[E's withdrawal of recognition of U, unlawful, since its assertion of doubt of U's majority not made in context free of ULPs of type aimed at causing disaffection from U where supervisor had unlawfully solicited resignations from U from striking Ees]

Bay Area-Los Angeles Express, Inc. — 275 NLRB No. 152
(U's loss of majority status and signing of ptn by half of unit Ees repudiating U tainted by E's ULPs where E dealt directly with Ees, threatened Ees that, if U did not accept E's contract proposals, but at same time promising that if Ees went non-U E would increase wages, grant health and welfare benefits as good or better than U plan, and offer financial assistance to Ees who wished to purchase own trucks and work for E as owner-operators; some of Ees were present when statements were made, and there was short time between statement and signing of ptn, supporting inference that statements were proximate cause of at least one Ee signing ptn)

Bay Area-Los Angeles Express, Inc. — 275 NLRB No. 152
(E's unlawful threat of loss of jobs if E's contract proposals were not accepted did not taint U's loss of majority, as evidenced by ptn repudiating U signed by 7 out of 14 unit members, where threat took place 4 months prior to signing of ptn and did not involve any Ees who signed ptn)

8009-5525 Unfair labor practices

The Hearst Corporation, San Antonio Light Division — 281 NLRB No. 113
[E was precluded from relying on Ee-ptns repudiating U and E's withdrawal of recognition violative, where E engaged in numerous violations of 8(a)(1) prior to and simultaneous with circulation of ptns by soliciting Ee repudiation of U, interrogating Ees about U sympathies, promising Ees better benefits w/o U and urging Ees to persuade coworkers to withdraw support from U; E may not rely on defense that some Ees were unaware of E's unlawful conduct where E's activity was aimed specifically at causing Ee disaffection from U since such conduct bars any reliance on disaffection]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. — 280 NLRB No. 118
[successor E's refusal to bargain with U, on grounds U did not enjoy majority support, violative, notwithstanding U did not have actual majority support of Ees hired where, but for E's discrimminatory refusal to hire predecessor's Ees, U would have enjoyed majority support; U's majority support in such instance is presumed as a matter of law]

Toyota of San Francisco — 280 NLRB No. 093
[E's withdrawal of recognition on basis of ptn signed by 34 out of 63 Ees in unit, unlawful, where E has engaged in numerous unremedied ULPs which probably contributed to Ees' dissatisfaction with U]

Architectural Woodwork Corporation — 280 NLRB No. 108
[unilateral change in overtime payment policy, violation, notwithstanding expiration of contract, where presumption of continued majority status was not rebutted by good faith doubt based on decertification ptn that was unlawfully induced by E]

Manhattan Eye, Ear and Throat Hospital — 280 NLRB No. 011
[E's withdrawal of recognition of U, unlawful, since its assertion of doubt of U's majority not made in context free of ULPs of type aimed at causing disaffection from U where supervisor had unlawfully solicited resignations from U from striking Ees]

Manhattan Eye, Ear and Throat Hospital — 280 NLRB No. 011
[testimony of only 4 Ees out of complement of approximately 100 Ees sufficient to carry burden that supervisor's conduct was unlawful. Nor does it satisfy E's burden of establishing that its asserted objective considerations arose in atmosphere free from coercion in support of its affirmative defense of good-faith doubt of U's majority support]

American Fluorescent Corp. — 275 NLRB No. 154
(Bd has indicated that it is necessary to evaluate totality of circumstances including nature of ULPs committed (by parties) and that commission of prior ULPs (by same parties) does not *per se* preclude good-faith doubt)

White-Rodgers, Division of Emerson Electric Company — JD-(ATL)-4-86
[E's withdrawal of recognition from U, assertedly because it had been presented ptn signed by majority of Ees renouncing U which established its good faith doubt, violative, since ptn was tainted by E's ULPs where E impliedly promised two Ees improvements in wages and pensions and threatened to freeze wages and benefits if they didn't support ptn and those two Ees then signed ptn which gave E a bare majroity to rely on in withdrawing recognition]

N.L.R.B. v. Auto Fast Freight, Inc. — 793 F.2d 1126 (C.A. 9, July 1986)
[decertification ptn no defense to E's unilateral changes where it was filed after unlawful cessation of health and welfare fund payments, institution of new medical plan, reduction in wages, and constructive discharges of Ees for refusing to resign from U]

8009-7700 Employer may require proof of majority

8009-7750 But employer may not reject reasonable mode of proof

Without Reservation — 280 NLRB No. 165
[refusing to bargain with U pursuant to agreement to be bound by card count, which showed U represented majority of Ees, violation where E, by avoiding completion of verification of signatures procedures, sought to repudiate previously agreed on method of determining whether U majority existed]

8009-8800 Fluctuation in employment does not support asserted doubt

ACL Corporation d/b/a Atlanta Hilton & Towers — 278 NLRB No. 076
[E's withdrawal of recognition from U and refusal to bargain assertedly based on good faith doubt of U's majority status because checkoffs had decreased, Ees told E they didn't want the U and E had experienced high turnovers, violative, since absence of majority of Ees from checkoff does not establish lack of majority support, Ee statements were no more than general criticism and dissatisfaction and turnover was amongst only a small minority of overall unit which did not rebut presumption that new Ees support U in proportion to Ees with more seniority]

8009-8800—Cont.

Cuello Industries, Inc., d/b/a Scroll Casual A Wholly Owned Subsidiary of Sunline Industries, Inc. **278 NLRB No. 005**
[successor E's refusal to recognize and bargain with U unlawful, notwithstanding assertion of doubt of majority status because U's demand allegedly predated hire of representative complement of Ees where from start of operations all skills and work functions were in place, all anticipated production departments active and manned w/i two weeks, at time of demand and refusal to bargain U had presumption of continuing majority status in work force that remained relatively stable to date of ULP hearing, and prospect of real augmentation of workforce was mere speculation]

Cuello Industries, Inc., d/b/a Scroll Casual A Wholly Owned Subsidiary of Sunline Industries, Inc. **278 NLRB No. 005**
[successor E's refusal to recognize and bargain with U unlawful, notwithstanding assertion of doubt of majority status because U's demand allegedly predated hire of representative complement of Ees where from start of operations all skills and work functions were in place, all anticipated production departments active and manned w/i two weeks, at time of demand and refusal to bargain U had presumption of continuing majority status in work force that remained relatively stable to date of ULP hearing, and prospect of real augmentation of workforce was mere speculation]

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(unit size based upon member of Ees employed for greater part of year, *not* during peak season when (employment) roles are inflated)

8009-9400 Employee withdrawal from U or lack of interest

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[E unlawfully withdrew recognition from U where, in prior case, Bd ordered E to give retroactive effect to contract reached by E and U, thereby giving rise to presumption that E's majority status was in effect at time E withdrew recognition; E's defense that U had lost, or E had good faith doubt of, U's majority status, predicated solely on Ee ptn assertedly showing Ees' disaffectionwith U, rejected, where circumstances surrounding solicitation of ptn signatures and ptn's language indicated ptn was meant to precipitate Ee ratification vote on E's proposed contract]

Molded Acoustical Products, Inc. **280 NLRB No. 163**
[E's refusal to recognize and bargain with U w/i certification year after E relocated its operations, violative notwithstanding reduction in work force from 130 to 118, turnover in Ees, and E's reliance on statements from some Ees that they would not support strike and wanted to resign their U membership]

Round Hill Foods, Inc. **276 NLRB No. 114**
(E's refusal to execute agreed upon contract with U, assertedly because it had good faith doubt of U's majority status as E had learned that Ee attendance at U meetings was very low and only 13 out of 227 unit Ees had attended a U meeting to ratify contract, violative, since such matters are purely intra-U matters and cannot be relied upon in asserting good faith doubt of U's majority status)

American Threat Company **274 NLRB No. 164**
(E's unilateral changes in grievance procedure, insurance and vacation benefits, not unlawful, where E had lawfully withdrawn recognition upon receipt of notice from majority of Ees that they no longer wished to be represented by U)

Tooling and Equipment International Corporation, Successor to Automotive Pattern Company **JD-334-85**
(E's refusal to bargain with U as successor E, not violative, since U did not enjoy majority support at time it demanded recognition, notwithstanding E had no knowledge of this fact, where most of the U member Ees attempted to withdraw from U prior to time U demanded recognition, Ees refused, upon request from U, to organize E and there was no evidence that E caused the Ee disaffection)

Jackie Lee Enterprise, Inc. and Jackie Lee, Limited, Inc. **JD-246-85**
(no unlawful refusal to bargain by purchaser with U which represented Ees of seller E whom it was hiring, even assuming successor E, since E had objective basis for good faith doubt of U's majority prior to setting initial terms and conditions of employment, where all unit Ees informing E that they no longer desired U representation, but wanted *to cut their own deal*, notwithstanding Ees' retention of U membership to retain pension rights and other benefits, since their request for withdrawal cards after executing private employment agreement with E showed Ees had no desire to retain U as bargaining agent)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
(E did not unlawfully refuse to recognize U at new store notwithstanding after-acquired stores clause in labor contract and that all unit Ees in meat department were U members because evidence showed that unit Ees did not wish U to represent them, E told them before they transferred that department would be non-U to start out with and still they volunteered to go and these Ees resigned from U)

8009-9800 Following withdrawal from multiemployer bargaining unit

The Typographers, Inc. **JD-23-86**
[rebuttable presumption of majority U support survives E's withdrawal from multiE unit]

8014 DOUBT AS TO UNION'S REPRESENTATIVE STATUS

Hydrotherm, Inc. **280 NLRB No. 167**
[refusing to bargain with local U that was certified under unamended premerger title, violation, notwithstanding that U merged with another local prior to election that resulted in change of name to one different from that of certified U, where U retained same character and relationship to Ees, had same international constitution, bylaws, officers, stewards, grievance procedure, methods of servicing contracts, assessing dues, making fund payments, place of business, and way of conducting affairs]

American Fluorescent Corp. **275 NLRB No. 154**
(withdrawal of recognition of U as exclusive Ee bargaining agent, not violative where there is no evidence that E took any action to inhibit transfer of former bargaining unit members, and no evidence to refute evidence of proferred assistance by E. E terminated its operations in one city and resumed operations in another 35 miles north of first city in another county where U did not represent majority of E's work force)

8018 DOUBT AS TO APPROPRIATENESS OF UNIT

8018-0100 Generally

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**
[where E's ans to C denied knowledge sufficient to form belief as to truth or falsity of allegation regarding appropriateness of unit, ALJ held unit description in C was correct and appropriate, consistent with that described in contract between E and U]

8018-0167 Lapse of time does not invalidate unit determination

ACL Corporation d/b/a Atlanta Hilton & Towers **278 NLRB No. 076**
[E's withdrawal of recognition from U and refusal to bargain, on grounds unit was inappropriate, notwithstanding it agreed to stipulation for certification 5 years prior, violative since unit in stipulation was approved by RD and unit on its face, did not violate any express statutory provision or established Bd policy; further, although Bd is required under 9(b) to determine appropriate unit, fact that RD initially approved stipulation signifies that unit was not contrary to Act or established Bd policy]

8018-1200 Nonrepresentative unit

Beck Corporation, d/b/a Jessie Beck's Riverside Hotel and Casino **279 NLRB No. 061**
[successor-E obligated to bargain with U which represented Ees of predecessor, where successor E had hired full complement, and majority of Ees in unit at successor were Ees of predecessor. *Process of identifying full complement will vary from case to case. I would be ludicrous to postpone defining full complement until small enterprise reached status of international corporation, but it would also be inappropriate to point to full complement as existing at moment successor assumes operation of moribund corporation*]

Myers Custom Products Inc., A Wholly Owned Subsidiary of Myers Electric Products, Inc., d/b/a Gibbons Enclosures, Inc. **278 NLRB No. 092**
[in deciding whether a substantial and representative work force existed on a certain date, Bd must balance objective of selection of bargaining representative by the maximum number of Ees with the objective of Ee representation as soon as possible; when a new E expects, with reasonable certainty, to increase its Ee complement substantially w/i a relatively short time, it is appropriate to delay determining the bargaining obligation for that short period]

Myers Custom Products Inc., A Wholly Owned Subsidiary of Myers Electric Products, Inc., d/b/a Gibbons Enclosures, Inc. **278 NLRB No. 092**
[E's refusal to bargain with U as successor E, not violative, since on date U demanded recognition, E had not yet hired *substantial and representative* work force for purpose of determining U's majority status where, prior to purchasing business, E planned, with a reasonable degree of certainty, a substantial increase in number of unit Ees w/i a relatively short time, therefore, it was appropriate to delay determination of bargaining obligation for short duration of planned work force expansion, a date U did not enjoy majority status]

Cuello Industries, Inc., d/b/a Scroll Casual A Wholly Owned Subsidiary of Sunline Industries, Inc. **278 NLRB No. 005**
[successor E's refusal to recognize and bargain with U unlawful, notwithstanding assertion of doubt of majority status because U's demand allegedly predated hire of representative complement of Ees where from start of

8018-1200—Cont.

operations all skills and work functions were in place, all anticipated production departments active and manned w/i two weeks, at time of demand and refusal to bargain U had presumption of continuing majority status in work force that remained relatively stable to date of ULP hearing, and prospect of real augmentation of workforce was mere speculation]

8018-2500 Changed circumstances

Rosehill Cemetery Association **281 NLRB No. 066**
[in summary judgment proceeding, Bd rejected E's defense that unit was inappropriate because E anticipated merger changing its operations and increasing its work force size significantly; although merger was long contemplated by E (9 years), and E claimed recent events made merger likely, E did not assert affirmatively that merger had occurred and therefore claimed merger was too speculative a basis upon which E could refuse to bargain]

8018-2512 Relocated operations

Central Soya Company, Inc. **281 NLRB No. 173**
[E's consolidation/relocation of facilities to a different part of town, withdrawal of recognition from U at new location once Ees at old locations had been transferred to new location and refusal to bargain with U over effects of decision to consolidate/relocate, violative, where there was no substantial change in operations following the consolidation/relocation and once Ees were transferred to new location with other unrepresented Ees, those transferred constituted a majority of Ees who still desired U representation]

Molded Acoustical Products, Inc. **280 NLRB No. 163**
[E's refusal to recognize and bargain with U w/i certification year after E relocated its operations, violative notwithstanding reduction in work force from 130 to 118, turnover in Ees, and E's reliance on statements from some Ees that they would not support strike and wanted to resign their U membership]

Harte & Company, Inc. **279 NLRB No. 128**
[Bd has developed standards in contract bar and failure to bargain cases to determine if there is sufficient continuity of operations to justify applying existing agreement to new location. Existing contract will remain in effect after relocation if operations are substantially same and if Ees from old plant constitute approximately 40% or more of new Ee complement. In relocation situations determining whether U should continue to represent Ees at new location involves balancing of newly hired Ees' interest in choosing whether or not to have U representation against transferees' interest in retaining fruits of their collective activity]

Safelite, Division of Lear Siegler, Inc. **277 NLRB No. 080**
(new plant opened by E assertedly for operational efficiency which replaced old plant and was located only a few miles therefrom, held to be accretion of old plant and E's withdrawal of recognition from U at old plant and failure to bargain over effects of opening new plant violative, where Ees at new plant performed work identical to old plant, supervisors at both plants reported to the same management and two plants were only 20 minutes away from each other; further, E's asserted good faith doubt of U's majority status at new plant was groundless since E hired majority of Ees from old plant to staff new plant)

American Fluorescent Corp. **275 NLRB No. 154**
(withdrawal of recognition of U as exclusive Ee bargaining agent, not violative where there is no evidence that E took any action to inhibit transfer of former bargaining unit members, and no evidence to refute evidence of proferred assistance by E. E terminated its operations in one city and resumed operations in another 35 miles north of first city in another county where U did not represent majority of E's work force)

8018-2520 Reorganization

Computer Sciences Corporation **280 NLRB No. 001**
[E held successor E and obligated to bargain with U which had represented unit of its commercial, as opposed to scientific programmers (nonunit), under previous E, since performed same work at same location and majority of its commercial programmers had been Ees of former E, notwithstanding contention no obligation to bargain where after takeover commercial programmers in paper reorganization were sprinkled throughout organization, and cross training program set up with scientific programmers, inasmuch as neither work nor working conditions changed after takeover]

8018-2525 New operation not accretion

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. **281 NLRB No. 128**
[Where E, by restructuring job classifications, seeks to separate certain Ees from established bargaining unit, combine them with a smaller number of formerly unrepresented Ees, and avoid bargaining with representative of established unit, Bd, in applying accretion analysis, will focus primarily on policy encouraging stable bargaining relationships, accord lesser weight to freedom of choice, and place burden on E to show that new Ee grouping is sufficiently dissimilar from previously established unit to warrant separation]

Phillip A. Hunt Corporation **JD-14-86**
[E's refusal to bargain with U and to recognize new plant as accretion to existing unit or to recognize U as exclusive bargaining representative of new plant's Ees, or by failing to apply bargaining agreement to those plant Ees, not violative, since new plant was found not to be accretion to existing unit]

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
(party arguing *accretion* must demonstrate that expanded unit would be appropriate for bargaining, as well as demonstrating that group to be added would not in itself constitute an appropriate unit)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
(right of unit Ees to select their bargaining representative is predominant consideration under Section 7 of Act and is to be restricted only under *compelling conditions* concerning resolution of unit and accretion issues)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
]*accretion* to present unit of Ees outweighed by 2 significant factors--absence of interchange or regular contact between meat department Ees in new store and meat department Ees in E's other stores notwithstanding occasional use of floaters and lack of common day-to-day supervision over Ees of different stores as each one is autonomous)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
(Us should resolve close questions concerning extension of bargaining agreements in favor of proselytizing Ees in question rather than seeking to represent them through the fait accomplai of accretion)

Save Mart of Modesto, Inc. **JD-(SF)-25-85**
(E did not unlawfully refuse to recognize U at new store notwithstanding after-acquired stores clause in labor contract and that all unit Ees in meat department were U members because evidence showed that unit Ees did not wish U to represent them, E told them before they transferred that department would be non-U to start out with and still they volunteered to go and these Ees resigned from U)

8018-2550 Accretion does not render existing unit inappropriate

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. **281 NLRB No. 128**
[Where E, by restructuring job classifications, seeks to separate certain Ees from established bargaining unit, combine them with a smaller number of formerly unrepresented Ees, and avoid bargaining with representative of established unit, Bd, in applying accretion analysis, will focus primarily on policy encouraging stable bargaining relationships, accord lesser weight to freedom of choice, and place burden on E to show that new Ee grouping is sufficiently dissimilar from previously established unit to warrant separation]

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. **281 NLRB No. 128**
[E's refusal to recognize U as representative of driver-salesmen, repudiation of contract and unilateral changes, following operational change in which E had eliminated job category's duties into new driver-salesman category, unlawful, notwithstanding E contention that creation of new category created qcr, where change was not technological and required no major hiring, job was similar to former category, no other U claimed to represent the E's, and Ees from old category substantially outnumbered additional driver-salesmen, who are viewed as accretion to old unit]

Safelite, Division of Lear Siegler, Inc. **277 NLRB No. 080**
(new plant opened by E assertedly for operational efficiency which replaced old plant and was located only a few miles therefrom, held to be accretion of old plant and E's withdrawal of recognition from U at old plant and failure to bargain over effects of opening new plant violative, where Ees at new plant performed work identical to old plant, supervisors at both plants reported to the same management and two plants were only 20 minutes away from each other; further, E's asserted good faith doubt of U's majority status at new plant was groundless since E hired majority of Ees from old plant to staff new plant)

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(in absence of any unusual circumstances, such as accretion to unit by agreement of parties w/o participation of affected Ees, presumption of majority status continues after takeover by Respondent (successor). No significance that U may not have been *recently* certified)

8018-2562 Accretion of appropriate unit into larger unit

Armco, Inc., Eastern Steel Division, Ashland Works **279 NLRB No. 143**
[E found successor E and obligated to bargain with incumbent U at new plant, notwithstanding contention Ees in new plant were accretion and thus E had no duty to recognize U at new plant but could recognize U it had historically dealt with at its other plants, since Ees at new plant could still be considered a separate appropriate unit where interchange between plants was minimal, Ees at new plant had been represented by incumbent U for 30 years and Ees at new plant had not been so integrated with E's other Ees so as to negate their separate identity]

8018-2562—Cont.

Matlack, Inc. **278 NLRB No. 036**
[E unlawfully refused to bargain with U representing separate unit of predecessor's Ees since latter Ees were not accretion to successor E's unit, because predecessor's Ees had not lost their separate identity and had not been incorporated into existing larger unit with required community of interest among entire group; under circumstances herein, to apply accretion principles would deny *accreted* Ees a vote on their choice of bargaining representative]

Abbott-Northwestern Hospital **274 NLRB No. 162**
(withdrawing recognition as to, and unilaterally changing working conditions of, 9 represented psychiatric assistants after transfer to same facility of 63 historically unrepresented psychiatric assistants, not violative, since consolidation obliterated unit of 9 represented Ees and unit of only part of group of Ees in same classification was inappropriate; unrepresented Ees were not accreted to former unit of represented Ees, parties had agreed that U would not represent previously unrepresented Ees, and U had reserved its representative position only as to previously represented Ees and complaint alleged violations only as to them)

8018-2569 Merger of multi-location units

Big R Distributors, Inc. d/b/a Shoppers Choice **280 NLRB No. 148**
[separate unit at each store alleged successor took over appropriate, in view of fact that in Decision and Direction of Deauthorization election at stores involved, it was held stores operated as self contained units; Ees had originally been represented by U in separate units, each store had separate seniority practices and were locally managed, and these practices contined, notwithstanding alleged successors contended it was not successor at stores involved herein, since those stores had merged with overall unit of its stores and thus majority of Ees not represented by U]

8018-3000 Union merger or affiliation

Eastern Connecticut Health Services, Inc. d/b/a New London Convalescent Home **274 NLRB No. 204**
(E's defense to refusal to bargain that it was not obligated to do so because of fact that, after certification, U disaffiliated with one national U and reaffiliated with another w/o notifying unit members of, or giving them an opportunity to vote on, reaffiliation raised material issues of fact and law such that Bd ordered hearing limited to issue of whether U's reaffiliation comported with *Amoco Production Co.* due process standards and whether E was obligated to bargain with reaffiliated U)

The Cincinnati Enquirer, Inc. **JD-171-85**
(merger of local Us valid and U resulting from merger held successor since adequate notice given of meetings at which merger votes were to take place, voting was by secret ballot in each local, and there was sufficient continuity of representation for premerger Ees since merger did not result in complete loss of identity of pre-merger groups inasmuch as each local U continued to negotiate separate bargaining agreements and each local's officers would continue to serve on joint governing board)

8018-7500 Doubt no defense if in fact unit appropriate

ACL Corporation d/b/a Atlanta Hilton & Towers **278 NLRB No. 076**
[E's withdrawal of recognition from U and refusal to bargain, on grounds unit was inappropriate, notwithstanding it agreed to stipulation for certification 5 years prior, violative, since unit in stipulation was approved by RD and unit on its face, did not violate any express statutory provision or established Bd policy; further, although Bd is required under 9(b) to determine appropriate unit, fact that RD initially approved stipulation signifies that unit was not contrary to Act or established Bd policy]

Landmark Industries, Inc. **JD-(SF)-109-85**
(unit covered in expired collective bargaining agreement is presumed appropriate)

United Sheetmetal of Arizona, Inc. **JD-(SF)-97-85**
(E's contention that unit description in expired contract was inappropriate because it gave U unilateral right to determine who would be in unit and thus E was relieved of duty to bargain, rejected, where instant unit description had remained unchanged for years, U had never attempted to increase scope of unit to include Ees not traditionally w/i unit and unit description was the knowing and voluntary product of bargaining relationship between E and U)

N.L.R.B. v. The Cooper Union For The Advancement of Science and Art **783 F.2d 29 (C.A. 2, Jan. 1986)**
[withdrawal of recognition from unit of full-time faculty members, violation, where advanced educational institution's faculty members forming unit were Ees, rather than managers of supervisors]

8019 RIVAL UNION CLAIM TO RECOGNITION

Lee Martin Corporation **282 NLRB No. 075**
[*RCA Del Caribe, Inc.*, 262 NLRB 963 (1982) cited as authority where E refused to bargain with incumbent U while timely ptn for R election was filed by competing U]

8020 DEMAND FOR BARGAINING IN INAPPROPRIATE OR NON-EXISTING UNIT

Renaissance West Community Mental Health Center **276 NLRB No. 050**
(E's refusal to bargain, not unlawful, where Ee unit was fatally flawed as to scope and included professional and nonprofessional Ees contrary to 9(b)(1) provisions which had not been followed by state agency in certifying U in case of mixed units of professional and nonprofessional Ees)

8020-0100 Generally

Marion Center Supply, Inc. **277 NLRB No. 026**
(U's demand for recognition as representative of majority of E's ees sufficient where it was preceded of E's Ees sufficient where it was preceded by copy of U's ptn to the Bd which fully described the unit, and E was aware of the precise scope of the unit due to an election four years before involving the same local and U; however, where neither the ptn nor prior dealings included two positions added here, the E's failure to respond to the U's demand for recognition was violative only as to the unit described in the pta and in the prior dealings)

8020-1200 One-man unit

American Bank Note Company **281 NLRB No. 099**
[E's untimely effort to withdraw from multi-E association and withdrawal of recognition from bargaining representative, violative, notwithstanding E had one-man unit. While E could have withdrawn from bargaining unit in timely fashion, its failure to avail itself of this procedure now precludes legal withdrawal. Further, while one-man unit is grounds for refusal to bargain, if E voluntarily recognizes unit representative, which E did by being member of association, then one-man unit is valid]

Donnie M. Parris, A Sole Proprietorship d/b/a D & B Masonry **275 NLRB No. 193**
(E's cancellation of the contract, withdrawal of recognition and unilateral change in terms of employment not violative where there was only one regular unit Ee, and other Ees were casual Ees w/o expectation of recall from layoff w/i reasonable time and thus lacking community of interest with regular Ee)

Unique Knitting, Inc. **JD-(NY)-20-86**
[E unlawfully refused to bargain with U, notwithstanding defense that it operated 1-Ee shop, where E failed to sustain burden of proving that 1-Ee operation was not temporary reduction in staff, since it was reasonable to assume that E's number of Ees may increase in view of fact that E's family members performed services for Ee and Ee in question worked overtime]

8020-2500 Reversion to bargaining in separately certified units

Marin Operating, Inc. d/b/a The Clarion Hotel-Marin; Colorado Marin Associates, A Joint Venture; and Preferred Properties Fund 82, A Limited Partnership **279 NLRB No. 070**
[successor E's refusal to bargain on grounds predecessor E unlawfully recognized U in separate units of Ees, violative, since, even though predecessor E's recognition of U in separate units may have been improper in view of that certified by Bd, successor E is barred by 10(b) from challenging that recognition; to allow successor E to challenge that recognition would upset successful 12-year bargaining relationship and revive problems long ago put to rest]

8020-6000 Demand for bargaining in unit other than certified or recognized

Syncor International Corporation **282 NLRB No. 063**
[scope of established bargaining unit is *non-mandatory*. However, party may lawfully propose change in scope of unit and parties may in certain circumstances agree to change or change can be accomplished by Bd proceedings, but never by unilateral action by party]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks **279 NLRB No. 121**
[bargaining agreement between U and 1 company, deemed part of single integrated enterprise with other companies, did not extend to Ees of other companies in enterprise which were also held to be alter ego of individual in whom ownership of all companies ultimately vested, and E not obligated to make payments into benefit and pension funds on those Ees behalf, since U acquiesced in Ees' exclusion where U aware of woner's propensity for securing corporate insulation against indebtedness by operating through as many distinct and separate business entities as his needs required]

Marin Operating, Inc. d/b/a The Clarion Hotel-Marin; Colorado Marin Associates, A Joint Venture; and Preferred Properties Fund 82, A Limited Partnership **279 NLRB No. 070**
[successor E's refusal to bargain on grounds predecessor E unlawfully recognized U in separate units of Ees, violative, since, even though predecessor E's recognition of U in separate units may have been improper in view of that certified by Bd, successor E is barred by 10(b) from challenging that

8020-6000—Cont.

recognition; to allow successor E to challenge that recognition would upset successful 12-year bargaining relationship and revive problems long ago put to rest]

Ida Lace, Inc. 278 NLRB No. 035

[GC's mtn for summary judgment in refusal to bargain case granted and E's contention that summary judgment was inappropriate since U's bargaining demand was *invalid* in that it requested bargaining for unit different than that certified by Bd, rejected; although U's demand neglected to include one group of Ees certified, request clearly referred to certified unit in *R* case and E admitted U made request to bargain]

8020-7500 Bargaining in unit not certifiable by Board

ACL Corporation d/b/a Atlanta Hilton & Towers 278 NLRB No. 076

[E's withdrawal of recognition from U and refusal to bargain, on grounds unit was inappropriate because it contained Ees employed as guards, violative, where Ees in dispute were in no way entrusted with the protection of E's premises or safety of persons; further, if E believes certain individuals should be excluded from unit because of guard status, proper procedure is unit clarification, not withdrawal of recognition. See Bd's R/R's 102.60(b) and 102.61(d)]

8023 NOT BOUND BY MULTIEMPLOYER BARGAINING

8023-0100 Generally

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) 764 F.2d 739 (C.A. 10, June 1985)

(test to determine multi-E unit's apparent authority to negotiate bargaining agreement is whether employer has indicated from outset unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has asserted to and entered upon negotiations with group's representative)

8023-2500 Withdrawal timely

American Bank Note Company 281 NLRB No. 099

[E can withdraw from multi-E bargaining upon written notice made prior to date set by contract for modification of existing contract or prior to agreed upon date to begin negotiations, *see Retail Associates, Inc.* 120 NLRB 388 (1958)]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. 279 NLRB No. 073

[E's failure to make health and welfare contributions, and instituting unilateral changes in wages and other conditions of employment, unlawful, notwithstanding its alter ego's midterm withdrawal from multi-E bargaining unit timely and effective, since alter ego E still bound by agreement executed prior to alter ego's withdrawal and still in effect; further, even if not bound by terms of agreement, its failure to bargain regarding mandatory subjects of bargaining, prior to change, unalwful]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. 279 NLRB No. 073

[E's refusal to recognize and bargain with U which represented Ees of which it was held alter ego, unlawful, notwithstanding E of which it was held alter ego had timely and effectively withdrawn from multi-E bargaining unit]

The Setterlin Company JD-56-86

[unilateral changes lawful after timely and lawful withdrawal from multi-E association and impasse in bargaining separately with U]

Pleasanton Plastics, Inc. JD-(SF)-15-85

(E had timely withdrawn from multi-E bargaining where it gave unequivocal notice of withdrawal prior to commencement of bargaining for new agreement; contention that meetings prior to notice constituted negotiations, and hence notice untimely, rejected, since meetings merely exploratory exchange of ideas outside formal negotiation channels, not did letter written in response to U request that Es put their concerns in writing commence negotiations)

8023-3700 Withdrawal unequivocal

American Bank Note Company 281 NLRB No. 099

[E can withdraw from multi-E bargaining upon written notice made prior to date set by contract for modification of existing contract or prior to agreed upon date to begin negotiations, *see Retail Associates, Inc.* 120 NLRB 388 (1958)]

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego 273 NLRB No. 224

(right to withdraw from E group bargaining with U is limited by reasonable controls as to time and manner of withdrawal. Intention to withdraw must be *unequivocal, and exercised at an appropriate time, apparent willingness of secretary and principal official of E collective bargaining group to allow E to drop out of E bargaining group, absence of any pending negotiations at time of withdrawal as well as its timely letter to group, non-payment of dues to group, expressed intent to operate non-U shop and unequivocal withdrawal (by letter) from E bargaining group was valid withdrawal)*

The Setterlin Company JD-56-86

[unilateral changes lawful after timely and lawful withdrawal from multi-E association and impasse in bargaining separately with U]

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) 764 F.2d 739 (C.A. 10, June 1985)

(E's repudiation of bargaining agreements reached through multi-E bargaining, violative notwithstanding E's contention that negotiations were entered and agreements reached w/o E's real or apparent authority, where E allowed its managers to sign authorizations for association to bargain on E's behalf over three-year period, observed terms of agreements negotiated by association, and used lawyer recommended by association to negotiate settlement agreement with U)

8023-5600 Withdrawal untimely

Elevator Sales and Service, Inc. 278 NLRB No. 094

[E's withdrawal from E-association held untimely, where written notice was not sent to either international U or local U prior to parties' commencement of negotiations]

8023-6700 Unusual circumstances in untimely withdrawal

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. 279 NLRB No. 073

[E's failure to make health and welfare contributions, and instituting unilateral changes in wages and other conditions of employment, unlawful, notwithstanding its alter ego's midterm withdrawal from multi-E bargaining unit timely and effective, since alter ego E still bound by agreement executed prior to alter ego's withdrawal and still in effect; further, even if not bound by terms of agreement, its failure to bargain regarding mandatory subjects of bargaining, prior to change, unalwful]

Jo-Vin Dress Company, Inc. and Villa Fashions, Inc. 279 NLRB No. 073

[E's refusal to recognize and bargain with U which represented Ees of which it was held alter ego, unlawful, notwithstanding E of which it was held alter ego had timely and effectively withdrawn from multi-E bargaining unit]

Thermo Heating, Inc. JD-(SF)-16-85

(E's refusal to abide by terms of *Extension of Agreement* negotiated on its behalf by multi-E association which had effect of decreasing wages and extending duration of current contract, on grounds that extreme financial conditions permitted untimely withdrawal from association, violative, where, although E could show it was experiencing financial losses, E did not show that adherence to negotiated agreement would worsen its financial condition or that it was in no position to adhere to agreement)

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)

[fragmentation of multi-E bargaining unit is unusual circumstance that justifies E's unilateral withdrawal from unit during negotiations. Unit fragmentation occurs if, after negotiations have begun, substantial proportion of members of bargaining unit properly withdraw from it]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct 1985)

[signing of interim bargaining agreement by less than all members of multi-E association not such fragmentation of multi-E unit that would constitute unusual circumstances justifying E withdrawal from multi-E bargaining]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)

[signing of bargaining agreement with U by members of E association located in one city separate from agreement signed by E members in another city not fragmentation of multi-E unit that would constitute unusual circumstances justifying withdrawal of E from multi-E unit, since Es which signed such separate agreement represented less that 7 per cent of Ees bound by negotiations, notwithstanding constituted third of Ees bound by negotiations]

8023-6800 No unit employees or one-man unit

American Bank Note Company 281 NLRB No. 099

[E's untimely effort to withdraw from multi-E association and withdrawal of recognition from bargaining representative, violative, notwithstanding E had one-man unit. While E could have withdrawn from bargaining unit in timely fashion, its failure to avail itself of this procedure now precludes legal withdrawal. Further, while one-man unit is grounds for refusal to bargain, if E voluntarily recognizes unit representative, which E did by being member of association, then one-man unit is valid]

8023-7500 Union's acquiescence in untimely withdrawal

8023-7500—Cont.

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)

[U did not consent to E's withdrawal from multi-E bargaining by failing to object to omission of E's name from list of E association members, where U announced it considered purported withdrawals mere bargaining tactics, absent affirmative actions antithetical to claim no withdrawal had occured, notwithstanding U's attempt to get E to sign interim agreement, and U's continuation of strike against E]

8023-9700 Effect of Section 10(b) 6-month limitation

Elevator Sales and Service, Inc. 278 NLRB No. 094

[E's contention that C allegations that E repudiated bargaining agreement were time-barred by virtue of 10(b), rejected, notwithstanding E's assertion that E withdrew from multi-E bargaining association more than 6 months before charges were filed and that U knew of existence of E's alter ego for more than 6 months before it filed charges, since refusal to execute and apply agreement triggered 10(b) period, which did not begin to run until U learned that work was being performed contrary to terms of agreement]

8027 LOSS OF MAJORITY (SEE ALSO 530-4080-5000)

8027-0400 No defense where raised after commission of ULP

The Hearst Corporation, San Antonio Light Division 281 NLRB No. 113

[E may not lawfully withdraw recognition from an incumbent U because of asserted doubt of U's majority status unless such doubt is based on objective considerations sufficient to afford E a reasonable ground for believing that its Ees no longer desire to be represented by the U; the asserted doubt, however, may not be raised in the context of any E activities aimed at causing Ee disaffection with the U]

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011

[E's withdrawal of recognition of U, unlawful, since its assertion of doubt of U's majority not made in context free of ULPs of type aimed at causing disaffection from U where supervisor had unlawfully solicited resignations from U from striking Ees]

Taylor Hospital 279 NLRB No. 006

[E's withdrawal of recognition from U based on ptn signed by majority of unit Ees, violative, where E's withdrawal of recognition was at a time when there remained an unremedied unlawful discharge of a long-time leading U supporter and member of U's bargaining team at the outset of long-delayed negotiations; because of the serious ULP of discharge, E is precluded from effectively relying on its asserted doubt of U's majority status]

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152

(E's withdrawal of recognition based on U's loss of majority status, unlawful, where proximate cause of loss was E's ULPs including threats, loss of benefits, and direct dealings with Ees which caused at least one Ee to sign statement repudiating U and w/o this Ee's signature less than half of unit Ees would have signed ptn)

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor 785 F.2d 195 (C.A. 7, Mar. 1986)

[successor E's contention that it should not be ordered to bargain with U since predecessor's strike replacements should not be presumed to support U, rejected, since one year had not elapsed since U was certified and successor itself was responsible for not reinstating strikers, which itself was a ULP and thus, it cannot rely on that to support U's loss of majority status]

N.L.R.B. v. Auto Fast Freight, Inc. 793 F.2d 1126 (C.A. 9, July 1986)

[decertification ptn no defense to E's unilateral changes where it was filed after unlawful cessation of health and welfare fund payments, institution of new medical plan, reduction in wages, and constructive discharges of Ees for refusing to resign from U]

8027-0900 Employee turnover

Molded Acoustical Products, Inc. 280 NLRB No. 163

[E's refusal to recognize and bargain with U w/i certification year after E relocated its operations, violative notwithstanding reduction in work force from 130 to 118, turnover in Ees, and E's reliance on statements from some Ees that they would not support strike and wanted to resign their U membership]

Mid-State Distributing Co., Inc. 279 NLRB No. 175

[E answer to *technical* 8(a)(5) C raises no litigable issues, where certain matters were litigated in representation proceeding and other assertedly *previously unavailable* evidence of post-election turnover and addition of new Ees to unit through acquisition of another distributorship did not constitute *unusual circumstances* sufficient to relieve E of duty to bargain]

Allis Chalmers Corporation 278 NLRB No. 082

[Ee turnover does not support finding U has lost its majority because it is assumed absent contrary evidence, that new Ees will be U supporters in same ratio as those they replace]

H & H Pretzel Company 277 NLRB No. 143

(withdrawal of recognition after contract expired, violation, since presumption of continued majority status was not rebutted by E's contention that its change to distributor dealerships converted Ees to independent contractors in view of E's retention of right of control and fact that nine out of twelve Ees were new hires which did not establish loss of majority support, as turnover alone cannot do so)

Royal Vending Services, Ltd. 275 NLRB No. 173

(Ee turnover not valid basis of assertion of doubt of U majority status by successor E where it admitted that it did not consider this factor in determining Ees' support for U)

A & L Investment Corporation JD-(SF)-108-85

(successor E's refusal to bargain with U on grounds that 20 months had passed since Ees elected U at predecessor E and Ee turnover since that time required new election, violative, since Ee turnover was irrelevant on question of Ee sentiment where certification year was still in effect at successor E (it being extended because of predecessor E's refusal to bargain) and thus, U enjoyed irrebutable presumption of majority status)

8027-1900 Failure of employees to join strike

Ashe Brick Company 280 NLRB No. 162

[E's doubt of U's majority status not based on objective considerations and did not justify withdrawal of recognition, where doubt based on fact it did not hear from U for over 3 months and that support for on going strike had dwindled, since U did contact mediators, and strikers who cross picket line are not presumed to have withdrawn support from U, and absent other evidence strikers no longer desired U to represent them]

Molded Acoustical Products, Inc. 280 NLRB No. 163

[E's refusal to recognize and bargain with U w/i certification year after E relocated its operations, violative notwithstanding reduction in work force from 130 to 118, turnover in Ees, and E's reliance on statements from some Ees that they would not support strike and wanted to resign their U membership]

8027-2700 Replacement of ULP strikers

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor 785 F.2d 195 (C.A. 7, Mar. 1986)

[successor E's contention that it should not be ordered to bargain with U since predecessor's strike replacements should not be presumed to support U, rejected, since one year had not elapsed since U was certified and successor itself was responsible for not reinstating strikers, which itself was a ULP and thus, it cannot rely on that to support U's loss of majority status]

8027-3600 Not defense where employer is responsible for loss

The Hearst Corporation, San Antonio Light Division 281 NLRB No. 113

[E was precluded from relying on Ee-ptns repudiating U and E's withdrawal of recognition violative, where E engaged in numerous violations of 8(a)(1) prior to and simultaneous with circulation of ptns by soliciting Ee repudiation of U, interrogating Ees about U sympathies, promising Ees better benefits w/o U and urging Ees to persuade coworkers to withdraw support from U; E may not rely on defense that some Ees were unaware of E's unlawful conduct where E's activity was aimed specifically at causing Ee disaffection from U since such conduct bars any reliance on disaffection]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. 280 NLRB No. 110

[successor E's refusal to bargain with U, on grounds U did not enjoy majority support, violative, notwithstanding U did not have actual majority support of Ees hired where, but for E's discriminatory refusal to hire predecessor's Ees, U would have enjoyed majority support; U's majority support in such instance is presumed as a matter of law]

Chaim Bahad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer 276 NLRB No. 117

(successor E's refusal to bargain, violative, notwithstanding lack of same work force, where successor E bribed some of predecessor's Ees to quit and unlawfully refused to rehire them, so that U would lose majority status and successor would have no duty to bargain)

8027-4800 Change in unit

Bay Breeze Industries, Inc., d/b/a Lloyd Flanders 280 NLRB No. 133

[in finding successor, Bd did not consider material factor the fact that successor employed only half the number of supervisors that predecessor employed or that only one of the employed supervisors came from predecessor, or that job classifications substantially reduced, in light of same products produced in same plant with same equipment even though on much reduced scale]

Mid-State Distributing Co., Inc. 279 NLRB No. 175

[E answer to *technical* 8(a)(5) C raises no litigable issues, where certain matters were litigated in representation proceeding and other assertedly *previously unavailable* evidence of post-election turnover and addition of new

8027-4800—Cont.

Ees to unit through acquisition of another distributorship did not constitute *unusual circumstances* sufficient to relieve E of duty to bargain]

8027-5400 Plant relocation

Central Soya Company, Inc. **231 NLRB No. 173**

[E's consolidation/relocation of facilities to a different part of town, withdrawal of recognition from U at new location once Ees at old locations had been transferred to new location and refusal to bargain with U over effects of decision to consolidate/relocate, violative, where there was no substantial change in operations following the consolidation/relocation and once Ees were transferred to new location with other unrepresented Ees, those transferred constituted a majority of Ees who still desired U representation]

8027-7200 Replacement of non-ULP strikers

Whisper Soft Mills, Inc. v. N.L.R.B. **754 F.2d 1381 (C.A. 9, Dec. 1984)**

(E's withdrawal of recogntion at end of certification year on grounds that substantial majority of unit was comprised of Ees who crossed picket line, not violative, since Ee turnover may be considered in determining E's good faith doubt where a demand for reinstatement by striking Ees at time E withdrew recognition would result in loss of employment for majority of striking Ees; and further, presumption that strike replacements support U in same ratio as strikers, rejected)

8027-7500 Lack of activity on part of bargaining representative

Cowles Publishing Company **280 NLRB No. 105**

[E's withdrawal of recognition, refusal to execute contract and furnish information to U on unit Ees, on grounds U had abandoned unit thus giving E good faith doubt, violative, since U had not abandoned unit where, although U had experienced some turnover in its representatives, this had happened only once, U did continue to process grievances and had U steward present at E's plant and fact that U's negotiator told E once during negotiations that contract w/o U security was not worth the paper it was written on, and U failed to secure this demand, was not evidence of abandonment]

IMS Manufacturing Company, Inc. **278 NLRB No. 079**

[successor E's refusal to bargain with U on grounds U had not made prompt demand (10 months later) and in any event E had good faith doubt of U's majority status, violative, since U demanded recognition during recertification year after winning decertification election at predecessor E and thus enjoyed irrebuttable presumption of majority status and E's alleged good faith doubt was based only on subjective beliefs and hearsay from unit Ees and a ptn purportedly signed by Ees denouncing U which E received *after* refusing to bargain with U]

Norsk Hydro Aluminum, Inc. **JD-(ATL)-14-86**

[E's withdrawal of recognition from U, not violative, where E received ptn signed by majority of Ees signifying they no longer wished representation by U, majority of Ees had voiced dissatisfaction with U to E, U president resigned from U in middle of negotiations and there was a lack of observable U activity w/i the plant]

8027-8300 Disinterest of unit members

Round Hill Foods, Inc. **276 NLRB No. 114**

(E's refusal to execute agreed upon contract with U, assertedly because it had good faith doubt of U's majority status as E had learned that Ee attendance at U meetings was very low and only 13 out of 227 unit Ees had attended a U meeting to ratify contract, violative, since such matters are purely intra-U matters and cannot be relied upon in asserting good faith doubt of U's majority status)

Bertolucci's Fender and Body Shop, Inc. **JD-(SF)-143-85**

(Ees' failure to attend ratification meeting no defense to E's prior unilateral changes)

8027-9000 Employee petition repudiating bargaining representative

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital **282 NLRB No. 010**

[filing of decertification ptn, *standing alone*, does not permit E to make unilateral changes]

The Hearst Corporation, San Antonio Light Division **281 NLRB No. 113**

[E was precluded from relying on Ee-ptns repudiating U and E's withdrawal of recognition violative, where E engaged in numerous violations of 8(a)(1) prior to and simultaneous with circulation of ptns by soliciting Ee repudiation of U, interrogating Ees about U sympathies, promising Ees better benefits w/o U and urging Ees to persuade coworkers to withdraw support from U; E may not rely on defense that some Ees were unaware of E's unlawful conduct where E's activity was aimed specifically at causing Ee disaffection from U since such conduct bars any reliance on disaffection]

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. **281 NLRB No. 117**

[E unlawfully withdrew recognition from U where, in prior case, Bd ordered E to give retroactive effect to contract reached by E and U, thereby giving rise to presumption that E's majority status was in effect at time E withdrew recognition; E's defense that U had lost, or E had good faith doubt of, U's majority status, predicated solely on Ee ptn asseretedly showing Ees' disaffectionwith U, rejected, where circumstances surrounding solicitation of ptn signatures and ptn's language indicated ptn was meant to precipitate Ee ratification vote on E's proposed contract]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**

[notwithstanding E's no solicitation rule, rule not applied disparately by allowing decertification ptn to circulate as E also allowed solicitations among Ees for charitable and private business purposes. Further, ptn not tainted either as E did not assist in formulation and circulation of ptn]

Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center **280 NLRB No. 005**

[U decertification ptn tainted and E's withdrawal of recognition and unilateral changes in conditions of employment in reliance thereon, unlawful, where e had made statements informing Ees that in order to keep working during anticipated strike they would have to resign from U, and in view of small majority of Ees who signed decertification ptn]

Boaz Carpet Yarns, Inc. **280 NLRB No. 004**

[E's withdrawal of recognition, not violation where Ees' ptn expressing disaffection with U provided objective evidence pursuant to which E had filed election ptn, which E had filed election ptn, which was blocked by U's filing of ULP charges, but E had verified Ees' dissafection with U by fairly conducted poll by secret ballot]

IMS Manufacturing Company, Inc. **278 NLRB No. 079**

[successor E's refusal to bargain with U on grounds U had not made prompt demand (10 months later) and in any event E had good faith doubt of U's majority status, violative, since U demanded recognition during recertification year after winning decertification election at predecessor E and thus enjoyed irrebuttable presumption of majority status and E's alleged good faith doubt was based only on subjective beliefs and hearsay from unit Ees and a ptn purportedly signed by Ees denouncing U which E received *after* refusing to bargain with U]

BASF-Wyandotte Corporation **276 NLRB No. 068**

(E's withdrawal of recognition during term of contract, on grounds that majority of Ees had signed ptn repudiating U and it had been presented with letter of disclaimer signed by members of local U's Executive Committee, violative, since majority status of U is irrebuttably presumed during term of contract and further, contract was signed and administered by both the local and International U and International had in no way disclaimed its bargaining rights and after learning of actions by its local, International informed E that local was in receivership and it would continue servicing the contract)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**

(E's withdrawal of recognition based on U's loss of majority status, unlawful, where proximate cause of loss was E's ULPs including threats, loss of benefits, and direct dealings with Ees which caused at least one Ee to sign statement repudiating U and w/o this Ee's signature less than half of unit Ees would have signed ptn)

Weiner Optical Company **274 NLRB No. 143**

(E's refusal to provide U with relevant and necessary information, assertedly because of good-faith doubt of U's majority status, violative, where E unlawfully encouraged Ees to sponsor decertification ptn thus tainting ptn and E's good-faith doubt)

Sun Coast Foods, Inc. **273 NLRB No. 203**

(successor E's refusal to bargain with U which had represented Ees of predecessor E, not unlawful, where E did engage in dilatory tactics upon receipt of demand for bargaining, but was subsequently presented with ptn signed by majority of Ees expressing desire not to be represented by U, and was found by Bd not to have committed any ULPs)

Harley-Davidson Transportation Co., Inc. **273 NLRB No. 192**

]*successor* lawfully withdrew from bargaining after 3 sessions and of voluntarily recognizing U that had been certified over year during predecessor's time on basis of good faith doubt evidenced by ptn signed by majority of Ees stating they no longer wanted U to be its representative. Change of ownership not treated as equivalent of certification or voluntary recognition of U following organizational drive since relationship between U and Ees not disturbed so all U has is presumption of majority status that may be rebutted at anytime w/o waiting reasonable period. Signatures on ptn need not be authenticated)

Duct-O-Wire Company **JD-(ATL)-3-86**

[E's withdrawal of recognition, based on decertification ptn signed by majority of unit Ees, not violative where E rebutted presumption of majority status by demonstrating on date of withdrawal, and in context free of ULPs, U 1) in fact had lost its majority status and 2) that withdrawal was predicated on reasonable doubt, based on objective considerations, of U's majority status]

8027-9000—Cont.

Bartolucci's Fender and Body Shop, Inc. JD-(SF)-143-85
(letter ostensibly signed by Ees requesting withdrawal from U, no defense to E's unilateral changes where it occurred after them and there was no convincing evidence, including testimony by Ees, that Ees were disaffected)

8027-9800 Checkoff authorizations

Imperial House Condominium, Inc. 279 NLRB No. 154
[presumption of U's continued majority status not rebutted on ground U lost Ee support as shown by withdrawal of Ee authorizations for dues deductions, since decline in dues authorizations in right-to-work state, as here, lends very little support to doubt of majority status inasmuch as other possible explanations may exist for worker not to pay dues even though he still favors U representation; here, most Ees withdrew authorizations for financial reasons or simply because fellow Ees did so, and they unambiguously expressed intention that U continue to represent them]

8031 EMPLOYER MAY NOT RELY ON EMPLOYEE'S RIGHTS IN REFUSAL TO RECOGNIZE OR BARGAIN

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118
[U's continued majority status presumed after expiration of contract, despite E's claim that U failed to fairly represent unit Ees' interests, where there was no ambiguity in unit description, no evidence of U-E understanding negating intent to enter into collective-bargaining relationship, and no evidence of existence of relationship inimical to Act's fundamental policy or standard; insofar as facts may have shown inept, ineffective or unfair representation, Ees may assert their interests through intra-U, Bd or other legal procedures, but E may not defend refusal to bargain on these grounds]

8031-8000 Lack of employee ratification of contract

Stoblex of South Carolina, Inc. JD-(ATL)-64-86
[E did not unlawfully refuse to execute agreement to which ratification by Ees or U members was condition precedent, where Ees initially rejected contract by written vote, but then assertedly accepted contract by showing of hands after they were told it was necessary to either vote to strike or accept contract, since, notwithstanding contract ratification procedure does not need to be written and is generally *considered internal U matter not subject to question by E, once having followed procedure, U is not free to ignore results and adopt different procedure*]

8032 BAD FAITH ON PART OF UNION

United Sheetmetal of Arizona, Inc. JD-(SF)-97-85
(E conduct during bargaining of referring to many of U's proposals as illegal, i.e., non-mandatory, refusing to discuss U's proposals when indeed some of them were mandatory subjects and offering overly regressive proposals than previously offered to U in areas such as wages and benefits when there had been no change in E's business to justify the regressive proposals, not violative, where U insisted during negotiations of inclusion of non-mandatory subjects in any final contract, i.e., interest arbitration and supervisory work, thus warranting conclusion that U also bargained in bad faith)

8033 UNION POSITION INCONSISTENT WITH ITS OBLIGATION TO REPRESENT EMPLOYEES

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121
[bargaining agreement between U and 1 company, deemed part of single integrated enterprise with other companies, did not extend to Ees of other companies in enterprise which were also held to be alter ego of individual in whom ownership of all companies ultimately vested, and E not obligated to make payments into benefit and pension funds on those Ees behalf, since U acquiesced in Ees' exclusion where U aware of woner's propensity for securing corporate insulation against indebtedness by operating through as many distinct and separate business entities as his needs required]

Ida Lace, Inc. 278 NLRB No. 035
[GC's mtn for summary judgment in refusal to bargain case granted and E's contention that summary judgment was inappropriate since U's bargaining demand was *invalid* in that it requested bargaining for unit different than that certified by Bd, rejected; although U's demand neglected to include one group of Ees certified, request clearly referred to certified unit in *R* case and E admitted U made request to bargain]

Samaritan Health Center, Deaconess Hospital Unit, A Division of The Sisters of Mercy Health Corporation, Inc. 277 NLRB No. 159
(E's refusal to recognize and bargain with local U during term of contract, not violative, since, before contract had expired, local U unequivocally disclaimed any interest in representing unit Ees where it informed E that, consistent with Ee wishes, International U had approved administrative transfer of bargaining unit to another local U and that local U would be servicing unit Ees and U did not thereafter engage in any action inconsistent with disclaimer for 2 months, thus E was not obligated to recognize or reinstitute its bargaining relationship)

8034 ABANDONMENT OF EMPLOYEES BY UNION

Imperial House Condominium, Inc. 279 NLRB No. 154
[E failed to rebut presumption of U's continued majority status by claiming U abandonment of Ees, since 1 month's absence of business agent because of illness cannot be equated with abandonment; E's claim that U representative was not seen for period of time at E's large establishment having various Ee areas did not mean that representative did not visit Ees; and during period in question E representatives attempted to arrange bargaining session w/o success, E complied with all terms and conditions of expired contract, and E subsequently proposed bargaining with U]

Samaritan Health Center, Deaconess Hospital Unit, A Division of The Sisters of Mercy Health Corporation, Inc. 277 NLRB No. 159
(E's refusal to recognize and bargain with local U during term of contract, not violative, since, before contract had expired, local U unequivocally disclaimed any interest in representing unit Ees where it informed E that, consistent with Ee wishes, International U had approved administrative transfer of bargaining unit to another local U and that local U would be servicing unit Ees and U did not thereafter engage in any action inconsistent with disclaimer for 2 months, thus E was not obligated to recognize or reinstitute its bargaining relationship)

BASF-Wyandotte Corporation 276 NLRB No. 068
(E's withdrawal of recognition during term of contract, on grounds that majority of Ees had signed ptn repudiating U and it had been presented with letter of disclaimer signed by members of local U's Executive Committee, violative, since majority status of U is irrebuttably presumed during term of contract and further, contract was signed and administered by both the local and International U and International had in no way disclaimed its bargaining rights and after learning of actions by its local, International informed E that local was in receivership and it would continue servicing the contract)

Melcolunity, Inc., and Melvin Collings and Ed Collins, a partnership t/a Collins & Collins Associates JD-(NY)-111-83
(U did not abandon Ees notwithstanding passage of 3 years from time last negotiating session for new contract until U and E met again in light of U's prompt action in making E sign contract for job site upon learning of E's operation and legal presumption of continued majority status arising out of certification)

8034-6700 Failure to process grievances

Cowles Publishing Company 280 NLRB No. 105
[E's withdrawal of recognition, refusal to execute contract and furnish information to U on unit Ees, on grounds U had abandoned unit thus giving E good faith doubt, violative, since U had not abandoned unit where, although U had experienced some turnover in its representatives, this had happened only once, U did continue to process grievances and had U steward present at E's plant and fact that U's negotiator told E once during negotiations that contract w/o U security was not worth the paper it was written on, and U failed to secure this demand, was not evidence of abandonment]

8036 CONDUCT OF UNION REPRESENTATIVE DURING BARGAINING

8036-0100 Generally

N.L.R.B. v. Auto Fast Freight, Inc. 793 F.2d 1126 (C.A. 9, July 1986)
[E's unilateral actions not justified by fact parties did not meet until nine days after contract expired or by E's alleged confusion over which branch of U to bargain with (local U or national committee), since, notwithstanding Us were not well coordinated and possibly were uncertain of their administrative responsibilities, inability to make earlier meeting arrangements was due to both parties equally, and E's confusion over which U branch to bargain with was insufficient to excuse failure to bargain with *any* branch prior to unilateral actions]

8036-1000 Conduct during negotiations indicating futility of further negotiations

Cowles Publishing Company 280 NLRB No. 105
[E's withdrawal of recognition, refusal to execute contract and furnish information to U on unit Ees, on grounds U had abandoned unit thus giving E good faith doubt, violative, since U had not abandoned unit where, although U had experienced some turnover in its representatives, this had happened only once, U did continue to process grievances and had U steward present at E's plant and fact that U's negotiator told E once during negotiations that contract w/o U security was not worth the paper it was written on, and U failed to secure this demand, was not evidence of abandonment]

8036-1000—Cont.

Nassau Insurance Company 280 NLRB No. 103
[E's refusal to bargain, not unlawful, where U which was bound by settlement agreement to bargain in good faith, came to negotiating session stating that its only purpose in attending meeting was to receive E's final offer, and when E attempted to negotiate merely reiterated its demand]

Hiysote Fuel Co., Inc., Debtor-In-Possession, et al. 280 NLRB No. 089
[direct dealing with Ees concerning terms and conditions of employment, not unlawful, where E, as debtor-in-possession, rightfully sought unilateral substitution of modified terms and conditions of employment and had proposed to U same terms subsequently offered to Ees; U's refusal to negotiate until its erroneous belief that E was bound by contract, abrogated by bankruptcy ct, was disproved or substantiated was in essence waiver of U's right to object to imposition of new terms and conditions of employment; and E was under severe time constraints to resume operations]

8036-1500 Misrepresentations

NDK Corporation 278 NLRB No. 151
[E's defense to its repudiation of contract and other related unlawful conduct on ground U official made fraudulent misrepresentation to E by promising that U would not demand contract compliance, rejected; E's defense was not established since U official did not meet requirement for fraudulent misrepresentation that he knew statement was false and was intended to deceive, where U's contract compliance efforts did not begin until year later; and party *in pari delicto* has no justifiable right to rely on promise having illegal purpose, especially when made with intent to undermine rights of third parties]

NDK Corporation 278 NLRB No. 151
[E's defense to its repudiation of contract and related conduct, herein found unlawful under federal labor policy, had no greater merit even if judged against more stringent common law principles, where contract was valid on its face, but E's admitted collateral understanding with U that contract would not be enforced was admission that E shared *in pari delicto* relationship with U officials, and under contract law no *in pari delicto* party may obtain legal redress, and law will not aid wrongdoer even if equally guilty offender escapes punishment]

8036-1900 Hostility towards employer

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[no Bd authority for proposition that U has duty not to disparage E whose Ees it represents, and that breach of such duty may justify U forfeiting its right to represent Ees; *where health care facility refuses to honor Bd certification of U, thereby precipitating peaceful strike in protest; doctrine of Laura Modes, 144 NLRB 1592, should not be extended to disqualify U as Ee representative on grounds that U and its pickets in course of strike disparaged quality of care in facility*]

8036-2000 Attempts to harass employer

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat 281 NLRB No. 030
[contention that U was exercising countering tactic of harassing E by filing *innumerable* grievances, rejected on ground of insufficient materiality to key issue of who may be U representative at grievance meeting, since E's position would be subject to same test regardless of number of grievances filed where statutory right was involved]

8036-5500 Attacking preconditions to bargaining

Nassau Insurance Company 280 NLRB No. 103
[U's insistence on having stenographer present at negotiating session justified E's subsequent refusal to bargain, since presence of stenographer non-mandatory subject of bargaining; U's contention stenographer was present only to record E's final offer, and was justified by E's pre-settlement withdrawal of proposals, rejected]

8036-6000 Lack of diligence in pursuing bargaining objectives

Ednor Home Care, Inc. 276 NLRB No. 042
(E did not unlawfully withdraw recognition since E never recognized U, where upon being presented with authorization cards by U's business representative, E's owner never acknowledged, nor did U representative claim U represented majority of Ees. U's contention that there was initial discussion regarding terms of proposed contract delivered with economic terms left blank, and absent evidence of any statement by E connoting recognition, or explicit testimony of U representative concerning plans for negotiating meetings, nor was U representative's behavior consistent with belief U was recognized)

Dukes Industries JD-167-85
(no violation where E decided to shut down operations and communicated decision to Ees prior to having any knowledge of U activity. Furthermore, U waived its perogative to bargain with E where, other than delivering its demand letter, it has made absolutely no attempt to meet and negotiate over effects of closing)

Melcolunity, Inc., and Melvin Collings and Ed Collins, a partnership t/a Collins & Collins Associates JD-(NY)-111-83
(U did not abandon Ees notwithstanding passage of 3 years from time last negotiating session for new contract until U and E met again in light of U's prompt action in making E sign contract for job site upon learning of E's operation and legal presumption of continued majority status arising out of certification)

8036-6500 Failure to make timely response to proposal

Hiysote Fuel Co., Inc., Debtor-In-Possession, et al. 280 NLRB No. 089
[alleged refusal by E to bargain with U, not unlawful, where E who, as debtor-in-possession having continuing obligation to bargain over terms of new contract, sought to do so both before and after bankruptcy ct approved rejection of old contract; U made no request to bargain during that period; and it was not E's fault U failed to follow up on his bargaining request]

The Hampton Roads Newspaper Guild, Local 219, The Newspaper Guild, AFL-CIO, CLC JD-288-85
[insisting to impasse on sole control of wages, not violation where U failed to make counterproposal it had indicated it intended to make]

Embossing Printers, Inc. JD-19-85
(E's duty to bargain over health insurance changes (non-contributory to contributory), suspended, where U explicitly rejected opportunity to seek bargaining over changes after receiving adequate notice that changes contemplated (6 months) and also waited 11 months to either request bargaining or protect changes)

8036-9500 Acceptance of employer's proposal

Public Service Electric and Gas Company 280 NLRB No. 048
[violation where E sought to modify retroactivity clause of old contract by refusing to agree to pay wage increase in new contract effective on expiration date of old contract unless Ees ratified new contract by expiration date and, as part of its final offer, conditioned agreement to new contract on U's consent to abrogation of retroactivity clause; U's urging Ees to ratify new contract not voluntary consent to modification where U advised Ees at same time that it had filed charge with Bd]

8040 CONDUCT OF EMPLOYER DURING BARGAINING

Hyatt Regency New Orleans 281 NLRB No. 042
[repeated expressions of displeasure by E during negotiations over composition of bargaining unit held not to indicate bad faith bargaining, where E never discontinued negotiations nor demanded change in composition of unit, and E's complaints about unit did not impede negotiations in any way]

Southern California Edison Company 274 NLRB No. 167
(E's refusal to conduct grievance meetings with Ees or U officials who wore *Stick Your Retro* button concerning retroactive pay raise during contract negotiations between E and U, violative, since wearing of button protected, and no matter what buttons were being worn, E was not privileged to refuse to meet and deal with U on matters being pursued through grievance arbitration process, at least so long as they did not cause unreasonable disruption (of process))

8040-0100 Generally

ICI Americas, Inc. JD-328-85
(E's advising U during negotiations that E controlled matter of split in certified unit, when in actuality split was army decision who had contracted work out to E, violative, since E's advice was conscious course of action intending to deceive U; such conduct (of E) was deceptive bargaining with tendency to inhibit process of collective bargaining)

8042 EXISTENCE OF BINDING AGREEMENT

Inner City Broadcasting Corporation 281 NLRB No. 162
[E held not to have unlawfully refused to execute contract with U, since there was no acceptance of E's final offer and therefore no agreement, where E's offer was conditioned upon U's acceptance by specified time, which U failed to meet; and even if E's offer was unconditional, contract drafts previously tendered by U differed from E's offer as to duration and effective dates, and therefore did not express agreement of parties]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables 279 NLRB No. 097
[E's negotiators did not agree with U's position on E's contract proposals by assertedly shaking their heads since, while shake of head could, under some circumstances, bind headshaker to terms of contract, headshaking must, in the very least, be in response to specific proposal or counter-proposal, which was not the case herein]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables 279 NLRB No. 097
[while fact that agreement is product of one party's mistake does not entitle that party to refuse to sign contract embodying such agreement where mistake is part of written agreement or even part of fully discussed oral understanding, such requirement is not to be imposed where, as here, E's

8042—Cont.

alleged agreement would have had to have been product of momentary inattention or confusion, and U made no effort to confirm that parties really had reached agreement]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables — 279 NLRB No. 097

[GC's contention that U's testimony about E's failure to respond and E's agreement with U's arguments on withdrawal of E's management rights proposal showed means by which E would indicate agreement on other contract items by means other than using words *I agree*, rejected, since E's withdrawal of its proposal and U's testimony concerning withdrawal signified nothing about E's actions in respect to other contract proposals]

Spring Valley Farms, Inc. — JD-(ATL)-54-86

[*When agent is appointed to negotiate collective bargaining agreement, that agent is deemed to have apparent authority to bind his principal, absent clear notice to contrary. Where there is such notice, condition on agreement is imposed*]

Walter N. Yoder & Sons, Inc. — 754 F.2d 531 (C.A. 4, Feb. 1985)

(E's argument that omission from record of contract in effect at time of U's request for information was fatal to Bd's finding that E committed ULP, rejected, where parties agreed that there was contract in effect at time of request for information, inquiry concerned only whether there was agreement to enforce, not whether some particular provision had been violated, and record revealed that E was signatory to agreement at all times relevant to action)

8045 DEFENSES BASED UPON CONTRACT CONSIDERATIONS

8045-0100 Generally

NDK Corporation — 278 NLRB No. 151

[upon execution of written contract, Act precludes E's reliance upon prior or contemporaneous oral agreement upon which its defense to alleged 8(a)(5) violation is based, and defenses based upon fraudulent misrepresentation concerning contract, whether innocent or fraudulent, cannot be relied upon to alter obligation of written bargaining agreement]

8045-1200 Actions permissible in absence of contract

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation — 278 NLRB No. 118

[unilateral cessation of pension and welfare fund contributions violation, notwithstanding contract expiration and E's reliance on provision in Trust Fund agreement stating that E should continue to pay fund contributions as long as E was obligated pursuant to collective bargaining agreement, where provision was not clear and unmistakable waiver of Ees' right to receive contributions and U's right to bargain over E's ceasing to make them on expiration of contract, since section did not deal with termination of E's obligation to contribute, and under Bd law E's obligation survived contract]

Westinghouse Electric Corporation — 278 NLRB No. 061

[recall of laid off Ees to lower classified positions w/o bargaining with representative, not violative unless contract provision provides that Ee has right to be recalled to grade he vacated as recall to work cannot be considered reclassification over which bargaining must ensure]

Lithochrome Corporation — 276 NLRB No. 132

(E's refusal to process grievance, not unlawful, where language of arbitration clause in expired contract indicated parties did not intend arbitration clause to survive contract, and no agreement had been reached on new contract)

Norsk Hydro Aluminum, Inc. — JD-(ATL)-14-86

[E's refusal to execute contract, not violative, since there was no meeting of the minds on major issue of wages where although e had made offer on wages, offer was withdrawn before acceptance by U]

8045-2500 Actions permissible during hiatus between contracts

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital — 282 NLRB No. 010

[implementing *budget days* whereby Ees worked reduced work weeks was priviledged under expired contracts' management rights clause]

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. — 785 F.2d 570 (C.A. 7, Mar. 1986)

[Es not required to pay cost-of-living adjustment provided for in contract where date increase was to take effect occurred after expiration of contracts and adjustment in question *never* became effective]

8045-2900 Invalid contract

D & D Development Co., Inc. d/b/a Anaheim Town and Country Inn — 282 NLRB No. 034

[E's refusal to honor contract, not unlawful, since U did not represent uncoerced majority at time recognition was granted and contract was executed, where U authorization cards were tainted by company manager's conduct in going well beyond any ministerial help to U or any benign cooperation in U effort by participating in organizational drive from start to finish and engaging in such conduct as calling in U, promising benefits if Ees joined, U coercively interrogating whether Ees signed cards, using supervisors to check cards, and precipitously executing contract]

8045-3300 Incomplete contract

Interprint Co. — 273 NLRB No. 223

(E's refusal to execute allegedly agreed-upon contract on grounds that there was no *meeting of the minds*, not violative, where draft of contract submitted by U to E did not contain commencement or termination dates and no dates were agreed upon by parties during negotiations, several clauses in draft were omitted or altered by U to make contract more acceptable to U, and ALJ, during the hearing, added or omitted terms to contract which in fact the parties had never agreed to, and in effect wrote the contract for the parties, contrary to Bd's remedial powers as interpreted in *H.K. Porter*)

Spring Valley Farms, Inc. — JD-(ATL)-54-86

[E obligated to sign agreement reached notwithstanding allegations of rejection by U membership, no meeting of minds over checkoff provision, length of contract and its effective date, where, in fact, ratification by membership not required, agreement, in fact, reached over checkoff and term of contract, and though effective date of contract left blank and parties had not discussed a date for signing, parties were in agreement contract would be effective on signing and so ALJ set effective date 1 week after U's notification to E of its acceptance]

Flechtner Packing Company — JD-135-85

(E's refusal to execute and abide by terms of bargaining agreement, on grounds that it never reached agreement with U on eye care plan, violative, since full agreement was reached where E's written proposal on eye care was clear and unambiguous, accepted and ratified by U; further, E's contention that after it made proposal on eye care, it was informed by insurance carrier that there was less costly plan available, and thus there was mutual mistake, rejected, since the mistake was solely on E's part)

8045-3500 Effect of 'after acquired' clause

Save Mart of Modesto, Inc. — JD-(SF)-25-85

(E did not unlawfully refuse to recognize U at new store notwithstanding after-acquired stores clause in labor contract and that all unit Ees in meat department were U members because evidence showed that unit Ees did not wish U to represent them, E told them before they transferred that department would be non-U to start out with and still they volunteered to go and these Ees resigned from U)

8045-3600 Contract provision prohibits action

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation — 278 NLRB No. 118

[unilateral cessation of pension and welfare fund contributions violation, notwithstanding contract expiration and E's reliance on provision in Trust Fund agreement stating that E should continue to pay fund contributions as long as E was obligated pursuant to collective bargaining agreement, where provision was not clear and unmistakable waiver of Ees' right to receive contributions and U's right to bargain over E's ceasing to make them on expiration of contract, since section did not deal with termination of E's obligation to contribute, and under Bd law E's obligation survived contract]

8045-3700 Contract provisions expressly authorize actions

Schaeff Namco, Inc. — 280 NLRB No. 150

[E's unilateral implementation of reduction in wages after wage reopener period passed, lawful, even absent impasse, since E had contract specifically left open wages for third year of contract and provided for specified period to negotiate wage rates and provided that E *shall implement* its wage offer if parties failed to reach agreement w/i specified period; nor was unilateral implementation violative Section 8(d) since 8(d) did not apply as no modification of contract rather action in accord with contract]

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer — 274 NLRB No. 198

(Ee's discharge grievance held not aribtrable because it was not signed by Ee as required by contract)

8045-3725 Management rights clause

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital — 282 NLRB No. 010

[E's altering job qualifications for unit positions in education instructor job classification, (E required these Ees to possess a Master's Degree rather than Bachelor of Science in Nursing which had previously been required) not violative, since E was priviledged to make such change unilaterally, by terms of Management Rights clause in expired agreement]

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital — 282 NLRB No. 010

[E's unilateral implementation of new overtime guidelines for its nurses not violative, since action was effort to improve efficiency which did not conflict with any established practices or published rules and standards w/i management's prerogative, policy was expresly privileged by terms of man-

8045-3725—Cont.

agement, rights clause and E's direction that nurses advise their supervisors of need for overtime imposed no substantial burden on them]

Goren Printing Co., Inc. 280 NLRB No. 064
[E's unilaterally requiring all finished work to be signed by supervisor, not violative, since such decision was management's right to control the quality of its work product under E's management rights clause]

BASF Wyandotte Corporation 278 NLRB No. 028
[unilateral implementation of respirator seal rule that had effect of prohibiting wearing of facial hair by Ees whose jobs necessitated their wearing respiratory protective equipment, not violation where U waived right to bargain over rule by agreeing to management rights clause allowing E to make and enforce rules deemed necessary or proper for conduct of Ees and operation of plant]

Suffolk Child Development Center, Inc. 277 NLRB No. 158
(no waiver of right to bargain over change in health insurance plan by U's agreeing to management rights clause, which did not mention plan)

Kansas National Education Association 275 NLRB No. 092
(contract's management-rights provision standing alone held at best vague and as such insufficient to meet standard of *clear and unmistakable waiver* of U's right to be consulted about Ee transfer arrangements and did not privilege E to negotiate directly with Ee or to enter into transfer agreement with Ee; transfer rights were not necessarily contemplated by provision's broad reference to *ordinary and customary functions* of management nor was implementation of transfer agreement encompassed by provision's granting E right to adopt unspecified policies in furtherance of management functions)

Georgia Pacific Corporation 275 NLRB No. 017
(E's refusal to reduce to writing agreement regarding change from 3 shifts a day to *4 shift program*, effect of which was that each Ee worked 7 days and then had 2 days off, where E and U had negotiated change, plan had been agreed to by majority of members of U, and implemented, and when parties agree on a mandatory subject of bargaining Sec. 8(d) requires execution of written agreement; E's contention it had right under management rights clause to make change unilaterally, rejected, since no clear and unmistakable waiver of right to bargain regarding change in shifts)

Continental Telephone Company of California 274 NLRB No. 210
(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

United Technologies Corporation 274 NLRB No. 087
(E's unilaterally splitting department into 3 separate departments, not violative where bargaining agreement reserved to E exclusive right to determine manner, means and processes of manufacturing which encompassed right to establish or rearrange its own organizational structure and to change and rearrange its manufacturing departments as it saw fit; when E split department, it was w/i its contractual rights to do so and U waived any right it might otherwise have had to bargain over that subject matter; moreover, there was bargaining over effects of decision on Ees)

Kohler Company 273 NLRB No. 195
(no violation by E's unilaterally contracting out janitorial work in view of broad management rights clause)

Kobell v. Thorsen Tool Co.
F.Supp.————(DC M.D. PA, Dec. 1982)
[management rights clause that stated *company retains sole right to manage its business including but not limited to right to decide on method and place of manufacturing* did not constitute waiver by U of right to bargain regarding transfer of work, and preclude finding of reasonable cause to believe Act violated and issuance of Section 10(j) inj when E unilaterally decided to transfer work since clause might not be interpreted as waiver by Bd, where clause does not specifically reserve to E right to move part of operation to another facility in order to avoid high labor costs imposed by agreement]

8045-3775 Favored-nation clause

Toyota of San Francisco 280 NLRB No. 093
[auto dealer's unilateral implementation of its final offer, not unlawful since E was privileged to implement changes pursuant to *most favored nation* provision of multi-dealer bargaining agreement in effect, which provided that any more favorable terms agreed to by U with any dealer would automatically become part of agreement; however, elimination of Sunday pay which was not consistent with terms of agreement with other dealer which triggered *most favored nation* provision, unlawful, notwithstanding if all changes, considered as a whole, were equivalent to those granted by other dealer]

8045-5000 Contract provisions impliedly authorizes action

Armour and Company 280 NLRB No. 096
[contention that since allocation of severance and vacation payments to Ees being terminated upon closing of plant to specific periods was bargained for between parties, and was matter which bargaining agreement controlled, neither party had further obligation to bargain during term of bargaining agreement, rejected, since U is not seeking to discuss any modification of terms or conditions of contract and contract silent on issue, notwithstanding parties reached agreement on other matters concerning closing of plant, where no zipper clause, no clear and unmistakable waiver of matter, and absent evidence issue was subject of prior bargaining]

BASF Wyandotte Corporation 278 NLRB No. 028
[unilaterally restricting U representatives to cafeteria, rather than allowing them to walk around plant, and prohibiting them from talking to supervisors during U time, not violation, where alleged past practice of walking about plant was not proved, nor was it controlling where there was *complete agreement* clause that abolished past practices, and restrictions did not have substantial impact on U representatives' ability to investigate grievances or represent Ees]

Suburban Transit Corp. and Suburban Trails, Inc. 276 NLRB No. 005
(no violation when E relocated unit work (single E) and thereby brought unit Ees under different bargaining agreement which was less favorable to these Ees, since contract covering original workstation did not contain any provisions preventing E from making such relocation w/o first obtaining consent of U and E bargained in good faith over decision to relocate)

Kobell v. Thorsen Tool Co.
F.Supp.————(DC M.D. PA, Dec. 1982)
[bargaining agreement provision that laid off Ees would have right of preferential hiring if E moved any or all work at specified plant did not constitute clear and unequivocal waiver of U's right to object to E's unilateral relocation of unit work]

8045-5600 Contract terms affected by government policy or regulations

ICI Americas, Inc. JD-328-85
(E's advising U during negotiations that E controlled matter of split in certified unit, when in actuality split was army decision who had contracted work out to E, violative, since E's advice was conscious course of action intending to deceive U; such conduct (of E) was deceptive bargaining with tendency to inhibit process of collective bargaining)

N.L.R.B. v. BASF Wyandotte Corp. 798 F.2d 849 (C.A. 5, Sept. 1986)
[E's unilateral discontinuance of allowing U steward 4 hours per day of paid company time, office and telephone in order to conduct U business, unlawful, since grant of company time and facilities to U mandatory subject of bargaining and bargaining agreement provided for *reasonable amount of paid time* for U business and practice over last 5 years had been to grant above priviledges to steward; E's contentions that privileges were personal to predecessor steward, that contract provision illegal under Sec. 302 of LMRA and Sec. 8(a)(2) of NLRA, and that at any rate, there was only contract violation, rejected]

8045-5700 Contract terms affected by union's constitution or bylaws

Kolman Division of Athey Products Corporation 282 NLRB No. 029
[violation where E refused to accept grievances for processing because contract called for president of U to bring grievance to attention of U and vice president acting as president pursuant to U's bylaws which called for VP to assume the presidency when president became incapacitated]

8045-5800 Contract as bar to election

N.L.R.B. v. Mississippi Power & Light Company 769 F.2d 276 (C.A. 5, July 1985)
(E's refusal to bargain with U as representative of storeroom and warehouse Ees, violation, notwithstanding E's contention that U was invalidly certified because election was barred by existing contract between E and U as representative of service and maintenance Ees; Bd's contract bar rule applies only to Ees covered by contract and not to unrepresented Ees; nor was unit clarification procedure appropriate for Ees historically and intentionally excluded from bargaining unit)

8045-6000 Illegal execution of contract

D & D Development Co., Inc. d/b/a Anaheim Town and Country Inn 282 NLRB No. 034
[E's refusal to honor contract, not unlawful, since U did not represent uncoerced majority at time recognition was granted and contract was executed, where U authorization cards were tainted by company manager's conduct in going well beyond any ministerial help to U or any benign cooperation in U effort by participating in organizational drive from start to finish and engaging in such conduct as calling in U, promising benefits if Ees joined, U coercively interrogating whether Ees signed cards, using supervisors to check cards, and precipitously executing contract]

Victor Wooten, d/b/a Diablo Paving JD-(SF)-90-86
[E executed binding 8(f) agreement with U and was not misled by U agents into thinking agreement was limited to only single construction project,

8045-6000—Cont.

where agreement was clear on its face and contained nothing to indicate it was limited to single project; it explicitly incorporated master agreement by reference, including its duration; U agents did not seek to convey impression to E, either by conduct or statements, that document was anything other than standard shortform U agreement; and E, who had agreement in his possession discussed matter with his company manager]

8045-6200 Breach of contract

8045-6201 Generally

8045-6201-8000 Jurisdiction of Board to remedy breach

Little Mining, Inc. **280 NLRB No. 073**
[refusing to pay minimum daily wages in contract and to pay premiums for individual E's benefit plan, unlawful, notwithstanding dissenting Bd member's argument that ULP charge was nothing more than attempt to have Bd enforce contract and collect delinquent wages and benefits]

Westinghouse Electric Corporation **278 NLRB No. 061**
[obligation to bargain over wages, hours, and terms and conditions of employment, as well as any mid-term changes therein, covers multitude of specific items where terms, conditions of employment, and mid-term changes have effect of cutting wages, decreasing (Ee) take-home pay or changes in functions and content of (an Ee's) job an asserted waiver of bargaining obligation involves examination of meaning of contract provisions and does not oust Bd of jurisdiction to make that examination]

8045-6240 Grievance and arbitration provisions

Kolman Division of Athey Products Corporation **282 NLRB No. 029**
[violation where E refused to have arbitrator selected from panel of 5 names furnished by FMCS pursuant to contract because some of the potential arbitrators had belonged to a U]

Kolman Division of Athey Products Corporation **282 NLRB No. 029**
[violation where E refused to accept grievances for processing because contract called for president of U to bring grievance to attention of U and vice president acting as president pursuant to U's bylaws which called for VP to assume the presidency when president became incapacitated]

Boyd-Mulford Construction Co. **277 NLRB No. 180**
[U's failure to file grievance over whether 2 related companies were single E with E with whom U had contract, no defense where E refused to supply requested relevant information about possible double-breasted operation, and E had indicated unequivocally what result of grievance would be]

Lithochrome Corporation **276 NLRB No. 132**
(E's refusal to process grievance, not unlawful, where language of arbitration clause in expired contract indicated parties did not intend arbitration clause to survive contract, and no agreement had been reached on new contract)

Southwestern Electric Cooperative, Inc. **274 NLRB No. 135**
(E's refusal to arbitrate grievances unless U put them in writing, violative, since contract permitted U to file grievances orally. U and E representatives credibly testified that they had never processed written grievances)

8045-6700 Unlawful provision

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**
[E's defense to alleged unlawful refusal to bargain with U on ground U security clause was unlawful because new hires were denied statutory right to have 30 days in which to decide to join U, rejected, where E's argument was totally specious in that it omitted reference in U security clause to words *whichever is later* with respect to beginning of employment or effective date of contract, which established validity of clause]

BASF Wyandotte Corporation **274 NLRB No. 147**
(E's grant of privileges to U chairman which included 4 hours of paid time each workday for conducting U business including processing of grievances, use of office, telephone and copying machine, not violative of Section 302 of LMRA, thus not illegal subject of bargaining justifying unilateral withdrawal of privileges since w/i exception set forth in Section 302 (c)(1) in that privileges were granted by reason of chairman's service as Ee of E, nor did such grant of privileges amount to bribery of Ees' representatives at which Section 302 was aimed)

BASF Wyandotte Corporation **274 NLRB No. 147**
(E's contention that its granting of privileges to U i.e. permitting U chairman to spend 4 hours of paid time each workday conducting U business including grievance processing, use of office, telephone, and copying machine, violated Section 8(a)(2) as unlawful support of U, and thus justified unilateral withdrawal of privileges as illegal rather than mandatory subject of bargaining, rejected, since grant of time and property not violative of Section 8(a)(2) where U had been recognized and dealt with at arms length, but merely friendly cooperation of amiable labor management relationship, absent deeper E involvement or intrusion into U affairs)

8045-9100 Execution of contract clause illegal under state or federal law

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**
[E need not bargain over or engage in illegal activity, even if necessary to comply with terms of bargaining agreement]

8045-9500 Termination of contract

Victor Block, Inc. and Syracuse Sand and Gravel, Inc. **276 NLRB No. 070**
(E's contention that renegotiation of new contract by E association and U had terminated prior contract, which E had signed as non-member of association, rejected, since that contract had automatic renewal clause which came into effect before renegotiation, and U's request that E sign the new contract was too late to operate as notice of proposed contractual change and forestall automatic renewal of prior contract binding E)

8049 DEFENSES BASED UPON PAST PRACTICES

Suffolk Child Development Center, Inc. **277 NLRB No. 158**
(no waiver of right to bargain over change in health insurance plan by U's failure to object to prior changes)

United States Postal Service **275 NLRB No. 057**
(reducing break periods from 15 to 10 minutes on one of its shifts to conform with its established policy–contract silent on issue–w/o bargaining with U, not violative, as all Ees aware of 10 minute break policy and notwithstanding that on this shift, as opposed to other shifts, extended break standard for 15 years except for 2 short periods as Bd considered this partial breach of otherwise uniformily applied work rule inadequate basis from denying E right to uniformily applying work rule to all its Ees)

8050 DEFENSE BASED UPON STATUTORY PROSCRIPTION OR ABRIDGEMENT OF CONSTITUTIONAL RIGHTS

The Big East Conference **282 NLRB No. 050**
[E's refusal to bargain with collegiate basketball officials association (CBOA) which represented E's men's basketball officials and eastern college basketball association (ECBA) which supervises officials represented by CBOA, not violative where CBOA was not labor organization because, in its dealings with ECBA, it did not represent Ees w/i meaning of Act]

Imperial House Condominium, Inc. **279 NLRB No. 154**
[ALJ rejected E's defense to failure to contribute to Ees' health benefit funds on ground payments would have been illegal under 302(a) because contract had expired and statutory *written agreement* requirement for making payments lawful was not met; to accept such argument would ignore policy considerations underlying enactment of 302 and 8(a)(5) and would deter rather than enhance bargaining process]

BASF Wyandotte Corporation **274 NLRB No. 147**
(E's grant of privileges to U chairman which included 4 hours of paid time each workday for conducting U business including processing of grievances, use of office, telephone and copying machine, not violative of Section 302 of LMRA, thus not illegal subject of bargaining justifying unilateral withdrawal of privileges since w/i exception set forth in Section 302 (c)(1) in that privileges were granted by reason of chairman's service as Ee of E, nor did such grant of privileges amount to bribery of Ees' representatives at which Section 302 was aimed)

BASF Wyandotte Corporation **274 NLRB No. 147**
(E's contention that its granting of privileges to U i.e. permitting U chairman to spend 4 hours of paid time each workday conducting U business including grievance processing, use of office, telephone, and copying machine, violated Section 8(a)(2) as unlawful support of U, and thus justified unilateral withdrawal of privileges as illegal rather than mandatory subject of bargaining, rejected, since grant of time and property not violative of Section 8(a)(2) where U had been recognized and dealt with at arms length, but merely friendly cooperation of amiable labor management relationship, absent deeper E involvement or intrusion into U affairs)

Mead Packaging **273 NLRB No. 181**
(E's unilateral discontinuance of insurance and pension benefits to U officers on leaves of absence for purpose of holding U office, not violative; granting such benefits to U officers alone under provision of contract would violate 8(a)(3) and 8(b)(2), since granting such benefits to U officers did not further effective administration of E's bargaining agreement where U officers were on U's payroll and acted as representatives of Ees at other Es premises, engaging in engotiations and arbitrations, and generally monitored compliance with U's bargaining agreements and further, granting of such benefits was not available to other Ees on an equal basis)

8052 DEFENSE OF ECONOMIC HARDSHIP

International Distribution Centers, Inc. **281 NLRB No. 111**
[E's failure to remit pursuant to checkoff deducted dues and contributions to health and welfare fund, unlawful, inasmuch as E's alleged poor financial condition rejected as defense]

8052—Cont.

ABS Industries, Inc. 275 NLRB No. 145
[unilateral decision to close plant and relocate remaining work, not violation, as there was no duty to bargain where decision was nonmandatory bargaining subject in view of fact it turned, not on reduction of labor costs but on restructuring of company due to heavy losses and requirements of lenders]

American Bank Note Company 281 NLRB No. 099
[decline in business, even to point where volume of business is 1/4 of its previous level does not constitute unusual circumstances which would relieve E of consequences of its failure to give timely notice (of withdrawal from multiE bargaining)]

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147
[hospital's failure to bargain with U regarding lay off of Ees allegedly because of cuts in Medicaid, and concerning effects of lay off, unlawful, since not justified by compelling economic considerations and new Ees hired after lay off and after Medicaid reductions effective; contention lay offs not mandatory subject of bargaining, rejected]

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147
[*while compelling economic considerations could justify unilateral change which might otherwise be prohibited, economic expediency or sound business considerations are insufficient defenses to justify unilateral changes in terms and conditions of employment*]

The Nielsen Lithographing Co. 279 NLRB No. 118
[E telling U that jobs would be lost and that E would go out of business unless economic concessions were made (by U) triggers duty to disclose financial information because by its words and conduct E conveyed to U an inability to pay w/i meaning of *Atlanta Hilton & Tower* 271 NLRB 1600 (1984) and not just mere unwillingness to continue to pay cost of its collective bargaining agreement]

The Nielsen Lithographing Co. 279 NLRB No. 118
[if E claims *poverty* or *inability to pay* then, upon request from U, E is required to produce or disclose financial data to support its claim of poverty or *inability to pay*]

Westinghouse Electric Corporation 278 NLRB No. 061
[fact E's unilateral mid-term changes in Ees' terms and conditions of employment were prompted by economic rather than discriminatory considerations is immaterial if E did not bargain about those changes. Defense that refusal to bargain did not take place in context of overall subjective, bad faith may be available when charge is violation of Section 8(a)(3) of Act, but it is no defense to 8(a)(5) allegation]

Mack Trucks, Inc. 277 NLRB No. 084
(E's decision to *transfer and consolidate work* being performed at truck assembly facility to another facility *not mandatory* bargaining subject, since E's decision did not turn on bargaining unit labor costs, but on serious losses for year 1980 and projected future losses because of E's excess productive capacity which led E to believe E had over invested in capital assets and such transfer to larger and more modern facility would cut freight and overhead costs)

Alamo Cement Company d/b/a San Antonio Portland Cement Company 277 NLRB No. 033
(failure to bargain over layoffs, unlawful, notwithstanding E's defense of economic necessity)

SFTT The Santa Fe Trail Transportation Company/BN transport JD-377-85
[unilaterally failing to make pension and health and welfare fund contributions, to pay wages, to pay vacation, holiday and sick pay, violation, despite alleged economic hardship]

Indianhead Truck Line, Inc. JD-271-85
(E's failure to notify Us of its decision to terminate its freight operations until after implementation of decision, thus denying Us opportunity to bargain over effects of its decision, unlawful; E's contention its failure to give timely notice was justified by fear of theft and its financial situation, rejected)

Tectonic Industries, Inc. JD-(NY)-100-84
(E's unilateral changes in terms and conditions of employment assertedly made because E faced economic difficulties after strike commenced requiring deviation from contract provisions in order for E to survive, unlawful, since unilateral changes are not excused by economic expediency even if made in good faith, and they cannot be made w/o notifying and bargaining with U)

8054 WAIVER (SEE ALSO 775-0000)

8054-0100 Generally

Handy Spot, Inc. 279 NLRB No. 177
[E's failure to bargain with U over effects of its decision to subcontract its delivery routes in metropolitan area to independent contractors resulting in layoff or termination of its Ees unlawful notwithstanding E's contention that U waived its right to bargain, where E never advised U of sale of any of E's routes until well after sales had taken place]

BASF Wyandotte Corporation 278 NLRB No. 028
[unilateral implementation of respirator seal rule that had effect of prohibiting wearing of facial hair by Ees whose jobs necessitated their wearing respiratory protective equipment, not violation where U waived right to bargain over rule by agreeing to management rights clause allowing E to make and enforce rules deemed necessary or proper for conduct of Ees and operation of plant]

Roman Iron Works, Inc. 275 NLRB No. 066
(interim unilateral wage increases granted during course of bargaining, violative where such increases were isolated individual wage adjustments, were not in accordance with practice of granting periodic increases, were granted in absence of impasse, and were granted w/o affording U opportunity to bargain about changes; E's contention that U waived its right to bargain over changes, rejected)

American Federation of State, County & Municipal Employees JD-131-85
(Ees' waiver of rights under arbitration award achieved by E's unlawfully bargaining individually with grievants not effective or defense)

Southwestern Steel & Supply, Inc. v. N.L.R.B. 806 F.2d 1111 (C.A. D.C., Dec. 1986)
[E's unilateral termination of payments to welfare plan and pension trust after expiration of bargaining agreement, unlawful; E's contention U waived right to bargain over such payments by provision in payment agreement between E and fund trustees prescribing how and when revocation was permissible between E and trustees, rejected]

8054-0133 Waiver must be explicit

Ground Breakers, Inc. 280 NLRB No. 014
[no clear and unmistakable waiver of U's right to designate its representative at grievance processing meeting existed since, by naming grievance committee in contract, parties did not necessarily mean to exclude all others, including non-Ee U representative; issue is not so much matter of contract interpretation as matter of Ees' statutory rights; and Ee's right to be represented by representative of his own choosing should not be lightly denied]

Ne Di Construction Co., Inc. 279 NLRB No. 071
[no waiver by U of its right to receive notice of E's termination of agreement to be bound by master contract where, upon receipt of E's letter *tendering notice of union cancellation*, U immediately sought explanation, consistently and forcefully resisted E's apparent attempt to withdraw recognition, and resisted E's announcement of unilateral changes by demanding immediate compliance with master contract]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066
[Ee's failure to protest E's alleged payment of wage rate comparable to that in the trade rather than contract not waiver of latter, since E's contractual obligation was to U, rather than Ees]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118
[contract provision stating that U *warrants, represents and agrees* that it represented a majority of unit Ees not clear and unmistakable waiver of U's right to benefit from presumption of majority status after expiration of contract]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118
[unilateral cessation of pension and welfare fund contributions violation, notwithstanding contract expiration and E's reliance on provision in Trust Fund agreement stating that E should continue to pay fund contributions as long as E was obligated pursuant to collective bargaining agreement, where provision was not clear and unmistakable waiver of Ees' right to receive contributions and U's right to bargain over E's ceasing to make them on expiration of contract, since section did not deal with termination of E's obligation to contribute, and under Bd law E's obligation survived contract]

Clinchfield Coal Company 275 NLRB No. 189
(contractual language not clear and unmistakable waiver of U's right to request information where language concerning grievance procedure spoke of complaints filed by Ees, not U; mine committee's duties were confined to adjusting disputes arising out of contract that E and Ees, not U, had failed to adjust; and where *full-disclosure* provision obligated parties to disclose facts and contractual provisions relied on after grievance was filed but did not mention situations where, as here, a party sought to police the contract and obtain information to determine if a violation had occurred)

Kansas National Education Association 275 NLRB No. 092
(contract's management-rights provision standing alone held at best vague and as such insufficient to meet standard of *clear and unmistakable waiver* of U's right to be consulted about Ee transfer arrangements and did not privilege E to negotiate directly with Ee or to enter into transfer agreement with Ee; transfer rights were not necessarily contemplated by provision's broad reference to *ordinary and customary functions* of management nor was implementation of transfer agreement encompassed by provision's granting E right to adopt unspecified policies in furtherance of management functions)

8054-0133—Cont.

Teledyne Wisconsin Motor, A Division of Teledyne Industries, Inc. **275 NLRB No. 076**
(no violation by e's unilateral subcontracting piston production for engines where U contractually waived its right to bargain over E's decision to contract out production work when doing the work on E's premises cost substantially more than having an outside contractor do it, as here)

Continental Telephone Company of California **274 NLRB No. 210**
(any claimed waiver of right to bargain concerning mandatory subjects of bargaining must be based upon evidence that is clear and unmistakable)

United Technologies Corporation **274 NLRB No. 072**
(U clearly and unmistakably waived its statutory right to a letter between supervisors assessing an Ee's attitude, performance and which discussed Ee's immediate supervisor's version of incident giving rise to a disciplinary warning, notwithstanding U anticipated filing grievance over that disciplinary warning, where *letter of understanding* supplementing partys' bargaining agreement gave U the right to certain records w/o prior advance requests (which did not include written communications between supervisors) and in exchange for this information, U relinquished its right to all other information with certain exceptions not herein relevant)

Everett Yacht Club **JD-(SF)-115-85**
(although U representative heard rumors and received phone calls that E would cease its restaurant and bar business by a certain day, record devoid of *clear and unambiguous evidence* that U waived its right to bargain about effects of E's decision, thus E's decision violative)

Roadway Express, Inc. **JD-(SF)-78-85**
(U did not clearly and unmistakably waive its presumptive statutory right to receive photocopies of supervisory reports relevant to processing grievances; contract reference to U's right to *examine* was not unmistakable indication that U consciously intended to relinquish rights to obtain photocopies of them)

Ingersoll-Rand Company **JD-(NY)-48-85**
(E's subcontracting unit work w/o bargaining with U, not violative, since U clearly and unmistakably waived right to object where contract specifically provided that E could unilaterally subcontract unit work, E had past practice of subcontracting unit work and U president acknowledged there was nothing U could do about E's decision)

My Buddy Products, A Division of S&T Industries, Inc. **JD-114-85**
(U did not waive its right to bargain about Ee health insurance contributions notwithstanding E raised issue during negotiations for new contract, since after some discussion, no agreement reached. W/o insisting upon express reservation to take such action and w/o zipper clause in contract, it would appear E conceded it had no right to take unilateral action. No waiver can be found unless issue was fully discussed, conscientiously explored and conscientiously yielded by U during negotiations)

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) **802 F.2d 969 (C.A. 7, Oct. 1986)**

N.L.R.B. v. Harnstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. **785 F.2d 570 (C.A. 7, Mar. 1986)**
[E's contention that U waived its right to review financial data substantiating claim of economic hardship, rejected where E's bargaining representative stated at meeting that E had lost $92,000 in last 6 months and waived profit and loss statement in air and asked if U wanted to see it, to which U representative responded that he would at some point want to see document; U's conduct did not come close to constituting *clear and unmistakable* waiver of its rights]

Southwestern Steel & Supply, Inc. v. N.L.R.B. **806 F.2d 1111 (C.A. D.C., Dec. 1986)**
[U did not waive right to bargain over payments to welfare plan and pension trust after expiration of bargaining agreement by provision in payment agreement between E and fund trustees prescribing how and when revocation was permissible between E and trustees, since provision was no more than right of E to terminate agreement w/trustees subject to obligation to give timely notice. That qualified right to terminate can be construed as coming into play after E has complied with duty to bargain. Such provision not clear and unmistakable waiver especially where U not party to document containing alleged waiver]

8054-0167 Waiver will not be implied

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[absent express language in contract waiving parties' bargaining obligations, Bd examines totality of circumstances surrounding making of contract, including prior bargaining history, to determine whether waiver may be implied; here, parties engaged in no discussion bearing on effects of relocation of unit work, and U's silence may not be construed as waiver; in absence of express language or unambiguous bargaining history, forfeiture of important right, such as bargaining over effects of decision to relocate Ees' work, will not be implied]

Boise Cascade Corp., Paper Group **279 NLRB No. 074**
[E's contention U had waived right to information regarding surveys used to formulate maintenance improvement program at one of its facilities which would combine some duties of Ees, reduce number of craft classifications, and change wage structure, by provision in contract which stated in part that before substantial change made in job content or in size of crew, E must discuss with U changes and similar jobs in oother mills, to be set forth in survey of 5 competitive mills, rejected, and E furnishing U 5 mill study not sufficient, where no express, unambiguous waiver in agreement, and parties, past practice did not constitute clear waiver]

United Technologies Corporation **274 NLRB No. 072**
(U did not waive its right to information, which included supervisor audit reports, audit departmental procedures and investigations of an Ee, by narrowing its defense of Ee's suspension and discharge before arbitration, to issue of improper supervision rather than Ee's actual guilt, since, regardless of U's defenses, it is still permitted to ascertain if disciplinary action complied with applicable contractual standards)

8054-1000 Union's failure to object to E's past unilateral changes not waiver as to present changes

Suffolk Child Development Center, Inc. **277 NLRB No. 158**
(no waiver of right to bargain over change in health insurance plan by U's failure to object to prior changes)

City Cab Company of Orlando, Inc.; et al. d/b/a Yellow Cab Company and Dixie Cab Company **273 NLRB No. 131**
(taxi company's unilateral changes in various charges, surcharges, late penalties drivers were required to pay, in bidding procedure and in minimum number of shifts required unlawful, where company had not committed itself to any fixed practice; company's contention U had failed to protest changes for inordinate amount of time, rejected, since U had alleged unlawful unilateral changed in first charge, and since Region was attempting to get company to comply with its promise not to engage in any further changes, it would have been useless for U to protest each change)

8054-2000 Omission from contract of matters subject to collective bargaining does not constitute waiver

Westinghouse Electric Corporation **278 NLRB No. 061**
[obligation to bargain over wages, hours, and terms and conditions of employment, as well as any mid-term changes therein, covers multitude of specific items where terms, conditions of employment, and mid-term changes have effect of cutting wages, decreasing (Ee) take-home pay or changes in functions and content of (an Ee's) job an asserted waiver of bargaining obligation involves examination of meaning of contract provisions and does not oust Bd of jurisdiction to make that examination]

Government Employees (Office Employees, Local No. 2) **278 NLRB No. 055**
[U did not waive striking Ees' rights to be reimbursed for unlawfully withheld annual leave benefits by raising issue in final phase of negotiations and then signing contract w/o any provision covering *lost* leave, where E gave no consideration to U's proposal that annual leave be restored]

Suffolk Child Development Center, Inc. **277 NLRB No. 158**
(no waiver of right to bargain over health insurance plan by contract's lack of specificity about it where specifics were set out in Ee handbook)

My Buddy Products, A Division of S&T Industries, Inc. **JD-114-85**
(U did not waive its right to bargain about Ee health insurance contributions notwithstanding E raised issue during negotiations for new contract, since after some discussion, no agreement reached. W/o insisting upon express reservation to take such action and w/o zipper clause in contract, it would appear E conceded it had no right to take unilateral action. No waiver can be found unless issue was fully discussed, conscientiously explored and conscientiously yielded by U during negotiations)

8054-2050 Effect of 'zipper' or wrap-up clause

Armour and Company **280 NLRB No. 096**
[contention that since allocation of severance and vacation payments to Ees being terminated upon closing of plant to specific periods was bargained for between parties, and was matter which bargaining agreement controlled, neither party had further obligation to bargain during term of bargaining agreement, rejected, since U is not seeking to discuss any modification of terms or conditions of contract and contract silent on issue, notwithstanding parties reached agreement on other matters concerning closing of plant, where no zipper clause, no clear and unmistakable waiver of matter, and absent evidence issue was subject of prior bargaining]

N.L.R.B. v. Americana Healthcare Center **782 F.2d 941 (C.A. 11, Feb. 1986)**
[*zipper* clause in instant case must be read with implied exception that it has no application to agreement negotiated (by parties) pursuant to ct order but ommitted from written contract by inadvertence and mistake. Ct's reading of *zipper* clause leaves it ample scope for application, where it will not nullify statutory policy]

8054-2050—Cont.

Electrical Workers Local 1466 v. N.L.R.B. (Columbus and Southern Ohio Electric Co.) 795 F.2d 150

[no unilateral change in wages and no requirement that E must bargain when E discontinued its past practice of 40 years of paying Christmas bonus where contract contained zipper clause that stated... contract...*shall be the sole source of all rights or claims which may be asserted in arbitration hereunder or otherwise*.... and contract silent as to Christmas bonus]

8054-4000 Abandonment of demands does not constitute waiver

My Buddy Products, A Division of S&T Industries, Inc. JD-114-85

(U did not waive its right to bargain about Ee health insurance contributions notwithstanding E raised issue during negotiations for new contract, since after some discussion, no agreement reached. W/o insisting upon express reservation to take such action and w/o zipper clause in contract, it would appear E conceded it had no right to take unilateral action. No waiver can be found unless issue was fully discussed, conscientiously explored and conscientiously yielded by U during negotiations)

8054-5000 Effect of zipper clause

Challenge-Cook Brothers of Ohio, Inc. 282 NLRB No. 002

[*zipper clause* held not to constitute clear and unmistakeable waiver of U's right to bargain over effects of E's interplant transfer of unit work since, unlike case in which zipper clause constituted waiver of U's right to bargain over new benefit for non-bargaining unit personnel, leaving unit Ees unaffected, no such waiver could be read into parties' zipper clause herein, since transfer of work struck directly at one of the most critical of Ee concerns--availability of jobs elsewhere when unit work had been lost]

EPI Corporation d/b/a Rockford Manor Intermediate Care Facility 279 NLRB No. 170

[U waived its interest in bargaining with respect to carrier induced changes in health benefit plan, notwithstanding parties did not specifically address issue of mid-term adjustment in health program during their contract deliberations where it was clear that they negotiated complete agreement, and it was also clear that parties desired to commit unresolved issues to management prerogatives as they existed upon entry of agreement]

Suffolk Child Development Center, Inc. 277 NLRB No. 158

(no waiver of right to bargain over change in health insurance plan by agreeing to zipper clause where it was not intended to *wipe slate clean*)

N.L.R.B. v. Americana Healthcare Center 782 F.2d 941 (C.A. 11, Feb. 1986)

[*zipper* clause in instant case must be read with implied exception that it has no application to agreement negotiated (by parties) pursuant to ct order but ommitted from written contract by inadvertence and mistake. Ct's reading of *zipper* clause leaves it ample scope for application, where it will not nullify statutory policy]

8054-6500 Waiver to represent employees

Armco, Inc., Eastern Steel Division, Ashland Works 279 NLRB No. 143

[successor E's contention that incumbent U at new plant had waived right to represent Ees by yielding representational rights to a rival U and failing to request bargaining, rejected, and E's refusal to bargain with incumbent U, unilateral changes in terms and conditions of employment, recognition of rival U and enforcing U security, violative, since bargaining request would have been futile i.e., E had already granted recognition to rival U, Ees at new plant had not been accreted and incumbent U had in no way *clearly and unmistakeably* waived right to represent Ees]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121

[bargaining agreement between U and 1 company, deemed part of single integrated enterprise with other companies, did not extend to Ees of other companies in enterprise which were also held to be alter ego of individual in whom ownership of all companies ultimately vested, and E not obligated to make payments into benefit and pension funds on those Ees behalf, since U acquiesced in Ees' exclusion where U aware of woner's propensity for securing corporate insulation against indebtedness by operating through as many distinct and separate business entities as his needs required]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121

[no violation where E entered into agreement with U other than U with which another E of single intergrated enterprise of which E part had contract, since U had acquiesced in exclusion of Ees of E]

Union Carbide Corporation, Nuclear Division 275 NLRB No. 037

(E's contention that U waived right to be present at adjustment of grievances by *ad hoc* committee formed to review problems in a section of E's plant because E told U official that committee was being formed to look into the general situation, rejected, where E did not tell U that committee would include unit Ees or that committee would interview unit Ees and E did not offer U opportunity to participate on committee; U cannot be said to have received actual notice of committee's planned membership or operations)

Dukes Industries JD-167-85

(no violation where E decided to shut down operations and communicated decision to Ees prior to having any knowledge of U activity. Furthermore, U waived its perogative to bargain with E where, other than delivering its demand letter, it has made absolutely no attempt to meet and negotiate over effects of closing)

8054-7000 Agreeing to management rights clause does not constitute waiver

Challenge-Cook Brothers of Ohio, Inc. 282 NLRB No. 002

[management rights clause, authorizing E to relocate work from one plant to another at will, held not waiver of U's right to bargain about consequences resulting from such work transfer; while management rights clause conferred upon E exclusive decision-making authority regarding relocation of unit work, contract was silent over consequences of such decision; and contract's broad management rights clause, in absence of specific waiver language, did not waive U's right to bargain over effects of E's relocation decision]

EPI Corporation d/b/a Rockford Manor Intermediate Care Facility 279 NLRB No. 170

[U waived its interest in bargaining with respect to carrier induced changes in health benefit plan, notwithstanding parties did not specifically address issue of mid-term adjustment in health program during their contract deliberations where it was clear that they negotiated complete agreement, and it was also clear that parties desired to commit unresolved issues to management prerogatives as they existed upon entry of agreement]

Suffolk Child Development Center, Inc. 277 NLRB No. 158

(no waiver of right to bargain over change in health insurance plan by U's agreeing to management rights clause, which did not mention plan)

Georgia Pacific Corporation 275 NLRB No. 017

(E's refusal to reduce to writing agreement regarding change from 3 shifts a day to *4 shift program*, effect of which was that each Ee worked 7 days and then had 2 days off, where E and U had negotiated change, plan had been agreed to by majority of members of U, and implemented, and when parties agree on a mandatory subject of bargaining Sec. 8(d) requires execution of written agreement; E's contention it had right under management rights clause to make change unilaterally, rejected, since no clear and unmistakable waiver of right to bargain regarding change in shifts)

Continental Telephone Company of California 274 NLRB No. 210

(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

Kobell v. Thorsen Tool Co. F.Supp.——(DC M.D. PA, Dec. 1982)

[management rights clause that stated *company retains sole right to manage its business including but not limited to right to decide on method and place of manufacturing* did not constitute waiver by U of right to bargain regarding transfer of work, and preclude finding of reasonable cause to believe Act violated and issuance of Section 10(j) inj when E unilaterally decided to transfer work since clause might not be interpreted as waiver by Bd, where clause does not specifically reserve to E right to move part of operation to another facility in order to avoid high labor costs imposed by agreement]

8054-9000 Failure to request that employer bargain

Rappazzo Electric Co., Inc. 281 NLRB No. 075

[U did not waive its right to bargain over decrease in wages and benefits and to protest E's actions, where U consistently took position that terms of bargaining agreement were in full force and effect; moreover E could not show that U had clear notice of E's intent to institute changes sufficiently in adherence of actual implementation nor did E demonstrate that U failed to make timely bargaining request before changes were implemented]

Whirlpool Corporation 281 NLRB No. 007

[no violation since U waived right to bargain over alleged unilateral change in suspension hearing procedure by writing to E and requesting witness to be present at hearing w/o subsequently requesting bargaining]

Whirlpool Corporation 281 NLRB No. 007

[U waives right to oppose unilateral change where it is aware of projected change in sufficient time to bargain before change is implemented and fails to request bargaining; U must prosecute its right, not merely protest the change or file ULP charge]

Armour and Company 280 NLRB No. 096

[no waiver of its right to bargain regarding allocation of vacation and severance pay to Ees being terminated to specific periods by U's failure to follow through on request for bargaining once it learned of E's position on allocation from forms sent to Ees, where U had previously requested bargaining, had reason to believe E understood its concern, but had been put off by E, and thus reasonable for U to believe further request would be futile]

8054-9000—Cont.

Armco, Inc., Eastern Steel Division, Ashland Works **279 NLRB No. 143**
[successor E's contention that incumbent U at new plant had waived right to represent Ees by yielding representational rights to a rival U and failing to request bargaining, rejected, and E's refusal to bargain with incumbent U, unilateral changes in terms and conditions of employment, recognition of rival U and enforcing U security, violative, since bargaining request would have been futile i.e., E had already granted recognition to rival U, Ees at new plant had not been accreted and incumbent U had in no way *clearly and unmistakeably* waived right to represent Ees]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[E's unilateral termination of Ees' group insurance coverage, unlawful, notwithstanding E's contention that U waived its right to bargain on ground no U representative ever requested E to bargain over the matter, where U did not learn of insurance coverage change until after it occurred; and U business agent, upon learning of the change, immediately protested to E]

Ventura County Star-Free Press **279 NLRB No. 064**
[unilaterally withholding step increases from eligible Ees not unlawful where U failed to timely demand bargaining and merely protested]

Intersystems Design and Technology Corp. **278 NLRB No. 111**
[E's unilateral layoff of Ees w/o notice to or bargaining with U, violative; further, E's contention that make whole remedy is inappropriate because U waived opportunity to bargain over effects of decision after learning of layoffs because U did not demand effects bargaining, rejected, where U was faced with fait accompli because it did not receive any notice of layoffs and any bargaining demand by U would have been futile where E wrote U a letter in relation to layoffs maintaining it had no obligation to bargain over decision or choice of Ees for layoff]

Southwest Forest Industries, Inc., Las Angeles Container Division **278 NLRB No. 031**
[E's unilateral implementation of various changes in working conditi..es and wages different than those in final contract proposal, on grounds U had notice of changes and would have refused to bargain under any circumstances, violative, since U did not have notice where prior to implementation E advised U only that there would be *other changes*, E's changes were in no way a new contract proposal and there was no evidence that U's steadfast refusal to bargain with E was in any way improper]

Oak Rubber Company **277 NLRB No. 148**
(E's contention that U waived right to bargain over decision to relocate part of its operations because U did not formally request bargaining, rejected, where, w/i two days after receiving word E was bidding on new site, U asked E to *try and work out any problems* which might prompt E to relocate and at same time requested information concerning relocation)

Kansas National Education Association **275 NLRB No. 092**
(once E notifies U of proposed changes in conditions of employment, it is incumbent upon U to act with due deligence in requesting bargaining and U's failure, upon receipt of E's notice, to request bargaining may result in waiver of U's rights)

Kansas National Education Association **275 NLRB No. 092**
(E's implementing position transfer agreement with individual Ee, which allegedly was contrary to U contract, not unlawful, since U acquesced in transfer as evidenced by U's receipt of notice of proposed transfer agreement approximately month before it became effective, U's actions in promoting transfer, and its failure to request bargaining on issue until month after agreement was implemented)

Continental Telephone Company of California **274 NLRB No. 210**
(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

Prime Time Post, Inc. **274 NLRB No. 218**
(successor E held not obligated to contribute to international's health and welfare fund pursuant to U's agreement with predecessor E and cessation of contributions not violative, where successor E at no time assumed obligations of predecessor E and entered into contract with local U of international which did not require it to make contributions to the fund; further, international waived right to bargain over fund contributions when it never requested successor E to bargain and was aware that local U was bargaining with E and entered into contract which did not provide for fund contributions)

Pennsylvania Energy Corporation **274 NLRB No. 174**
(U did not waive its right to bargain over E's subcontracting agreement with contractor to do bargaining unit work, activity of E's of which U had no knowledge; otherwise, U repeatedly pursued meetings with E whenever it became aware of suspicious activity; these actions were consistent with attempts to preserve rights of laid off Ees and could not be considered to be indicative of any abandonment of those rights)

Hawthorn Mellody, Inc. **275 NLRB No. 085**
(E did not unlawfully refuse to bargain over effects of its decision to close facility and transfer production to plant 90 miles away. While no formal notice given to U, U had substantial information from which it must inevitably have been aware of E's intentions but never requested bargaining over effects of its decision, thereby waiving its right to do so)

The Setterlin Company **JD-56-86**
[U's failure to demand negotiations after receiving notice of E's intent to implement unilateral changes after impasse constituted waiver of right]

Everett Yacht Club **JD-(SF)-113-85**
(although U representative heard rumors and received phone calls that E would cease its restaurant and bar business by a certain day, record devoid of *clear and unambiguous evidence* that U waived its right to bargain about effects of E's decision, thus E's decision violative)

My Buddy Products, A Division of S&T Industries, Inc. **JD-114-85**
(U did not waive right to bargain over Ee health insurance contributions when U, when presented with notice of increase, grieved, and E's response to grievance was that E could not afford increased premiums and had to pass them on to Ees; thus, U presented with fait accompli rendering demand for bargaining futile gesture)

Tectonic Industries, Inc. **JD-(NY)-100-84**
(E's contention that U gained knowledge about some of E's unilateral changes, failed to act, and thereby waived its right to bargain about changes, rejected; thus, fact that U agent saw supervisors entering plant during strike did not give notice to U that E had instituted change in working conditions by having supervisors routinely perform unit work, and E's failure to list certain changes in job positions in its contract proposals to U did not constitute notice to U concerning E's actions with regard to those positions)

8063 STRIKES

8063-0100 Generally

8063-0150 Obligation to bargain during strike

Service Electric Company **281 NLRB No. 107**
[E did not violate Act by refusing, after U gave notice that strike over, U's demand that employment terms for replacements be restored to levels prevailing prior to commencement of strike, where economic strikers failed to offer to return to work, coupled with absence of any evidence that Ees had abandoned future employment with E]

Service Electric Company **281 NLRB No. 107**
[E under no obligation to bargain over employment terms of strike replacements, whether terms better or worse than preexisting terms before strike, whether strike has ended, or not, where no resolution of underlying dispute because no agreement on contract, and there are unreinstated strikers who have not abandoned future employment with E but whose jobs continued to be filled by replacements]

Tectonic Industries, Inc. **JD-(NY)-100-84**
(E's defense to unilateral changes in terms and conditions of employment on ground it did not have to bargain about such changes with strike replacements, rejected; E's obligation to bargain with U is not suspended by virtue of strike; E's changes did not concern wages and/or fringe benefits paid to replacements; rather, they affected every term and condition of employment and were not instituted on temporary basis to enable E to cope with effect of strike, and effect of changes continued long after initial impact of strike)

N.L.R.B. v. Platte Valley Plumbing & Heating **748 F.2d 445 (C.A. 8, Nov. 1984)**
(fact that economic strike took place during negotiations does not relieve E of duty to bargain)

8063-1400 Effect on impasse

Brady-Stannard Motor Co., Inc. **273 NLRB No. 178**
(Bd found that after impasse wages paid to striker replacements was consistent with E's final offer to U to continue expired contract for 1 year where Bd looked at *actual* earnings received by replacements over 6 month period and it showed they were equal to or lower than what strikers earned in similar period in prior year notwithstanding wage package of replacements different from strikers. Therefore, no violation by offering replacements higher wage formula but where actual wages same, because it was, in effect, offering same contract to replacements as one that expired and which was offered to U)

8063-5600 Partial strike

Arrow Sash and Door Company **281 NLRB No. 149**
[E's withdrawal from tentative agreements and concessions previously reached during negotiations, assertedly because it believed U had sanctioned or condoned sick out engaged in by some Ees thus breaching no strike agreement, unlawful. Under totality of circumstances test in *Farm Boy Restaurants*, 279 NLRB No. 13, where, despite apparent progress in negotiations, E not only withdrew from all agreements and prior concessions, but also cancelled next bargaining session, and extension of bargaining agreement, ceased payments to benefit funds, and implemented new health plan; issue is not whether E acted in good faith, but whether E had good cause]

8068 GRIEVANCE/ARBITRATION PROCEEDINGS AND/OR AWARD

Springfield Transit Management, Inc. 281 NLRB No. 124
[E's failure to execute contract after impasse and issuance of state ct-ordered arbitration award, unlawful, where E and U reached agreement consisting of old contract, pre-arbitration agreements, and arbitration award, all of which E's prepared document accurately reflected, and U requested that document be signed; E's defense that its pre-arbitration agreements required approval of state authority which retained control over its bargaining process, rejected, since failure by E and authority, which were ordered by ct to submit unresolved issues to arbitration, to submit previously negotiated contract terms constituted approval of agreements

United States Postal Service 281 NLRB No. 032
[bypassing U and dealing directly with Ee by unilaterally adjusting Ee's grievance concerning proposed dismissal of Ee, unlawful, where at time E resolved grievance, while ignoring Ee's request to be accompanied by U representative, E knew that Ee's grievance was pending and that Ee wanted U agent to be present; and Veterans' Preference Act, permitting what would be ULP under Act by giving Ee right to meet with E for discussing problem before being dismissed, did not prevail over Ee's rights under Act]

Asociacion Hospital Del Maestro, Inc. 279 NLRB No. 062
[E's raising at arbitration affirmative defense that it had no duty to arbitrate grievances filed after expiration of contract, not refusal to arbitrate or violation, where E submitted grievances to arbitration, participated in hearings, and did not indicate that it would not comply with an adverse arbitrator's decision; a Bd order prohibiting party from raising arbitrability issue before arbitrator would contravene Bd's policy to favor and defer to voluntary arbitration]

Southern California Edison Company 274 NLRB No. 167
(E's refusal to conduct grievance meetings with Ees or U officials who wore *Stick Your Retro* button concerning retroactive pay raise during contract negotiations between E and U, violative, since wearing of button protected, and no matter what buttons were being worn, E was not privileged to refuse to meet and deal with U on matters being pursued through grievance arbitration process, at least so long as they did not cause unreasonable disruption (of process))

8072 PENDENCY OF BOARD PROCEEDINGS

8072-2900 Filing of decertification petition

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital 282 NLRB No. 010
[filing of decertification ptn, *standing alone*, does not permit E to make unilateral changes]

Rascar, Inc. 274 NLRB No. 001
(E's advising U that a decertification ptn had been filed and that it would not bargain further until that qcr was resolved, not violative under *Telautograph* rule, which was not overruled by *Dresser Industries* until after E's refusal to bargain in instant case, since *Dresser* was not applied retroactively)

Kelly Broadcasting Company d/b/a DCRA--TV 273 NLRB No. 206
(notwithstanding that under *Dresser*, 264 NLRB 1088, E and incumbent U required to bargain and execute any agreed upon contract even though decertification ptn filed, E and U may by mutual agreement defer effective and execution date of any contract reached until decertification ptn is resolved, and refusal of E to sign this contract with incumbent U until such resolution, not violative)

Frederick Davidowitz, D.D.S. Professional Corporation and Martin Goldberg, D.D.S. Professional Corporation, a Partnership d/b/a Union Health Services JD-(SF)-112-85
(withdrawal of recognition based on decertification ptn signed by substantial majority of unit Ees, lawful where there was no evidence of E's involvement with ptn, nor were Ees coerced in signing ptn by E's prior ULP's then pending before Bd, and Ees stated that they were not affected by pending charges but by U's failure to win contract from E)

N.L.R.B. v. Auto Fast Freight, Inc. 793 F.2d 1126 (C.A. 9, July 1986)
[decertification ptn no defense to E's unilateral changes where it was filed after unlawful cessation of health and welfare fund payments, institution of new medical plan, reduction in wages, and constructive discharges of Ees for refusing to resign from U]

8072-3500 Pendency of Regional Director's direction of election or decision on objections

8072-3500 Pendency of Regional Director's direction of election or decision on objections

Specialty Steel Treating, Inc. 279 NLRB No. 067
[unilaterally granting discretionary, rather than regularly scheduled, wage increases and bonuses while objections to election were pending, violation]

8072-4200 Pendency of ULP charges

Dane County Dairy, Inc. 273 NLRB No. 209
(E's unwillingness to negotiate under compulsion of pending ULP proceeding against it no defense to charge of refusal to agree to further date for negotiations)

Frederick Davidowitz, D.D.S. Professional Corporation and Martin Goldberg, D.D.S. Professional Corporation, a Partnership d/b/a Union Health Services JD-(SF)-112-85
(withdrawal of recognition based on decertification ptn signed by substantial majority of unit Ees, lawful where there was no evidence of E's involvement with ptn, nor were Ees coerced in signing ptn by E's prior ULP's then pending before Bd, and Ees stated that they were not affected by pending charges but by U's failure to win contract from E)

N.L.R.B. v. Platte Valley Plumbing & Heating 748 F.2d 445 (C.A. 8, Nov. 1984)
(fact that U filed ULP charges against E alleging refusal to bargain does not relieve E of duty to bargain)

8072-6500 Pendency of UC petition

Save Mart of Modesto, Inc. JD-(SF)-25-85
(notwithstanding UC ptn filed which sought to clarify bargaining unit encompassed by E's current contract with U into proposed unit consisting of Ees employed in meat department of new store before ULP charge alleging unlawful refusal to recognize U, ALJ went ahead with hearing on ULP charge and RD held ptn in abeyance pending disposition of ULP case)

8072-7000 Rival union's RC petition

Oak Rubber Company 277 NLRB No. 148
(E ordered to move transferred work back to original location, notwithstanding Ees at new location had won R election, since whether or not Ees at new plant are organized or unorganized is irrelevant to any remedy to which Ees at original location are entitled)

8072-9200 Pendency of collateral litigations

Lands Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014
(although joint E met with U on five occasions in order to negotiate contract for E's Ees, Bd found that joint E failed to bargain in good faith with U, since: (1) E failed to respond to U's first two requests for bargaining; (2) as soon as U requested bargaining E proposed closing one of its facilities; (3) E informed U it was not willing to discuss wages until ALJ issued his decision in prior Bd C case involving one of joint Es and same Ees; and (4) other expressions of joint Es' U animus which frustrated bargaining process)

8074 PROVISIONS OF BOARD ORDER

Koenig Iron Works, Inc. 276 NLRB No. 083
(implementing unilateral wage increase called for under terms of contract that Bd had abrogated as violative of Sec. 8(a)(2), unlawful, as Bd will not allow E to resurrect unlawful contract since this would frustrate prior Bd order and would undermine Ees' right to be represented by present bargaining representative)

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. ———F.2d——— (C.A. 4, Feb. 1986)
[E's contention that its refusal to bargain with U should be excused because Bd's order denying summary judgment was ambiguous and did not state E could not raise issues of U's pre-election misconduct in subsequent ULP hearing and ALJ did not allow it to raise those pre-election issues in ULP hearing, rejected, since Bd's R/R's are clear that issues resolved in *R* proceeding may not be raised in subsequent ULP hearing and E did not show evidence was previously unavailable or newly discovered]

8076 PENDENCY OF COURT PROCEEDINGS

8076-0100 Generally

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170
[E's defense to unlawful unilateral discontinuance of payments to health and welfare fund on ground C should be dismissed because U instituted ct action to collect monies due to fund, rejected, since it is not Bd law to defer or to dismiss due to pendency of ct action]

8076-3300 Review of Board Order of Certification

8072-9200—Cont.

Leeds Cablevision, Inc. and Cablevision Company, Inc. **277 NLRB No. 014**

(although joint E met with U on five occasions in order to negotiate contract for E's Ees, Bd found that joint E failed to bargain in good faith with U, since: (1) E failed to respond to U's first two requests for bargaining; (2) as soon as U requested bargaining E proposed closing one of its facilities; (3) E informed U it was not willing to discuss wages until ALJ issued his decision in prior Bd C case involving one of joint Es and same Ees; and (4) other expressions of joint Es' U animus which frustrated bargaining process)

8074 PROVISIONS OF BOARD ORDER

Koenig Iron Works, Inc. **276 NLRB No. 083**

(implementing unilateral wage increase called for under terms of contract that Bd had abrogated as violative of Sec. 8(a)(2), unlawful, as Bd will not allow E to resurrect unlawful contract since this would frustrate prior Bd order and would undermine Ees' right to be represented by present bargaining representative)

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. **———F.2d———**

(C.A. 4, Feb. 1986)

[E's contention that its refusal to bargain with U should be excused because Bd's order denying summary judgment was ambiguous and did not state E could not raise issues of U's pre-election misconduct in subsequent ULP hearing and ALJ did not allow it to raise those pre-election issues in ULP hearing, rejected, since Bd's R/R's are clear that issues resolved in *R* proceeding may not be raised in subsequent ULP hearing and E did not show evidence was previously unavailable or newly discovered]

8076 PENDENCY OF COURT PROCEEDINGS

8076-0100 Generally

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**

[E's defense to unlawful unilateral discontinuance of payments to health and welfare fund on ground C should be dismissed because U instituted ct action to collect monies due to fund, rejected, since it is not Bd law to defer or to dismiss due to pendency of ct action]

8076-3300 Review of Board Order of Certification

Bryan Memorial Hospital **282 NLRB No. 032**

[mtn for summary judgment granted and E held to have violated Section 8(a)(5) by failing to bargain before making changes in benefits and working conditions, where issue of whether E had properly withdrawn recognition from U was raised in previous case, is res judicata, and may not herein be raised or litigated, nor does pendency of appeal of prior proceeding in federal ct necessitate dismissal of C. Since E is not entitled to refuse to bargain with certified U while it litigates validity of certification in ct of appeals]

8076-6700 Review of Board Finding of ULP

Gentzler Tool & Die Corp. **275 NLRB No. 124**

(notwithstanding Bd has pending ptn for enforcement of its Order requiring execution of contract, retroactive application of contract and that E c/d from dealing directly with Ees, Bd issued another D/O arising from subsequent C finding E violations for refusal to bargain and withdrawal of recognition which are different violations than those found in first decision, and therefore, Order in first decision would not remedy those violations found in second decision; hence need for another Order)

8076-8400 State court proceedings

Medic-Bus Service, Inc. d/b/a A-Medic Ambulance Service **274 NLRB No. 139**

(E's refusal during contract negotiations to discuss U's economic proposals or to sign any new agreement ultimately reached on ground that derivative shareholder's action in state ct placed E in position analogous to that of debtor-in-possession and thereby relieved it of its bargaining obligations, unlawful, since debtor-in-possession vis-a-vis its obligations under Act is unique, being product of Bankruptcy Code's Chapter 11 provisions, and nothing in those provisions, or in S.Ct's *Bildisco* decision interpreting them, can provide similar status to defendant in derivative shareholder's suit)

8081 INVALIDITY OF CERTIFICATION OR RECOGNITION

8081-0800 Employee complement at time of election not representative and substantial

Louis Peppas' Hot Springs Restaurant, Inc. **275 NLRB No. 213**

(date for determining U majority status is date new E commences full scale operations with representative complement of Ees whether or not hoped for expansion has been fully achieved. Here, E, with no hiatus, immediately began full scale operations at restaurant employing majority of Ees who were formerly unit members. Changes to menu and remodeling facilities not so significant as to change date)

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[in successorship situation, bargaining obligation can normally be determined at time of transfer or when operations begin. In other instances, however, such as when E is rebuilding collapsed business or is operating at substantially reduced capacity, delay in making determination may be appropriate. As S.Ct has noted, determination regarding successor's obligation to bargain may have to wait until successor E has hired full complement of Ees since it will not be evident until then that bargaining representative represents majority of complementing unit required by Sec. 9(a) of Act]

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[*full complement principle has been interpreted to require that examination of workforce composition be postponed until business is operating at its maximum capacity or until E has completed hiring all of its bargaining unit Ees fixing appropriate date at which bargaining obligation arises involves balancing objective of ensuring maximum Ee participation in selection of bargaining agent against goal of permitting Ees to be represented as quickly as possible Bd has reconciled these interests by applying substantial and representative complement standard*]

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[successor E obligated to bargain with U that had represented Ees of predecessor when it had employed substantial and representative complement i.e. had hired at least 50% of those it would ultimately employ in majority of Ees it would eventually employ when it reached full complement, notwithstanding at time of original demand for recognition representative complement not employed, since demand continuing and no need to renew later]

N.L.R.B. v. Fall River Dyeing & Finishing Corp. **775 F.2d 425 (C.A. 1, Oct. 1985)**

[in determining whether representative complement existed at a given date and E obligated to bargain, Bd first looks to see whether job classifications for operation were filled or substantially filled and whether operation was in normal or substantially normal production. Bd also considers size of complement on that date time expected substantially larger complement would be hired and relative certainty of expected expansion]

8081-2500 New matter or evidence

General Felt Industries, Inc. **275 NLRB No. 134**

(notwithstanding E's refusal to bargain with U certified following election on ground losing incumbent U had reasonable possibility of prevailing on issue of validity of election in pending 8(b)(7)(B) case, motion for summary judgment granted where in 8(b)(7)(B) case, claiming it belatedly learned Ees did not vote for it because they feared E retaliation and withheld such information for same reason failed to show that such evidence was newly discovered and previously unavailable during prior Bd hearing at which Bd found Ee's unlawful discharge had minimal impact on subsequent election)

General Felt Industries, Inc. **275 NLRB No. 134**

(mtn for summary judgment granted, notwithstanding E's refusal to bargain with U certified following election on ground that E had been informed by several Ees that they would have voted for losing incumbent U had they not been afraid of possible discharge, which fear they based on unlawful discharge of Ee as found by Bd in prior case, where E failed to show that evidence was unavailable at time of ULP hearing or otherwise demonstrated that Ee statements constituted newly discovered or previously unavailable evidence)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital **789 F.2d 524 (C.A. 7, Apr. 1986)**

[decertification election which resulted in vote against decertification not set aside and bargaining order issued since E's refusal to bargain not justified by U's misrepresentation that NLRB had issued complaint against E, by omission of Ees from Norris-Thermador list and refusal to allow Ees omitted to vote, erroneous statement of units in decertification election notices and Bd certification and bargaining orders]

8081-3700 Conduct on part of Regional Director or other Board employee

8081-3700 Conduct on part of Regional Director or other Board employee

Castello Packing Co., Inc. and Castello Foods, Inc., d/b/a Holiday Pack Foods **281 NLRB No. 011**

[E's refusal to bargain on ground that Bd attorney assigned to instant ULP and underlying R proceedings was biased and prejudiced to detriment of E, unlawful, where E's claim of being misled by alleged statements of Bd attorney concerning Bd's blocking charge policy with respect to expedited election was, at best, perhaps somewhat due to E's confusion about Bd terminology; and E's claim of bias and prejudice because of Bd attorney's membership in NLRB Ee association was based on pure speculation]

8081-3700—Cont.

N.L.R.B. v. Mississippi Power & Light Company 769 F.2d 276 (C.A. 5, July 1985)

(E's refusal to bargain with U as representative of storeroom and warehouse Ees, violation, notwithstanding E's contention that U was invalidly certified because election was barred by existing contract between E and U as representative of service and maintenance Ees; Bd's contract bar rule applies only to Ees covered by contract and not to unrepresented Ees; nor was unit clarification procedure appropriate for Ees historically and intentionally excluded from bargaining unit)

8081-4300 Union's conflict of interest

North Shore University Hospital 274 NLRB No. 188

(on ct remand, Bd vacated prior D/O, dismissed C and revoked Certification of Representative and found that nurses association should not be considered differently from other labor organizations regarding conflict of interest engendered by supervisors' active participation in association, lack of insulation of collective-bargaining process from governance of organization and lack of mechanism to assist Es from violating Sec. 8(a)(2) through supervisory Ees participation in association's affairs)

Quality Inn Waikiki v. N.L.R.B. 783 F.2d 1444 (C.A. 9, Mar. 1986)

[E's refusal to bargain with local U, on grounds that the son of a competitor's owner was Vice President of International U and thus local U had disqualifying conflict of interest in representing E's Ees, violative, where E did not show local U lacked autonomy in labor relations with Es or that son had any control or authority over local U]

Quality Inn Waikiki v. N.L.R.B. 783 F.2d 1444 (C.A. 9, Mar. 1986)

[E's refusal to bargain with local U on grounds that local U had disqualifying conflict of interest because of its common relationship with another local U that represented Ees of E's direct competitor and both locals were chartered under the same International U, violative, since local U's were separate and distinct organizations and there was no evidence one local tried to exert control or influence over the other local, in fact, although locals at one time shared common officers, they were now rivals]

8081-5000 Fairness of election

Season-All Industries, Inc. 276 NLRB No. 139

(E held obligated to bargain since setting aside of election not warranted where Ee who was held not agent of U stood a few feet from Ees who were waiting to vote in area outside room in which polling booths were located, and held very brief conversations with Ees for 10--20 minutes)

Fruehauf Corporation 274 NLRB No. 067

(E's refusal to bargain on grounds that certification of election was invalid, not violative, and U business agent's threat to majority of Ees, several days before ptn for election was filed, that Ee who crossed a future picket line would be shot, held interference and election set aside, since statement tainted election atmosphere where threat was repeated to other Ees by rank-and-file Ees during critical preelection period and rumors continuously circulated around plant during critical preelection period that strike breakers would be shot, thus destroying required condition of freedom of choice)

The Heil Co. JD-(ATL)-18-85

(no duty to bargain with U where U agent interfered with election by promising that U would waive initiation fees for Ees who signed U authorization cards before election)

The May Department Stores Company JD-(SF)-13-85

(E's refusal to bargain on grounds that certification of election was invalid, not violative, and threats by members of U's *organizing committee*, found herein to be agents of U, that pro-E Hispanic Ees would be victims of immigration sweeps, lose their jobs or find their cars damaged, held interference and election set aside, since threats restrained Ees w/i meaning of 8(b)(1)(A) where character of threats, together with fact they were made shortly before election, led Hispanic Ees to believe they would be deported on election day, thus having potential of affecting voting choice of Ees and willingness of Ees w/i unit to show up at all)

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[U representing to Ees that NLRA precluded reducing any wages or benefits if U won election, and that NLRB region had advised U that E's threat of loss of benefits was unlawful and suggested that U file charge, did not warrant setting aside election and justify E's refusal to bargain, since holding of *Midland National Life Insurance Co.*, 263 NLRB 127, that Bd would not probe truth or falsity of campaign statements by partisans in elections applies also to misrepresentations concerning Bd actions or positions that are recognized as partisan nor do *Midland* rules run afoul of either Sec. 9(c) of Act or Bd's rules]

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. ———F.2d——— (C.A. 4, Feb. 1986)

[E's contention that its refusal to bargain with U should be excused because Bd's order denying summary judgment was ambiguous and did not state E could not raise issues of U's pre-election misconduct in subsequent ULP hearing and ALJ did not allow it to raise those pre-election issues in ULP hearing, rejected, since Bd's R/R's are clear that issues resolved in *R* proceeding may not be raised in subsequent ULP hearing and E did not show evidence was previously unavailable or newly discovered]

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[decertification election which resulted in vote against decertification not set aside and bargaining order issued since E's refusal to bargain not justified by U's misrepresentation that NLRB had issued complaint against E, by omission of Ees from Norris-Thermador list and refusal to allow Ees omitted to vote, erroneous statement of units in decertification election notices and Bd certification and bargaining orders]

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)

(U's alleged campaign misrepresentation invalidating certification no defense to E's refusal to bargain where, before hearing was held on E's objections to U's alleged campaign misrepresentations, Bd issued its decision that it would no longer inquire into such allegations in absence of allegations of use of forged documents -- not alleged herein-- and would apply the decision retroactively, as it did here)

8081-6200 Appropriateness of unit

The Westin Hotel 277 NLRB No. 172

[E's refusal to bargain with separate unit of maintenance workers, on grounds that only an overall unit of hotel workers was appropriate, not violative, since appropriate unit was overall unit which included maintenance workers where there was extensive contact, integration of duties and similar terms and conditions of employment among all hotel personnel and all of E's service Ees were subject to uniform personnel policies regarding recruitment, hiring, orientation and work rules]

Oak Rubber Company 277 NLRB No. 148

(E ordered to move transferred work back to original location, notwithstanding Ees at new location had won R election, since whether or not Ees at new plant are organized or unorganized is irrelevant to any remedy to which Ees at original location are entitled)

Lycee Francais de New York 273 NLRB No. 191

(Bd found improper inclusion of certain Ees (exchange visitors) who are on leave from French Ministry of Education (Ministry) to teach at E for up to 3 years because they did not enjoy community of interest with locally hired Ees as they must comply with French rules of their profession, can be discharged only with permission of Ministry, are evaluated by Ministry, continue their French pension and health care plans, work same hours as in France and no taxes paid first 2 years)

ICI Americas, Inc. JD-328-85

(bargaining for change in scope of unit is *nonmandatory* subject of bargaining; and insistence to bargaining impasse on modification in scope of bargaining unit, whether established by Bd certification or by voluntary recognition, violative)

ICI Americas, Inc. JD-328-85

(E's advising U during negotiations that E controlled matter of split in certified unit, when in actuality split was army decision who had contracted work out to E, violative, since E's advice was conscious course of action intending to deceive U; such conduct (of E) was deceptive bargaining with tendency to inhibit process of collective bargaining)

Landmark Industries, Inc. JD-(SF)-109-85

(unit covered in expired collective bargaining agreement is presumed appropriate)

N.L.R.B. v. Paper Manufacturers Company, et al. 786 F.2d 163 (C.A. 3, Mar. 1986)

[move of medical packaging division to same facility where regular packaging products manufactured w/i certification year not such changed circumstances that would justify E's refusal to bargain with U certified as representative of medical packaging Ees prior to move, where only upper echelons of management consolidated, almost all job descriptions remained intact, working conditions, skills, and functions, with exception of two maintenance Ees, separate and distinct, no interchange of Ees; contention relocated Ees accretion to Ees in other division at same facility and represented by another U, rejected]

N.L.R.B. v. Engineers Constructors, Inc. 756 F.2d 464 (C.A. 6, Mar. 1985)

(E's defense to bargaining order that contracting unit and change in nature of work performed by laborers had made election inappropriate, rejected, since decline of Ees in laborer classification would be gradual, and change in work from primarily construction work with some clean-up duties to primarily clean-up work was not significant since basic nature of work did not change; further, with eight months of work anticipated before project's completion, decision to hold election was reasonable and not contrary to Bd precedent)

8081-6200—Cont.

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital **789 F.2d 524 (C.A. 7, Apr. 1986)**

[decertification election which resulted in vote against decertification not set aside and bargaining order issued since E's refusal to bargain not justified by U's misrepresentation that NLRB had issued complaint against E, by omission of Ees from Norris-Thermador list and refusal to allow Ees omitted to vote, erroneous statement of units in decertification election notices and Bd certification and bargaining orders]

N.L.R.B. v. L & B Cooling, Inc. **757 F.2d 236 (C.A. 10, Mar. 1985)**

(Bd's conclusion that *extras* hired by E engaged in lettuce cooling business in prior growing season were not included in bargaining unit, is supported by substantial evidence in record even if E shows that another unit might be more appropriate)

8081-6900 Union merger or affiliation

Canterbury Villa of Waterford, Inc. **282 NLRB No. 072**

[on withdrawal of case from CA, E's refusal to bargain, unlawful, notwithstanding nonmembers' inability to vote on U's change in affiliation, since affiliation is internal U matter with which Bd is precluded from interfering; moreover, there was *substantial continuity* between pre-and-post disaffiliation U, and due process was safeguarded by U members' voting on, and district ct's approval of settlement agreement providing for, change in affiliation]

American National Insurance Company **281 NLRB No. 105**

[E's refusal to recognize and bargain with newly merged U violative, notwithstanding U's disenfranchisement of 2400 nonmember Ees in 3000 Ee unit in affiliation election, since S.Ct in *N.L.R.B. v. Financial Institution Employees*, 106 S.Ct 1007 (1985) held that Act does not require that nonmembers be permitted to vote in U affiliation elections, there was continuity of identity between original U and postmerger bargaining representative and original U provided U members fair and meaningful opportunity to become informed about proposed merger and to cast informed vote]

Eastern Connecticut Health Services, Inc. d/b/a New London Convalescent Home **281 NLRB No. 120**

[E's refusal to bargain with certified local, whose parent organization had disaffiliated with another U and then affiliated directly with AFL-CIO, violative, where there was substantial continuity in operations of certified local, as prescribed in *Seattle-First National Bank* 106 S.Ct 1007, (1986), notwithstanding E's contention that disaffiliation caused disruption of existing intra-U relationship and financial instability in parent organization]

Hydrotherm, Inc. **280 NLRB No. 167**

[refusing to bargain with local U that was certified under unamended premerger title, violation, notwithstanding that U merged with another local prior to election that resulted in change of name to one different from that of certified U, where U retained same character and relationship to Ees, had same international constitution, bylaws, officers, stewards, grievance procedure, methods of servincing contracts, assessing dues, making fund payments, place of business, and way of conducting affairs]

Arizona Pork Products, Inc. **279 NLRB No. 167**

[E's rejecting U's request for recognition and bargaining violation, notwithstanding allegedly inadequate assurance of ballot secrecy in U predecessor's merger election involving U's properly becoming successor to benefits of certification]

Ventura County Star-Free Press **279 NLRB No. 064**

[E estopped from challenging and found to have waived right to challenge U's affiliation with international U on basis that it failed to meet due process requirements where E's spokesman demanded, received, and accepted U's proof of its status as Ees' bargaining representative before commencing negotiations and negotiated with it thereafter]

Insulfab Plastics, Inc., New England Division **274 NLRB No. 126**

(violation where E refused to bargain on ground of allegedly improper affiliation with international U of independent U with which E had bargained for many years; E's contention that two part-time Ees should have been allowed to vote as to affiliation rejected, where they were ineligible, having never been members of unit)

The Cincinnati Enquirer, Inc. **JD-171-85**

(merger of local Us valid and U resulting from merger held successor since adequate notice given of meetings at which merger votes were to take place, voting was by secret ballot in each local, and there was sufficient continuity of representation for premerger Ees since merger did not result in complete loss of identity of pre-merger groups inasmuch as each local U continued to negotiate separate bargaining agreements and each local's officers would continue to serve on joint governing board)

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) **755 F.2d 5 (C.A. 2, Feb. 1985)**

(where local U representing only E's guards and other guards in armored car industry was merged into local U representing guards and nonguards, and E voluntarily recognized latter U, E's withdrawing recognition after contract had expired and U had rejected E's final offer, not violative; Sec. 9(b)(3) language and legislative history provide sufficient support for Bd's conclusion that Congress knowingly decreased stability of bargaining relationships involving such Us to protect guards from potential for division of loyalty between E and fellow U members)

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) **774 F.2d 752 (C.A. 7, Oct. 1985)**

[in holding that Bd's conclusion that merger election is not solely internal U affair was rational, consistent with Act, and not arbitrary, ct sustained Bd's determination that all unit members must vote before it will sanction results of merger election]

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) **774 F.2d 752 (C.A. 7, Oct. 1985)**

[in finding that Bd properly found *members only* merger election invalid, ct held Bd correctly justified its refusal to apply outcome determinative limitation on ground that effects of exclusion cannot be measured by mere numerical tally since group exclusions from election can have effects greater than mere number of excluded voters]

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) **774 F.2d 752 (C.A. 7, Oct. 1985)**

[*members only* merger election held invalid, notwithstanding fact that decision to void election would leave Ees w/o representation, at least temporarily, since U was at fault for not letting non-U Ees vote; because non-U Ees did not vote, no recognizable majority of unit Ees had agreed to vote by U and therefore U cannot invoke Bd processes to force E to bargain with it]

8081-8100 Validity of authorization cards

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**

(Ee's asserted revocation of validly signed U authorization card held ineffective, where E engaged in widespread and pervasive unlawful acts in effort to destroy Ees' support for U, which was well under way when Ee attempted to revoke card; under such circumstances, Bd presumes that Ee revocations of authorization cards are direct result of E's unlawful conduct)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**

(U authorization cards assertedly signed because of representation that only purpose for which cards would be used was to secure election held valid, where before signing Ees read card themselves or had card read to them by solicitors who told them U wanted to represent Ees, and solicitors made no statements to Ees to disregard langauge on card; nor did solicitors make any representation that only purpose for which cards would be used was to secure election)

1115, Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board **275 NLRB No. 045**

(E does not violate Section 8(a)(5) of Act by refusing to recognize U which bases its majority on *tainted* cards)

8081-9000 Recognition coerced by supervisory pressure

N.L.R.B. v. Island Film Processing Co., Inc., d/b/a Kahala Kai Photo Service **784 F.2d 1446 (C.A. 9, Mar. 1986)**

[refusal to bargain with certified U, not violation, since supervisory conduct tainted election where supervisors, who had ability to effectively recommend pay increases, reprimand Ees, and grant overtime, sowed seeds of reprisal by their constant vocal support of U among small group of Ees and assured them of benefits if U won and unfavorable conduct if it lost]

8082 ELIMINATION OF UNIT OR JOB CLASSIFICATION FROM UNIT

Syncor International Corporation **282 NLRB No. 063**

[scope of established bargaining unit is *non-mandatory*. However, party may lawfully propose change in scope of unit and parties may in certain circumstances agree to change or change can be accomplished by Bd proceedings, but never by unilateral action by party]

The Seven-Up/Canada Dry Bottling Company of Pittsburgh, A Division of Beverage Management, Inc. **281 NLRB No. 128**

[E's refusal to recognize U as representative of driver-salesmen, repudiation of contract and unilateral changes, following operational change in which E had eliminated job category's duties into new driver-salesman category, unlawful, notwithstanding E contention that creation of new category created qcr, where change was not technological and required no major hiring, job was similar to former category, no other U claimed to represent the E's

8082—Cont.

and Ees from old category substantially outnumbered additional driver-salesmen, who are viewed as accretion to old unit]

H & H Pretzel Company 277 NLRB No. 143
(withdrawal of recognition after contract expired, violation, since presumption of continued majority status was not rebutted by E's contention that its change to distributor dealerships converted Ees to independent contractors in view of E's retention of right of control and fact that nine out of twelve Ees were new hires which did not establish loss of majority support, as turnover alone cannot do so)

Donnie M. Parris, A Sole Proprietorship d/b/a D & B Masonry 275 NLRB No. 193
(E's cancellation of the contract, withdrawal of recognition and unilateral change in terms of employment not violative where there was only one regular unit Ee, and other Ees were casual Ees w/o expectation of recall from layoff w/i reasonable time and thus lacking community of interest with regular Ee)

Abbott-Northwestern Hospital 274 NLRB No. 162
(withdrawing recognition as to, and unilaterally changing working conditions of, 9 represented psychiatric assistants after transfer to same facility of 63 historically unrepresented psychiatric assistants, not violative, since consolidation obliterated unit of 9 represented Ees and unit of only part of group of Ees in same classification was inappropriate; unrepresented Ees were not accreted to former unit of represented Ees, parties had agreed that U would not represent previously unrepresented Ees, and U had reserved its representative position only as to previously represented Ees and complaint alleged violations only as to them)

8083 LACK OR LOSS OF STANDING OF REPRESENTATIVE

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital 282 NLRB No. 010
[E's refusal to bargain with U in which E's letter purported not to withdraw recognition unconditionally, but only to suspend negotiations *pending a final determination as to whether or not your labor organization represents a majority of nurses at our hospital* not untimely refusal, since, notwithstanding E's letter was over 6-months before any ULP charge as a refusal to bargain which is contingent on other occurrences does not start statute of limitations running]

Southern Lumber Company, Inc. 279 NLRB No. 027
[E's argument that U failed to police its certification because it did not file ULP charge until seven months after initial refusal to bargain, rejected since acceptance of E's reasoning would require certified U to file charge every time it believed ULP had been committed in order to assist risk of losing its certification]

IMS Manufacturing Company, Inc. 278 NLRB No. 079
[successor E's refusal to bargain with U on grounds that bargaining demand was made by International U when local U was certified as bargaining representative in prior decertification election held at predecessor E, violative, since there was no indication E was misled, E did not seek clarification of demand from U or Bd and U in any event amended charge to allege E refused to bargain with both the International and local U]

Louis Pappas' Homosassa Springs Restaurant, Inc. 275 NLRB No. 213
(unit size based upon member of Ees employed for greater part of year, *not* during peak season when (employment) roles are inflated)

8085 STATE CERTIFICATION

William Okie, Jr., et al. d/b/a Standby One Associates Center for Housing Partnerships 274 NLRB No. 140
(E's failure to recognize and bargain with U on ground E had no legal duty to do so because certification issued to U following state bd conducted election was invalid, unlawful, where Bd granted comity to state bd election procedures which reflected true desires of Ees, election irregularities were not involved, and there was no substantial deviation from due process requirements)

8090 CHANGE IN EMPLOYER'S OPERATIONS

8090-0100 Generally

8090-0133 Required by action of third party

ICI Americas, Inc. JD-328-85
(circumstances, such as U.S. Army's action in splitting bargaining unit in instant case, occurring after (Bd) certification may affect appropriateness of unit and negate long history of collective bargaining)

ICI Americas, Inc. JD-328-85
(E's powerlessness to affect Army's determination to cause split in unit (fire fighters *and* guards rather than single unit of combined firefighter-security department Ees) permits Bd to reexamine its existing prior certification (since 1964) and conclude that *essential factors* upon which Bd based its combined unit determination were eliminated due to Army's lawful action)

8090-0167 Pressing economic necessity

ABS Industries, Inc. 275 NLRB No. 145
[unilateral decision to close plant and relocate remaining work, not violation, as there was no duty to bargain where decision was nonmandatory bargaining subject in view of fact it turned, not on reduction of labor costs but on restructuring of company due to heavy losses and requirements of lenders]

American Bank Note Company 281 NLRB No. 099
[decline in business, even to point where volume of business is 1/4 of its previous level does not constitute unusual circumstances which would relieve E of consequences of its failure to give timely notice (of withdrawal from multiE bargaining)]

The Nielsen Lithographing Co. 279 NLRB No. 118
[E telling U that jobs would be lost and that E would go out of business unless economic concessions were made (by U) triggers duty to disclose financial information because by its words and conduct E conveyed to U an inability to pay w/i meaning of *Atlanta Hilton & Tower* 271 NLRB 1600 (1984) and not just mere unwillingness to continue to pay cost of its collective bargaining agreement]

Indianhead Truck Line, Inc. JD-271-85
(E's failure to notify Us of its decision to terminate its freight operations until after implementation of decision, thus denying Us opportunity to bargain over effects of its decision, unlawful; E's contention its failure to give timely notice was justified by fear of theft and its financial situation, rejected)

N.L.R.B. v. Auto Fast Freight, Inc. 793 F.2d 1126 (C.A. 9, July 1986)
[E's poor financial condition no defense where Bd could reasonably conclude from evidence that E's financial difficulties did not suddenly rise to level of urgency justifying unilateral changes]

8090-1000 Closing of plant

ABS Industries, Inc. 275 NLRB No. 145
[unilateral decision to close plant and relocate remaining work, not violation, as there was no duty to bargain where decision was nonmandatory bargaining subject in view of fact it turned, not on reduction of labor costs but on restructuring of company due to heavy losses and requirements of lenders]

Hawthorn Mellody, Inc. 275 NLRB No. 055
(E had no duty to bargain with U over its decision to close plant and transfer production to plant 90 miles away as decision turned upon change in nature or operation of business percipitated by loss of contract with major customer who provided 50-70% of business. Labor costs was one motivating factor, but decision did not *turn upon* it)

8090-2500 Merger

Rosehill Cemetery Association 281 NLRB No. 066
[in summary judgment proceeding, Bd rejected E's defense that unit was inappropriate because E anticipated merger changing its operations and increasing its work force size significantly; although merger was long contemplated by E (9 years), and E claimed recent events made merger likely, E did not assert affirmatively that merger had occurred and therefore claimed merger was too speculative a basis upon which E could refuse to bargain]

8090-4000 Transfer of operations to another location

Central Soya Company, Inc. 281 NLRB No. 173
[E's consolidation/relocation of facilities to a different part of town, withdrawal of recognition from U at new location once Ees at old locations had been transferred to new location and refusal to bargain with U over effects of decision to consolidate/relocate, violative, where there was no substantial change in operations following the consolidation/relocation and once Ees were transferred to new location with other unrepresented Ees, those transferred constituted a majority of Ees who still desired U representation]

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[E's unilateral change from permanent assignment of nurses aides and unit secretaries to certain wing of facility to rotating assignments from one wing to another during strike at E's alcohol and drug treatment center, and continuing policy after strike, violative of Section 8(a)(5), since E obligated to bargain about this substantial and material change]

Molded Acoustical Products, Inc. 280 NLRB No. 163
[E's refusal to recognize and bargain with U during certification year relocated operations on ground unit was limited to old operations, violative where new plant was continuation of same operation]

Drummond Coal Company, Inc. 277 NLRB No. 177
[E's transfer of repair work caused primarily by fundamental change in nature and direction of E's operations and not costs from city to onsite location at mine and closing city repair shop w/o notice to or bargaining with U over decision and its effects, not violative]

8090-4000—Cont.

Oak Rubber Company **277 NLRB No. 148**
(E's refusal to bargain over decision to relocation part of its operations and the effects of that decision, violative, where just at time U was offering concessions in an attempt to meet E's expressed financial needs over labor costs, E closed the door to further negotiations before impasse by announcing that it had finalized plans to relocate; further, E is under obligation to do more than present U with list of predetermined effects of relocation and ask U for comments)

Mack Trucks, Inc. **277 NLRB No. 084**
(E's decision to *transfer and consolidate work* being performed at truck assembly facility to another facility *not mandatory* bargaining subject, since E's decision did not turn on bargaining unit labor costs, but on serious losses for year 1980 and projected future losses because of E's excess productive capacity which led E to believe E had over invested in capital assets and such transfer to larger and more modern facility would cut freight and overhead costs)

Suburban Transit Corp. and Suburban Trails, Inc. **276 NLRB No. 005**
(no violation when E relocated unit work (single E) and thereby brought unit Ees under different bargaining agreement which was less favorable to these Ees, since contract covering original workstation did not contain any provisions preventing E from making such relocation w/o first obtaining consent of U and E bargained in good faith over decision to relocate)

American Fluorescent Corp. **275 NLRB No. 154**
(withdrawal of recognition of U as exclusive Ee bargaining agent, not violative where there is no evidence that E took any action to inhibit transfer of former bargaining unit members, and no evidence to refute evidence of proferred assistance by E. E terminated its operations in one city and resumed operations in another 35 miles north of first city in another county where U did not represent majority of E's work force)

Paper Manufacturers Company **274 NLRB No. 070**
(E's refusal to bargain with U upon its transfer of Ees to new location during certification year, on grounds that transfer involved acquisition of new equipment and an increase in Ee complement, thus constituting *unusual circumstances* warranting its refusal to bargain, violative, where there was no hiatus when Ees were transferred, Ees received same wages, benefits and performed same jobs before and after transfer and transferred Ees remained an identifiable entity separate from Ees at new location; further, fact that transferred unit increased in size was inconsequential since addition of new Ees occurred gradually over a period of 11 months)

Jaydon, Inc. **273 NLRB No. 199**
(transfer of unit work to new location allegedly contrary to terms of existing contract and w/o U's prior consent in order to avoid paying contract wage rates and in retaliation for U's refusal to make or accept mid-term contract modifications, not unlawful, in view of rule, established by *Milwaukee II* and retroactively applied therein, that relocations such as that herein are not unlawful in absence of contract language expressly forbidding such moves)

Patrick Cadillac Company; Hanley Dawson BMW, d/b/a Patrick BMW SAAB; et al. **JD-156-86**
[E's refusal to bargain with U and apply extant contract to relocated bodyshop operations, not violative, since new bodyshop did not have substantially same equipment or utilize substantially same operations where new bodyshop was five times the size of old bodyshop and performed work old bodyshop was incapable of handling and new operation employed many more Ees]

Patrick Cadillac Company; Hanley Dawson BMW, d/b/a Patrick BMW SAAB; et al. **JD-156-86**
[existing agreement remains in effect following relocation providing operations and equipment remain substantially same at new location and substantial percentage (approximately 40% or more) of Ees at old plant have transferred to new location by time relocation substantially completed]

Phillip A. Hunt Corporation **JD-14-86**
[E's decision to relocate certain work performed by unit Ees at plant represented by U to new non-U plant, excluded from limited scope of 8(d) where decision to relocate was not based upon labor costs but instead was based upon change in direction and nature of its business]

8090-4100 Transfer of work outside of unit

Morco Industries, Inc. And All Southern Fabricators, A division of Morco Industries, Inc. **279 NLRB No. 100**
[E's transferring work from one plant to another w/o bargaining with U about transfer, not violative where decision turned entirely on need to expand E's metal fabrication facilities, which involved change in nature and scope of facet of enterprise; E did not seek to undermine status of U or escape labor costs embodied in contract]

ICI Americas, Inc. **JD-328-85**
(E not free to alter composition of bargaining unit under guise of transfer of unit work after impasse on transfer of unit work to Ees outside unit, a mandatory subject of bargaining on which impasse is allowed)

ICI Americas, Inc. **JD-328-85**
]*transfer of unit work*, lawful)

8090-5000 Administrative action eliminating employee category

H & H Pretzel Company **277 NLRB No. 143**
(withdrawal of recognition after contract expired, violation, since presumption of continued majority status was not rebutted by E's contention that its change to distributor dealerships converted Ees to independent contractors in view of E's retention of right of control and fact that nine out of twelve Ees were new hires which did not establish loss of majority support, as turnover alone cannot do so)

8090-5500 Change in administrative structure

Sonat Marine, Inc. **279 NLRB No. 016**
[E's refusal to provide U with information concerning its conclusion that certain Ees in bargaining unit were supervisory and E was refusing to bargain over those Ees, violative, where U had represented contested Ees for years and had formally requested E's factual basis for its conclusion; further, nowhere does the Act require that the U must accept w/o any verification an E's claim that bargaining unit Ees are now out of the bargaining unit]

H & H Pretzel Company **277 NLRB No. 143**
(withdrawal of recognition after contract expired, violation, since presumption of continued majority status was not rebutted by E's contention that its change to distributor dealerships converted Ees to independent contractors in view of E's retention of right of control and fact that nine out of twelve Ees were new hires which did not establish loss of majority support, as turnover alone cannot do so)

8090-6000 Subcontracting

Gar Wood-Detroit Truck Equipment, Inc. **274 NLRB No. 023**
(as stated in *Otis Elevator* 269 NLRB No. 162, critical factor in determining whether specific management decision is subject to mandatory bargaining is essence of decision itself, i.e. whether it turns upon change in nature or direction of business or turns on labor costs; not its effect on Ees nor U's ability to offer alternatives. Further, in *Otis Elevator* Bd specifically stated that *Fibreboard* subcontracting is subject to mandatory bargaining not because decision is labeled *subcontracting* but because decision turns on reduction of labor costs)

8090-6900 Increase or decrease in number of business locations

Mangold Markets, Inc. **280 NLRB No. 090**
[refusal to bargain as successor E, on grounds store it took over was reopened as single store as opposed to multistore chain and Ees of predecessor were not employed at store E took over, violative, where store remained a retail store, Ees performed identical work, E did not show that change in store's operation changed Ees' working conditions and, although Ees were not employed at store E took over, did work for predecessor whose operation was highly integrated with substantial interchange between stores, thus Ees could be assumed to still desire U representation]

8090-8500 Change in industry

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(E held successor notwithstanding major thrust of operations changed from hotel, attraction park, and bait store with restaurant only incidental to total operations under previous E, to restaurant under new E since successorship obligations are not defeated by mere fact that only portion of former U-represented operation is subject to sale or transfer to new owners so long as Ees in conveyed portion constitute separate appropriate unit, and they comprise majority of unit under new operation)

8090-9000 Reopening after shutdown

Inland Container Corporation **275 NLRB No. 60**
(E held successor notwithstanding 2 1/2 month hiatus between closing of predecessor and commencement of successor E's operations, where hiatus may have been necessary at least inpart because of E's discriminatory hiring policies and plant renovations; however, renovations E made were insufficient to negotiate *substantial continuity* of employing enterprise as new machinery was introduced and work done did not alter machinery's fundamental character but was in nature of long overdue repairs)

8095 EFFECT OF OTHER STATUTES

United States Postal Service **281 NLRB No. 032**
[bypassing U and dealing directly with Ee by unilaterally adjusting Ee's grievance concerning proposed dismissal of Ee, unlawful, where at time E resolved grievance, while ignoring Ee's request to be accompanied by U representative, E knew that Ee's grievance was pending and that Ee wanted U agent to be present; and Veterans' Preference Act, permitting what would be ULP under Act by giving Ee right to meet with E for discussing problem before being dismissed, did not prevail over Ee's rights under Act]

U.S. Postal Service **280 NLRB No. 080**
[*Privacy Act* constitutes *a defense* to request for information under Section 8(a)(5) and (1) of Act *unless* disclosure of (requested) record would be for *routine use*]

8095—Cont.

U.S. Postal Service **280 NLRB No. 080**
[information in E's records (in instant case) may be disclosed under NLRA, to U as a *routine use* exception to Privacy Act in view of E's own acknowledged, published *routine use* exception under Privacy Act and its (E's) specific warning to applicants]

Lockheed Shipbuilding and Construction Company **278 NLRB No. 006**
[discharge of Ees pursuant to policy of testing Ees for medical fitness for particular job assignments, assertedly because OSHA required such medical tests, violative, where Bd had rejected this defense in previous ULP case involving same parties and E had expressly agreed by contract that such testing would not adversely affect Ees' employment]

BASF Wyandotte Corporation **276 NLRB No. 175**
(it is appropriate for Bd to consider arguments concerning Section 302 of LMRA to extent they support, or raise possible defense to, ULP allegations)

BASF Wyandotte Corporation **276 NLRB No. 175**
(Bd rejected E's argument that paid release time violates Section 302 of LMRA where factually similar case held that paid release time granted by E to U officials or committeemen administering contract did not violate Section 302, as it came w/i exception for payments made *by reason of* one's services as Ee)

BASF Wyandotte Corporation **274 NLRB No. 147**
(ALJ properly considered whether E's grant of privileges to U was violative of Section 302 of LMRA, which generally makes it illegal for E to pay money or other things to U or U officer, notwithstanding Bd has no authority to enforce Section 302; Bd is not precluded, in course of determining whether ULP has occurred, from considering arguments, to extent they support, or raise possible defense to ULP allegations, since if Bd refused to consider such arguments, Bd would risk placing party in position of being required to comply with conflicting statutory mandates)

BASF Wyandotte Corporation **274 NLRB No. 147**
(E's grant of privileges to U chairman which included 4 hours of paid time each workday for conducting U business including processing of grievances, use of office, telephone and copying machine, not violative of Section 302 of LMRA, thus not illegal subject of bargaining justifying unilateral withdrawal of privileges since w/i exception set forth in Section 302 (c)(1) in that privileges were granted by reason of chairman's service as Ee of E, nor did such grant of privileges amount to bribery of Ees' representatives at which Section 302 was aimed)

Indianhead Truck Line, Inc. **JD-271-85**
(E unlawfully refused to bargain over effects of closure of its freight operations where U's secretary-treasurer stated to E *we have to sit down and work out a closing agreement,* and E replied that agreement *had to be worked out by bankruptcy ct,* since E is not relieved of its obligation to bargain over effects of its decision because it has become debtor-in-possession under Bankruptcy Act and believes it would be unable to meet U's financial demands; E's subsequent invitation to U to bargain did not bar finding of violation and ordering remedy for prior violation)

Ambassador Convalescent Center, Inc. Debtor-In-Possession In Bankruptcy **JD-319-85**
(refusing to grant wage increase as required by executed agreement, violative, notwithstanding E's argument that agreement was void because E, debtor-in-possession, did not seek or obtain approval of bankruptcy ct where ct was not required to approve agreement)

536 UNION COERCION OF EMPLOYEES (8(b)(1)(A))

0100 GENERALLY

Nation's Capital Area Local, American Postal Workers (United States Postal Service) — 278 NLRB No. 110

[C dismissed where GC failed to establish that Ee's protected activity of filing charge with Bd was motivating, under *Wright Line*, factor in U's decision to remove Ee from steward's position]

0150 SCOPE OF PROSCRIPTION

0150-7500 Conduct reasonably calculated to coerce

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. — ———U.S.——— (U.S. SCT, June 1985)

[fining members who have attempted to resign at time such resignations prohibited under U's constitution, violative, as this is restraint on Sec. 7 rights to refrain from engaging in concerted activities and inconsistent with congressional policy of voluntary unionism. *retention of membership* set forth in provison relates to expulsion from membership and not resignation]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) — 279 NLRB No. 023

[conversation between member of U's executive board and 2 other Ees, overheard by Ee, who unsuccessfully sought clearance into local U, in which executive board member stated U had run Ee out of town because he had caused NLRB hearing which gave U some difficulty, and further suggested violent action against girlfriend of Ee who caused U trouble, unlawful. Immaterial whether statements directed at Ee, since statements, implication of which was that U would resort to reprisals if one seeks Bd's assistance, were made in obvious presence of Ee]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) — 279 NLRB No. 023

[member of U's executive board advising Ee that Ee would cause himself a lot of trouble and get hurt if he did not forget about attempting to get clearance into local U, unlawful, since was more than friendly advice, reasonably conveyed impression that E would retaliate, and constituted threat of unspecified injury]

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) — 275 NLRB No. 127

(U's refusal to allow financial core members to use services of dental and eye clinics and pharmacy (agents of U), violative, notwithstanding these benefits outside bargaining agreements as it has forseeable effect of coercing these financial core members from exercising their statutory right to refrain from joining U and remain core member. Defense that U's conduct priviledged under 8(b)(1)(A) proviso, rejected as against national policy to promote peaceful settlement of disputes where as part of strike settlement agreement U agreed it would not discriminate against core members)

Building Material and Dump Truck Drivers, Local 420, Teamsters (Gregg Industries) — 274 NLRB No. 085

(U's offers to waive or lower initiation fees for Ee's who joined prior to election, violative of Sec. 8(b)(1)(A), since clear from legislative history Sec. 8(b)(1)(A) was intended to proscribe U solicitation of membership with threats of exacting higher fees later when maintenance of membership may be condition of employment, and Bd also relied on *Savair Mfg. Co.*, 414 U.S. 270, in concluding that conduct had reasonable tendency to coerce Ees who desired to refrain from joining or assisting U at time when they were w/i their Sec. 7 rights to do so and thus was w/i proscription of 8(b)(1)(A))

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers — 778 F.2d 284 (C.A. 6, Dec. 1985)

[although Sec. 8(b)(1)(A) was modelled after Sec. 8(a)(1), its legislative history shows prohibition of interference with Ees' Sec. 7 rights was deleted lest any conversation or persuasion urging Ees to join U be found a ULP and has been interpreted by S.Ct to reach such *reprehensible* practices as violence, intimidation, reprisals and threats thereof, rather than *methods of peaceful persuasion*, and distinction between coercion and persuasion is explicitly legislated in Sec. 8(c)]

N.L.R.B. v. Local 139, Operating Engineers — 796 F.2d 985 (C.A. 7, July 1986)

[although U's imposition of fines on Ee members for their dissident activities against U officials *restrains* members' exercise of their Sec. 7 rights, terms *restrain or coerce* in 8(b)(1)(A) are not interpreted so literally as to make it an ULP for U to enforce compliance with U rules and policies, since 8(b)(1)(A) was not intended to give Bd power to regulate internal U affairs, including disciplinary charges and fines against members]

0169 DISCIPLINE INCONSISTENT WITH AMNESTY OR SETTLEMENT AGREEMENT

Sheet Metal Workers, Local 208 (Paul Mueller Company) — 278 NLRB No. 087

[U charging and fining members who had crossed picket line, including one member who had not resigned from U prior to crossing picket line, unlawful, since by signing no-retaliation clause in strike settlement agreement U waived any right to discipline member for strike related activity; U's contention agreement signed under duress rejected, and parol evidence regarding U's contention no retaliation provision signed with understanding it was not applicable to internal U affairs, since provision clear and integrated into agreement]

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) — 275 NLRB No. 127

(U's refusal to allow financial core members to use services of dental and eye clinics and pharmacy (agents of U), violative, notwithstanding these benefits outside bargaining agreements as it has forseeable effect of coercing these financial core members from exercising their statutory right to refrain from joining U and remain core member. Defense that U's conduct priviledged under 8(b)(1)(A) proviso, rejected as against national policy to promote peaceful settlement of disputes where as part of strike settlement agreement U agreed it would not discriminate against core members)

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) — 275 NLRB No. 127

(U unilaterally eliminating financial core members (members who resigned during strike but continue paying dues) access to eye and dental clinics and pharmacy (agents of U), violative, as these are mandatory subjects of bargaining notwithstanding these benefits outside bargaining agreements since strike settlement agreement provided that there would be no discrimination against any Ee because of their actions with respect to financial core status and use of these facilities involve significant aspect of employment relationship between Ees and E, namely, Ees' decision to work or not during strike

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) — 275 NLRB No. 127

(U's denial of financial core members' access to its pharmacy and eye and dental clinics in contravention of its strike settlement agreement, violative, even in absence of evidence that U was using dues of financial core members to finance its operation of these facilities)

1200 UNION INTERFERENCE WITH EMPLOYEE REFRAINING FROM ENGAGING IN UNION ACTIVITY

N.L.R.B. v. Local 299, Teamsters — 782 F.2d 46 (C.A. 6, Jan. 1986)

[U representatives initiating work stoppage that was illegal under contract though participants not told one way or other of its illegality, nor did U authorize stoppage did not restrain or coerce Ees in exercise of their Sec. 7 rights, as U could not punish Ees for refusal to commit illegal act (joining in work stoppage), so no coercion; further, as U did not threaten or intimidate members to secure their participation, members were free to not participate in action instigated by U]

2500 FORM OF UNION CONDUCT

2501 GENERALLY

2501—Cont.

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[U's contention that its filing of a grievance cannot be basis for ULP charge, rejected, since Bd is fully empowered to enjoin pursuit of a grievance where its object is enforcement of illegal contractual provision such as that he rein granting U officials superseniority solely because of their status]

2501-6500 Isolated conduct

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(even single instance of discriminatory treatment will support finding of ULP when hiring hall rules are not followed)

2501-8000 Noncoercive circumstances

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[conversation between member of U's executive board and 2 other Ees, overheard by Ee, who unsuccessfully sought clearance into local U, in which executive board member stated U had run Ee out of town because he had caused NLRB hearing which gave U some difficulty, and further suggested violent action against girlfriend of Ee who caused U trouble, unlawful. Immaterial whether statements directed at Ee, since statements, implication of which was that U would resort to reprisals if one seeks Bd's assistance, were made in obvious presence of Ee]

District 30, Mine Workers and Local 1834 (TCH Coal Company) 278 NLRB No. 045

[local U's and District U's endorsement of protest activities of its President and other officers while local U picketed secondary E for not hiring former Ees of primary E, held violative, since any force *that back to work* directives (instructions to U members at U meeting) did carry was belied by local U's officials failure to return to work themselves after issuing such directives and refused to cross U picket lines. U, like an E, acts through its agents, Local U's officers are *admitted agents of U and their conduct, therefore, evidence Local's endorsement of protest activities*]

Sausage Makers' Union, Local 203, Food & Commerical Workers (Western Employer Associates) JD-(SF)-47-86

[U is free to inform Ees of consequences of resigning, or of continuing to remain resigned, on their ability to receive internal U benefits]

Telephone Commercial Employees Union, Local 643, Telecommunications International Union (Illinois Bell Telephone Company) JD-463-84

(U fining individuals for crossing picket line, unlawful, since individuals had resigned from U prior to cossing line, where U steward, agent of U, who knew individuals had resigned prior to crossing picket line, circulated ptn to bring charges before U's executive Bd. Further, even if U had acted in good faith, members' right to resign and then cross picket line would be endangered if U could impose fines in good faith belief individual had crossed picket line while still member)

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers 778 F.2d 284 (C.A. 6, Dec. 1985)

[U president's speech to referral applicants stating that filing ULP charges would lead to investigation that might result in members losing unemployment compensation for turning down work, not coercive where it truthfully predicted possible consequential action by independent third party w/o U instigation or of assistance from U and beyond U's control]

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(no specific intent to discriminate need be shown to support finding of ULP in improper operation of hiring hall)

2506 PICKETING

Teamsters Local 115 (Oakwood Chair Manufacturing Co., Inc.) 277 NLRB No. 068

(mass picketing and obstructing entrances, violative)

District 17, Mine Workers, and its Local 5869 (Dehue Coal Company, et al.) 275 NLRB No. 101

(U's mass picketing mine of E, physically preventing entry by Ees, and otherwise blocking entry into premises, violative)

2507 FILING CRIMINAL OR CIVIL LAW SUIT

Local Lodge No. 707, Machinists (Pratt & Whitney Division of United Technologies Corporation) 276 NLRB No. 108

(local U's representative telling members that they would suffer *dire consequences* and possibly civil charges if they distributed a leaflet which was highly critica' of the incumbent local's leadership, violative)

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) 275 NLRB No. 098

(U filing state ct law suit against members to collect fines U had leveied against them for crossing picket line after resigning from U, unlawful, since suit had objective that was illegal under federal law, inasmuch as U's fines of Ees who had resigned from U could not lawfully be imposed under Act)

Local Lodge No. D192, Cement Workers Division of Boilermakers (Riverside Cement/A Gifford-Hill Company) JD-(SF)-77-86

[U securing and enforcing ct judgment to collect strike victimization assessments against individuals for periods after they had effectively resigned from U, unlawful, since assessment was legally enforceable only as to Ees who had voluntarily remained members of U and assumed obligation, and non-members only liable for basic monthly dues under security clause]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[mere filing of retaliatory lawsuit by U against its own members may amount to coercion even if suit is prosecuted in good faith or would be barred on merits by res judicata]

2509 THREATS TO EMPLOYEES

2509-0600 Prohibiting resignation from union

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) 275 NLRB No. 098

(U's refusal to accept resignations of members, threatening to bring and bringing disciplinary proceedings against members for crossing picket line after resigning, unlawful, notwithstanding U's contention actions justified where resignations were in violation of U's constitution, since U's maintenance of such restrictions was unlawful and thus its refusal to accept resignations based on such restrictions, unlawful; further, U's defense that resignations void ab initio due to improper E influence through E's memo advising Ees regarding their rights concerning resignation from U, rejected)

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) 275 NLRB No. 098

(violation, where U maintained restrictions on right to resign from U during strike)

Local 73, Sheet Metal Workers (Safe Air, Inc.) 274 NLRB No. 054

(maintaining provision in constitution which stated *No resignation shall be accepted if offered in anticipation of charges being preferred against him, during pendency of any such charges or during a strike or lockout,* violative; limitation under 10(b) held inapplicable since provision is unlawful on its face and continued maintenance or adherence to clause constitutes ULP continuing up to and even after filing of charge and C)

2509-1200 Refusal to refer

Garage Employees Union Local No. 272, a/w Teamsters (Various Employers) 280 NLRB No. 138

[U informing member who held withdrawal card which exempted him from paying dues, that he would not be referred until he turned in withdrawal card and paid dues]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124

[coercing and threatening Ees that they would not get jobs because they had been candidates for U office or had supported candidates for office other than incumbents, violation]

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

(statements by U to job applicants in hiring hall context to effect that referrals would first go to Local U members, violative, since U's method of making referrals was in direct contravention of lawful hiring hall procedure established by collective bargaining agreement then in effect)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

(U's threat to *traveller* that he would not work out of local's hiring hall unless he withdrew charge filed with Bd demonstrates existence of arbitrary and unlawful referral system. In addition, such threat tends to be coercive of member's exercise of his right to file charges)

2509-2300 Loss of employment

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) 281 NLRB No. 164

[threatening to cause Ee's discharge because he had refused to pay new initiation fee after he resigned from U during strike but continued to pay periodic dues, violation, notwithstanding letter of resignation did not state nature of resignation, since Ee thus retained financial core membership]

Communications Workers, Local 1101 (New York Telephone Company) 281 NLRB No. 064

[statement by steward of U having U security contract with E, telling newly hired Ees that they had to become U members to retain their jobs, unlawful]

2509-2500—Cont.

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[U's financial secretary informing member that he was aware member had filed charges with NLRB, and member would not be working *until NLRB thing was over* constituted unlawful threat to deprive member of work because he had instituted Bd proceedings]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[U's financial secretary informing member that he had created problem for himself and would not be working long in area, if he persisted in his efforts to secure clearance into local U, unlawful]

Montgomery Elevator Company **278 NLRB No. 122**
[U informing Ee who was not member that his job was being challenged in that U was challenging that aspect of right to work law that concerned his sepcific right to work as non-member of U, unlawful; U's contentions actions motivated by Ee's failure to pay service fees, rejected because it was not mentioned in conversation]

Local Union No. 277, Painters (Del E. Webb New Jersey, Inc.) **278 NLRB No. 027**
[threatening to cause member's discharge if he failed to pay dues for time for which he was unemployed]

Hotel & Restaurant Employees, Local 19 (Vicorp Restaurants, Inc. d/b/a Seasons Restaurant) **277 NLRB No. 090**
(U's sending standard notice to dues-delinquent members that, if suspended, they might be removed from the job, no violation where contract contained U-security clause)

Food & Commercial Workers, Local 115 (California Meat Company) **277 NLRB No. 083**
(threatening to seek discharge of Ees, who had resigned from U, unless they paid additional initiation fee, and actually seeking to do so, unlawful, where Ees became *financial core* members inasmuch as their resignations did not revoke their checkoff authorizations or otherwise evidenced intent to sever all of their relationship with U; and motivation behind U's professed concern about violating law with respect to receipt of payments by Us from Es was to mask its desire to retaliate against Ees for resigning)

Safeway Stores, Inc. **276 NLRB No. 099**
(U agent unlawfully coerced Ee during organizing campaign to support U by threatening Ee with implied loss of employment)

Woodcliff Lake Manor Nursing Home, Inc. **276 NLRB No. 084**
(violation, where U's business agent, in reply to Ee's question as to whether he could be discharged for refusing to sign dues checkoff authorization form, informed Ee *legally, yes*)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(statement to Ees by agent of assisted U that U had contract with E and that Ees had to join U or else U would request that E fire Ees, unlawful)

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) **274 NLRB No. 110**
(local U's *deliberate pattern of conduct* consisting of threats and coercion designed to force travelers into quitting so that local U's members could be hired, violative, where local U refused to accept properly tendered travel service dues from travelers yet threatened them with internal charges if they worked w/o travel service dues receipts, threatened them with loss of employment after they refused U's request that they quit by stating that U was requesting E to lay them off and strictly applied dues collection policy against travelers when past practice was to have flexible and open-handed policy)

Miss Elaine, Inc. **274 NLRB No. 036**
(U unlawfully threatened Ees, not previously included in unit, by stating that they must join U in 2 weeks or be discharged)

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**
(alleged statement by U official to Ee at settlement conference that if matter at hand were litigated, Ee would never work in industry again, not unlawful, since Ee's prehearing affidavit could not be relied upon particularly in view of Ee's uncontradicted testimony that his recollection required refreshing by way of leading questions by GC's counsel less than 1 hour after statement was allegedly made)

M. W. Kellogg Constructors, Inc. **273 NLRB No. 134**
(threatening Ee with loss of employment if he contested E's unlawful policy of laying off travelers because of nonmembership in local U, violative)

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[shop stewards, U president, and members of shop committee who were supporters of incumbent U, informing Ees that anyone who signed petition for rival U and refused to support incumbent U would be discharged, unlawful]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) **JD-144-86**
[violation, where U's secretary-treasurer business representative, upon being informed by member that member intended to withdraw ULP charge he had filed regarding *competitive* agreement which impacted adversely on senior Ees, informed member he had felt charge would be dismissed, that he was tired of member's actions, that there were ways of getting rid of troublemakers, and that if member wanted to keep working he had best do what he told him]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business representative informing Ee-member, in presence of other Ee-members, that ee member was making mistake involving himself in government investigation of charges of misuse of U funds by secretary-treasurer/business representative and that member might as well find another job, unlawful]

Retail Delivery Drivers, Driver Salesmen, Produce Workers and Helpers, Local 588, a/w Teamsters (Pak N Save, A Division of Brentway, Inc.) **JD-(SF)-145-85**
(demanding that Ees employed at one of E's stores, who were temporarily assigned to another store operated by E at which U had U security contract with E apply for membership in U, and threatening Ees with discharge if they failed to do so, unlawful)

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) **JD-(SF)-87-85**
(U security clause does not survive expiration of contract, and therefore U's demand on E to discharge Ees for nonpayment of dues after expiration, violative)

2509-3700 Legal action

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) **277 NLRB No. 059**
(threatening to take and/or taking expenses incurred in processing nonmembers to court to collect fees for grievances where no fees charged to members, violative)

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) **275 NLRB No. 098**
(U's refusal to accept resignations of members, threatening to bring and bringing disciplinary proceedings against members for crossing picket line after resigning, unlawful, notwithstanding U's contention actions justified where resignations were in violation of U's constitution, since U's maintenance of such restrictions was unlawful and thus its refusal to accept resignations based on such restrictions, unlawful; further, U's defense that resignations void ab initio due to improper E influence through E's memo advising Ees regarding their rights concerning resignation from U, rejected)

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business agent, upon being informed by member that other members were meeting with government investigator regarding charges of misuse of millions of dollars of funds by secretary-treasurer/business agent, asking member who had attended meeting, informing member that he would file intra-U charges against members at meeting, have their U cards pulled, and file civil suits for defamation, unlawful]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business representative in reply to Ee member that he had list of all members who had attended meeting with government investigator regarding charges of misuse of U funds by secretary-treasurer/business representative, that members were lying regarding charges against him, that he would sue them for libel, that Ee was not going to be member of U, unlawful]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business representative denying accusations of misuse of U funds, stating before assembled Ee members that he had pulled U card of one accuser, would file internal U charges and law suit against him, and would take similar actions against other Ee members who were his accusers, unlawful]

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2509-5000 Loss of employment benefits

M. W. Kellogg Constructors, Inc. **273 NLRB No. 134**
(U steward's telling Ees *checking in* at jobsite that they would not be assigned unscheduled overtime because local U members would do that work and telling a traveler that he had been assigned overtime because the foreman mistakenly thought he was local U member, violative, since steward was U representative on the job responsible for enforcing the contract

2509-5000—Cont.

whose terms and conditions were included in the *work rules* the steward was explaining)

2509-6200 Lack of representation

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) **277 NLRB No. 059**
(duty of fair representation requires that grievance filed by bargaining unit member, whether U member or nonmember, not be processed by U in arbitrary, discriminatory, perfunctory, or bad-faith manner)

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) **277 NLRB No. 059**
(refusal to process nonmember's grievance unless he agreed to pay local according to fee schedule established by local and applicable only to nonmembers, violative, as this has coercive effect on nonmembers in their exercise of their right to join or refrain from joining U)

Local 796, Electronic Workers IUE (Michael P. Burrow, an Individual) **JD-162-86**
[U president informing individual in unit, who was not member of U and had grieved his discharge, that he didn't care if individual ever got job back, since individual was not U member, unlawful, even if not accurate reflection of U's policies, as it would tend to restrain or coerce Ee in exercise of his Section 7 rights]

Sausage Makers' Union, Local 203, Food & Commerical Workers (Western Employer Associates) **JD-(SF)-47-86**
[U violated its duty of fair representation by telling Ees it would not provide services; e.g., providing forms and assistance in completing forms necessary to secure health-related benefits available under collective bargaining agreement, in connection with conditions of work and work-related problems to Ees who had resigned from membership even though these Ees continued to satisfy their financial core requirements under contract]

2509-7500 Violence

Local 295-295C, Operating Engineers (Weather Wise Conditioning Corp.) **282 NLRB No. 044**
[U representative's threatening Ees at meeting with physical harm if they did not support U during strike and went back to work, unlawful]

Metropolitan District Council of Philadelphia and Vicinity, Carpenters (E. Allen Reeves, Inc.) **281 NLRB No. 077**
[threatening unspecified bodily harm to Ee photographing picketers' coercive conduct, violation]

Nassau Insurance Company **280 NLRB No. 103**
[U violated Section 8(b)(1)(A) by threatening Ees and supervisors of E against which it was engaged in strike and Ees of other Es with bodily harm, threatening to inflict and inflicting property damage, and attempting to block ingress to E's property during strike]

Congreso De Uniones Industriales De Puerto Rico (Rice Growers Association of California (P.R.) Inc.) **279 NLRB No. 088**
[threat to physically attack, and later attack on Ee at E's plant gate in order to impede his access to work violation, where U picket captain observed conduct and permitted picket to remain on picket line after attack and where U did not repudiate his conduct and accepted him as U delegate, thereby silently adopting and approving violence]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[conversation between member of U's executive board and 2 other Ees, overheard by Ee, who unsuccessfully sought clearance into local U, in which executive board member stated U had run Ee out of town because he had caused NLRB hearing which gave U some difficulty, and further suggested violent action against girlfriend of Ee who caused U trouble, unlawful. Immaterial whether statements directed at Ee, since statements, implication of which was that U would resort to reprisals if one seeks Bd's assistance, were made in obvious presence of Ee]

Laborers, Local Union No. 644 (Kellerman Brothers Construction Compan) **278 NLRB No. 162**
[U's refusal to refer or consider non-member for referral while members of U were unemployed, violative; further, U's picketing E for employing nonmember, causing E to discharge non-member by threatening to stop construction and threatening non-member with bodily harm if he continued working for E, violative]

Iron Workers, Local 601 (Papco, Inc.) **276 NLRB No. 142**

United Telephone Answering and Communications Service Union, Local 780, AFL-CIO (Federated Communications Services, Inc.) **276 NLRB No. 028**
(picketer telling strike replacement that she would kick her ass and her mother's ass violative; further, U held responsible for picketer's statements since picket line was officially authorized by U and person making statements was an elected member of U's executive board)

United Mine Workers of America **275 NLRB No. 070**
(picketers blocking ingress and egress to E's facility, threatening to and inflicting serious bodily harm on Ee attempting to cross picket line and threatening Ees with bodily harm as they left E's premises, violative)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(U's threatening Ees with violence and bodily injury if they refused to join U's strike against E, unlawful)

Lumber Production and Industrial Workers, Local 3171 (Louisiana-Pacific Corporation, Movie Springs Operation **274 NLRB No. 125**
(violation where U's vice president present, though no evidence he participated in, at time striking Ees threw rocks and eggs at nonstriking Ees' vehicles as they left E's facility and which caused bodily injury and property damage, since vice president failed to take any preventive or corrective action)

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[blocking of egress and ingress to E's property, threats to inflict and infliction of bodily harm to non-striking Ees and property damage by pickets, unlawful, including threats to and damage involving supervisors, since those incidents took place in presence of statutory Ees]

Theresa Ryan, President, and Mary Ann Masar, Vice-President, Agents of Local 4010, Communications Workers (Michigan Bell Telephone Company) **JD-216-86**
[violation where U president threatened Ee with personal injury and/or property damage if she worked behind picket line]

Upholstery Division of The United Steelworkers of America, AFL-CIO, Local Union 406-U (Jody Becker, An Individual) **JD-130-86**
[U steward's threat to beat up resigned member who had worked during strike, violation]

Operating Engineers Local Union No. 3 (Arthur R. Cole, an Individual) **JD-(SF)-113-85**
(U hiring hall dispatcher's threat, to member who had dispute over nonreferral, to take dispute out to the parking lot and settle it, not violative, since member did not take offer seriously and was not coerced where dispatcher was man of slight build, member was taller and heavier than dispatcher and statement was simply made in the spirit of bravado)

Hotel & Restaurant Employees, Local 1 (Tom Pappalis, an Individual and George Dimas, an Individual) **JD-30-85**
(U threatening member with bodily harm because he had filed charge against U with Bd, violative)

2509-8100 Change of working conditions

Shipbuilders, Local No. 9 (Todd Pacific Shipyards) **279 NLRB No. 087**
[telling Ee that U was going to cause Ee's transfer and demotion and file internal U charges against him as result of Ee's performance of leadman's duties, unlawful]

2509-9300 Fines and other sanctions for violating union rules and opposing union

Mail Handlers, Local Union No. 308 (United States Postal Service) **281 NLRB No. 143**
[U removing Ee from his position as shop steward because he had filed ULP charges previously against U violative, since internal U considerations raised by U-Respondent Ee's alleged dereliction of duty as shop steward and his alleged failure, as treasurer, to properly protect monies belonging to Ee's Social and Recreation committee as well as alleged altercation with U president cannot prevail in face of overriding public interest in unimpeded access to Bd and fact that violation turns on coercive nature of U's conduct rather than on U's motivation which may be factor to be considered]

Shipbuilders, Local No. 9 (Todd Pacific Shipyards) **279 NLRB No. 087**
[telling Ee that U was going to cause Ee's transfer and demotion and file internal U charges against him as result of Ee's performance of leadman's duties, unlawful]

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) **278 NLRB No. 138**
[U's threatening Ees of neutral subcontractor that if they failed to leave construction project, they could be fined by U, violative where leaving project would violate 8(b)(4)(ii)(A) and (B)]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**
[U fining Ee who resigned from U during strike, violative]

2509-9300—Cont.

Telephone Traffic Union, Upstate Local 212, T.I.U.
(New York Telephone Co.) **278 NLRB No. 144**
[U's bringing up Ee on charges and fining her for working during strike, violative, since Ee was not member of U Ee took no action consistent with (U) membership]

Communications Workers, Local 9201 (Pacific Northwest Bell) **275 NLRB No. 214**
(threatening members with fines if they attempted to resign their membership in contravention of U's rule prohibiting resignations immediately preceding or during a strike, violative)

Machinists, Local 289, and District Lodge 160
(Tacoma and Seattle Trailer Repair, Inc.) **275 NLRB No. 081**
(mtn for summary judgment granted where there were no material facts in dispute and no cause to the contrary shown, since U admitted all factual allegations that it brought charges and fined Ees for their postresignation work for E behind U's picket line, and U did so pursuant to its constitutional restriction maintained and enforced against its members' right to resign from U, which was in violation of 8(b)(1)(A))

Food & Commercial Workers, Local No. 1439
(Roosuer's Supermarkets, Inc.) **275 NLRB No. 007**
(threatening to censor, fine, suspend, and expel U members in one unit for violating U rules by failing to honor picket line of another unit of Ees of same employer also represented by U, unlawful, since U had waived threatened Ees' right to engage in sympathy strike by signing contract covering them which had no-strike clause where nothing in contract or parties' bargaining history established intent to except sympathy strike)

Food & Commercial Workers, Local No. 1439
(Roosuer's Supermarkets, Inc.) **275 NLRB No. 007**
(threatening to censor, fine, suspend, and expel U members in one unit for violating U rules by failing to honor picket line of another unit of Ees of same employer also represented by U, unlawful, where U had expressly agreed in its contract with E covering threatened Ees not to discipline them for crossing U's primary picket line at E's premises, and its threat breached that no-discipline provision of its contract)

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) **274 NLRB No. 110**
(local U's *deliberate pattern of conduct* consisting of threats and coercion designed to force travelers into quitting so that local U's members could be hired, violative, where local U refused to accept properly tendered travel service dues from travelers yet threatened them with internal charges if they worked w/o travel service dues receipts, threatened them with loss of employment after they refused U's request that they quit by stating that U was requesting E to lay them off and strictly applied dues collection policy against travelers when past practice was to have flexible and open-handed policy)

Teamsters Local Union No. 957 a/w Teamsters
(Complete Auto Transit, Inc.) **JD-144-86**
[violation, where U's secretary-treasurer business representative, upon being informed by member that member intended to withdraw ULP charge he had filed regarding *competitive* agreement which impacted adversely on senior Ees, informed member he had felt charge would be dismissed, that he was tired of member's actions, that there were ways of getting rid of troublemakers, and that if member wanted to keep working he had best do what he told him]

Teamsters Local Union No. 957 a/w Teamsters
(Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business agent, upon being informed by member that other members were meeting with government investigator regarding charges of misuse of millions of dollars of funds by secretary-treasurer/business agent, asking member who had attended meeting, informing member that he would file intra-U charges against members at meeting, have their U cards pulled, and file civil suits for defamation, unlawful]

Teamsters Local Union No. 957 a/w Teamsters
(Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business representative in reply to Ee member that he had list of all members who had attended meeting with government investigator regarding charges of misuse of U funds by secretary-treasurer/business representative, that members were lying regarding charges against him, that he would sue them for libel, that Ee was not going to be member of U, unlawful]

Teamsters Local Union No. 957 a/w Teamsters
(Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business representative denying accusations of misuse of U funds, stating before assembled Ee members that he had pulled U card of one accuser, would file internal U charges and law suit against him, and would take similar actions against other Ee members who were his accusers, unlawful]

Teamsters Local Union No. 957 a/w Teamsters
(Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business representative informing individual who he had alleged had accused him of misuse of U funds, that individual's dues would not be accepted, that he would never belong to U again, directed him to leave U hall, and take his dissident fellow accusers with him, unlawful, since constituted unlawful threat of intra-U disciplinary proceedings]

Teamsters Local Union No. 957 a/w Teamsters
(Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer returning member's dues and in enclosed letter informing member that his actions while on withdrawal card were being considered by U as basis for possible U disciplinary action, unlawful]

N.L.R.B. v. Electrical Workers, Local 745 **759 F.2d 533 (C.A. 6, Apr. 1985)**
(U steward-agent of U- threatening Ee with fine if Ee testified against fellow member at grievance hearing regarding fellow member's discharge for drinking on job, unlawful, notwithstanding threat never carried out, since Ee perceived threat seriously, Ee testified willingly and U may not enforce any rule which would inhibit Ees from testifying truthfully at grievance hearing, inasmuch as such rule would inhibit overriding policy of labor law)

2509-9500 Unspecified

Metropolitan District Council of Philadelphia and Vicinity, Carpenters (E. Allen Reeves, Inc.) **281 NLRB No. 077**
[threatening unspecified bodily harm to Ee photographing picketers' coercive conduct, violation]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[member of U's executive board advising Ee that Ee would cause himself a lot of trouble and get hurt if he did not forget about attempting to get clearance into local U, unlawful, since was more than friendly advice, reasonably conveyed impression that E would retaliate, and constituted threat of unspecified injury]

Local Lodge No. 707, Machinists (Pratt & Whitney Division of United Technologies Corporation) **276 NLRB No. 105**
(local U's representative telling members that they would suffer *dire consequences* and possibly civil charges if they distributed a leaflet which was highly critical of the incumbent local's leadership, violative)

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) **JD-(NY)-136-85**
[fact that Ee's grievances were not arbitrated by time instant case came to trial before ALJ *not* indicative of bad faith on U's part, since U demonstrated that there exists large backlog of grievances pending arbitration with Ee's grievance processing in approximately its correct order]

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2509-9900 Other

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers **778 F.2d 284 (C.A. 6, Dec. 1985)**
[U president's speech to referral applicants stating that filing ULP charges would lead to investigation that might result in members losing unemployment compensation for turning down work, not coercive where it truthfully predicted possible consequential action by independent third party w/o U instigation or of assistance from U and beyond U's control]

2510 INTERROGATION

Teamsters Local Union No. 957 a/w Teamsters
(Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business agent, upon being informed by member that other members were meeting with government investigator regarding charges of misuse of millions of dollars of funds by secretary-treasurer/business agent, asking member who had attended meeting, informing member that he would file intra-U charges against members at meeting, have their U cards pulled, and file civil suits for defamation, unlawful]

2512 SURVEILLANCE

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[videotapping cars of nonstrikers as they entered struck plant and taking pictures on nonstriking Ees' cars in plant parking lot, violative, as such conduct necessarily threatens and coerce nonstrikers in their exercise of their rights not to honor picket line]

2514 PROMISES OF BENEFITS TO EMPLOYEES

2514-0100 Generally

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**
(U's maintaining and attempting to enforce contractual *superseniority*, in its contract with E, for U vice president, recording secretary, and members of U negotiating committee with regard to layoff, recall and protection against job bumping, violative, since their on-the-job presence was not necessary for performance of grievance processing duties or contract administration. Negotiating committee had *only* duty to negotiate contract with E)

2514-0100—Cont.

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**
(U's invoking contractual grievance procedure on or after U vice president filed grievance seeking reinstatement to job from which she had been bumped (contract granted U vice president *superseniority* for job bumping purposes) violative, since on-the-job presence of U vice president not necessary for performance of grievance processing duties and if grievant successful, result would displace another Ee)

2514-5000 Waiver of dues or fees

Building Material and Dump Truck Drivers, Local 420, Teamsters (Gregg Industries) **274 NLRB No. 085**
(U's offers to waive or lower initiation fees for Ee's who joined prior to election, violative of Sec. 8(b)(1)(A), since clear from legislative history Sec. 8(b)(1)(A) was intended to proscribe U solicitation of membership with threats of exacting higher fees later when maintenance of membership may be condition of employment, and Bd also relied on *Savair Mfg. Co.*, 414 U.S. 270, in concluding that conduct had reasonable tendency to coerce Ees who desired to refrain from joining or assisting U at time when they were w/i their Sec. 7 rights to do so and thus was w/i proscription of 8(b)(1)(A))

2515 DEMANDS AGAINST EMPLOYEES

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) **274 NLRB No. 110**
(local U's requesting travelers that had been previously referred by local U to quit their jobs so that local U's members could work, violative; U has an obligation not to conduct itself in an arbitrary, invidious or discriminatory manner when representing traveler Ees referred out by it; further, U's contention that since no traveler quit his job there was no coercive impact from its action, rejected)

Retail Delivery Drivers, Driver Salesmen, Produce Workers and Helpers, Local 588, a/w Teamsters (Pak N Save, A Division of Brentway, Inc.) **JD-(SF)-145-85**
(demanding that Ees employed at one of E's stores, who were temporarily assigned to another store operated by E at which U had U security contract with E apply for membership in U, and threatening Ees with discharge if they failed to do so, unlawful)

Iron Workers, Local No. 111 v. N.L.R.B. **792 F.2d 241 (C.A. D.C., June 1986)**
[U's refusal to accept traveler's tender of travel service dues because traveler did not have monthly dues receipt from his home local, unlawful, since U's behavior toward traveler was improperly motivated deviation from what had been lenient enforcement of requirement that travelers verify payment of dues to their home local]

2518 VIOLENCE AGAINST EMPLOYEES

Local 87 Service Employees (Pacific Telephone and Telegraph Company) **279 NLRB No. 025**
[chants of *Kill the scabs* maintained by pickets held to have merely reflected *animal exuberance* rather than threats, where nonstrikers did not consider chants serious enough to mention in their testimony, and it seemed unlikely that any real harm would have come to them as result of such random chanting]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) **279 NLRB No. 025**
[hostile comments made by pickets to nonstrikers crossing picket line have been interpreted as being mere extravagant language used during labor dispute to express disagreement or frustration; however, distinction has been drawn based on perceived likelihood of particular speaker to follow through on his remarks; thus, while size of person uttering potentially threatening remarks should not be considered determinative, it is a factor that should be considered when analyzing if such remarks might be viewed as intimidating or coercive]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) **279 NLRB No. 025**
[threat made by picketing individual to nonstriker crossing picket line that *We're going to get you*, unlawful, where nonstriker specifically cited large size of speaker as being intimidating; and remark, made in context of arrest of one picket for act of violence, about which nonstriker testified, lent credibility to his testimony that he gave sufficient credence to threat to be intimidated by it]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) **279 NLRB No. 025**
[purportedly threatening remarks made by U's president during picketing, not unlawful, where remarks were addressed to E, and not Ees; and, in view of E's response, it was most likely that remarks, although regarded as real, were not perceived as intimidating]

2518-1000 In hiring hall

General Teamsters and Food Processing Local 87, Teamsters (Harry Shain, an Individual) **273 NLRB No. 225**
(notwithstanding assurances that omission was inadvertant clerical error member becoming upset and telling U's office manager to *keep her damn hand off his name on out of work list* when he discovered that posted unofficial referral list did not include his name, not protected activity)

Local 796, Electronic Workers IUE (Michael P. Burrow, an Individual) **JD-162-86**
[violation, where U president, following discussion with individual, who was not member of U, regarding U's assistance in regaining his job, called individual *scab*, grabbed him, forced him against wall and out of room, since this constituted assault and battery which unlawfully restrained and coerced Ee in exercise of Section 7 rights, notwithstanding state ct dismissed criminal complaint as to incident]

Operating Engineers Local Union No. 3 (Arthur R. Cole, an Individual) **JD-(SF)-113-85**
(U hiring hall dispatcher's threat, to member who had dispute over nonreferral, to take dispute out to the parking lot and settle it, not violative, since member did not take offer seriously and was not coerced where dispatcher was man of slight build, member was taller and heavier than dispatcher and statement was simply made in the spirit of bravado)

2518-2000 On picket line

Nassau Insurance Company **280 NLRB No. 103**
[U violated Section 8(b)(1)(A) by threatening Ees and supervisors of E against which it was engaged in strike and Ees of other Es with bodily harm, threatening to inflict and inflicting property damage, and attempting to block ingress to E's property during strike]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) **279 NLRB No. 025**
[fact that individual was on sidewalk picketing with others among U's pickets and was in possession of picket sign held sufficient indicia that individual was one of U's pickets since exact identity of individual picket need not be established; and U was responsible for his action in hitting nonstriker with picket sign in violation of 8(b)(1)(A)]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) **279 NLRB No. 025**
[frequent incidents involving action of U's pickets in spitting upon nonstrikers crossing picket line, unlawful]

United Mine Workers of America **275 NLRB No. 070**
(picketers blocking ingress and egress to E's facility, threatening to and inflicting serious bodily harm on Ee attempting to cross picket line and threatening Ees with bodily harm as they left E's premises, violative)

Lumber Production and Industrial Workers, Local 3171 (Louisiana-Pacific Corporation, Movie Springs Operation **274 NLRB No. 125**
(violation where U's vice president present, though no evidence he participated in, at time striking Ees threw rocks and eggs at nonstriking Ees' vehicles as they left E's facility and which caused bodily injury and property damage, since vice president failed to take any preventive or corrective action)

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-123-86**
[blocking of egress and ingress to E's property, threats to inflict and infliction of bodily harm to non-striking Ees and property damage by pickets, unlawful, including threats to and damage involving supervisors, since those incidents took place in presence of statutory Ees]

2518-6000 Mass picketing

Metropolitan District Council of Philadelphia and Vicinity, Carpenters (E. Allen Reeves, Inc.) **281 NLRB No. 077**
[mass picketing of, and blocking ingress to and egress from, work sites to intimidate Ees attempting to pass through picket lines, violation]

District 17, Mine Workers, and its Local 5869 (Dehue Coal Company, et al.) **275 NLRB No. 101**
(U's mass picketing mine of E, physically preventing entry by Ees, and otherwise blocking entry into premises, violative)

2518-7000 At employer's plant

Congreso De Uniones Industriales De Puerto Rico (Rice Growers Association of California (P.R.) Inc.) **279 NLRB No. 088**
[threat to physically attack, and later attack on Ee at E's plant gate in order to impede his access to work violation, where U picket captain observed conduct and permitted picket to remain on picket line after attack and where U did not repudiate his conduct and accepted him as U delegate, thereby silently adopting and approving violence]

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(throwing rocks in vicinity of E's premises at vehicles driven by Ees who refused to join U's strike against E, unlawful)

2518-8000 Obstructing ingress to and egress from plant

Metropolitan District Council of Philadelphia and Vicinity, Carpenters (E. Allen Reeves, Inc.) **281 NLRB No. 077**
[mass picketing of, and blocking ingress to and egress from, work sites to intimidate Ees attempting to pass through picket lines, violation]

Nassau Insurance Company **280 NLRB No. 103**
[U violated Section 8(b)(1)(A) by threatening Ees and supervisors of E against which it was engaged in strike and Ees of other Es with bodily harm, threatening to inflict and inflicting property damage, and attempting to block ingress to E's property during strike]

United Mine Workers of America **275 NLRB No. 070**
(picketers blocking ingress and egress to E's facility, threatening to and inflicting serious bodily harm on Ee attempting to cross picket line and threatening Ees with bodily harm as they left E's premises, violative)

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[blocking of egress and ingress to E's property, threats to inflict and infliction of bodily harm to non-striking Ees and property damage by pickets, unlawful, including threats to and damage involving supervisors, since those incidents took place in presence of statutory Ees]

2519 VIOLENCE AGAINST SUPERVISORS

Teamsters Local 115 (Oakwood Chair Manufacturing Co., Inc.) **277 NLRB No. 068**
(restraint and coercion directed against supervisors and managerial persons under circumstances where conduct became or was sure to become known to striking and nonstriking Ees constitutes restraint and coercion of Ees in exercise of their statutory rights)

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[blocking of egress and ingress to E's property, threats to inflict and infliction of bodily harm to non-striking Ees and property damage by pickets, unlawful, including threats to and damage involving supervisors, since those incidents took place in presence of statutory Ees]

2522 DEMANDS AGAINST EMPLOYER

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) **279 NLRB No. 122**
[U's efforts to apply terms of collective-bargaining agreements to Ees other than those for which agreements were negotiated by insisting on arbitration of grievances seeking to merge three separate units by dovetailing their seniority rights contrary to parties' longstanding bargaining agreements, violation]

Naftali Deutsch and Alexander Coler d/b/a C–D Investment Co. **279 NLRB No. 090**
[District Council's action, and E's acquiescence, in reinstating two duly appointed stewards and causing discharge of steward appointed by U officer w/o authority to do so and in violation of hiring hall rules, not unlawful where District Council was preserving integrity of contractually prescribed referral practice, and discharge of steward appointed w/o proper authority was necessary to effective performance of its representative function]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[U steward informing Ee and E that Ee could not work overtime because he was not member of local U, notwithstanding no local members on job available to do work, unlawful]

Greg Construction Co. **277 NLRB No. 163**
(discharge of Ees to avoid paying wage rate in U contract, rather than because U demanded discharged because they were not U members, not unlawful)

Helmsley-Spear, Inc. **275 NLRB No. 043**
(U seeking and obtaining discharge of Ee for failure to pay dues violative, since U's notices to Ee of dues delinquency were inadequate where two notices sent to Ee set forth conflicting periods of dues delinquency and failed to specify precise amount of reinstatement fee required of Ee; further, U's contention Ee was *free-rider* because he failed to read U mail, rejected, since negligence and inattention to U concerns are not equivalent to willful attempt to evade financial obligations and Ee followed pattern of sporadic dues payment, becoming delinquent and then paying in lump sum not only arrears but in advance)

Graphic Arts International Union, Local 280 (Belzer-Shapes Litho Plate Company) **274 NLRB No. 119**
(no violation where U did not cause or attempt to cause E to discharge Ee, as alleged; U official was not hostile to Ee because of Ee's apparent suspension by sister local or his failure as yet to join U pursuant to U security clause, as alleged, but, upon being told by E's officer that E was dissatisfied with Ee's conduct, simply asked what E intended to do, and, when E's officer said that E intended to discharge Ee, U official commented that U therefore would not pursue Ee's membership application)

Paper Manufacturers Company **274 NLRB No. 070**
(U's demanding that E recognize it as majority representative for group of Ees that were transferred to plant violative, where transferred Ees did not constitute accretion to existing unit at plant, U did not enjoy majority support of transferred Ees and they were in fact, represented by another U)

Local 807, Teamsters (Paragon Paint & Varnish Corporation) **JD-(NY)-34-85**
(no violation, where U requested discharge of Ee who was in arrears in payment of dues for period during which he was on sick leave, since U had advised Ee of amount owed, method used to compute amount, when payments were to be made and that discharge would result from failure to pay, and where Ee failed to fulfill agreement made with U for payment)

2527 VIOLENCE OR THREATS THEREOF AGAINST EMPLOYERS KNOWN TO EMPLOYEES

Teamsters Local 115 (Oakwood Chair Manufacturing Co., Inc.) **277 NLRB No. 068**
(restraint and coercion directed against supervisors and managerial persons under circumstances where conduct became or was sure to become known to striking and nonstriking Ees constitutes restraint and coercion of Ees in exercise of their statutory rights)

2529 VIOLENCE OR THREATS THEREOF AGAINST OTHERS

Electrical, Local 1547 (Alaska Chapter, National Electrical Contractors Association, Inc.) **280 NLRB No. 097**
[U did not violate 8(b)(1)(A) by statements, made by rank-and-file members at U meeting, allegedly threatening travelers who were linked to declining jobs in area, since U, not its members, was respondent herein, and there was no basis for finding improper conduct on part of U's agents, since U's officers credibly denied that they stood in unison with rank-and-file members and applauded anti-traveler statements at meeting]

Electrical, Local 1547 (Alaska Chapter, National Electrical Contractors Association, Inc.) **280 NLRB No. 097**
[U officer's statement, made at general U meeting, linking declining jobs in area with teavelers, not unlawful, where officer was expressing only his personal opinion, and traveler-witness conceded in his testimony that officer had made a personal statement and had not intimated that action was contemplated against travelers]

Electrical, Local 1547 (Alaska Chapter, National Electrical Contractors Association, Inc.) **280 NLRB No. 097**
[U held not to have violated 8(b)(1)(A) where at general U meeting U's officers had little choice but to permit rank-and-file member, who also directed his remarks to U officers, the same opportunity to *sound off* as other rank-and-file members concerning problem of travelers in face of declining number of jobs in area; and there was no evidence that U invited those remarks, encouraged them, or endorsed spreading fear among travelers]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[conversation between member of U's executive board and 2 other Ees, overheard by Ee, who unsuccessfully sought clearance into local U, in which executive board member stated U had run Ee out of town because he had caused NLRB hearing which gave U some difficulty, and further suggested violent action against girlfriend of Ee who caused U trouble, unlawful. Immaterial whether statements directed at Ee, since statements, implication of which was that U would resort to reprisals if one seeks Bd's assistance, were made in obvious presence of Ee]

Teamsters Local 115 (Oakwood Chair Manufacturing Co., Inc.) **277 NLRB No. 068**
(U violated Act by blocking locksmith's (3rd party) access to plant, jostling him and indicating to him his truck was not safe)

Teamsters Local 115 (Oakwood Chair Manufacturing Co., Inc.) **277 NLRB No. 068**
(U blocking entrance to plant to prevent tow truck operator from entering, and blocking entrance on approach of customers and calling them *scabs*, violative)

2530 REPRISALS AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES

Dillingham Tug & Barge Corporation **278 NLRB No. 019**
[attempting to cause and causing E to discharge Ee, who had been suspended for exercising Sec. 7 right of supporting rival U, for failure to pay dues when Ee had no dues obligation violation]

2530—Cont.

Glenn Machine Works, Inc. 277 NLRB No. 076
(U's telling its member that he was being penalized for his failure to support incumbent business agent and he had lost his job because he had not supported incumbent business agent in last election, violative)

Local Lodge No. 707, Machinists (Pratt & Whitney Division of United Technologies Corporation) 276 NLRB No. 105
(local and international U's filing and processing to hearing internal U charges against individuals, assertedly because they had engaged in a variety of conduct unbecoming of a U member and which was destructive of the local, violative, since real reason was their involvement in distributing leaflet which was highly critical of incumbent local's leadership, many of the charges against the individuals were either stale, based upon events condoned by the membership or unsubstantiated and internal trial committee was clearly biased against these members)

Communications Workers, Local 6012 (Southwestern Bell Telephone Co.) 275 NLRB No. 210
(fining Ees for failing to honor picket line and returning to work during strike violative where U had effectively prevented them from tendering resignations from membership)

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) 275 NLRB No. 127
(U's refusal to allow financial core members to use services of dental and eye clinics and pharmacy (agents of U), violative, notwithstanding these benefits outside bargaining agreements as it has forseeable effect of coercing these financial core members from exercising their statutory right to refrain from joining U and remain core member. Defense that U's conduct priviledged under 8(b)(1)(A) proviso, rejected as against national policy to promote peaceful settlement of disputes where as part of strike settlement agreement U agreed it would not discriminate against core members)

Penn Yan Express, Inc. 274 NLRB No. 057
(U principal officer's causing E to discharge Ee for supporting losing candidate in U election, violative where U official acted with apparent authority of U in that he could reasonably have been believed to be acting on U's behalf)

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081
(U's failure and refusal to refer particular Ee to E, at E's request, because Ee had solicited and encouraged Ees to run for position of business manager of U and attempted to oust present U business manager from office by running, himself for that office held violative, since activities of Ees designed to oust incumbent U leadership and to elect different U officers are concerted activities protected by Section 7 of Act)

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) JD-(NY)-97-86
[no unlawful conditioning by E of Ee's reinstatement upon U's consent or unlawful refusal by U to consent to reinstatement due to Ee's concerted activities]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) JD-144-86
[U's secretary-treasurer/business representative informing Ee-member, in presence of other Ee-members, that ee member was making mistake involving himself in government investigation of charges of misuse of U funds by secretary-treasurer/business representative and that member might as well find another job, unlawful]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) JD-144-86
[U's secretary-treasurer/business representative in reply to Ee member that he had list of all members who had attended meeting with government investigator regarding charges of misuse of U funds by secretary-treasurer/business representative, that members were lying regarding charges against him, that he would sue them for libel, that Ee was not going to be member of U, unlawful]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) JD-144-86
[U's secretary-treasurer/business representative denying accusations of misuse of U funds, stating before assembled Ee members that he had polled U card of one accuser, would file internal U charges and law suit against him, and would take similar actions against other Ee members who were his accusers, unlawful]

N.L.R.B. v. Local 299, Teamsters 782 F.2d 46 (C.A. 6, Jan. 1986)
[U representatives initiating work stoppage that was illegal under contract though participants not told one way or other of its illegality, nor did U authorize stoppage did not restrain or coerce Ees in exercise of their Sec. 7 rights, as U could not punish Ees for refusal to commit illegal act (joining in work stoppage), so no coercion; further, as U did not threaten or intimidate members to secure their participation, members were free to not participate in action instigated by U]

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)
[local U president's causing E to change two members' starting time, an action which reduced overtime worked, violative, since reason was fact that one of the members had complained to local president concerning change in absentee program where immediately after Ee complained, president requested E to change starting time, president told Ee that didn't complain that he wasn't after him but was after the other Ee and disparate treatment was shown by fact that Ee who hadn't complained, eventually had his starting time changed back]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)
[where U referred dissident U member to job which U knew he could not accept because he was scheduled to attend Bd hearing on his ULP charges against U on same day, ct held U's action in reporting to state unemployment agency that member had refused job referral, although made in retaliation for member's dissident U activity and contrary to U's nonreporting policy, was internal U affair beyond scope of 8(b)(1)(A), since report had no impact on member's relationship with an E nor interfered with his existing or prospective employment relations]

2531 DISCRIMINATION AGAINST SUPERVISORS OR APPLICANTS FOR SUPERVISORY POSITION

Oil Workers, Local Union No. 4–23 (Gulf Oil Corporation) 274 NLRB No. 063
(U expelling supervisor for testimony he gave at arbitration hearing regarding 2 poor work performance letters that he issued to grievant while then serving as temporary relief supervisor (was only Ee at time he testified and became permanent supervisor after U charges filed against him), violative, because of impact of such discipline on other members who might be restrained in exercise of their Sec. 7 rights to give testimony against grievants in contractual arbitration hearings)

2536 STRIKES AND BOYCOTTS, OR THREATS THEREOF

2536-2000 Strikes

2536-2067 To compel preferential hiring

District 30, Mine Workers and Local 1834 (TCH Coal Company) 278 NLRB No. 045
[local U's and District U's endorsement of protest activities of its President and other officers while local U picketed secondary E for not hiring former Ees of primary E, held violative, since any force *that back to work* directives (instructions to U members at U meeting) did carry was belied by local U's officials failure to return to work themselves after issuing such directives and refused to cross U picket lines. U, like an E, acts through its agents, Local U's officers are *admitted agents of U and their conduct, therefore, evidence Local's endorsement of protest activities*]

2536-2084 To force employer to make bargaining concessions

N.L.R.B. v. Local 299, Teamsters 782 F.2d 46 (C.A. 6, Jan. 1986)
[U representatives initiating work stoppage that was illegal under contract though participants not told one way or other of its illegality, nor did U authorize stoppage did not restrain or coerce Ees in exercise of their Sec. 7 rights, as U could not punish Ees for refusal to commit illegal act (joining in work stoppage), so no coercion; further, as U did not threaten or intimidate members to secure their participation, members were free to not participate in action instigated by U]

2536-4000 Boycott appeals

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138
[U's threatening Ees of neutral subcontractor that if they failed to leave construction project, they could be fined by U, violative where leaving project would violate 8(b)(4)(ii)(A) and (B)]

2545 HIRING HALL AND OTHER REFERRAL PRACTICES

2545-0100 Generally

Carpenters Local 608 (Various Employers) 279 NLRB No. 099
[U held to operate an exclusive hiring hall, notwithstanding E retained right to hire 50% of total workforce]

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010
(even in absence of unlawful motivation, any departure by U from established exclusive hiring hall procedures resulting in denial of employment is discrimination which inherently encourages U membership, breaches duty of fair representation and violates 8(b)(1)(A) and (2), unless U demonstrates that its interference with employment was pursuant to valid U-security

2545-0100—Cont.

clause or was necessary to effective performance of its representative function)

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110

(U held to have operated an exclusive hiring hall where project agreement between U and E contained referral provision requiring E first to seek Ees from U and only if U w/i 48 hours was unable to fill E's request could E hire other Ees and E's total workforce on instant project had been referred from U's hiring hall)

N.L.R.B. v. General Truckdrivers, Warehousemen and Helpers, et al. 778 F.2d 207 (C.A. 5, Dec. 1985)

[U's operation of exclusive hiring hall violative, notwithstanding U had written procedures to follow for referral, since U did not refer by objective standards where referral was based on business agent's personal knowledge of individual's qualifications and circumstances and there existed a set of unwritten irregular procedures which were w/i unfettered discretion of business agent to use or not]

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers 794 F.2d 1474 (C.A. 9, July 1986)

[U's challenge to Bd's jurisdiction to regulate its hiring hall practices absent proof of discrimination or animus on U's part, rejected; challenges to Bd's jurisdiction are reviewed de novo, and challenge herein lacked merit since Bd has jurisdiction *to determine* whether any person named in C had committed an ULP, and since C alleged ULP, Bd was empowered to decide issue; view that Bd's jurisdiction depends on specific factual findings relevant to merits confuses issue of jurisdiction with that of merits]

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers 794 F.2d 1474 (C.A. 9, July 1986)

[U's contention that Bd improperly determined that U's hiring hall policy had coercive effect on non-U applicants in violation of 8(b)(1)(A) on ground there was no evidence of U animus against applicants, rejected; no specific intent to discriminate on basis of U membership need be shown in order to prevail on claim under 8(b)(1)(A) which U violates if it wields its power invidiously or arbitrarily since such conduct gives notice that its favor must be curried and thereby encourages membership and unquestioned adherence to its policies]

2545-0600 Requirement of referral

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. 275 NLRB No. 182

(U's referring job applicants under hiring hall provisions of illegal prehire agreement and causing E to refuse to employ Ees w/o U referral, violative)

2545-1200 Refusal of referral

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) 281 NLRB No. 010

[refusing to accept travel cards of Ees applying for referral w/o being sent by their local business manager found unlawful departure from international U's contitutional guidelines]

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) 281 NLRB No. 010

[refusing to register and dispatch travellers because they were not sent by their local's business manager, violation, as such procuedure failed to comply with international U's constitutional guidelines and contractual exclusive hiring hall procedures and resulted in denying travellers employment]

Garage Employees Union Local No. 272, a/w Teamsters (Various Employers) 280 NLRB No. 138

[U's failure to refer member, unlawful, since based solely on U considerations, where member had been in good standing when he requested withdrawal card; was under no obligation to pay dues while he held withdrawal card, and U refused to refer him out of hiring hall until he turned in his withdrawal card and paid dues for period he held card]

Stage Employees, Local No. 41 (Atlanta Ballet) 280 NLRB No. 065

[forcing discharge of Ee specifically requested by ballet company who was on U's *C* list and refusing to refer Ee in accordance with established procedure and expired contract by which terms parties were still abiding violation, where U took such action because E had not agreed to new contract]

Local 282, Teamsters (The General Contractors Association of New York, Inc.) 280 NLRB No. 086

[U's refusal to refer U dissidents to their requested positions of *working foremen* at jobsite, not unlawful, where working foremen, equivalent to shop stewards, engaged in processing grievances and administering contract; U is legitimately entitled to hostility toward dissidents in positions where teamwork, loyalty and cooperation are necessary for administering contract; accordingly, U official's estimation that U dissidents did not meet personal qualifications of loyalty was not evidence of unlawful intent; and U did not apply loyalty standard in arbitrary or invidious fashion]

Local 426, Laborers (Joseph Brown, an Individual) 280 NLRB No. 074

[violation where U agents admitted preference to members over non-members in referrals notwithstanding lawful hiring hall provisions and informed Ee that he would not be referred while suspended from membership, and Ee, while suspended, received only three job referrals in contrast to eight or ten members' receipt of four to five referrals]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 134

[refusing to refer Ees because of their intra-U political or protected activities, violation]

Stage Employees IATSE, Local #41 (Theater of the Stars; Andrews-Bartlett and Associates, Inc.) 278 No. 004

[removal of member and non-member's name from referral list because non-member had crossed picket line and both had worked for non-U E while also seeking referrals from U, violative, since non-member was engaged in protected activity, plain language of referral system did not require users to depend exclusively on referral system and both Ees were not employed at time they registered for referral]

Glenn Machine Works, Inc. 277 NLRB No. 076

(E's refusal to employ, and U's refusal to refer for employment, two members of U because they were in disfavor with U as result of their involvement in internal U political activities, violative)

Electrical Workers, Local 11 (Choi Engineering Corp.) 277 NLRB No. 008

(U's refusal to refer traveler because it mistakenly believed he was delinquent in dues owed to a sister local, violative)

Teamsters Local Union #519 (Rust Engineering Co.) 276 NLRB No. 094

(violation, where U discarded referral cards of U dissidents; contention cards discarded because dissidents did not comply with alleged rule which required personally signing card monthly to renew registration, rejected, since other members were allowed to call in to renew their registration)

Iron Workers, Local 601 (Papco, Inc.) 276 NLRB No. 142

The Mead Corporation-Publishing Paper Division-Escanaba 275 NLRB No. 052

(refusing to refer member who had filed ULP charges against U and E, initiated and won a state ct lawsuit against U, had filed intra-U charge alleging U's erroneous printing of approved amendments to its bylaws, and had engaged in concerted protected activities, violative)

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) 275 NLRB No. 048

(allegation that local U unlawfully made Ee's future referrals dependent on his support for local U president, dismissed since U president simply pointed out to job applicant that he had done him a favor and asked him to remember it at election time if still employed w/i U's geographical jurisdiction)

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) 275 NLRB No. 048

(U's refusal to dispatch Ee who had filed charges against it with Bd, not unlawful, where dispatcher, consistent with contract and its past practice, insisted that Ee personally pick up his referral slip, rather than allowing Ee's wife to take it to him, and U had consistently adhered to this procedure with two exceptions, neither of which applied to Ee)

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081

(U's failure and refusal to refer particular Ee to E, at E's request, because Ee had solicited and encouraged Ees to run for position of business manager of U and attempted to oust present U business manager from office by running himself for that office held violative, since activities of Ees designed to oust incumbent U leadership and to elect different U officers are concerted activities protected by Section 7 of Act)

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081

(when U deprives Ee it represents of employment opportunities via misuse of contractual referral procedure, U must justify that it did so for benefit of members of bargaining unit, and not, as in instant case, for benefit of U leadership)

General Teamsters and Food Processing Local 87, Teamsters (Harry Shain, an Individual) 273 NLRB No. 225

(U's refusal to refer owner-operators of trucks, not unlawful, where owner-operators were independent contractors, rather than Ees)

2545-1200—Cont.

Carpenters, Local 745 (Dillingham Construction Pacific, Ltd. d/b/a Hawaiian Dredging & Construction Company) JD-(SF)-102-86,119 [refusal to refer and causing discharge of Ee because he was member of 2 Us, violative]

N.L.R.B. v. General Truckdrivers, Warehousemen and Helpers, et al. 778 F.2d 207 (C.A. 5, Dec. 1985)

[U's refusal to refer men out because of business agent's personal animosity towards one and because of others' intra-U activity in actively opposing business agent, violative, where U's exclusive hiring hall was run w/o objective standards and left unfettered discretion to business agent who was referred to work]

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(Bd's holding that local U discriminated against travelers and nonmembers as compared with local U members in operating its hiring hall supported by substantial evidence: U's *A* book was restricted to local U members, and *B* book was used only after *A* book was exhausted; requiring *B* book job applicants to sign list each day burdened travelers and nonmembers; periodic discontinuation of *B* book violated local U's own procedures; U resisted production of *B* book until contempt procedures were initiated; and GC's statistics, though not determinative, at least suggested discrimination)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(fact nonmember complainant often signed U's *B* book, which it allowed travelers and nonmembers to sign while reserving *A* book for local U members, w/o receiving hiring hall referrals supported Bd's finding of discrimination against him in referrals; whether he was entitled to monetary redress, however, was left to compliance stage of proceeding)

N.L.R.B. v. Electrical Workers, Local 575 773 F.2d 746 (C.A. 6, Oct. 1985)

[local U's requirement in operation of its exclusive hiring hall, that travelers resubmit documentation as to their qualifications every 6 months in order to be eligible for referral, violative, since natural and foreseeable consequences of rule was to hinder travelers over locals' members where locals' members did not have to provide such documentation]

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)

(by setting additional requirements than those provided for in contract for travellers to qualify for preferred group in referral from hiring hall w/o informing members of these requirements, U discriminated against Ees in regard to hire or tenure of employment to encourage or discourage membership in labor organization; no discriminatory intent need be proven by specific evidence of motive or purpose but may be inferred from natural and foreseeable consequences of local's conduct)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(even single instance of discriminatory treatment will support finding of ULP when hiring hall rules are not followed)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(U that refused to properly dispatch workers is *clearly the cause of the E's refusing to hire these men*)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(no specific intent to discriminate need be shown to support finding of ULP in improper operation of hiring hall)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(District Council (Council) violated Act by preventing member from working overtime because he failed to present Council work card which evidenced member current in his dues. Under U security clause, dues delinquency only reason Ee could not work. But dues could be paid to local, as was case here, and Ee did everything he could to prove he was current. Burden on Council to justify its actions and sanction of unemployment is sufficiently harsh to invoke U's fiduciary obligation which was not met by its reliance on absence of Council's card and its attempt to confirm status with local who refused inquiry)

2548-1500 Preference for union members in general, and/or membership in particular local

Plumbers Local No. 305 (Stone & Webster Engineering Corp. et al.) 282 NLRB No. 012

[refusal to let travellers sign out-of-work list, violation, notwithstanding U's contention Ees would have been allowed to register had they remained in hiring hall]

Carpenters, Local Union No. 1243 (Northern Alaska Associated General Contractors) 281 NLRB No. 015

[business representative's dispatching travelers as stewards and recommending them as foremen when asked not violation as selection was not arbitrary in view of their recommendation by respected source, favorable impression at interview, and experience as foreman, and other registrants, who were ahead of them on U's referral lists, *passing* short-term jobs or resigning from them so as to retain position on list for long-term jobs, not being more qualified than travelers, not wanting position, or having personal problems]

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) 281 NLRB No. 010

[changing established contractual exclusive hiring hall procedures to require that travellers be sent by their local U business managers w/o timely notifying users, violation absent evidence change was required for local's effective performance of its representative function; contention that change was necessary for local's reciprocal arrangement with other locals to apportion available jobs among locals rejected]

Local 426, Laborers (Joseph Brown, an Individual) 280 NLRB No. 074

[violation where U agents admitted preference to members over nonmembers in referrals notwithstanding lawful hiring hall provisions and informed Ee that he would not be referred while suspended from membership, and Ee, while suspended, received only three job referrals in contrast to eight or ten members' receipt of four to five referrals]

Laborers, Local Union No. 644 (Kellerman Brothers Construction Compan) 278 NLRB No. 162

[U's refusal to refer or consider non-member for referral while members of U were unemployed, violative; further, U's picketing E for employing nonmember, causing E to discharge non-member by threatening to stop construction and threatening non-member with bodily harm if he continued working for E, violative]

Electrical Workers, Local Union No. 46 (NECA) 277 NLRB No. 139

(U's refusal to let traveler take journeyman's exam for local members entitling Ee to get highest priority for referrals, while offering him opportunity to take referral exam for nonmembers, which tested same material and, if passed, would have entitled him to same referrals, not unlawful; contention that other locals would only accept journeyman's exam, rejected, since U's only duty under contract and Act was to preserve Ees' employment interest w/i local U's geographic area)

Electrical Workers, Local Union No. 46 (NECA) 277 NLRB No. 139

(local U's refusing for two months to offer Ee opportunity to take nonmember referral exam qualifying him for highest priority referrals, violation, notwithstanding contractual clause specifying reasonable interval of time for examination as ninety days, since U was obligated to offer Ee referral exam as expeditiously as it would schedule members for journeyman's exam designed for them and there was no evidence that members were not allowed to take the next scheduled exam or were routinely forced to wait the contractually permitted ninety days)

Teamsters, Local Union No. 328 (Flount Brothers Corporation) 274 NLRB No. 160

(refusing to refer job applicants because of nonmembership in U or lesser length of membership, violative)

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110

(local U's *deliberate pattern of conduct* consisting of threats and coercion designed to force travelers into quitting so that local U's members could be hired, violative, where local U refused to accept properly tendered travel service dues from travelers yet threatened them with internal charges if they worked w/o travel service dues receipts, threatened them with loss of employment after they refused U's request that they quit by stating that U was requesting E to lay them off and strictly applied dues collection policy against travelers when past practice was to have flexible and open-handed policy)

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110

(local U's requesting travelers that had been previously referred by local U to quit their jobs so that local U's members could work, violative; U has an obligation not to conduct itself in an arbitrary, invidious or discriminatory manner when representing traveler Ees referred out by it; further, U's contention that since no traveler quit his job there was no coercive impact from its action, rejected)

Waterfront Service Co., Inc. JD-171-86

[maintaining and enforcing contractual referral provision which, on its face, conditioned work opportunities on membership in or clearance by U, violation]

Carpenters, Millwright Local 1412 (Oscar J. Boldt Construction Co.) JD-284-85

(U's use of discretionary standards for referral in exclusive hiring hall arrangement, violative since those seeking employment would be hesitant to risk disfavor of U officials either in connection with issues of U membership or their participation in statutorily protected forms of internal U activity)

2545-1500—Cont.

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) **JD-13-85**
(statements by U to job applicants in hiring hall context to effect that referrals would first go to Local U members, violative, since U's method of making referrals was in direct contravention of lawful hiring hall procedure established by collective bargaining agreement then in effect)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) **JD-13-85**
(U's maintenance of *second out-of-work list* in hiring hall situation which was for use by nonmembers and from which list no referrals made, violative)

Plumbers, Local No. 198 v. N.L.R.B. **747 F.2d 326 (C.A. 5, Nov. 1985)**
(Bd's holding that local U discriminated against travelers and nonmembers as compared with local U members in operating its hiring hall supported by substantial evidence: U's *A* book was restricted to local U members, and *B* book was used only after *A* book was exhausted; requiring *B* book job applicants to sign list each day burdened travelers and nonmembers; periodic discontinuation of *B* book violated local U's own procedures; U resisted production of *B* book until contempt procedures were initiated; and GC's statistics, though not determinative, at least suggested discrimination)

Plumbers, Local No. 198 v. N.L.R.B. **747 F.2d 326 (C.A. 5, Nov. 1985)**
(fact nonmember complainant often signed U's *B* book, which it allowed travelers and nonmembers to sign while reserving *A* book for local U members, w/o receiving hiring hall referrals supported Bd's finding of discrimination against him in referrals; whether he was entitled to monetary redress, however, was left to compliance stage of proceeding)

2545-1600 Preference based on familial relationship

Local 282, Teamsters (The General Contractors Association of New York, Inc.) **280 NLRB No. 086**
[in finding U's refusal to refer job applicants to their requested positions which were equivalent to that of shop steward at jobsite, Bd noted that U's concession that relatives of high U officials had been appointed to such positions did not, by itself, establish arbitrary application of selection criteria]

2545-1800 Refusal to comply with seniority procedures

Carpenters, Local Union No. 1243 (Northern Alaska Associated General Contractors) **281 NLRB No. 015**
[business representative's dispatching travelers as stewards and recommending them as foremen when asked not violation as selection was not arbitrary in view of their recommendation by respected source, favorable impression at interview, and experience as foreman, and other registrants, who were ahead of them on U's referral lists, *passing* short-term jobs or resigning from them so as to retain position on list for long-term jobs, not being more qualified than travelers, not wanting position, or having personal problems]

2545-2000 Job referrals based on group classifications arrived at through journeyman's examinations

Electrical Workers, Local Union No. 46 (NECA) **277 NLRB No. 139**
(U's refusal to let traveler take journeyman's exam for local members entitling Ee to get highest priority for referrals, while offering him opportunity to take referral exam for nonmembers, which tested same material and, if passed, would have entitled him to same referrals, not unlawful; contention that other locals would only accept journeyman's exam, rejected, since U's only duty under contract and Act was to preserve Ees' employment interest w/i local U's geographic area)

Electrical Workers, Local Union No. 46 (NECA) **277 NLRB No. 139**
(local U's refusing for two months to offer Ee opportunity to take nonmember referral exam qualifying him for highest priority referrals, violation, notwithstanding contractual clause specifying reasonable interval of time for examination as ninety days, since U was obligated to offer Ee referral exam as expeditiously as it would schedule members for journeyman's exam designed for them and there was no evidence that members were not allowed to take the next scheduled exam or were routinely forced to wait the contractually permitted ninety days)

2545-2900 Jobs referrals out-of-sequence with names listed on register

Construction and General Labors Union, Local No. 1334 (Western Sign Corp.) **281 NLRB No. 029**
[referring Ees whose names were below that of charging party on referral list, not violation where U was not hostile to charging party and followed posted contractual hiring hall procedures, of which Ees had notice and which were based on objective criteria, and where all non-referrals of charging party were due to Es' requests for named Ees or Ees with particular types of experience, or E's rejection of charging party]

Carpenters, Local Union No. 1243 (Northern Alaska Associated General Contractors) **281 NLRB No. 015**
[business representative's dispatching travelers as stewards and recommending them as foremen when asked not violation as selection was not arbitrary in view of their recommendation by respected source, favorable impression at interview, and experience as foreman, and other registrants, who were ahead of them on U's referral lists, *passing* short-term jobs or resigning from them so as to retain position on list for long-term jobs, not being more qualified than travelers, not wanting position, or having personal problems]

Local Union 468, Plumbers (McAuliffe Mechanical, Inc., et al.) **280 NLRB No. 136**
[referral of persons on seniority lists w/o first offering jobs to those having higher seniority, not unlawful, where U dispatchers reasonably believed they were acting in accord with contract and hiring hall rules; departure from hiring hall procedures was justified since time in which jobs were to be filled was critical, and more senior individuals were either unavailable or were not interested in type of jobs available for referral; and there was no evidence of hositility, arbitrariness, or U preference in dispatch of individuals herein]

Ironworkers Local Union No. 505 (Snelson-Anvil, Inc.) **275 NLRB No. 199**
(referral of previously laid off Ees back to E made out-of-sequence with order of Ees' signatures on out-of-work register, unlawful, where referral rules posted in hiring hall clearly stated applicants will be referred in order of their place on referral list and contained no language indicating that rules were intended to apply only to first time referrals to particular Es)

Ironworkers Local Union No. 505 (Snelson-Anvil, Inc.) **275 NLRB No. 199**
(even assuming posted referral rules did not apply to callback of previously laid off Ees and presence in hiring hall as basis for referral was governing rule, Bd held referrals based on hiring hall presence on date E specified it needed Ees was unlawful; use of such criterion, w/o more, falls short of objective, nondiscrimiatory standard which must be basis for hiring hall referrals, since objectivity of presence as referral criterion would seriously be brought into question in event number of registrants present exceeded number of E requests)

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers **794 F.2d 1474 (C.A. 9, July 1986)**
[U's deviation from its written hiring hall rules, resulting in referral of lower listed job applicants over non-U applicants, held unlawful, even though deviation was longstanding exception to rules, since Bd rationally concluded that U wielded its power arbitrarily; although ALJ found no violation on ground that U's referral policy was not deviation from written rules but a supplement to them, ct deferred to Bd's finding of violation based on Bd's interpretation of written rules, since ct could not say it was unreasonable and inconsistent with Act's policies]

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers **794 F.2d 1474 (C.A. 9, July 1986)**
[U was not justified in deviating from written hiring hall rules, resulting in referral of lower listed job applicants over non-U applicants, on ground that physical presence in hiring hall was reasonable method of separating interested from disinterested applicants; physical presence in hiring hall was arbitrary basis for making job referrals, since continuing interest was adequately demonstrated by applicant's re-registering on first of each month, and physical presence would not be helpful whenever more applicants were present in hiring hall than there were available jobs]

2545-3100 Denial of access to employment roster and other job referral records

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) **281 NLRB No. 010**
[refusing to accept travel cards of Ees applying for referral w/o being sent by their local business manager found unlawful departure from international U's contitutional guidelines]

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) **281 NLRB No. 010**
[refusing to register and dispatch travellers because they were not sent by their local's business manager, violation, as such procuedure failed to comply with international U's constitutional guidelines and contractual exclusive hiring hall procedures and resulted in denying travellers employment]

Local 282, Teamsters (The General Contractors Association of New York, Inc.) **280 NLRB No. 086**
[U's refusal to comply with referral applicants' request for information concerning number of applicants, identity of those referred, and related information, unlawful, since U has obligation to deal with request for referral information by Ee who is entitled to referral lists in order to protect his referral rights; while lacking formal referral list, U did not demonstrate that it had none of the information requested or that it would be unduly burdensome to compile some of it; moreover, hiring lists kept by U officers and agents might fall w/i purview of information request]

Local No. 136, Plumbers (B. F. Shaw Company) **280 NLRB No. 099**
[U's refusal to comply with charging party's lawful request for copies of U's out-of-work lists, referrals and other records reflecting applications for refer-

2545-3100—Cont.

ral from U's hiring hall, unlawful, notwithstanding U's contention that request was improper attempt to assist GC in prosecution of C, rather than good faith effort to obtain hiring hall information, where charging party's action reflected serious intent to pursue his rights under law, and he did not waive his right to U's records by filing charge against U]

Stage Employees IATSE, Local #41 (Theater of the Stars; Andrews-Bartlett and Associates, Inc.) 278 No. 004

[removal of member and non-member's name from referral list because non-member had crossed picket line and both had worked for non-U E while also seeking referrals from U, violative, since non-member was engaged in protected activity, plain language of referral system did not require users to depend exclusively on referral system and both Ees were not employed at time they registered for referral]

Plumbers Local No. 305 (Stone & Webster engineering Corp. et al.) JD-(NY)-23-86

[U's refusal to allow travelers to sign out-of-work book, assertedly because U was not sure of their qualifications for work, violative, where U had not checked other members' qualifications and had referred these travelers out before and had no real reason to question their qualifications]

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

(Local U's refusal to tell *traveller* where member ranked on Respondent's out-of-work list at hiring hall, violative, since requested information was necessary in order for member to determine whether U was operating contractually established hiring hall in proper manner. Refusal was breach of U's duty of fair R)

N.L.R.B. v. Electrical Workers, Local 575 773 F.2d 746 (C.A. 6, Oct. 1985)

[local U's refusal to grant traveler access to its hiring hall books to determine if U was complying with hiring hall rules, violative, since member has right to monitor performance of his chosen representative]

2545-3900 Denial of overtime

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[U steward informing Ee and E that Ee could not work overtime because he was not member of local U, notwithstanding no local members on job available to do work, unlawful]

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(District Council (Council) violated Act by preventing member from working overtime because he failed to present Council work card which evidenced member current in his dues. Under U security clause, dues delinquincy only reason Ee could not work. But dues could be paid to local, as was case here, and Ee did everything he could to prove he was current. Burden on Council to justify its actions and sanction of unemployment is sufficiently harsh to invoke U's fiduciary obligation which was not met by its reliance on absence of Council's card and its attempt to confirm status with local who refused inquiry)

2545-9900 Other

Stage Employees, Local No. 41 (Atlanta Ballet) 280 NLRB No. 065

[forcing discharge of Ee specifically requested by ballet company who was on U's *C* list and refusing to refer Ee in accordance with established procedure and expired contract by which terms parties were still abiding violation, where U took such action because E had not agreed to new contract]

Teamsters Local Union #519 (Rust Engineering Co.) 276 NLRB No. 094

(U's oral modification of referral plan by selectively requiring some of its dissident members to sign or initial referral cards once a month to have their cards renewed after changing from referral book to card system, w/o adequately notifying members of any such requirement, violative)

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) 275 NLRB No. 048

(allegation that local U unlawfully made Ee's future referrals dependent on his support for local U president, dismissed since U president simply pointed out to job applicant that he had done him a favor and asked him to remember it at election time if still employed w/i U's geographical jurisdiction)

2548 REFUSAL TO FURNISH INFORMATION OR PERMIT INSPECTION OF RECORDS

Local 282, Teamsters (The General Contractors Association of New York, Inc.) 280 NLRB No. 086

[U's refusal to comply with referral applicants' request for information concerning number of applicants, identity of those referred, and related information, unlawful, since U has obligation to deal with request for referral information by Ee who is entitled to referral lists in order to protect his referral rights; while lacking formal referral list, U did not demonstrate that it had none of the information requested or that it would be unduly burdensome to compile some of it; moreover, hiring lists kept by U officers and agents might fall w/i purview of information request]

Carpenters Local 608 (Various Employers) 279 NLRB No. 099

[U's refusal to permit members to inspect job lists of hiring hall, violative, since reason was members' dissident U activity and filing charges with Bd against U where U had told members they would not see any information or answer questions about list since they filed charges and U permitted other members to inspect job list]

Teamsters Local Union #519 (Rust Engineering Co.) 276 NLRB No. 094

(U's refusal to make referral records available to members, unlawful, where individuals who requested to see records had valid reason for doing so, and absent any legitimate or compelling reason for U's refusal; contention refusal justified because referral records contained telephone numbers members wanted kept confidential, and that matter moot since U was currently posting list once a month reflecting correct order for members and applicants to be referred, rejected)

Teamsters, Local Union No. 328 (Flount Brothers Corporation) 274 NLRB No. 160

(refusal to provide job applicants with information they requested as to their relative ranking on referral list, violative)

M. W. Kellogg Constructors, Inc. 273 NLRB No. 134

(U's refusing to let certain travelers examine its dispatch books at exclusive hiring hall to see where their names were registered and how far their names were from the top of the referral list, violative; contentions that books were being used and travelers did not follow U's procedure for such request, rejected where travelers were not informed procedure existed or told to come back another time)

General Teamsters, Professional and Public Employees Union, Local 980, Teamsters (MCA, Inc. d/b/a Universal Studios) JD-(SF)-3-86

[refusal to honor requests of Ees on its out-of-work list to inspect and copy hiring hall referral lists, violative]

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

(Local U's refusal to tell *traveller* where member ranked on Respondent's out-of-work list at hiring hall, violative, since requested information was necessary in order for member to determine whether U was operating contractually established hiring hall in proper manner. Refusal was breach of U's duty of fair R)

N.L.R.B. v. Electrical Workers, Local 575 773 F.2d 746 (C.A. 6, Oct. 1985)

[local U's refusal to grant traveler access to its hiring hall books to determine if U was complying with hiring hall rules, violative, since member has right to monitor performance of his chosen representative]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[anonymity or privacy of U members does not justify U's refusal to provide referral list information to Ee member since inherent in U's duty of fair representation is obligation to deal fairly with Ee's request for information as to his relative position on out-of-work register for purposes of job referral through exclusive hiring hall]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[U's refusal to comply with member's request for information as to his relative position on job referral list, unlawful, where member was completely dependent on U for protection of his job referral rights; his request was not unduly burdensome; it was reasonable to infer refusal was motivated by bad faith in light of U's retaliatory conduct and harassment of member; and U had no justifiable reason for its refusal which was intentional misconduct in breach of its duty of fair representation in administering contract]

2550 SUPERVISORS' PARTICIPATION AS UNION MEMBERS IN UNION ACTIVITIES

Oil Field Construction Company JD-(SF)-104-86

[U's permitting supervisor to be its steward and president, not unlawful, since U did not thereby coerce or restrain *Ees* in exercise of their statutory rights]

2551 CAUSING EMPLOYER TO MAKE RETROACTIVE DUES DEDUCTIONS

Auto Workers, Local 785 (The Dayton Forging & Heat Treating Company) 281 NLRB No. 102

[causing E to withhold dues pursuant to dues checkoff of current security provision for dues owed during precontract period, and threatening Ees with discharge for failure to pay such dues, violative]

2551—Cont.

Hotel, Motel, Restaurant Employees and Bartenders Union Local 19 (La Baron Hotel) 281 NLRB No. 086
[for hiatus period when E and U were w/o contract]

United Professional Nurses Association (Lockport Memorial Hospital) JD-128-85
(U's attempting to compel dues payments from Ees in absence of effective bargaining agreement containing U security clause, unlawful)

2553 DISCRIMINATORY DUES OR INITIATION FEES

Auto Workers, Local 376 (Emhart Industries, Hartford Division, etc.) 278 NLRB No. 037
[U's notice to members threatening them with discharge for failure to pay dues at a time U's contract had expired, violative; further, U's contention it had repudiated threat by posting notice at plant accurately setting forth dues obligations and held meetings with Ees to explain threat was in error and no Ees were obligated to pay dues as condition of employment, rejected, where U failed to distribute written retraction to any Ees who received threat, notice repudiating conduct was untimely and meetings with Ees did not reach Ees receiving threat]

Auto Workers, Local 376 (Emhart Industries, Hartford Division, etc.) 278 NLRB No. 037
[U's informing Ees through newsletter, that U was *looking into* raising reinstatement fees for members who had not paid dues, not violative, since motivation of U was only to encourage payment of dues, article was not associated with Ees' employment status and even in absence of U security agreement, U would be privileged to increase reinstatement fees]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) 278 NLRB No. 025
[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorization election which U won set aside, since members and nonmembers were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

2554 REQUIRING PAYMENTS OTHER THAN DUES

2554-0100 Generally

Furriers Joint Council of New York, a/w Food & Commercial Workers (Associated Fur Manufacturers, Inc., et al.) 280 NLRB No. 107
[where U assumed job of transmitting paychecks to Ees, its withholding of members' vacation paychecks in order to enforce collection of assessment for back dues and its deduction of back dues from those paychecks and giving members the balance thereof, violative; underlying purpose of 8(b)(1)(A) and (2) is to keep employment rights separate from membership obligations, such as payment of dues, and U may seek only the discharge of Ees who do not pay dues and may not resort to other methods to enforce compliance with membership obligations]

2554-2500 Fine, assessment, reinstatement fee or back dues

Automobile Workers, Local 73 (McDonnell Douglas Corporation) 282 NLRB No. 064
[fines imposed on Ees who returned to work before resigning, not violative to extent that they covered preresignation conduct, but fining Ees for their postresignation conduct held unlawful]

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) 281 NLRB No. 164
[preferring internal U charges against and fining Ee for crossing picket line to work during strike, violation where Ee's resignation was effectively received when deposited in U's night-deposit box before he returned to work, notwithstanding resignation was not retrieved by U's agents until after Ee reported to work]

Hotel, Motel, Restaurant Employees and Bartenders Union Local 19 (La Baron Hotel) 281 NLRB No. 086
[for hiatus period when E and U were w/o contract]

Furriers Joint Council of New York, a/w Food & Commercial Workers (Associated Fur Manufacturers, Inc., et al.) 280 NLRB No. 107
[where U assumed job of transmitting paychecks to Ees, its withholding of members' vacation paychecks in order to enforce collection of assessment for back dues and its deduction of back dues from those paychecks and giving members the balance thereof, violative; underlying purpose of 8(b)(1)(A) and (2) is to keep employment rights separate from membership obligations, such as payment of dues, and U may seek only the discharge of Ees who do not pay dues and may not resort to other methods to enforce compliance with membership obligations]

Auto Workers, Local 376 (Emhart Industries, Hartford Division, etc.) 278 NLRB No. 037
[U's informing Ees through newsletter, that U was *looking into* raising reinstatement fees for members who had not paid dues, not violative, since motivation of U was only to encourage payment of dues, article was not associated with Ees' employment status and even in absence of U security agreement, U would be privileged to increase reinstatement fees]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) 278 NLRB No. 025
[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorization election which U won set aside, since members and nonmembers were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

Local Union No. 277, Painters (Del E. Webb New Jersey, Inc.) 278 NLRB No. 027
[threatening to cause member's discharge if he failed to pay dues for time for which he was unemployed]

Carpenters District Council For Seattle, King County and Vicinity (Tullus Gordon Construction, Inc.) 277 NLRB No. 019
(filing intra-U charges against and fining Ees for crossing and working behind picket line during authorized strike, violative where Ee had reduced his membership status from full to *financial core* membership so as to eliminate any obligation to U except to pay dues, which he continued to do)

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) 277 NLRB No. 020
(members working under U security agreement who wrote letters to U during strike apprising U that they were changing membership status from *full* member to that of *financial core* member but were not resigning from U, held to have effectively resigned from U; further, U's fining these members for crossing picket line after receipt of those letters, violative. U cannot compel a financial core member by way of court collectible fine to support its strike or other activities)

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164
(Us' constitutional restrictions on members' right to resign are invalid and Us' bringing charges against and fining individuals for resigning their memberships and returning to work during strike, violative)

Sheet Metal Workers Local Union No. 14 (C. L. Linfoot Co.) 275 NLRB No. 153
(fining members for returning to work during strike violative where, pursuant to unlawful constitutional provision that U not accept resignations during strike, U had previously refused to accept resignations)

Teamsters Local No. 538 (Passavant Health Center) 275 NLRB No. 104
(imposing fines on Ees who resigned their membership and returned to work during strike, violative)

Local Lodge No. D192, Cement Workers Division of Boilermakers (Riverside Cement/A Gifford-Hill Company) JD-(SF)-77-86
[U securing and enforcing ct judgment to collect strike victimization assessments against individuals for periods after they had effectively resigned from U, unlawful, since assessment was legally enforceable only as to Ees who had voluntarily remained members of U and assumed obligation, and nonmembers only liable for basic monthly dues under security clause]

Graphic Communications, Local 229 (Imperial Printing Company) JD-183-85
(U's requiring, pursuant to its constitution, executive board approval, membership in good standing, and that Ee not be employed in industry w/i U's juriadiction before U accepted members' resignations, violative of their Sec. 7 right to refrain from U membership, notwithstanding assertion that U had right to prescribe rules as to retention of membership; however, Ees' attempts to make resignations retroactive found not effective, and resignations were effective from date of U's receipt)

2554-3700 Benefit programs

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an individual) 279 NLRB No. 023
[U steward informing Ee in presence of E's superintendent who was also Ee's supervisor, that ee could not work without paying *high time* insurance premium, followed by immediate granting Ee time off to pay premium, constituted unlawful threat, since underlying motive deemed to be Ee's continuing efforts to transfer his U membership, in view of previous threats to Ee]

2554-7500 Wage contribution as condition of picket line pass

2554-7500—Cont.

National Cash Register Co. 190 NLRB No. 117
(contribution requirement enforced by violence)

The National Cash Register Co. v. N.L.R.B. 466 F.2d 945 (C.A. 6, Mar. 1984)
(violation where U conditioned right of unit Ees to obtain picket-line passes during strike upon payment of wage contribution to U)

2554-7600 **Grievance service fee or bond**

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) 277 NLRB No. 059
(refusal to process nonmember's grievance unless he agreed to pay local according to fee schedule established by local and applicable only to nonmembers, violative, as this has coercive effect on nonmembers in their exercise of their right to join or refrain from joining U)

2555 USE OF DUAL-PURPOSE MEMBERSHIP/CHECKOFF CARDS

Communications Workers, Local 1101 (New York Telephone Company) 281 NLRB No. 064
[maintaining policy of providing Ees with dues-checkoff authorization cards as sole means of satisfying their obligation to U, unlawful, where existence of such policy was established by U's acknowledgement that all Ees were required to sign card and by fact that U used only one membership application card which required checkoff at time of joining U; and number of Ees U claimed paid dues in cash represented small percentage of represented individuals and did not rebut GC's proof that U's policy existed]

Communications Workers, Local 1101 (New York Telephone Company) 281 NLRB No. 064
[requiring Ees to sign dual-purpose U membership and dues checkoff authorization cards, unlawful since, where dual-purpose card is *sole* means by which Ee may obtain U membership under U security clause, it deprives Ee of right to select method by which he will pay his periodic dues]

2556 REFUSAL TO ALLOW WITHDRAWAL OF CHECKOFF AUTHORIZATIONS

United States Postal Service 280 NLRB No. 169
[E's and U's refusing to honor Ees' revocations of dues-checkoffs, violative where checkoff authorizations were revoked by operation of law when U membership ceased to exist by virtue of effective resignation from membership]

2557 DEMANDING DUES WHILE DENYING MEMBERSHIP

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023
[U's business manager informing member that he would have to sign dues checkoff authorization as condition of returning to work, unlawful]

Dillingham Tug & Barge Corporation 278 NLRB No. 019
[attempting to cause and causing E to discharge Ee, who had been suspended for exercising Sec. 7 right of supporting rival U, for failure to pay dues when Ee had no dues obligation violation]

2559 REFUSAL TO ACCEPT DUES OR OTHER PAYMENTS, OR REFUND SAME

Upholsterer's, Local Union 406 (Boyertown Casket Company) 280 NLRB No. 134
[U's attempting to cause the discharge of Ee who had resigned from U and attempting to refund Ee's dues assertedly because Ee had resigned, violative, where Ee, although having resigned from U, had still complied with U security agreement by tendering dues (Ee was thus only a *financial core* member) and Ee's only obligation to U after resignation, was to tender initiation fees and dues]

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110
(local U's *deliberate pattern of conduct* consisting of threats and coercion designed to force travelers into quitting so that local U's members could be hired, violative, where local U refused to accept properly tendered travel service dues from travelers yet threatened them with internal charges if they worked w/o travel service dues receipts, threatened them with loss of employment after they refused U's request that they quit by stating that U was requesting E to lay them off and strictly applied dues collection policy against travelers when past practice was to have flexible and open-handed policy)

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) JD-144-86
[U's secretary-treasurer/business representative informing individual who he had alleged had accused him of misuse of U funds, that individual's dues would not be accepted, that he would never belong to U again, directed him to leave U hall, and take his dissident fellow accusers with him, unlawful, since constituted unlawful threat of intra-U disciplinary proceedings]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) JD-144-86
[U's secretary-treasurer returning member's dues and in enclosed letter informing member that his actions while on withdrawal card were being considered by U as basis for possible U disciplinary action, unlawful]

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)
[U's refusal to accept traveler's tender of travel service dues because traveler did not have monthly dues receipt from his home local, unlawful, since U's behavior toward traveler was improperly motivated deviation from what had been lenient enforcement of requirement that travelers verify payment of dues to their home local]

2560 ADVISING EMPLOYEES CONCERNING CHECKOFF AUTHORIZATIONS

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023
[U's business manager informing member that he would have to sign dues checkoff authorization as condition of returning to work, unlawful]

Woodcliff Lake Manor Nursing Home, Inc. 276 NLRB No. 084
(violation, where U's business agent, in reply to Ee's question as to whether he could be discharged for refusing to sign dues checkoff authorization form, informed Ee *legally, yes*)

2561 DEMAND FOR CHECKOFF DUES OR DUES EQUIVALENCY OF RESIGNED MEMBERS

The Hearst Corporation, San Antonio Light Division 281 NLRB No. 113
[U's demanding that E continue deducting dues from Ees who lawfully resigned from U, violative, notwithstanding Ees had failed to request revocation of dues deduction, since Ees' dues deduction authorizations made payment of dues a quid pro quo for U membership where contract established E would deduct all *membership dues* levied by U and authorizations assigned all *membership dues* to U, thus, it was clear dues were quid pro quo for U membership and was not intended to meet any other U financial obligations such as *financial core* payments]

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) 278 NLRB No. 024
[U's refusal to give effect to Ees' valid resignations of U membership, and attempt to cause E to withhold resigned Ees' dues, unlawful, since U thereby impaired Ees' Sec. 7 right to resign or otherwise refrain from U or other concerted activities, and dues checkoff authorization, directing deduction of amounts owed by Ee for membership, made payment of dues quid pro quo for U membership, and dues were revoked as matter of law at time Ees' effectively resigned]

Bakery Workers, Local 42 (Gold Kist, Inc.) JD-(ATL)-42-85
(by requesting E to continue dues checkoff after Ees had resigned and by taking steps to grieve refusal of E to continue disputed checkoffs, U violated Act, notwithstanding Ees executed checkoff authorization since authorization directed deduction of dues *in accordance with regular membership dues* making payment of dues a quid pro quo for U membership and thereby revoking dues checkoff assignment as matter of law at time of each effective resignation from U membership. Therefore, by taking such action, U directly impairs Ee's Sec. 7 right to resign when it seeks to delay member's resignation)

Bakery Workers, Local 42 (Gold Kist, Inc.) JD-(ATL)-42-85
(violation where U refused to accept valid written resignations of Ees who had signed checkoff authorizations, requested E to continue dues deductions and took steps to grieve E's refusal to do so)

2562 DEMAND FOR DUES OF MEMBERS WHO HAVE REVOKED CHECKOFF AUTHORIZATION

The Hearst Corporation, San Antonio Light Division 281 NLRB No. 113
[U's demanding that E continue deducting dues from Ees who lawfully resigned from U, violative, notwithstanding Ees had failed to request revocation of dues deduction, since Ees' dues deduction authorizations made payment of dues a quid pro quo for U membership where contract established E would deduct all *membership dues* levied by U and authorizations assigned all *membership dues* to U, thus, it was clear dues were quid pro quo for U membership and was not intended to meet any other U financial obligations such as *financial core* payments]

2563 MINORITY UNION'S ACCEPTANCE OF EXCLUSIVE BARGAINING AUTHORITY

2563—Cont.

S.M.S. Automotive Products, Inc. **282 NLRB No. 006**
[E's conducting a private secret ballot election among Ees, violative, where at time election was conducted, E had unlawfully entered into contract with U that did not enjoy majority support and E did nothing to repudiate the unlawful contract prior to election; further, E's granting recognition to another U that won election and that U's acceptance of recognition, unlawful, since by conducting the unlawful election, U could not have represented an uncoerced majority of Ees]

Safeway Stores, Inc. **276 NLRB No. 099**
(E unlawfully recognized U and U unlawfully accepted recognition when both E and U knew that U did not represent uncoerced majority of Ees, where recognition occurred under contract covering existing multistore unit containing recognition clause including *future stores* w/i U's jurisdiction, but new store Ees were never given opportunity in an election to ascertain whether they desired U representation and thus desired to join larger unit; and new store Ees were not accreted to existing unit)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(notwithstanding E's contention that it was acting in good faith and seeking to avoid jurisdictional dispute between 2 Us, E held to have unlawfully extended recognition to 1 of the Us at E's new facility, and U to have unlawfully accepted recognition at time that Ees had not yet been hired)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(where E and minority U unlawfully entered into, maintained and enforced contract containing both U security and exclusive referral provisions, fact that persons were referred by U to employment with E held not proof that they were U members or had authorized U to represent them thereby conferring majority status on U)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(E violated 8(a)(2) and U violated 8(b)(1)(A), respectively, by E's proffering recognition to U and executing contract with U, and U's acceptance of recognition and entering into contract with E, where U did not represent uncoerced majority either because it never obtained authorization cards from majority of Ees or because, if it did, authorization cards may have been poisoned by dues deduction forms furnished to applicants to fill out even before E's operations had begun and by accompanying statements made by U's agents that applicants had to join U)

2563-0100 Generally

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. **275 NLRB No. 182**
(obtaining recognition from E as exclusive representative of unit under illegal prehire agreement when U did not represent an uncoerced majority, violative)

1115, Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board **275 NLRB No. 045**
(U's filing ptn in S.Ct of N.Y. to confirm that portion of arbitrator's award determining that U gained majority support of Ees in several previously unrepresented departments of E, violative, since award was based on *tainted authorization cards*, obtained by supervisors' assistance removing them as basis for attaining majority support; no deferral as decision of arbitrator palpably wrong as it seeks to achieve prohibited objective and lacks reasonable basis in fact and law)

2563-5000 Good faith immaterial

Ryder/P.I.E. Nationwide **275 NLRB No. 084**
(E's recognition of U and U's acceptance thereof, and their execution of contract, unlawful, where U never had valid majority in combined regular clerical unit resulting from merger of freight terminal offices of 2 Ees since E's and U's reliance on casual Ee's authorization card to include her in regular Ees' unit was contrived to lend colorable legitimacy to improper inclusion in unit, thereby tipping majority balance in favor of U; and parties' good faith but mistaken belief that Ee was regular Ee did not excuse prohibited conduct)

2563-7500 Subsequent acquisition of majority immaterial

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(fact that assisted U subsequently achieved majority status prior to actual signing of contract held not valid defense to parties' prior commission of ULPs)

Ryder/P.I.E. Nationwide **275 NLRB No. 084**
(where E's and U's execution of contract was unlawful because of improper inclusion of casual Ee in combined regular Ees' unit resulting from merger of 2 Es, thereby tipping majority balance in favor of U, ALJ held fact that casual Ee was made regular Ee retroactive to date before implementation of merger did not cure situation since belated acquisition of majority is of no saving consequence if earlier recognition was unlawful)

2564 UNION'S DEMAND OR ACCEPTANCE OF REPRESENTATIVE STATUS IN INAPPROPRIATE UNIT

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) **279 NLRB No. 122**
[U's efforts to apply terms of collective-bargaining agreements to Ees other than those for which agreements were negotiated by insisting on arbitration of grievances seeking to merge three separate units by dovetailing their seniority rights contrary to parties' longstanding bargaining agreements, violation]

2566 EXECUTION OR RENEWAL OF CONTRACT DURING PENDENCY OF REAL QUESTION OF REPRESENTATION

Metropolitan Teletronics Corp. **279 NLRB No. 134**
[U's acceptance of recognition as representative of E's new plant Ees transferred from E's two old plants and execution of contract covering them, not violation where U had previously represented 63 percent of Ees when employed at old plant, and other U had only represented 5 percent of merged work force and had no colorable claim]

Steven Muss, Cynthia Muss Lawrence and Debbie Muss Kushen, A Copartnership, d/b/a Alexander Muss & Sons **274 NLRB No. 193**
(U's entering into contract with E after E withdrew recognition from another U which was striking E over failure of contract negotiations, not violative, since no R ptn had been filed with Bd thus raising qcr, and E had objective considerations for doubting striking U's majority status where striking Ees had been on strike for over a year, all strikers had been permanently replaced and 13 of 17 current Ees had freely sign-cards authorizing instant U to represent them, giving no indication of support for striking U)

2567 RECOGNITION OF UNION DURING PENDENCY OF REAL QUESTION OF REPRESENTATION

Steven Muss, Cynthia Muss Lawrence and Debbie Muss Kushen, A Copartnership, d/b/a Alexander Muss & Sons **274 NLRB No. 193**
(U's entering into contract with E after E withdrew recognition from another U which was striking E over failure of contract negotiations, not violative, since no R ptn had been filed with Bd thus raising qcr, and E had objective considerations for doubting striking U's majority status where striking Ees had been on strike for over a year, all strikers had been permanently replaced and 13 of 17 current Ees had freely sign-cards authorizing instant U to represent them, giving no indication of support for striking U)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. **764 F.2d 182 (C.A. 3, June 1985)**
(E's recognizing and entering into contract containing U security with U purusuant to card check, and that U's accepting recognition and entering into contract, violative, since, at time above events took place, there was real qcr where another U had on file with Bd a valid R ptn known to E at time it recognized former U; further, former U's defense that it had no knowledge of latter U's R ptn at time it initiated card check, rejected)

2568 UNION'S ACCEPTANCE OF REPRESENTATION STATUS WHILE DISQUALIFIED

Safeway Stores, Inc. **276 NLRB No. 099**
(E unlawfully recognized U and U unlawfully accepted recognition when both E and U knew that U did not represent uncoerced majority of Ees, where recognition occurred under contract covering existing multistore unit containing recognition clause including *future stores* w/i U's jurisdiction, but new store Ees were never given opportunity in an election to ascertain whether they desired U representation and thus desired to join larger unit; and new store Ees were not accreted to existing unit)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. **764 F.2d 182 (C.A. 3, June 1985)**
(E's recognizing and entering into contract containing U security with U purusuant to card check, and that U's accepting recognition and entering into contract, violative, since, at time above events took place, there was real qcr where another U had on file with Bd a valid R ptn known to E at time it recognized former U; further, former U's defense that it had no knowledge of latter U's R ptn at time it initiated card check, rejected)

2569 RENEWAL OF CONTRACT AFTER LOSS OF MAJORITY

2569-3300 **During insulated period of contract**

2569-3367 **Where union has knowledge of loss of majority**

S.M.S. Automotive Products, Inc. 282 NLRB No. 006

[E and U entering into negotiations for successor contract and concluding such contract, at time when majority of Ees had signed ptn signifying their disaffection from U and both E and U had knowledge of such disaffection, violative; such ptn negates existence of legitimate interest of incumbent U in pursuing negotiations, notwithstanding ptn was circulated and presented during 60-day insulated period of contract]

2570 ACCEPTANCE OF ASSISTANCE FROM EMPLOYER

Safeway Stores, Inc. 276 NLRB No. 099

(E unlawfully assisted and supported U and U unlawfully accepted such assistance and support during its organizing campaign at E's new chain retail store, where E made store facilities available for U representatives to solicit U membership and health and welfare applications when E had already unlawfully recognized U, thus facilitating U access to store and giving U representatives opportunity to tell Ees U already represented them, which is unlike situation where neutral E's granting access to U to solicit Ees, w/o more, does not constitute unlawful assistance)

2571 DEDUCTION OF DUES WITHOUT CHECKOFF AUTHORIZATION

Safeway Stores, Inc. 276 NLRB No. 099

(E and U violated 8(a)(3) and 8(b)(2), respectively, where E maintained U-security clause in invalid agreement with unlawfully assisted U, pursuant to which E deducted U dues w/o obtaining dues deduction authorization forms from Ees, and U actually or constructively received such dues deductions)

2572 EXECUTION OR MAINTENANCE OF INVALID UNION-SECURITY AGREEMENT

District 30, Mine Workers and Local 1834 (TCH Coal Company) 278 NLRB No. 045 protest activities of its President and other officers while local U picketed secondary E for not hiring former Ees of primary E, held violative, since any force *that back to work* directives (instructions to U members at U meeting) did carry was belied by local U's officials failure to return to work themselves after issuing such directives and refused to cross U picket lines. U, like an E, acts through its agents, Local U's officers are *admitted agents of U and their conduct, therefore, evidence Local's endorsement of protest activities*]

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008

(where E and minority U unlawfully entered into, maintained and enforced contract containing both U security and exclusive referral provisions, fact that persons were referred by U to employment with E held not proof that they were U members or had authorized U to represent them thereby conferring majority status on U)

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) JD-(SF)-87-85

(U security clause does not survive expiration of contract, and therefore U's demand on E to discharge Ees for nonpayment of dues after expiration, violative)

United Professional Nurses Association (Lockport Memorial Hospital) JD-128-85

(U's attempting to compel dues payments from Ees in absence of effective bargaining agreement containing U security clause, unlawful)

2572-2500 **Covering employees for whom union not exclusive representative**

Harte & Company, Inc. 278 NLRB No. 128

[no violation, where E and U agreed to extend bargaining agreement with security clause in effect at former facility to E's newly purchased facility, since new facility was essentially extension of E's old operation where new plant produced same products using same machinery, Ees performed essentially same functions. Contention move not mere relocation since it took too long for substantial percentage of transferees to arrive at new plant, rejected, since transferees constituted more than 40% of new work force on date transfer process *substantially completed*, and 8 month period to complete transfer operations not unreasonable herein]

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008

(E and assisted U unlawfully entered into, maintained, and enforced U security contract covering Ees at E's new facility at time that U, having been recognized at time that Ees had not yet been hired, did not represent uncoerced majority of Ees)

2573 ACCEPTING UNLAWFULLY COLLECTED DUES

Hotel, Motel, Restaurant Employees and Bartenders Union Local 19 (Le Baron Hotel) 281 NLRB No. 006

[for hiatus period when E and U were w/o contract]

2576 DISCRIMINATORY MAINTENANCE OF CONTRACT CLAUSE

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[contention that preferential seniority for non-steward U officials is not so inherently destructive of Ee rights that it should be held unlawful in spite of legitimate justification, rejected, since Bd's finding that only contract administration requiring U officials to be on the job justifies superseniority is not irrational or contrary to the Act, and cases cited in support of contention do not apply where they involve specific legislation, rather than superseniority clauses concerning which Congress did not legislate, and Selective Service Act's, rather than NLRA Sec. 7's, protection of Ee rights]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[maintaining and attempting to enforce contractual clauses granting superseniority for layoff to U's recording secretary and financial secretary, respectively, solely because of their status as U officials, violations where their presence on the job was not necessary for contract administration]

2576-5000 **Superseniority and/or other benefits for union officials or stewards**

Goodyear Tire and Rubber Company 278 NLRB No. 098

[granting super-seniority to Executive Board members and Treasure of U for their terms of office for shift preference, surplus and layoff, and maintaining super-seniority clause with respect to Executive Board members and Treasurer of U, violative, where they had no responsibilities requiring on-the-job presence to further administration of bargaining agreement]

Goodyear Tire and Rubber Company 278 NLRB No. 098

[according U's Executive Board member super-seniority under bargaining agreement with respect to shift preference and thereby causing Ee to be removed from first shift and placed on second shift, violative where Executive Board Member had no responsibility requiring on-the-job presence to further administration of bargaining agreement]

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(U's maintaining and attempting to enforce contractual *superseniority*, in its contract with E, for U vice president, recording secretary, and members of U negotiating committee with regard to layoff, recall and protection against job bumping, violative, since their on-the-job presence was not necessary for performance of grievance processing duties or contract administration. Negotiating committee had *only* duty to negotiate contract with E)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(U's invoking contractual grievance procedure on or after U vice president filed grievance seeking reinstatement to job from which she had been bumped (contract granted U vice president *superseniority* for job bumping purposes) violative, since on-the-job presence of U vice president not necessary for performance of grievance processing duties and if grievant successful, result would displace another Ee)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(while grant of contractual superseniority to chief steward as to layoff and recall, lawful, lawfulness did not extend to job bumping protection since here, unlike *Scovill*, 266 NLRB 952, E had only one shift, and chief steward had plantwide responsibilities and so did not need to be in any particular job in order to perform plantwide grievance duties effectively)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(contention that superseniority grant of job bumping protection is lawful because, w/o such protection, chief steward may quit her job or stewardship, rejected, because it remains U's task to build and maintain its own organization, and where immediate problem is simply matter of encouraging Ees to serve as U representative U can handle situation by simply paying Ees or giving them other nonjob benefits)

2576-5000—Cont.

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**

(grant of superseniority for purposes of recall and layoffs but not for job bumping protection, lawful, where president held impromptu meetings with company officials to discuss problems on plant floor before they became formal grievances which meetings are integral part of grievance procedure, in which she could not participate were she on layoff. In addition, she spends 2 full days per month in step 3 grievance meetings)

Laborers Local Union No. 380 (Mantz & Oren, Inc.) **275 NLRB No. 147**

(by maintaining and enforcing steward superseniority clause in contract, U violates 8(b)(1)(A) and (2) of Act, because clause gives them special economic or other on-the-job benefits, thereby going beyond preference for recall and layoff)

Laborers Local Union No. 380 (Mantz & Oren, Inc.) **275 NLRB No. 147**

(superseniority clause is presumptively unlawful, since it is not limited to layoff and recall of stewards, but extends by contract interpretation of arbitrator to overtime work and wage benefits for stewards on Saturday. Incumbent on Respondents to rebut presumption of unlawfulness, by demonstrating that Saturday overtime work for stewards serves legitimate statutory purpose other than impermissable one of giving stewards additional benefits to exclusion of nonsteward unit Ees)

Laborers Local Union No. 380 (Mantz & Oren, Inc.) **275 NLRB No. 147**

]*superseniority clause* in contract unlawful where Respondents did *not* demonstrate that payment for Saturday overtime work at date of time and one-half to steward would promote administration of collective-bargaining agreement beyond incidental and side benefits of having steward on job to police unit work)

Hotel and Restaurant Employees, Local 54 (Boardwalk Regency Corp-d/b/a Caesars Atlantic City) **JD-104-86**

[attempting to enforce shop stewards' contractual superseniority as to shift retention, not violation, since it protects continuity of U representation on shift because, stewards are responsible for processing grievances under contract, and presumption of lawfulness of their superseniority has not been rebutted]

Hotel and Restaurant Employees, Local 54 (Boardwalk Regency Corp-d/b/a Caesars Atlantic City) **JD-104-86**

[enforcing shop stewards' contractual superseniority for selecting days off, violation where U failed to establish that superseniority would be used to further representation process]

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**

[U's invoking superseniority clause of contract to keep pyrometer steward on job, not unlawful discrimination against two Ees who were not allowed to bump steward from sole remaining pyrometer position but were laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**

[U stewards justifiably presumed to have valid lay-off-recall superseniority on basis of U's retaining on-the-job representation for processing grievances; superseniority of nonstewards of officers engaged in no on-the-job, steward-like functions, to whom it was later extended, was evaluated under different criteria]

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**

[presumption of validity of job retention of U steward under superseniority provision of contract not rebutted by high ratio of stewards to Ees in steward's department, since Bd criteria for decisions focuses on U steward's on-the-job function rather than ratio of stewards to represented Ees]

N.L.R.B. v. Ensign Electric Division of Harvey Hubbell, Inc., and Steelworkers, Local 5925 (Center on National Labor Policy, Inc.) **767 F.2d 1100 (C.A. 4, July 1985)**

(contract provision's grant of superseniority for executive personnel of U, including recording secretary and treasurer, unlawful, notwithstanding U's contention that contract provision was negotiated at time superseniority was lawful under Bd decisions and Bd changed and retroactively applied rule on super seniority)

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Dec. 1985)**

[contention that preferential seniority for U officials in necessary to promote efficient and effective U representation, rejected, since U is responsible for maintaining its own organization, using job related benefits to do so is contrary to statutory purpose, and U has other means of accomplishing same end]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Nov. 1985)**

(contention that preferential seniority for non-steward U officials is not so inherently destructive of Ee rights that it should be held unlawful in spite of legitimate justification, rejected, since Bd's finding that only contract administration requiring U officials to be on the job justifies superseniority is not irrational or contrary to the Act, and cases cited in support of contention do not apply where they involve specific legislation, rather than superseniority clauses concerning which Congress did not legislate, and Selective Service Act's, rather than NLRA Sec. 7's, protection of Ee rights)

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Nov. 1985)**

(maintaining and attempting to enforce contractual clauses granting superseniority for layoff to U's recording secretary and financial secretary, respectively, solely because of their status as U officials, violations where their presence on the job was not necessary for contract administration)

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 **776 F.2d 745 (C.A. 7, Nov. 1985)**

[grant of superseniority to U officer who performed steward-like duty on intermittent occasions as substitute, but whose primary duty did not involve performance of steward-like duties or on-the-job contract administration functions, violative]

Local 1384, Auto Workers v. N.L.R.B. **756 F.2d 482 (C.A. 7, Feb. 1985)**

(granting U officer superseniority which enabled him to displace more senior Ee, violative, since officer was not necessary to administration of contract on the job; Bd considered Ees' right not to have job benefits tied to U activism more important than right to bargain through chosen representative and adjudged superseniority's lawfulness based on how much it encouraged U activism, not how little it discriminated; promotion of U's effectiveness and efficiency insufficient basis for U officer's superseniority after *Gulton*, and Bd has not endorsed U's allegation that superseniority assisted Ees' exercise of their rights

Local 1384, Auto Workers v. N.L.R.B. **756 F.2d 482 (C.A. 7, Feb. 1985)**

(granting U recording secretary seniority as to shift preference by assigning her to day shift solely because it would make communication with U president easier, violative, since gain in convenience from face-to-face over telephonic or documentary communication did not justify tying seniority-linked job benefit to U office while denying it to Ee whose seniority otherwise entitled her to it)

Local 1384, Auto Workers v. N.L.R.B. **756 F.2d 482 (C.A. 7, Feb. 1985)**

]*Gulton* rule as to U officer's superseniority not misapplied to U recording secretary's assignment to day shift, notwithstanding her contract administrative duties, since under *Gulton* rule persons with on-the-job contract administrative duties may lawfully be granted only such seniority as is necessary to enable them to stay on the job to carry out those duties, and recording secretary did not have such duties)

2578 EXECUTION OF DISCRIMINATORY CONTRACT OR CLAUSE

Laborers Local Union No. 380 (Mantz & Oren, Inc.) **275 NLRB No. 147**

(superseniority clause is presumptively unlawful, since it is not limited to layoff and recall of stewards, but extends by contract interpretation of arbitrator to overtime work and wage benefits for stewards on Saturday. Incumbent on Respondents to rebut presumption of unlawfulness, by demonstrating that Saturday overtime work for stewards serves legitimate statutory purpose other than impermissable one of giving stewards additional benefits to exclusion of nonsteward unit Ees)

Laborers Local Union No. 380 (Mantz & Oren, Inc.) **275 NLRB No. 147**

]*superseniority clause* in contract unlawful where Respondents did *not* demonstrate that payment for Saturday overtime work at date of time and one-half to steward would promote administration of collective-bargaining agreement beyond incidental and side benefits of having steward on job to police unit work)

2581 DUTY OF FAIR REPRESENTATION

2581-0100 Generally

Staff Officers Association of America (Delta Steamship Lines) **277 NLRB No. 125**

(U owed no duty to Ee where Ee's claim was frivolous)

2581-0100—Cont.

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) **276 NLRB No. 010**
(U's duty of fair representation imposes on it duty not to purposely keep Ees uninformed or misinformed concerning matters affecting employment, and U is free to enforce properly adopted rule which reflects a legitimate U interest; however, rule must be *properly adopted* requiring, at the very least, fair advance notice)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(U breaches its duty of fair representation when it engages in conduct affecting Ees it represents which is arbitrary, discriminatory or in bad faith; however, something more than mere negligence or exercise of poor judgment on part of U must be shown in order to support finding of arbitrariness)

Janet Eichelberger v. N.L.R.B. **765 F.2d 851 (C.A. 9, July 1985)**
[U is required to represent fairly interests of all members of bargaining unit during negotiation, administration, and enforcement of bargaining agreements, and such principles must be interpreted in context of individual case; however, in general, U's duty requires that it avoid conduct that is *arbitrary, discriminatory, or in bad faith*]

Janet Eichelberger v. N.L.R.B. **765 F.2d 851 (C.A. 9, July 1985)**
[while both intentional and unintentional conduct can constitute arbitrariness resulting in breach of U's duty of fair representation, showing of mere negligence is insufficient to constitute breach of 8(b)(1)(A); negligent action or nonaction of U by itself will not be considered arbitrary, irrelevant, invidious, or unfair so as to constitute breach of duty of fair representation violative of Act; rather, something more is required]

2581-0120 Section 7 as source of employee's right to fair treatment by representative

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) **274 NLRB No. 081**
(U's failure and refusal to refer particular Ee to E, at E's request, because Ee had solicited and encouraged Ees to run for position of business manager of U and attempted to oust present U business manager from office by running, himself for that office held violative, since activities of Ees designed to oust incumbent U leadership and to elect different U officers are concerted activities protected by Section 7 of Act)

2581-0140 Section 8(b)(1)(A) as encompassing duty to represent fairly

Iron Workers, Local 601 (Papco, Inc.) **276 NLRB No. 142**

N.L.R.B. v. Local 299, Teamsters **782 F.2d 46 (C.A. 6, Jan. 1986)**
[*duty of fair representation is implicated only when individual or group is treated differently by U - either through discriminatory, bad faith, or arbitrary conduct- than another individual, group or the collective*]

2581-0160 Duty owed all employees whom union represents

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) **277 NLRB No. 059**
(duty of fair representation requires that grievance filed by bargaining unit member, whether U member or nonmember, not be processed by U in arbitrary, discriminatory, perfunctory, or bad-faith manner)

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) **277 NLRB No. 059**
(refusal to process nonmember's grievance unless he agreed to pay local according to fee schedule established by local and applicable only to nonmembers, violative, as this has coercive effect on nonmembers in their exercise of their right to join or refrain from joining U)

Machinists, Local 776 and Local Lodge 776-B (General Dynamics) **JD-128-86**

Sausage Makers' Union, Local 203, Food & Commerical Workers (Western Employer Associates) **JD-(SF)-47-86**
[U violated its duty of fair representation by telling Ees it would not provide services; e.g., providing forms and assistance in completing forms necessary to secure health-related benefits available under collective bargaining agreement, in connection with conditions of work and work-related problems to Ees who had resigned from membership even though these Ees continued to satisfy their financial core requirements under contract]

Local 866, Teamsters (Richard Rapp, an Individual) **JD-(NY)-58-85**
(U held not to have knowingly misled Ees as to procedures for obtaining employment where U owed duty of fair representation to former Ees of lease operator which went out of business when chemical company cancelled its lease)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) **JD-13-85**
(statements by U to job applicants in hiring hall context to effect that referrals would first go to Local U members, violative, since U's method of making referrals was in direct contravention of lawful hiring hall procedure established by collective bargaining agreement then in effect)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) **JD-13-85**
(U's maintenance of *second out-of-work list* in hiring hall situation which was for use by nonmembers and from which list no referrals made, violative)

N.L.R.B. v. Local 299, Teamsters **782 F.2d 46 (C.A. 6, Jan. 1986)**

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**
[Act imposes on U implied duty of fair representation, and U's statutory right to act as exclusive representative of Ee unit that selected it implies correlative duty on U to serve interests of all members w/o hostility or discrimination, to exercise its discretion with good faith and honesty, and to eschew arbitrary conduct]

2581-0180 Duty may be breached by action or inaction

Industrial Workers AIW (Texas Lime Company) **JD-244-85**
(U representative's failing to inform members of agreement with E to give 24 hours notice in advance of strike, resulting in discharge of Ees, held not breach of U's duty of fair representation, where, assuming Ee committee was ignorant of agreement although U representative may have been negligent in failing to give required notice, examination of totality of circumstances failed to reveal *something more than mere negligence* necessary to constitute arbitrary action and violation of Act)

Service Employees Union Local 87 (American Building Maintenance) **JD-(SF)-30-85**
(U's handling of Ee's grievance, not violative, notwithstanding U might be considered negligent when it failed to mount proper, timely, investigation of Ee's layoff claim, where totality of circumstances failed to reveal *something more than mere negligence* necessary to constitute violation of Act)

N.L.R.B. v. Local 299, Teamsters **782 F.2d 46 (C.A. 6, Jan. 1986)**
[*duty of fair representation is implicated only when individual or group is treated differently by U - either through discriminatory, bad faith, or arbitrary conduct- than another individual, group or the collective*]

2581-0180-5000 Adequacy of representation provided by U to employees

Rainey Security Agency, Inc. **274 NLRB No. 041**
(U did not unlawfully fail in its duty of fair representation, where U's delay in appointing U steward and failure to maintain reasonable contact with Ees, including failure to respond to phone messages and to keep Ees informed of its address or meetings, suggest, in light of all circumstances, including absence of animus toward and discriminatory treatment of Ees, ineptitude or mismanagement on U's part which cannot be equated with action which is *arbitrary, irrelevant, infidious, or unfair*)

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) **JD-(NY)-97-86**
[allegations of inadequate preparation of Ee to give testimony at arbitration, arbitrary refusal to help Ee obtain important witnesses, arbitrary refusal to obtain from E *important documentary information* of all past reprimands or discharges for use at arbitration, refusal to allow a competent translator to participate in arbitration proceeding, and deliberate withholding of testimony of U agent, not sustained]

Service Employees Union Local 87 (American Building Maintenance) **JD-(SF)-30-85**
(U's failure and refusal to process Ee's grievance, violative where U's representatives undertook responsibility for timely filing of grievance and thereafter failed to do so; U's representatives could have refused to process grievance, believing it was w/o merit; however, when U representatives told Ee that grievance would be filed, their conduct in so advising him created affirmative duty on U's part to file grievance and failure to do so was arbitrary and contrary to fiduciary obligation)

Local 594, Auto Workers v. N.L.R.B. **776 F.2d 1310 (C.A. 6, Nov. 1985)**
[local U's refusal to process Ee's grievances concerning a change in his starting time by settling one unsatisfactorily and withdrawing the rest, violative, where U's conduct was motivated by Ee's complaints to local U president concerning change in absentee program, handling of grievances was perfunctory in light of fact that International U supported Ee's position and local U did not take into account obvious disparate treatment of Ee and another Ee concerning start-up time]

2581-0180-5000—Cont.

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) 794 F.2d 420 (C.A. 9, July 1986)

[U has no duty to process frivolous grievance. However, U may be liable for expense of outside representation if it has failed to process nonfrivolous grievance fairly]

2581-3300 Forms of representation to which duty applies

2581-3301 Generally

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[standards pertaining to duty of fair representation may differ when applied to negotiation and to administration of contract; in negotiating contract with E, U is allowed wide range or reasonableness subject always to complete good faith and honesty of purpose in exercise of its discretion; while in administering contract, duty of fair representation requires good faith by U, but range of reasonable conduct is narrowed]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[breach of U's duty of fair representation occurs as result of arbitrary, discriminatory, or bad faith conduct by U, and to show breach of such duty ct requires intentional U misconduct; but no such breach was found in perfunctory representation of Ee at grievance hearing, absent wrongful intent; in negotiating Ee benefit plan, absent fraud, deceitful action or dishonest conduct; in gross negligence in prosecuting Ee grievance, absent bad faith; in negligent failure to preserve properly Ee's U appeal rights; and in U's negligence in failing to appeal grievance]

2581-3307 Union security requirements

Harte & Company, Inc. 278 NLRB No. 128

[U representative informing newly hired Ees at new facility, that Ees who did not join U would lose their jobs, unlawful, since Ees had been working less than 30 days to which entitled under Section 8(a)(3) proviso before they could be discharged for non-compliance with U security provision, nor were Ees informed of amounts owed, method used to compute amounts, or manner in which they could satisfy obligation]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) 278 NLRB No. 025

[U's failure to explain in delinquency notice sent to Ees, how a fee was broken down between dues owed and initiation or reinstatement fees, violative, since, if Ees had questions concerning apportionment of fees owed, they would be required to seek assistance from the U]

Bakery Workers, Local 42 (Gold Kist, Inc.) JD-(ATL)-42-85

(by requesting E to continue dues checkoff after Ees had resigned and by taking steps to grieve refusal of E to continue disputed checkoffs, U violated Act, notwithstanding Ees executed checkoff authorization since authorization directed deduction of dues *in accordance with regular membership dues* making payment of dues a quid pro quo for U membership and thereby revoking dues checkoff assignment as matter of law at time of each effective resignation from U membership. Therefore, by taking such action, U directly impairs Ee's Sec. 7 right to resign when it seeks to delay member's resignation)

United Professional Nurses Association (Lockport Memorial Hospital) JD-128-85

(U's executing and maintaining bargaining agreement containing U security clause that did not provide Ees employed as of date of agreement with statutory 30-day grace period before requiring U membership, violative)

2581-3314 Operation of referral system

Construction and General Labors Union, Local No. 1334 (Western Sign Corp.) 281 NLRB No. 029

[referring Ees whose names were below that of charging party on referral list, not violation where U was not hostile to charging party and followed posted contractual hiring hall procedures, of which Ees had notice and which were based on objective criteria, and where all non-referrals of charging party were due to Es' requests for named Ees or Ees with particular types of experience, or E's rejection of charging party]

Garage Employees Union Local No. 272, a/w Teamsters (Various Employers) 280 NLRB No. 138

[U's failure to refer member, unlawful, since based solely on U considerations, where member had been in good standing when he requested withdrawal card; was under no obligation to pay dues while he held withdrawal card, and U refused to refer him out of hiring hall until he turned in his withdrawal card and paid dues for period he held card]

Stage Employees, Local No. 41 (Atlanta Ballet) 280 NLRB No. 065

[forcing discharge of Ee specifically requested by ballet company who was on U's *C* list and refusing to refer Ee in accordance with established procedure and expired contract by which terms parties were still abiding violation, where U took such action because E had not agreed to new contract]

Naftali Deutsch and Alexander Coler d/b/a C–D Investment Co. 279 NLRB No. 090

[District Council's action, and E's acquiescence, in reinstating two duly appointed stewards and causing discharge of steward appointed by U officer w/o authority to do so and in violation of hiring hall rules, not unlawful where District Council was preserving integrity of contractually prescribed referral practice, and discharge of steward appointed w/o proper authority was necessary to effective performance of its representative function]

Stage Employees IATSE, Local #41 (Theater of the Stars; Andrews-Bartlett and Associates, Inc.) 278 No. 004

[U's changing referral procedure in a way adversely affecting Ees w/o notice to them constituted a violation of U's duty of fair representation]

Teamsters Local Union #519 (Rust Engineering Co.) 276 NLRB No. 094

(U's oral modification of referral plan by selectively requiring some of its dissident members to sign or initial referral cards once a month to have their cards renewed after changing from referral book to card system, w/o adequately notifying members of any such requirement, violative)

Iron Workers, Local 601 (Papco, Inc.) 276 NLRB No. 142

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010

(U's threatening to file, filing, and announcing to its membership that it had filed internal U charges against Ee for declining job referral from U's hiring hall while on U's out-of-work list and simultaneously working non-U, unlawful, where U breached its duty of fair representation, since charges against Ee reflected a change in U's previous referral policy made w/o advance notice of charge to U's membership)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010

(U's imposition of fine against Ee and his suspension from membership, pursuant to internal U charges brought against him for declining job referral while on U's out-of-work list and simultaneously working non-U, unlawful, where U breached its duty of fair representation, since charges against Ee reflected a change in U's previous referral policy made w/o advance notice of change to U's membership)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010

(even in absence of unlawful motivation, any departure by U from established exclusive hiring hall procedures resulting in denial of employment is discrimination which inherently encourages U membership, breaches duty of fair representation and violates 8(b)(1)(A) and (2), unless U demonstrates that its interference with employment was pursuant to valid U-security clause or was necessary to effective performance of its representative function)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010

(U's notice to Ee who was on U's out-of-work list while working non-U that U charges would be brought against him for rejecting U's job referral did not constitute fair advance notice of new referral policy, where Ee had already rejected referral and could reasonably conclude U was acting arbitrarily and from animus against him since U did not explain basis for charges nor announce new policy as applicable to everyone; and subsequent announcement to membership of charges against Ee did not adequately inform all members of policy change)

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110

(local U's requesting travelers that had been previously referred by local U to quit their jobs so that local U's members could work, violative; U has an obligation not to conduct itself in an arbitrary, invidious or discriminatory manner when representing traveler Ees referred out by it; further, U's contention that since no traveler quit his job there was no coercive impact from its action, rejected)

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081

(U's refusal to refer dissident U member for reasons which were determined at hearing to be arbitrary, invidious or irrelevant to legitimate U interests (opposed U leadership), violative since U failed to *act in an even-handed manner*)

Electrical Workers, Local 328 (Stone and Webster Engineering Corporation) JD-(NY)-17-85

(where E insisted in its hiring hall requisition on only journeymen for work at jobsite and U conveyed this requirement to sister local who, in disregard of this requirement, sent members who were not journeymen to job, no violation of U's duty of fair representation where local U upon learing that these members lacked necessary requirements for job caused them to quit because U had to meet its contractual obligation with E in operating hiring hall to refer only Ees who met E's requirements)

2581-3314—Cont.

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85
(statements by U to job applicants in hiring hall context to effect that referrals would first go to Local U members, violative, since U's method of making referrals was in direct contravention of lawful hiring hall procedure established by collective bargaining agreement then in effect)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85
(Local U's refusal to tell *traveller* where member ranked on Respondent's out-of-work list at hiring hall, violative, since requested information was necessary in order for member to determine whether U was operating contractually established hiring hall in proper manner. Refusal was breach of U's duty of fair R)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85
(U's maintenance of *second out-of-work list* in hiring hall situation which was for use by nonmembers and from which list no referrals made, violative)

Millwright & Machinery Erectors, Local Union 720, Carpenters v. N.L.R.B. 798 F.2d 781 (C.A. 5, Aug. 1986)
[no violation by fining member for not accepting referral of employment at U shop since member continued working at non-U shop so fine did not affect E-Ee relationship and falls w/i proviso. Fact that U never fined members previously for such conduct nor did it communicate change in its policy to membership, not relevant]

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers 778 F.2d 284 (C.A. 6, Dec. 1985)
[U's call-back referrals, violation, where E was only entitled to receive referrals by customary procedures using U's hiring hall lists, rather than call-back certain Ees who had not worked for E w/i prior six months; contention that E would not accept other referrals, not credited, but, if it were, E would have had to reject Ees at time of referral]

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers 778 F.2d 284 (C.A. 6, Dec. 1985)
[referring U steward ahead of other Ees because he needed more weeks of employment to qualify for unemployment compensation, violation]

N.L.R.B. v. Electrical Workers, Local 575 773 F.2d 746 (C.A. 6, Oct. 1985)
[local U's requirement in operation of its exclusive hiring hall, that travelers resubmit documentation as to their qualifications every 6 months in order to be eligible for referral, violative, since natural and foreseeable consequences of rule was to hinder travelers over locals' members where locals' members did not have to provide such documentation]

N.L.R.B. v. Electrical Workers, Local 575 773 F.2d 746 (C.A. 6, Oct. 1985)
[local U's refusal to grant traveler access to its hiring hall books to determine if U was complying with hiring hall rules, violative, since member has right to monitor performance of his chosen representative]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)
[anonymity or privacy of U members does not justify U's refusal to provide referral list information to Ee member since inherent in U's duty of fair representation is obligation to deal fairly with Ee's request for information as to his relative position on out-of-work register for purposes of job referral through exclusive hiring hall]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)
[U's refusal to comply with member's request for information as to his relative position on job referral list, unlawful, where member was completely dependent on U for protection of his job referral rights; his request was not unduly burdensome; it was reasonable to infer refusal was motivated by bad faith in light of U's retaliatory conduct and harassment of member; and U had no justifiable reason for its refusal which was intentional misconduct in breach of its duty of fair representation in administering contract]

N.L.R.B. (Steven R. Lovell, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)
(by setting additional requirements than those provided for in contract for travellers to qualify for preferred group in referral from hiring hall w/o informing members of these requirements, U discriminated against Ees in regard to hire or tenure of employment to encourage or discourage membership in labor organization; no discriminatory intent need be proven by specific evidence of motive or purpose but may be inferred from natural and foreseeable consequences of local's conduct)

2581-3328 Operation of seniority system

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132
[U's establishing seniority list which placed bargaining unit Ees at E's more recently organized plant behind previously unionized Ees at another of E's facilities, violative, since U could not refuse to consider or negotiate a dovetailing system solely because Ees at E's non-U plant joined U more recently than did Ees at E's unionized plant. By favoring Ees at its unionized plant, U in effect (if not intent) penalized Ees of non-U plant for refraining from engaging in U activity]

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109
(U's maintaining and attempting to enforce contractual *superseniority*, in its contract with E, for U vice president, recording secretary, and members of U negotiating committee with regard to layoff, recall and protection against job bumping, violative, since their on-the-job presence was not necessary for performance of grievance processing duties or contract administration. Negotiating committee had *only* duty to negotiate contract with E)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109
(U's invoking contractual grievance procedure on or after U vice president filed grievance seeking reinstatement to job from which she had been bumped (contract granted U vice president *superseniority* for job bumping purposes) violative, since on-the-job presence of U vice president not necessary for performance of grievance processing duties and if grievant successful, result would displace another Ee)

Milk Drivers and Dairy Employees Union, Local 584, Teamsters (Milk Bottlers Federation of New York) JD-(NY)-133-85
[U's causing E to lay off senior Ee because of preference for junior man, who was related to individual holding U position, violation; when asked by E for information as to Ees' seniority, U stated laid-off Ee was junior man, notwithstanding that Ee hired before him had waived seniority as to lay off and become junior man]

Akron Printing and Graphic Communications Union #42, International Printing and Graphic Communications Union, AFL-CIO (The Beacon Journal Publishing Company of Akron, Ohio) JD-185-84
(U's placing former supervisor at bottom of priority list upon his return to journeyman's position notwithstanding his great seniority, violative where placement was pursuant to *ex post facto* rule adopted by U members of department and applied retroactively and contrary to past practice; former supervisor had not been informed that such loss of priority might occur before he accepted supervisory position)

Akron Printing and Graphic Communications Union #42, International Printing and Graphic Communications Union, AFL-CIO (The Beacon Journal Publishing Company of Akron, Ohio) JD-485-84
(U's placing former journeyman at bottom of priority list upon his return to journeyman's position from supervisory position contrary to past practice, violative; at unit meeting called w/o notifying him, journeymen voted that supervisors returning to journeymen's positions should lose their priority and applied it retroactively, so that returning journeyman received last choice of job assignments, days of work, and vacation)

2581-3342 Informing employees of rights under contract

Rainey Security Agency, Inc. 274 NLRB No. 041
(contrary to ALJ's holding that U unlawfully failed to provide copies of contract and U's constitution and bylaws requested by Ees, Bd found no violation where, unlike case in which U failed to honor repeated requests by Ees for copy of contract for information concerning certain benefits, U sent copy of contract to Ee who had agreed to act as information liaison)

Local 888, Food & Commercial Workers (Sachs New York, Inc., Debtor in Possession) JD-(NY)-134-85
[U did not violate duty of fair representation to Ee which had filed for bankruptcy who, as provided in contract filed claims for severance pay after distribution of payment to other Ees, and received smaller amounts than other Ees, where Ee held meeting to inform Ees of procedures for filing of bankruptcy forms to obtain severance pay, aided Ees in preparation of claim forms, filed claims, obtained settlement twice the amount of other creditors, sought arbitration for late filers, notwithstanding U did not remind Ee who failed to file forms, nor filed forms on behalf of Ees]

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2581-3356 Informing employees of obligation under contract

Local 441, International Union of Electrical, Radio & Machine Workers, AFL-CIO (Phelps Dodge Copper Products Company, a Division of Phelps Dodge Industries, Inc.) 281 NLRB No. 137

[U's attempt to restrict member's right to resign even when no strike or lockout present or imminent, violative, as *any* restriction on resignations are invalid, and attempt to cause E to discharge member also violative. Furthermore, U breached its fiduciary duty by not informing member of proper resignation procedure]

Local Union No. 896, a/w Teamsters (Anheuser-Busch, Inc.) 280 NLRB No. 076

[U breached duty of fair representation to member by failing to provide her with pertinent information and by misinforming her about contractual provisions, where upon her request for copy of agreement as to requirements for temporary Ees being available to receive calls for weekend shifts, U sent purported copy of agreement with changed heading and date to indicate it had previously been sent to Ee and omitting paragraph regarding E's intended policy as to non-availabilities, which deprived member of argument in arbitration of subsequent discharge]

Local Union No. 896, a/w Teamsters (Anheuser-Busch, Inc.) 280 NLRB No. 076

[U breached duty of fair representation to members where it failed to inform Ees of changes in bargaining agreement regarding being available to receive calls to work on week-end shifts, and particularly not informing member who grieved reprimand for failure to adhere to new provisions, thus depriving her of possible defense, and further misleading U executive board that grievant had been sent copy of agreement, thus, perhaps influencing board's refusal to take grievance to arbitration]

Harte & Company, Inc. 278 NLRB No. 128

[U representative informing newly hired Ees at new facility, that Ees who did not join U would lose their jobs, unlawful, since Ees had been working less than 30 days to which entitled under Section 8(a)(3) proviso before they could be discharged for non-compliance with U security provision, nor were Ees informed of amounts owed, method used to compute amounts, or manner in which they could satisfy obligation]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) 278 NLRB No. 025

[U's failure to explain in delinquency notice sent to Ees, how a fee was broken down between dues owed and initiation or reinstatement fees, violative, since, if Ees had questions concerning apportionment of fees owed, they would be required to seek assistance from the U]

Dillingham Tug & Barge Corporation 278 NLRB No. 019

[failing to inform delinquent Ee of dues obligation under U shop clause while Ee was on suspension, not violative since duty to pay dues would not arise until Ee was reinstated]

Helmsley-Spear, Inc. 275 NLRB No. 043

(labor organizations seeking to enforce valid U security provisions have a strict fiduciary duty to advise Ees of their contractual obligations to maintain membership in good standing before initiating adverse action against them; this duty includes the obligation to apprise Ee of amount of dues arrearage, the time period in question and the precise amount of any reinstatement fee that may be required)

Helmsley-Spear, Inc. 275 NLRB No. 043

(U seeking and obtaining discharge of Ee for failure to pay dues violative, since U's notices to Ee of dues delinquency were inadequate where two notices sent to Ee set forth conflicting periods of dues delinquency and failed to specify precise amount of reinstatement fee required of Ee; further, U's contention Ee was *free-rider* because he failed to read U mail, rejected, since negligence and inattention to U concerns are not equivalent to willful attempt to evade financial obligations and Ee followed pattern of sporadic dues payment, becoming delinquent and then paying in lump sum not only arrears but in advance)

Local 888, Food & Commercial Workers (Sachs New York, Inc., Debtor in Possession) JD-(NY)-134-85

[U did not violate duty of fair representation to Ee which had filed for bankruptcy who, as provided in contract filed claims for severance pay after distribution of payment to other Ees, and received smaller amounts than other Ees, where Ee held meeting to inform Ees of procedures for filing of bankruptcy forms to obtain severance pay, aided Ees in preparation of claim forms, filed claims, obtained settlement twice the amount of other creditors, sought arbitration for late filers, notwithstanding U did not remind Ee who failed to file forms, nor filed forms on behalf of Ees]

Industrial Workers AIW (Texas Lime Company) JD-244-85

(U representative's failing to inform members of agreement with E to give 24 hours notice in advance of strike, resulting in discharge of Ees, held not breach of U's duty of fair representation, where, assuming Ee committee was ignorant of agreement although U representative may have been negligent in failing to give required notice, examination of totality of circumstances failed to reveal *something more than mere negligence* necessary to constitute arbitrary action and violation of Act)

Hotel & Restaurant Employees Union, Local No. 1 (Palmer House and Towers, a Hilton Hotel) JD-75-85

(violation where U caused E to terminate and/or refuse to hire Ee because he had not paid dues or fees to U pursuant to U-security clause where U had not previously notified Ee of amount owed, method used to compute that amount, to which local U payments were to be made, and fact that failure to make such payments could result in discharge; Ee was ignorant of need to arrange with U to keep his job after transferring membership to other local to get extra work)

N.L.R.B. v. Local 299, Teamsters 782 F.2d 46 (C.A. 6, Jan. 1986)

[no unlawful breach of duty of fair representation since no discriminatory conduct by U where U representatives called *meeting* of Ees to protest loss of positions on day shift, which resulted in suspension of Ees for participation in work stoppage in violation of contract, nor did U notify Ees that E regarded meeting as illegal work stoppage and participating Ees could be disciplined since U failed to authorize it in manner prescribed by contract]

2581-3358 Informing employees that grievance is without merit

Communications Workers of America Local 6372 (United Telephone Company) JD-298-85

(U officer's failure to inform Ee that his grievance would not be taken to arbitration due to officer's assumption that others had informed Ee found not so negligent as to be arbitrary and unlawful)

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[U's failure to timely notify Ee of its refusal to pursue her grievance, as result of which Ee's grievance was found untimely filed and not arbitrable, not unlawful, in absence *of something more* than mere negligence sufficient to constitute breach of U's duty of fair representation, where Ee was on notice of contract terms and was competent to lodge her grievance had she but elected to do so; and while Ee's dilatoriness in requesting U's intervention did not excuse U's conduct, Ee failed to act to forestall extinguishment of her rights before filing deadline]

2581-3359 Work stoppage

N.L.R.B. v. Local 299, Teamsters 782 F.2d 46 (C.A. 6, Jan. 1986)

[U representatives initiating work stoppage that was illegal under contract though participants not told one way or other of its illegality, nor did U authorize stoppage did not restrain or coerce Ees in exercise of their Sec. 7 rights, as U could not punish Ees for refusal to commit illegal act (joining in work stoppage), so no coercion; further, as U did not threaten or intimidate members to secure their participation, members were free to not participate in action instigated by U]

2581-3370 Negotiation of agreements

2581-3370-0100 Generally

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[standards pertaining to duty of fair representation may differ when applied to negotiation and to administration of contract; in negotiating contract with E, U is allowed wide range or reasonableness subject always to complete good faith and honesty of purpose in exercise of its discretion; while in administering contract, duty of fair representation requires good faith by U, but range of reasonable conduct is narrowed]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[breach of U's duty of fair representation occurs as result of arbitrary, discriminatory, or bad faith conduct by U, and to show breach of such duty ct requires intentional U misconduct; but no such breach was found in perfunctory representation of Ee at grievance hearing, absent wrongful intent; in negotiating Ee benefit plan, absent fraud, deceitful action or dishonest conduct; in gross negligence in prosecuting Ee grievance, absent bad faith; in negligent failure to preserve properly Ee's U appeal rights; and in U's negligence in failing to appeal grievance]

2581-3370-0130 Fair treatment for all unit members

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 189

(U's maintaining and attempting to enforce contractual *superseniority* in its contract with E, for U vice president, recording secretary, and members of U negotiating committee with regard to layoff, recall and protection against job bumping, violative, since their on-the-job presence was not necessary for performance of grievance processing duties or contract administration. Negotiating committee had *only* duty to negotiate contract with E)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 189

(U's invoking contractual grievance procedure on or after U vice president filed grievance seeking reinstatement to job from which she had been bumped (contract granted U vice president *superseniority* for job bumping

2581-3370-0150—Cont.

purposes) violative, since on-the-job presence of U vice president not necessary for performance of grievance processing duties and if grievant successful, result would displace another Ee)

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) **JD-(NY)-136-85**

[fact that Ee's grievances were not arbitrated by time instant case came to trial before ALJ *not* indicative of bad faith on U's part, since U demonstrated that there exists large backlog of grievances pending arbitration with Ee's grievance processing in approximately its correct order]

2581-3370-7900 Ratification of agreement

State County Employees AFSCME, Council 71 (Golden Crest Convalescent Centers, Inc.) **275 NLRB No. 013**

(U's refusal to honor agreement reached by parties in negotiations not unlawful since agreement was subject to ratification where E was aware, or reasonably should have been aware, that authority of U negotiators was limited to negotiations and could not in absence of ratification bind U to contract; and there was no allegation of bad faith or attempts to deceive on part of U)

2581-3384 Presentation of grievances

Local 8-398, Oil Workers (Gilbert Spruance Company) **282 NLRB No. 061**

[where U undertakes to process grievance but decides to abandon it short of arbitration, finding of violation turns not on merit of grievance, but rather on whether U's disposition of grievance was perfunctory or motivated by ill will or other invidious considerations]

Local 3036, New York City Taxi Drivers Union, SEIU, AFL–CIO (Linden Maintenance Corp.) **280 NLRB No. 115**

[U's abandoning Ee's grievance, violation where it gave Ee no notice but continued to reassure him it would be taken care of and neither offered explanation for inaction nor evidence of exercise of discretion, and inaction was therefore wilful and perfunctory]

Local Union No. 896, a/w Teamsters (Anheuser-Busch, Inc.) **280 NLRB No. 076**

[U breached duty of by processing grievance in perfunctory manner where U representative, upon appeal to U's executive board of refusal to take reduction of member's reprimand to counseling to arbitration did not make clear effect of counseling on grievant's future employment in that she could be discharged for one more reprimand, and misrepresented that she had been informed of change in agreement on which reprimand based; at arbitration of subsequent discharge U failed to argue member's lack of knowledge of system for lack of adherence thereto she had been discharged, and threatened to withdraw from representation]

Rubber Workers, Local 250 (Mack-Wayne Closures) **279 NLRB No. 165**

[U's breach of its duty of fair representation by arbitrarily refusing to process Ee's grievance, violative]

Hotel, Motel, Restaurant, Cafeteria, Bartenders and Miscellaneous Employees, Local Union 64, AFL-CIO (HLJ Management Group) **278 NLRB No. 112**

[GC's contention that *Teamsters Local 705 (Associated Transport)*, 209 NLRB 292 (1974) applies to case herein and requires finding 8(b)(1)(A) violation for U's alleged failure to advocate interests of Charging Party at grievance meeting, rejected; in cases subsequent to *Associated Transport* Bd has indicated that U's representative's duties in early prearbitral stages of grievance, as in prearbitral grievance meeting herein, are not same as duty owed by attorney to client or duty to be advocate once in arbitration]

Hotel, Motel, Restaurant, Cafeteria, Bartenders and Miscellaneous Employees, Local Union 64, AFL-CIO (HLJ Management Group) **278 NLRB No. 112**

[business agent acted w/i U's considerable grievance handling discretion where charging party failed to provide requisite substantiation of her contested version of critical events at nonarbitral grievance meeting and having heard both sides of grievance, agent then openly agreed with E about merits of grievance and said that U would not proceed to arbitration]

Staff Officers Association of America (Delta Steamship Lines) **277 NLRB No. 125**

(U's failure to process Ee's grievance that he was not assigned work ahead of less senior Ees, allegedly because of his opposition to U's leadership, not violation, since U owed no duty where grievance was frivolous, as it was based on contract which stated length of Ee's unemployment, rather Ee's seniority, was basis for assignment)

Staff Officers Association of America (Delta Steamship Lines) **277 NLRB No. 125**

(U's failure to notify Ee for over three months of its decision not to prosecute his grievance due to its leak of specificity, but instead to ask him for more specific information, not violation where it was not product of personal hostility and did not extinguish Ee's right to file a grievance in absence of contractual limitation on time for filing)

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) **277 NLRB No. 059**

(duty of fair representation requires that grievance filed by bargaining unit member, whether U member or nonmember, not be processed by U in arbitrary, discriminatory, perfunctory, or bad-faith manner)

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) **277 NLRB No. 059**

(refusal to process nonmember's grievance unless he agreed to pay local according to fee schedule established by local and applicable only to nonmembers, violative, as this has coercive effect on nonmembers in their exercise of their right to join or refrain from joining U)

Rainey Security Agency, Inc. **274 NLRB No. 041**

(U's failure to attend to one Ee's complaints and delay in investigating grievance of another Ee held not so egregious as to warrant finding of failure of U's duty of fair representation where, in light of all circumstances, including absence of animus toward and discriminatory treatment of Ees, U's conduct constituted ineptitude or mismanagement which cannot be equated to action which is *arbitrary, irrelevant, indidious, or unfair*)

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) **JD-(NY)-97-86**

[no unlawful failure to grieve Ee's discharge because of Ee's concerted activities with fellow U dissidents where Ee had terminated U's attempt to process his grievance by unjustifiably walking out of meeting arranged by U to assist him in his problems with E because of U's reasonable position that only local U member would be permitted to act as his interpreter]

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) **JD-(NY)-97-86**

[allegations of inadequate preparation of Ee to give testimony at arbitration, arbitrary refusal to help Ee obtain important witnesses, arbitrary refusal to obtain from E *important documentary information* of all past reprimands or discharges for use at arbitration, refusal to allow a competent translator to participate in arbitration proceeding, and deliberate withholding of testimony of U agent, not sustained]

Machinists, Local 776 (General Dynamics) **JD-128-86**

[U did not breach duty to individual who resigned from U and not honored strike, where it refused to settle grievances of individual and another Ee, member of U, who grieved their discharges for fighting by accepting E's offer to reinstate individual if grievance of other Ee withdrawn, and failed to arbitrate grievances, since no breach of duty to refuse to accept action which would have benefited 1 unit member at expense of another, where U's assessment it could not disprove E had proper cause was reasonable, and absent evidence of connection between U's actions and animus towards individual, or of U discrimination against non-members of U]

Milk Drivers and Dairy Employees Union, Local 584, Teamsters (Milk Bottlers Federation of New York) **JD-(NY)-133-85**

[failing to inform Ee of proper procedure for presenting grievance and refusing to process grievance which U knew to be meritorious where it resulted from U's causing layoff of Ee contrary to seniority system; violation]

Retail Wholesale Union, Local 315 **JD-(ATL)-70-85**

(U's withdrawal of grievance after third step meeting and failing to take grievance to arbitration, not unlawful, where U business agent did not investigate grievance in a perfunctory manner or with negative predisposition, and there was no showing he did not present grievance in light most favorable to Ee; nor was U unlawfully motivated in withdrawing grievance)

Communications Workers of America Local 6372 (United Telephone Company) **JD-298-85**

(U's treatment of discharge grievance not perfunctory and unlawful where U decided not to arbitrate grievance based on lack of position to which dischargee could be demoted pursuant to contract provisions and other ee layoffs)

King Kullen Grocery Co., Inc. **JD-NY-35-85**

(no unlawful refusal to process grievance because Ee was not member of U, as alleged, where grievance concerned lay off of Ee who was still on probabtion and thus could be laid off for any reason, so that U had no basis for processing grievance concerning his layoff or duty to process such grievance)

Service Employees Union Local 87 (American Building Maintenance) **JD-(SF)-30-85**

(U's failure and refusal to process Ee's grievance, violative where U's representatives undertook responsibility for timely filing of grievance and thereafter failed to do so; U's representatives could have refused to process grievance, believing it was w/o merit; however, when U representatives told Ee that grievance would be filed, their conduct in so advising him created affirmative duty on U's part to file grievance and failure to do so was arbitrary and contrary to fiduciary obligation)

2581-3384—Cont.

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[U may breach its duty of fair representation when it arbitrarily ignores meritorious grievance or processes it in perfunctory manner; Us' thoroughness in investigating grievances in order to satisfy their duty varies with circumstances of each case; although Us have reasonable range of discretion in deciding how best to handle grievances, U conduct showing egregious disregard for U members' rights constitutes breach of duty of fair representation]

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[ct's *Dutrisac* decision holding that U breached its duty of fair representation where U's negligence in failing properly to pursue discharged Ee's grievance resulted in total foreclosure of Ee's right to grieve held inapplicable to instant case which involved voluntary resignation by Ee instead of discharge; and, while U's negligence here may have contributed to eclipse of Ee's grievance rights, it was not sole cause of their complete extinguishment]

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[U's failure to timely notify Ee of its refusal to pursue her grievance, as result of which Ee's grievance was found untimely filed and not arbitrable, not unlawful, in absence of *something more* than mere negligence sufficient to constitute breach of U's duty of fair representation, where Ee was on notice of contract terms and was competent to lodge her grievance had she but elected to do so; and while Ee's dilatoriness in requesting U's intervention did not excuse U's conduct, Ee failed to act to forestall extinguishment of her rights before filing deadline]

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[U sufficiently investigated Ee's grievance before deciding not to pursue it, where there was no indication that grievance was processed in arbitrary or perfunctory manner; 2 U officials concurred in conclusion adverse to Ee; Bd properly found that U fully considered Ee's claims and that its decision not to process them was not unreasonable; refusal to process bad case is not arbitrary but is reasonable and essential to grievance and arbitration system; and policy mandates judicial deference to U decision-making activity in grievance sphere]

2581-6700 Basis for union action or failure to act

2581-6701 Generally

Auto Workers, Local 376 (Emhart Industries, Hartford Division, etc.) 278 NLRB No. 037

[U's informing Ees through newsletter, that U was *looking into* raising reinstatement fees for members who had not paid dues, not violative, since motivation of U was only to encourage payment of dues, article was not associated with Ees' employment status and even in absence of U security agreement, U would be privileged to increase reinstatement fees]

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[ct's *Dutrisac* decision holding that U breached its duty of fair representation where U's negligence in failing properly to pursue discharged Ee's grievance resulted in total foreclosure of Ee's right to grieve held inapplicable to instant case which involved voluntary resignation by Ee instead of discharge; and, while U's negligence here may have contributed to eclipse of Ee's grievance rights, it was not sole cause of their complete extinguishment]

2581-6733 Permissible considerations

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) JD-(NY)-136-85

[fact that Ee's grievances were not arbitrated by time instant case came to trial before ALJ *not* indicative of bad faith on U's part, since U demonstrated that there exists large backlog of grievances pending arbitration with Ee's grievance processing in approximately its correct order]

2581-6733-2500 Contract

Industrial Workers AIW (Texas Lime Company) JD-244-85

(U representative's failing to inform members of agreement with E to give 24 hours notice in advance of strike, resulting in discharge of Ees, held not breach of U's duty of fair representation, where, assuming Ee committee was ignorant of agreement although U representative may have been negligent in failing to give required notice, examination of totality of circumstances failed to reveal *something more than mere negligence* necessary to constitute arbitrary action and violation of Act)

2581-6733-5000 Good-faith evaluation of merits of grievance

Hotel, Motel, Restaurant, Cafeteria, Bartenders and Miscellaneous Employes, Local Union 64, AFL-CIO (HLJ Management Group) 278 NLRB No. 112

[business agent acted w/i U's considerable grievance handling discretion where charging party failed to provide requisite substantiation of her contested version of critical events at nonarbitral grievance meeting and having heard both sides of grievance, agent then openly agreed with E about merits of grievance and said that U would not proceed to arbitration]

Milk Drivers and Dairy Employes Union, Local 584, Teamsters (Milk Bottlers Federation of New York) JD-(NY)-133-85

[failing to inform Ee of proper procedure for presenting grievance and refusing to process grievance which U knew to be meritorious where it resulted from U's causing layoff of Ee contrary to seniority system; violation]

2581-6767 Irrelevant or invidious considerations

2581-6767-0100 Generally

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers 794 F.2d 1474 (C.A. 9, July 1986)

[U's contention that Bd improperly determined that U's hiring hall policy had coercive effect on non-U applicants in violation of 8(b)(1)(A) on ground there was no evidence of U animus against applicants, rejected; no specific intent to discriminate on basis of U membership need be shown in order to prevail on claim under 8(b)(1)(A) which U violates if it wields its power invidiously or arbitrarily since such conduct gives notice that its favor must be curried and thereby encourages membership and unquestioned adherence to its policies]

2581-6767-4300 Nepotism

Milk Drivers and Dairy Employes Union, Local 584, Teamsters (Milk Bottlers Federation of New York) JD-(NY)-133-85

[U's causing E to lay off senior Ee because of preference for junior man, who was related to individual holding U position, violation; when asked by E for information as to Ees' seniority, U stated laid-off Ee was junior man, notwithstanding that Ee hired before him had waived seniority as to lay off and become junior man]

2581-6767-4600 Dual unionism

Carpenters, Local 745 (Dillingham Construction Pacific, Ltd. d/b/a Hawaiian Dredging & Construction Company) JD-(SF)-102-86,119[refusal to refer and causing discharge of Ee because he was member of 2 Us, violative]

2581-6767-5000 Nonmembership in union of unit employee

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132

[U's establishing seniority list which placed bargaining unit Ees at E's more recently organized plant behind previously unionized Ees at another of E's facilities, violative, since U could not refuse to consider or negotiate a dovetailing system solely because Ees at E's non-U plant joined U more recently than did Ees at E's unionized plant. By favoring Ees at its unionized plant, U in effect (if not intent) penalized Ees of non-U plant for refraining from engaging in U activity]

Columbus Area Local, American Postal Workers Union, AFL-CIO (U.S. Postal Service) 277 NLRB No. 089

(refusal to process nonmember's grievance unless he agreed to pay local according to fee schedule established by local and applicable only to nonmembers, violative, as this has coercive effect on nonmembers in their exercise of their right to join or refrain from joining U)

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) 275 NLRB No. 127

(U's refusal to allow financial core members to use services of dental and eye clinics and pharmacy (agents of U), violative, notwithstanding these benefits outside bargaining agreements as it has forseeable effect of coercing these financial core members from exercising their statutory right to refrain from joining U and remain core member. Defense that U's conduct privileged under 8(b)(1)(A) proviso, rejected as against national policy to promote peaceful settlement of disputes where as part of strike settlement agreement U agreed it would not discriminate against core members)

Local 796, Electronic Workers IUE (Michael P. Burrow, an Individual) JD-162-86

[U president informing individual in unit, who was not member of U and had grieved his discharge, that he didn't care if individual ever got job back, since individual was not U member, unlawful, even if not accurate reflection of U's policies, as it would tend to restrain or coerce Ee in exercise of his Section 7 rights]

Machinists, Local 776 (General Dynamics) JD-128-86

[U did not breach duty to individual who resigned from U and not honored strike, where it refused to settle grievances of individual and another Ee, member of U, who grieved their discharges for fighting by accepting E's offer to reinstate individual if grievance of other Ee withdrawn, and failed to arbitrate grievances, since no breach of duty to refuse to accept action which would have benefited 1 unit member at expense of another, where U's assessment it could not disprove E had proper cause was reasonable, and absent evidence of connection between U's actions and animus towards individual, or of U discrimination against non-members of U]

2581-6767-5000—Cont.

King Kullen Grocery Co., Inc. JD-NY-35-85
(no unlawful refusal to process grievance because Ee was not member of U, as alleged, where grievance concerned lay off of Ee who was still on probabtion and thus could be laid off for any reason, so that U had no basis for processing grievance concerning his layoff or duty to process such grievance)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85
(U's maintenance of *second out-of-work list* in hiring hall situation which was for use by nonmembers and from which list no referrals made, violative)

2581-6767-7500 Intrasnion activity

Millwrights Local Union No. 1931, Carpenters (John W. McCaffrey, an Individual) 281 NLRB No. 142
[U official's removal of member's name from exclusive hiring hall's out-of-work list, unlawful, in view of official's suspicions concerning member's informing sister local about U's members working in such local's jurisdiction and/or resentment of member's belligerent and offensive conduct at U's office; fact that jobs were unavailable did not diminish seriousness of official's action, and timing of action immediately after sister local's inquiry about U members working in its jurisdiction suggested cause and effect]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124
[refusing to refer Ees because of their intra-U political or protected activities, violation]

Local Union No. 896, a/w Teamsters (Anheuser-Busch, Inc.) 280 NLRB No. 076
[while no need to find animus related to grievant/charging party's intra-U activity in order to establish breach of duty to represent her fairly, finding of ill will of U's business agent towards her warranted finding of ill will which tainted U's business representative resented opposition of senior temporary Ees, charging party among them, to new agreement regarding system of requiring availability to work weekends which diminished Ees' seniority rights and prospects for working enough shifts to become permanent Ees, and bypassing him by protesting change directly to U president]

Carpenters Local 608 (Various Employers) 279 NLRB No. 099
[U's refusal to permit members to inspect job lists of hiring hall, violative, since reason was members' dissident U activity and filing charges with Bd against U where U had told members they would not see any information or answer questions about list since they filed charges and U permitted other members to inspect job list]

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) 278 NLRB No. 008
[U's bring internal charges against member for allegedly fraudently buying *unemployment stamps* rather than paying full dues when he was fully employed, cancelling his membership and stripping him of his U office and superseniority thus jeopardizing his employment, and preculding him from holding other U office, unlawful, since actions motivated by member internal U activities of distributing leaflets critical of U leadership, and filing ULP charges against U]

Staff Officers Association of America (Delta Steamship Lines) 277 NLRB No. 125
(U's failure to process Ee's grievance that he was not assigned work ahead of less senior Ees, allegedly because of his opposition to U's leadership, not violation, since U owed no duty where grievance was frivolous, as it was based on contract which stated length of Ee's unemployment, rather Ee's seniority, was basis for assignment)

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081
(U's failure and refusal to refer particular Ee to E, at E's request, because Ee had solicited and encouraged Ees to run for position of business manager of U and attempted to oust present U business manager from office by running, himself for that office held violative, since activities of Ees designed to oust incumbent U leadership and to elect different U officers are concerted activities protected by Section 7 of Act)

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081
(U's refusal to refer dissident U member for reasons which were determined at hearing to be arbitrary, invidious or irrelevant to legitimate U interests (opposed U leadership), violative since U failed to *act in an even-handed manner*)

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) JD-(NY)-97-86
[no unlawful failure to fairly represent Ee's grievance due to his support of dissident U movement where Ee's sole activity was wearing of dissidents' hat and distributing its literature one time and his abortive effort to remove U shop steward]

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) JD-(NY)-97-86
[no unlawful failure to grieve Ee's discharge because of Ee's concerted activities with fellow U dissidents where Ee had terminated U's attempt to process his grievance by unjustifiably walking out of meeting arranged by U to assist him in his problems with E because of U's reasonable position that only local U member would be permitted to act as his interpreter]

Mine Workers, District 31 (Office Employees, Local No. 67) JD-392-85
[where Ee, member of U other than UMWA where she was employed, grieved her discharge and members of UMWA testified on her behalf and adversely to U's position, UMWA violated Act by filing charges against witnesses whether witnesses were employed or retired. Mere fact that individual is charged, tried, fined, or even threatened to be fined for testifying at arbitration hearing, or giving statements during arbitration procedure is sufficient to establish violation]

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)
[local U's refusal to process Ee's grievances concerning a change in his starting time by settling one unsatisfactorily and withdrawing the rest, violative, where U's conduct was motivated by Ee's complaints to local U president concerning change in absentee program, handling of grievances was perfunctory in light of fact that International U supported Ee's position and local U did not take into account obvious disparate treatment of Ee and another Ee concerning start-up time]

2581-6767-7600 Delinquency in dues or other monies owed to union

Furriers Joint Council of New York, a/w Food & Commercial Workers (Associated Fur Manufacturers, Inc., et al.) 280 NLRB No. 107
[where U assumed job of transmitting paychecks to Ees, its withholding of members' vacation paychecks in order to enforce collection of assessment for back dues and its deduction of back dues from those paychecks and giving members the balance thereof, violative; underlying purpose of 8(b)(1)(A) and (2) is to keep employment rights separate from membership obligations, such as payment of dues, and U may seek only the discharge of Ees who do not pay dues and may not resort to other methods to enforce compliance with membership obligations]

Auto Workers, Local 376 (Emhart Industries, Hartford Division, etc.) 278 NLRB No. 037
[U's notice to members threatening them with discharge for failure to pay dues at a time U's contract had expired, violative; further, U's contention it had repudiated threat by posting notice at plant accurately setting forth dues obligations and held meetings with Ees to explain threat was in error and no Ees were obligated to pay dues as condition of employment, rejected, where U failed to distribute written retraction to any Ees who received threat, notice repudiating conduct was untimely and meetings with Ees did not reach Ees receiving threat]

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) 278 NLRB No. 008
[U's bring internal charges against member for allegedly fraudently buying *unemployment stamps* rather than paying full dues when he was fully employed, cancelling his membership and stripping him of his U office and superseniority thus jeopardizing his employment, and preculding him from holding other U office, unlawful, since actions motivated by member internal U activities of distributing leaflets critical of U leadership, and filing ULP charges against U]

Electrical Workers, Local 11 (Choi Engineering Corp.) 277 NLRB No. 008
(U's refusal to refer traveler because it mistakenly believed he was delinquent in dues owed to a sister local, violative)

2581-6767-7800 Failure to follow union rules or procedures

Millwrights Local Union No. 1931, Carpenters (John W. McCaffrey, an Individual) 281 NLRB No. 142
[U official's removal of member's name from exclusive hiring hall's out-of-work list, unlawful, where U failed to establish asserted lawful reason for action on ground member did not call in as required by bylaws, and such reason failing, all that remained were unlawful reasons which gained strength from failure of asserted reason; and member was singled out for more stringent treatment than other members who failed to call in]

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) 281 NLRB No. 010
[changing established contractual exclusive hiring hall procedures to require that travellers be sent by their local U business managers w/o timely notifying users, violation absent evidence change was required for local's effective performance of its representative function; contention that change was necessary for local's reciprocal arrangement with other locals to apportion available jobs among locals rejected]

2581-6767-7800—Cont.

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) **281 NLRB No. 010**
[refusing to register and dispatch travellers because they were not sent by their local's business manager, violation, as such procuedure failed to comply with international U's constitutional guidelines and contractual exclusive hiring hall procedures and resulted in denying travellers employment]

Local Union No. 896, a/w Teamsters (Anheuser-Busch, Inc.) **280 NLRB No. 076**
[E's contention Charging Party failed to exhaust internal U remedies before bringing ULP charges against U, rejected, where issues in ULP case included allegations that improper handling of her grievance resulted in jeopardizing her job by maintaining two reprimands in her record, went beyond plainly internal affairs and thus not subject to *Landrum-Griffin* proviso requiring exhaustion of internal remedies]

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) **278 NLRB No. 008**
[U's bring internal charges against member for allegedly fraudently buying *unemployment stamps* rather than paying full dues when he was fully employed, cancelling his membership and stripping him of his U office and superseniority thus jeopardizing his employment, and preculding him from holding other U office, unlawful, since actions motivated by member internal U activities of distributing leaflets critical of U leadership, and filing ULP charges against U]

Iron Workers, Local 601 (Papco, Inc.) **276 NLRB No. 142**

2581-6767-8100 Personal animosity toward employees

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[conversation between member of U's executive board and 2 other Ees, overheard by Ee, who unsuccessfully sought clearance into local U, in which executive board member stated U had run Ee out of town because he had caused NLRB hearing which gave U some difficulty, and further suggested violent action against girlfriend of Ee who caused U trouble, unlawful. Immaterial whether statements directed at Ee, since statements, implication of which was that U would resort to reprisals if one seeks Bd's assistance, were made in obvious presence of Ee]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[U steward informing Ee in presence of E's superintendent who was also Ee's supervisor, that ee could not work without paying *high time* insurance premium, followed by immediate granting Ee time off to pay premium, constituted unlawful threat, since underlying motive deemed to be Ee's continuing efforts to transfer his U membership, in view of previous threats to Ee]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[U steward informing Ee in presence of E's superintendent, who was also Ee's supervisor, thatEe could not work without paying *high time* insurance premium, followed by immediate granting Ee time off to go pay premiums, constituted unlawful request to discriminate since motive was Ee's efforts to achieve clearance into local U, in view of previous threats to Ee; notwithstanding no direct demand on E to discriminate where communication could be construed as inducement for action, inasmuch as remarks made in presence of superintendent implied request for cooperation]

Machinists, Local 776 (General Dynamics) **JD-128-86**
[U did not breach duty to individual who resigned from U and not honored strike, where it refused to settle grievances of individual and another Ee, member of U, who grieved their discharges for fighting by accepting E's offer to reinstate individual if grievance of other Ee withdrawn, and failed to arbitrate grievances, since no breach of duty to refuse to accept action which would have benefited 1 unit member at expense of another, where U's assessment it could not disprove E had proper cause was reasonable, and absent evidence of connection between U's actions and animus towards individual, or of U discrimination against non-members of U]

Local 594, Auto Workers v. N.L.R.B. **776 F.2d 1310 (C.A. 6, Nov. 1985)**
[local U president's causing E to change two members' starting time, an action which reduced overtime worked, violative, since reason was fact that one of the members had complained to local president concerning change in absentee program where immediately after Ee complained, president requested E to change starting time, president told Ee that didn't complain that he wasn't after him but was after the other Ee and disparate treatment was shown by fact that Ee who hadn't complained, eventually had his starting time changed back]

2581-6767-8700 Recourse to the NLRB

Mail Handlers, Local Union No. 308 (United States Postal Service) **281 NLRB No. 143**
[U removing Ee from his position as shop steward because he had filed ULP charges previously against U violative, since internal U considerations raised by U-Respondent Ee's alleged dereliction of duty as shop steward and his alleged failure, as treasurer, to properly protect monies belonging to Ee's Social and Recreation committee as well as alleged altercation with U president cannot prevail in face of overriding public interest in unimpeded access to Bd and fact that violation turns on coercive nature of U's conduct rather than on U's motivation which may be factor to be considered]

Carpenters Local 608 (Various Employers) **279 NLRB No. 099**
[U's refusal to permit members to inspect job lists of hiring hall, violative, since reason was members' dissident U activity and filing charges with Bd against U where U had told members they would not see any information or answer questions about list since they filed charges and U permitted other members to inspect job list]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) **279 NLRB No. 023**
[U's financial secretary informing member that he was aware member had filed charges with NLRB, and member would not be working *until NLRB thing was over* constituted unlawful threat to deprive member of work because he had instituted Bd proceedings]

Teamsters, Local Union 138 (J. Fabian Trucking Corp.) **JD-(NY)-97-86**
[no unlawful failure to fairly represent Ee's grievance due to his filing charges with NLRB and EEOC where U officials merely made innocuous comments about him w/o threats or coercion and worked with him in presentation of his grievance]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) **JD-144-86**
[violation, where U's secretary-treasurer business representative, upon being informed by member that member intended to withdraw ULP charge he had filed regarding *competitive* agreement which impacted adversely on senior Ees, informed member he had felt charge would be dismissed, that he was tired of member's actions, that there were ways of getting rid of troublemakers, and that if member wanted to keep working he had best do what he told him]

Hotel & Restaurant Employees, Local 1 (Tom Pappalis, an Individual and George Dimas, an Individual) **JD-30-85**
(U threatening member with bodily harm because he had filed charge against U with Bd, violative)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) **JD-13-85**
(U's threat to *traveller* that he would not work out of local's hiring hall unless he withdrew charge filed with Bd demonstrates existence of arbitrary and unlawful referral system. In addition, such threat tends to be coercive of member's exercise of his right to file charges)

2585 WAIVER OF EMPLOYEE RIGHTS BY CONTRACT

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) **281 NLRB No. 132**
[waiver of seniority rights may not be permissable when obtained to reward others for being *good active U members*]

Food & Commercial Workers, Local No. 1439 (Reasner's Supermarkets, Inc.) **275 NLRB No. 007**
(threatening to censor, fine, suspend, and expel U members in one unit for violating U rules by failing to honor picket line of another unit of Ees of same employer also represented by U, unlawful, since U had waived threatened Ees' right to engage in sympathy strike by signing contract covering them which had no-strike clause where nothing in contract or parties' bargaining history established intent to except sympathy strike)

2590 INTERFERENCE WITH BOARD PROCEEDINGS

Mine Workers District 2, and Its Local 2282 (Old Devon Corporation, et al.) **282 NLRB No. 039**
[no violation where, even if GC had made prima facie case, U carried its burden and established that in absence of filing of ULP charge against U, Ee nonetheless would have been denied strike benefits for dues delinquency]

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**
[where U referred dissident U member to job which U knew he could not accept because he was scheduled to attend Bd hearing on his ULP charges against U on same day, ct held U's action in reporting to state unemployment agency that member had refused job referral, although made in retaliation for member's dissident U activity and contrary to U's nonreporting policy, was internal U affair beyond scope of 8(b)(1)(A), since report had no

2590—Cont.

impact on member's relationship with an E nor interfered with his existing or prospective employment relations]

2595 INTERFERENCE WITH ACCESS TO BOARD

Local 814, a/w Teamsters (Beth Israel Medical Center) 281 NLRB No. 153

[U's failure to take Ee's discharge to arbitration, violated its duty of fair representation and such inaction was *something more* than mere negligence where U was completely unaware of contractual time limits for pursuing grievance and did nothing to pursue Ee's grievance w/i those time limits, U handled grievance in perfunctory manner by assuring Ee they would arbitrate discharge while at same time U had decided internally not to pursue grievance and when Ee went to Bd, U refused to pursue grievance further and said Bd was now *taking care of it*]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[U's financial secretary informing member that he was aware member had filed charges with NLRB, and member would not be working *until NLRB thing was over* constituted unlawful threat to deprive member of work because he had instituted Bd proceedings]

Nation's Capital Area Local, American Postal Workers (United States Postal Service) 278 NLRB No. 110

[removing Ee, who intended to file charge against U, from position as steward, not violation, since record failed to establish that U knew Ee was going to file charge against it and established only a series of unrelated events which at best raised suspicions about U's motivation]

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) 275 NLRB No. 048

(local U's filing internal U charges with district council against Ees for filing ULP charges with Bd alleging that local's hiring hall procedures violated 8(b)(1)(A) and district council's trying and finding them guilty because they failed to exhaust contractual remedies, violative, since these actions were retaliatory)

Auto Workers, Local No. 171 (Mack Trucks, Inc.) JD-33-85

(filing of internal U charges against members for filing grievance against E and ULP charges with Bd over alleged preferential treatment E gave U official in accepting his application for posted job, and accepting and setting up trial board for hearing on such charges, unlawful, where stewards and committeemen, acting as U agents, filed internal charges in retaliation for members' filing of grievance against E; it was clearly evident that U agents' intent was also to punish members' recourse to Bd law; and internal charges were filed with knowledge of members' filing of ULP charge)

Auto Workers, Local No. 171 (Mack Trucks, Inc.) JD-33-85

(U's removal of elected recording secretary from his position, unlawful, where he was among members who filed grievance against E and ULP charges with Bd over alleged preferential treatment E gave a U official in accepting his application for posted job; stewards and committeemen, acting as U agents, filed internal charges in retaliation for members' filing of grievance against E; it was clearly evident that U agents' intent was also to punish members' recourse to Bd law; and internal charges were filed with knowledge of members' filing of ULP charge)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

(U's threat to *traveller* that he would not work out of local's hiring hall unless he withdrew charge filed with Bd demonstrates existence of arbitrary and unlawful referral system. In addition, such threat tends to be coercive of member's exercise of his right to file charges)

2599 OTHER FORMS OF COERCIVE CONDUCT

District 30, Mine Workers and Local 1834 (TCH Coal Company) 278 NLRB No. 045

[local U's and District U's endorsement of protest activities of its President and other officers while local U picketed secondary E for not hiring former Ees of primary E, held violative, since any force *that back to work* directives (instructions to U members at U meeting) did carry was belied by local U's officials failure to return to work themselves after issuing such directives and refused to cross U picket lines. U, like an E, acts through its agents, Local U's officers are *admitted agents of U and their conduct, therefore, evidence Local's endorsement of protest activities*]

5000 UNION RULES PROVISO

5025 SCOPE OF EXEMPTION

5025-6100 Generally

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110

(Section 8(b)(1)(A) makes it a ULP for a U to restrain or coerce any Ee in the exercise of his or her Section 7 rights and although the proviso permits a U to prescribe rules with respect to acquisition and retention of membership, a U's ability to enforce such rules in such a way that it affects a member's employment status is restricted)

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[although U's imposition of fines on Ee members for their dissident activities against U officials *restrains* members' exercise of their Sec. 7 rights, terms *restrain or coerce* in 8(b)(1)(A) are not interpreted so literally as to make it an ULP for U to enforce compliance with U rules and policies, since 8(b)(1)(A) was not intended to give Bd power to regulate internal U affairs, including disciplinary charges and fines against members]

5025-3300 Rules respecting acquisition or retention of membership

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. ———U.S.——— (U.S. SCT, June 1985)

[fining members who have attempted to resign at time such resignations prohibited under U's constitution, violative, as this is restraint on Sec. 7 rights to refrain from engaging in concerted activities and inconsistent with congressional policy of voluntary unionism. *retention of membership* set forth in provison relates to expulsion from membership and not resignation]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144

[Ee who had filled out U authorization card at time first employed with E but did not do so when rehired, held member of U when at time of rehire Ee designated the *union dues* box on her checkoff authorizrtion card. Therefore, U could validly enforce fines against these Ees for working during strike]

Auto Workers, Local 376 (Emhart Industries, Hartford Division, etc.) 278 NLRB No. 037

[U's informing Ees through newsletter, that U was *looking into* raising reinstatement fees for members who had not paid dues, not violative, since motivation of U was only to encourage payment of dues, article was not associated with Ees' employment status and even in absence of U security agreement, U would be privileged to increase reinstatement fees]

Sheet Metal Workers Local Union No. 14 (C. L. Linfoot Co.) 275 NLRB No. 153

(U constitutional provision restricting members' right to resign during strike or lockout violative of their Sec. 7 right to refrain from U membership)

Graphic Communications, Local 229 (Imperial Printing Company) JD-183-85

(U's requiring, pursuant to its constitution, executive board approval, membership in good standing, and that Ee not be employed in industry w/i U's jurisdiction before U accepted members' resignations, violative of their Sec. 7 right to refrain from U membership, notwithstanding assertion that U had right to prescribe rules as to retention of membership; however, Ees' attempts to make resignations retroactive found not effective, and resignations were effective from date of U's receipt)

5025-3350 Cannot be prescribed to change employer hiring policy or affect employment status

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[although any disciplinary charge or fine is *coercive* to some degree, Congress did not intend provisions of 8(b)(1)(A) to apply to imposition of fines not affecting E-Ee relationship; Bd has authority to pass on U rules affecting individua's employment status but not rules affecting only his U membership status; and Congress has not empowered Bd to pass judgment on penalties U may impose so long as penalty does not impair member's status as Ee]

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(U is free to enforce properly adopted rule which reflects legitimate U interest; but the internal affairs exception to Section 8(b)(1) does not apply when U's application of its rules is contrary to national labor policy; e.g., where it affects member's employment status)

5025-6700 Rules governing conduct of members

Mine Workers, District 31 (Office Employees, Local No. 67) JD-392-85

[where Ee, member of U other than UMWA where she was employed, grieved her discharge and members of UMWA testified on her behalf and adversely to U's position, UMWA violated Act by filing charges against witnesses whether witnesses were employed or retired. Mere fact that individual is charged, tried, fined, or even threatened to be fined for testifying at arbitration hearing, or giving statements during arbitration procedure is sufficient to establish violation]

5025-8300 Rules governing internal procedures

5025-8300—Cont.

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. ——U.S.—— (U.S. SCT, June 1985)

[fining members who have attempted to resign at time such resignations prohibited under U's constitution, violative, as this is restraint on Sec. 7 rights to refrain from engaging in concerted activities and inconsistent with congressional policy of voluntary unionism. *retention of membership* set forth in provison relates to expulsion from membership and not resignation]

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) 275 NLRB No. 098

(Sec. 8(b)(1)(A) of Act makes it unlawful for U to restrain or coerce Ees in exercise of rights protected by Sec. 7. Internal rules proviso to Sec. 8(b)(1)(A), however, expressly reserves to U right to make and enforce rules governing conduct of its members. In attempting to accomodate those facially inharmonious statutory cocommands, S.Ct has said, generally, Sec. 8(b)(1)(A) leaves U free to enforce properly adopted rule which reflects legitimate U interest, impairs no policy Congress has imbedded in labor laws, and is reasonably enforced against members free to leave U and escape rule)

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[although U's imposition of fines on Ee members for their dissident activities against U officials *restrains* members' exercise of their Sec. 7 rights, terms *restrain or coerce* in 8(b)(1)(A) are not interpreted so literally as to make it an ULP for U to enforce compliance with U rules and policies, since 8(b)(1)(A) was not intended to give Bd power to regulate internal U affairs, including disciplinary charges and fines against members]

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(U is free to enforce properly adopted rule which reflects legitimate U interest but the internal affairs exception to Section 8(b)(1) does not apply when U's application of its rules is contrary to national labor policy; e.g., where it affects member's employment status)

5025-8350 Cannot be prescribed to change employer hiring policy or affect employment status

Millwright & Machinery Erectors, Local Union 720, Carpenters v. N.L.R.B. 798 F.2d 781 (C.A. 5, Aug. 1986)

[no violation by fining member for not accepting referral of employment at U shop since member continued working at non-U shop so fine did not affect E-Ee relationship and falls w/i proviso. Fact that U never fined members previously for such conduct nor did it communicate change in its policy to membership, not relevant]

5050 EMPLOYEE CONDUCT REGULATED BY RULES

5050-0100 Generally

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) 276 NLRB No. 141

(U has right to promulgate its own rules and to impose reasonable discipline on members who do not obey such rules, but such enforcement is lawful only when rule reflects legitimate U interest, impairs no policy that Congress has embedded in labor laws, and is reasonably enforced against U members; thus, U may not enforce rule that *invades or frustrates an overriding policy of labor laws*)

5050-0150 Voluntariness of union membership

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. ——U.S.—— (U.S. SCT, June 1985)

[fining members who have attempted to resign at time such resignations prohibited under U's constitution, violative, as this is restraint on Sec. 7 rights to refrain from engaging in concerted activities and inconsistent with congressional policy of voluntary unionism. *retention of membership* set forth in provison relates to expulsion from membership and not resignation]

Communications Workers, Local 1101 (New York Telephone Company) 281 NLRB No. 064

[statement by steward of U having U security contract with E, telling newly hired Ees that they had to become U members to retain their jobs, unlawful]

Carpenters District Council For Seattle, King County and Vicinity (Tullus Gordon Construction, Inc.) 277 NLRB No. 019

(filing intra-U charges against and fining Ees for crossing and working behind picket line during authorized strike, violative where Ee had reduced his membership status from full to *financial core* membership so as to eliminate any obligation to U except to pay dues, which he continued to do)

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) 277 NLRB No. 020

(members working under U security agreement who wrote letters to U during strike apprising U that they were changing membership status from *full* member to that of *financial core* member but were not resigning from U, held to have effectively resigned from U; further, U's fining these members for crossing picket line after receipt of those letters, violative. U cannot compel a financial core member by way of court collectible fine to support its strike or other activities)

Communications Workers, Local 9201 (Pacific Northwest Bell) 275 NLRB No. 214

(U's rejecting members' attempts to resign based on its rule prohibiting resignations immediately preceding or during a strike, violative)

Communications Workers, Local 9201 (Pacific Northwest Bell) 275 NLRB No. 214

(Bd will apply an objective standard to determine whether U's conduct reasonably creates impression in members' minds that any attempt to resign would be futile, and a member is not required to attempt to resign when the U has made it clear that the U would reject the resignation; mere existence of restriction on resignations, however, is insufficient to support finding of futility of resigning even when member is aware of restriction)

Sheet Metal Workers Local Union No. 14 (C. L. Linfoot Co.) 275 NLRB No. 153

(U constitutional provision restricting members' right to resign during strike or lockout violative of their Sec. 7 right to refrain from U membership)

Graphic Communications, Local 229 (Imperial Printing Company) JD-183-85

(U's requiring, pursuant to its constitution, executive board approval, membership in good standing, and that Ee not be employed in industry w/i U's jurisdiction before U accepted members' resignations, violative of their Sec. 7 right to refrain from U membership, notwithstanding assertion that U had right to prescribe rules as to retention of membership; however, Ees' attempts to make resignations retroactive found not effective, and resignations were effective from date of U's receipt)

5050-3300 Regulation within proviso

Baltimore Newspaper Graphic Communications Union Local No. 31, International Printing and Graphic Communications Union, AFL-CIO (The A. S. Abell Company) JD-327-85

(U's fining Ee for sending letter to E, prior to filing grievance with U, not violative, since Ee was not engaged in concerted activity, and U's conduct did not impair any statutory policy, reflected legitimate U interest, and involved enforcement of U policy in reasonable manner)

5050-3350 Prohibition against crossing picket line

5050-3350-0100 Generally

5050-3350-0150 Legality of prohibition where no-strike clause in effect

Food & Commercial Workers, Local No. 1439 (Rossner's Supermarkets, Inc.) 275 NLRB No. 007

(threatening to censor, fine, suspend, and expel U members in one unit for violating U rules by failing to honor picket line of another unit of Ees of same employer also represented by U, unlawful, since U had waived threatened Ees' right to engage in sympathy strike by signing contract covering them which had no-strike clause where nothing in contract or parties' bargaining history established intent to except sympathy strike)

5050-3350-2300 Primary picket lines

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144

[U fining Ee who resigned from U during strike, violative]

Plumbers, Local 444 (T.S. Hanson Plumbing) 277 NLRB No. 137

(fining U members employed by neutral E for violating U's bylaws and rules by crossing lawful primary picket line of sister U at common situs, unlawful, since U's right to prescribe own rules under 8(b)(1)(A) proviso requires that rules impair no Congressional policy, and fining members did impair Congressional policy against application of 8(b)(4) secondary pressure on neutral E by having object of forcing fined members to stop working for neutral E and in turn cause latter to c/d/b with primary E)

Plumbers, Local 444 (T.S. Hanson Plumbing) 277 NLRB No. 137

(while Us have legitimate interest in having members honor picket lines whether in direct furtherance of primary labor dispute or in sympathetic support of primary U, and U may lawfully enforce such legitimate interest by fining members who have crossed picket lines; critical inquiry required by S.Ct's *Scofield* test is whether U's fining of members impaired policy Congress has embedded in labor laws, specifically policy against application of secondary pressure on neutral Es embodied in 8(b)(4); if such policy is impaired, 8(b)(1)(A) proviso affords no protection to Us)

Plumbers, Local 444 (T.S. Hanson Plumbing) 277 NLRB No. 137

(fining U members employed by neutral E for failing to honor lawful primary picket line of sister U at common situs held to have unlawful object, since U which induces neutral Ees to stop working must take responsibility for foreseeable consequences of its conduct; here, U knew fined members worked for E who was neutral in sister U's dispute with primary E, and natural and apparent object of U's fining of members was to force them to

5050-3350-2500—Cont.

stop working for neutral E and in turn to cause latter to c/d/b with primary E)

Plumbers, Local 444 (T.S. Hanson Plumbing) 277 NLRB No. 137
(where U's enforcement of sympathy strike violated 8(b)(1)(A) by fining U members employed by neutral E for failing to honor lawful primary picket line of sister U at common situs not having valid reserved gate system, Bd held 8(a)(4) places burden on *labor organizations* to conduct themselves in primary dispute so as not to needlessly entangle neutral Es; while absence of reserved gate may extend permissible physical limits of primary dispute on common situs, neutral contractors remain protected by 8(b)(4) against conduct having clear proscribed secondary objective even when there is no reserved gate)

Plumbers, Local 444 (T.S. Hanson Plumbing) 277 NLRB No. 137
(where U was found to have violated 8(b)(1)(A) by fining U members employed by neutral E for failing to honor primary picket line of sister U at common situs, Bd held that to permit U's fines would lead to anomalous result that secondary U may attempt to influence Ees of neutral E by means denied to primary U itself; if primary U may not put such secondary pressure on neutral Ees at common situs, then it follows that neutral U may not do so either)

Carpenters District Council For Seattle, King County and Vicinity (Tullus Gordon Construction, Inc.) 277 NLRB No. 019
(filing intra-U charges against and fining Ees for crossing and working behind picket line during authorized strike, violative where Ee had reduced his membership status from full to *financial core* membership so as to eliminate any obligation to U except to pay dues, which he continued to do)

General Drivers, Dairy Employees and Helpers Local Union No. 579, a/w Teamsters (Northern Conveyor Manufacturing Corporation) 274 NLRB No. 022
(disciplining and fining Ee for crossing picket line violative, where language of withdrawal card he obtained from U and of U bylaws equated withdrawal status with resignation, and nothing in that language or in the bylaws informed Ee on withdrawal status of possible discipline for crossing U's picket line)

5050-3350-9300 Picket line of own union for other employees at own employer's premises

Food & Commercial Workers, Local No. 1439 (Rossner's Supermarkets, Inc.) 275 NLRB No. 007
(threatening to censor, fine, suspend, and expel U members in one unit for violating U rules by failing to honor picket line of another unit of Ees of same employer also represented by U, unlawful, since U had waived threatened Ees' right to engage in sympathy strike by signing contract covering them which had no-strike clause where nothing in contract or parties' bargaining history established intent to except sympathy strike)

Food & Commercial Workers, Local No. 1439 (Rossner's Supermarkets, Inc.) 275 NLRB No. 007
(threatening to censor, fine, suspend, and expel U members in one unit for violating U rules by failing to honor picket line of another unit of Ees of same employer also represented by U, unlawful, where U had expresaly agreed in its contract with E covering threatened Ees not to discipline them for crossing U's primary picket line at E's premises, and its threat breached that no-discipline provision of its contract)

5050-3362 Prohibition against remaining on job after picket line established

Local 388, Plumbers (Daily Heating and Air Conditioning, Inc. 280 NLRB No. 141
[U's picketing of E in attempt to cause E to c/d/b with subcontractor with whom U had primary dispute, bringing charges against Ee and fining him for having worked behind U's picket line and U's telling Ee that it had been good to him before but that was now over, violative; U's defense that picketing was lawful primary picketing done pursuant to valid work preservation clause with E, rejected, since U's object was not to preserve work but was to force E with whom U had contract from working on a jobsite with another E with whom U had long-standing primary area standards dispute]

Carpenters District Council For Seattle, King County and Vicinity (Tullus Gordon Construction, Inc.) 277 NLRB No. 019
(filing intra-U charges against and fining Ees for crossing and working behind picket line during authorized strike, violative where Ee had reduced his membership status from full to *financial core* membership so as to eliminate any obligation to U except to pay dues, which he continued to do)

5050-3368 Prohibition against working in nonunion shop

Stage Employees IATSE, Local #41 (Theater of the Stars; Andrews-Bartlett and Associates, Inc.) 278 No. 004
[placing member on probation 12 months for working for non-U E while at same time seeking referrals through U's hiring hall, violative, where plain language of referral system did not prohibit members from working part-time for nonsignatory and U did not notify member of any change in referral system]

Millwright & Machinery Erectors, Local Union 720, Carpenters v. N.L.R.B. 798 F.2d 781 (C.A. 5, Aug. 1986)
[no violation by fining member for not accepting referral of employment at U shop since member continued working at non-U shop so fine did not affect E-Ee relationship and falls w/i proviso. Fact that U never fined members previously for such conduct nor did it communicate change in its policy to membership, not relevant]

5050-3385 Violation of hiring hall procedure

Teamsters Local Union #519 (Rust Engineering Co.) 276 NLRB No. 094
(violation, where U discarded referral cards of U dissidents; contention cards discarded because dissidents did not comply with alleged rule which required personally signing card monthly to renew registration, rejected, since other members were allowed to call in to renew their registration)

5050-3393 Prohibition against injury to fellow union member

Sheet Metal Workers, Local 208 (Paul Mueller Company) 278 NLRB No. 087
[bringing intra-U charges against member for alleged violations of U constitution, including slandor of another member, unlawful, where member had right to and had previously resigned from U; U's contentions issue moot since member found not guilty of charges, U subjected to double jeopardy because of relitigation of issues, trial was internal U matter and should be deferred to arbitration, rejected, inasmuch as fact member not found guilty did not rectify wrongfulness of processing charges, prohibition against resignations during strikes invalid, and no double jeopardy where U twice bought charges against member]

5050-6700 Regulation not within proviso

5050-6730 Restrictions on resignation from union

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. ——U.S.——
(U.S. SCT, June 1985)
[fining members who have attempted to resign at time such resignations prohibited under U's constitution, violative, as this is restraint on Sec. 7 rights to refrain from engaging in concerted activities and inconsistent with congressional policy of voluntary unionism. *retention of membership* set forth in provison relates to expulsion from membership and not resignation]

Automobile Workers, Local 73 (McDonnell Douglas Corporation) 282 NLRB No. 064
[failure of Local Us to honor members' resignations, violative]

Local 441, International Union of Electrical, Radio & Machine Workers, AFL-CIO (Phelps Dodge Copper Products Company, a Division of Phelps Dodge Industries, Inc.) 281 NLRB No. 137
[U's attempt to restrict member's right to resign even when no strike or lockout present or imminent, violative, as *any* restriction on resignations are invalid, and attempt to cause E to discharge member also violative. Furthermore, U breached its fiduciary duty by not informing member of proper resignation procedure]

The Hearst Corporation, San Antonio Light Division 281 NLRB No. 113
[violative]

United States Postal Service 280 NLRB No. 169
[U's refusal to honor Ees' clearly communicated intention to resign, violative]

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) 278 NLRB No. 024
[Ees' letters to U stating their desire to *withdraw* their membership from U held to constitute effective resignations, since there is no requirement that Ee use any magic words in order to do so]

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) 278 NLRB No. 024
[U held to have attempted to do indirectly what it could not due directly where U limited or impeded Ees' resignation from U by application of language in dues checkoff authorization rather than through U security clause which would run counter to state *right to work* law]

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) 278 NLRB No. 024
[U's refusal to give effect to Ees' valid resignations of U membership, and attempt to cause E to withhold resigned Ees' dues, unlawful, since U thereby impaired Ees' Sec. 7 right to resign or otherwise refrain from U or other concerted activities, and dues checkoff authorization, directing deduction of amounts owed by Ee for membership, made payment of dues quid pro quo for U membership, and dues were revoked as matter of law at time Ees' effectively resigned]

5050-6730—Cont.

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) **277 NLRB No. 020**
(members working under U security agreement who wrote letters to U during strike apprising U that they were changing membership status from *full* member to that of *financial core* member but were not resigning from U, held to have effectively resigned from U; further, U's fining these members for crossing picket line after receipt of those letters, violative. U cannot compel a financial core member by way of court collectible fine to support its strike or other activities)

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) **277 NLRB No. 020**
(U was estopped to deny receipt of members' letters reducing U membership obligation to financial core where U consistently refused to accept communications from Ees crossing picket line by refusing to accept hand-delivered letters or letters sent by regular or certified mail)

Communications Workers, Local 9201 (Pacific Northwest Bell) **275 NLRB No. 214**
(U's rejecting members' attempts to resign based on its rule prohibiting resignations immediately preceding or during a strike, violative)

Communications Workers, Local 6012 (Southwestern Bell Telephone Co.) **275 NLRB No. 210**
(U's preventing members from resigning during strike, violative; one member was told by U steward that she could not resign w/o being terminated by the E and sent U a written resignation to no avail; other members who telephoned U hall to ask how to resign were also told that they could not resign and also sent U written resignations which were of no avail)

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) **275 NLRB No. 164**
(Us' constitutional restrictions on members' right to resign are invalid and Us' bringing charges against and fining individuals for resigning their memberships and returning to work during strike, violative)

Sheet Metal Workers, Local Union No. 20 (Formerly Local Union No. 156) (C. L. Shust Co., Inc.) **275 NLRB No. 155**
(vilation in refusing to accept resignation of employee-members while engaged in strike against their employer)

Sheet Metal Workers Local Union No. 14 (C. L. Linfoot Co.) **275 NLRB No. 153**
(U constitutional provision restricting members' right to resign during strike or lockout violative of their Sec. 7 right to refrain from U membership)

Food & Commercial Workers, Local No. 1439 (Allied Employers, Inc.) **275 NLRB No. 140**
(fining members for postresignation conduct of working behind picket line during strike, violative whether or not resigned members knew about U's requirement of 30 day notice before resignation effective. No restrictions can be made on resignations)

Local Lodge 758, Machinists (Menasco, Inc.) **275 NLRB No. 111**
(rule restricting resignations from U, violative, and U's fining members for crossing picket line after receiving their various oral resignations, violative)

Teamsters Local No. 538 (Passavant Health Center) **275 NLRB No. 104**
(imposing fines on Ees who resigned their membership and returned to work during strike, violative)

Teamsters Local No. 538 (Passavant Health Center) **275 NLRB No. 104**
(U's maintaining its restriction on resignations as set forth in international U's constitution, violative since provisions constituted invalid, restraints on Ees' Sec. 7 rights)

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) **275 NLRB No. 098**
(violation, where U maintained restrictions on right to resign from U during strike)

Food & Commercial Workers, Local No. 506 (Fuccicla Meat Company, et al.) **274 NLRB No. 211**
(U's threat to fine Ees for working behind picket line after their resignation, violative, since U bylaws contained illegal prohibition on resignation during period of strike or economic action imminent)

San Francisco Lodge No. 68, Machinists (Holmatic, Inc.) **274 NLRB No. 108**
(U's rule restricting resignations held unlawful and U's imposition of fines on members for returning to work and crossing picket line subsequent to their resignations from U, violative)

Local 73, Sheet Metal Workers (Safe Air, Inc.) **274 NLRB No. 054**
(maintaining provision in constitution which stated *No resignation shall be accepted if offered in anticipation of charges being preferred against him, during pendency of any such charges or during a strike or lockout*, violative; limitation under 10(b) held inapplicable since provision is unlawful on its face and continued maintenance or adherence to clause constitutes ULP continuing up to and even after filing of charge and C)

Machinists, Local Lodge No. 1374 (Columbia Machine, Inc.) **274 NLRB No. 026**
(U's maintenance and publication to members of its rule restricting resignations, violative)

Machinists, Local Lodge No. 1374 (Columbia Machine, Inc.) **274 NLRB No. 026**
(U's filing charges and imposing fines on members who crossed picket line violative, notwithstanding contention that members had not resigned, since U created impression it would be futile to resign by telling members in pre-strike meeting that attempts to resign would be ineffective; however, other members who had not resigned and had attended a different meeting where rule restricting resignations was simply reiterated, could not claim resignation was futile and fines and charges against them were not unlawful)

Sheet Metal Workers', Local 16 (Salem Heating and Sheet Metal, Inc.) **274 NLRB No. 008**
(international and local U's maintaining restrictions on members' resignations in their constitution and ritual, violative; *Neufeld Porsche-Audi* followed)

Graphic Communications, Local 229 (Imperial Printing Company) **JD-183-85**
(U's requiring, pursuant to its constitution, executive board approval, membership in good standing, and that Ee not be employed in industry w/i U's jurisdiction before U accepted members' resignations, violative of their Sec. 7 right to refrain from U membership, notwithstanding assertion that U had right to prescribe rules as to retention of membership; however, Ees' attempts to make resignations retroactive found not effective, and resignations were effective from date of U's receipt)

Electrical Workers Local 76 (Ryan Wright, an Individual) **JD-(SF)-36-85**
(U's fining Ee for working in non-U shop, assertedly because Ee had not followed U's elaborate procedure for resigning from U, violative, where Ee's resignation was clear and U was not prejudiced by procedure followed by Ee; further, U's by-laws required use of *magic formula* before it even considered a resignation request, thus encumbering Ee's right to seek employment with non-U Ee)

5050-6733 Prohibition against filing ULP charge

Mail Handlers, Local Union No. 308 (United States Postal Service) **281 NLRB No. 143**

Iron Workers (Walker Construction Company) **277 NLRB No. 099**
(International U bringing internal U charges, fining, and prohibiting president of local U from holding office, for filing ULP charges in name of local against International, unlawful, since International not entitled even to protect its legitimate institutional interests by restraining access to Bd, since such restraint coercive and against public policy of fostering unimpeded access to Bd, notwithstanding president could have filed charges as individual, and International's contention that president was not disciplined for filing of charges, but for misuse of office by acting w/o authority from membership or executive board)

5050-6741 Prohibition against complaining about union to federal agencies other than National Labor Relations Board

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business agent, upon being informed by member that other members were meeting with government investigator regarding charges of misuse of millions of dollars of funds by secretary-treasurer/business agent, asking member who had attended meeting, informing member that he would file intra-U charges against members at meeting, have their U cards pulled, and file civil suits for defamation, unlawful]

Teamsters Local Union No. 957 a/w Teamsters (Complete Auto Transit, Inc.) **JD-144-86**
[U's secretary-treasurer/business representative informing Ee-member, in presence of other Ee-members, that ee member was making mistake involving himself in government investigation of charges of misuse of U funds by secretary-treasurer/business representative and that member might as well find another job, unlawful]

5050-6750 Prohibition against testifying against union member

Oil Workers, Local Union No. 4--23 (Gulf Oil Corporation) **274 NLRB No. 063**
(U expelling supervisor for testimony he gave at arbitration hearing regarding 2 poor work performance letters that he issued to grievant while then serving as temporary relief supervisor (was only Ee at time he testified and became permanent supervisor after U charges filed against him), violative, because of impact of such discipline on other members who might be restrained in exercise of their Sec. 7 rights to give testimony against grievants in contractual arbitration hearings)

5050-6750—Cont.

N.L.R.B. v. Electrical Workers, Local 745 739 F.2d 533 (C.A. 6, Apr. 1985)

(U steward-agent of U- threatening Ee with fine if Ee testified against fellow member at grievance hearing regarding fellow member's discharge for drinking on job, unlawful, notwithstanding threat never carried out, since Ee perceived threat seriously, Ee testified willingly and U may not enforce any rule which would inhibit Ees from testifying truthfully at grievance hearing, inasmuch as such rule would inhibit overriding policy of labor law)

5050-6754 Prohibition against providing information in grievance proceeding

Amalgamated Transit Union, Local Union 1222, Greyhound Drivers and Station Employees, AFL-CIO (Greyhound Lines, Inc.) JD-(SF)-128-86

[U's processing internal charge and determining to fine and expel Ee because he had violated U rule against giving testimony against fellow U member by answering E questions asked in preparation for anticipated grievance proceeding, violation, notwithstanding U claim that charge was premature because U had made no attempt to collect fine or carryout expulsion]

5050-6755 Prohibition against testifying adverse to union's position

Oil Workers, Local Union No. 4–23 (Gulf Oil Corporation) 274 NLRB No. 063

(U expelling supervisor for testimony he gave at arbitration hearing regarding 2 poor work performance letters that he issued to grievant while then serving as temporary relief supervisor (was only Ee at time he testified and became permanent supervisor after U charges filed against him), violative, because of impact of such discipline on other members who might be restrained in exercise of their Sec. 7 rights to give testimony against grievants in contractual arbitration hearings)

Mine Workers, District 31 (Office Employees, Local No. 67) JD-392-85

[where Ee, member of U other than UMWA where she was employed, grieved her discharge and members of UMWA testified on her behalf and adversely to U's position, UMWA violated Act by filing charges against witnesses whether witnesses were employed or retired. Mere fact that individual is charged, tried, fined, or even threatened to be fined for testifying at arbitration hearing, or giving statements during arbitration procedure is sufficient to establish violation]

5050-6791 Prohibition against supporting rival union

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) 276 NLRB No. 141

(monetary penalties imposed against U members for engaging in rival U activity during U's election campaign held to constitute fines imposed as punishment to vindicate U's authority over members, rather than assessment against members for election campaign expenses, as evidenced by provisions of U's constitution and by U's disciplinary decision which attempted to circumvent Bd law by referring to monetary penalties imposed by U as reimbursements)

5075 ENFORCEMENT OF RULES WITHIN PROVISO

5075-0100 Generally

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) 276 NLRB No. 141

(U has right to promulgate its own rules and to impose reasonable discipline on members who do not obey such rules, but such enforcement is lawful only when rule reflects legitimate U interest, impairs no policy that Congress has embedded in labor laws, and is reasonably enforced against U members; thus, U may not enforce rule that *invades or frustrates an overriding policy of labor laws*)

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) 275 NLRB No. 098

(Sec. 8(b)(1)(A) of Act makes it unlawful for U to restrain or coerce Ees in exercise of rights protected by Sec. 7. Internal rules proviso to Sec. 8(b)(1)(A), however, expresaly reserves to U right to make and enforce rules governing conduct of its members. In attempting to accomodate those facially inharmonious statutory cocommands, S.Ct has said, generally, Sec. 8(b)(1)(A) leaves U free to enforce properly adopted rule which reflects legitimate U interest, impairs no policy Congress has imbedded in labor laws, and is reasonably enforced against members free to leave U and escape rule)

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[although any disciplinary charge or fine is *coercive* to some degree, Congress did not intend provisions of 8(b)(1)(A) to apply to imposition of fines not affecting E-Ee relationship; Bd has authority to pass on U rules affecting individua's employment status but not rules affecting only his U membership status; and Congress has not empowered Bd to pass judgment on penalties U may impose so long as penalty does not impair member's status as Ee]

5075-0112 No requirement of explicit warning to members of conduct which will incur particular penalty

Millwright & Machinery Erectors, Local Union 720, Carpenters v. N.L.R.B. 798 F.2d 781 (C.A. 5, Aug. 1986)

[no violation by fining member for not accepting referral of employment at U shop since member continued working at non-U shop so fine did not affect E-Ee relationship and falls w/i proviso. Fact that U never fined members previously for such conduct nor did it communicate change in its policy to membership, not relevant]

5075-0125 May not be enforced through employment relationship

Millwright & Machinery Erectors, Local Union 720, Carpenters v. N.L.R.B. 798 F.2d 781 (C.A. 5, Aug. 1986)

[no violation by fining member for not accepting referral of employment at U shop since member continued working at non-U shop so fine did not affect E-Ee relationship and falls w/i proviso. Fact that U never fined members previously for such conduct nor did it communicate change in its policy to membership, not relevant]

5075-0137 Board not authorized to evaluate fairness of union discipline

Sausage Makers' Union, Local 203, Food & Commerical Workers (Western Employer Associates) JD-(SF)-47-86

[U is free to inform Ees of consequences of resigning, or of continuing to remain resigned, on their ability to receive internal U benefits]

5075-0150 Membership status of employees at time of conduct

Communications Workers, Local 1101 (New York Telephone Company) 281 NLRB No. 064

[fining Ee for crossing picket line and working during strike, unlawful, since Ee did not voluntarily became U member by checking membership box on dues-checkoff card which also contained box for deduction of agency fee, where U steward told Ee he had to join U, and Bd could not find that because steward did not tell Ee which box to check, Ee's checking of membership box manifested intent to become U member; nor did Ee's picketing manifest such intent where Ee picketed unwillingly after being coerced into becoming U member]

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(Us' constitutional restrictions on members' right to resign are invalid and Us' bringing charges against and fining individuals for resigning their memberships and returning to work during strike, violative)

5075-0150-1200 Unenforceable against employee paying service charge under agency shop

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) 278 NLRB No. 024

[U held to have attempted to do indirectly what it could not due directly where U limited or impeded Ees' resignation from U by application of language in dues checkoff authorization rather than through U security clause which would run counter to state *right to work* law]

Local 4103, Communications Workers (Michigan Bell Telephone Company; AT&T Information Systems) JD-454-84

(U imposing fine on individual and seeking to collect fine through civil lawsuit for allegedly violating U's bylaws and constitution by working during strike, unlawful, since she was not member of U with which her E had security agreement, but merely paying amount equivalent to dues, and thus was not subject to U's bylaws and constitution, and had so informed U, notwithstanding U had received printout form International based on information furnished by E that listed individual as member)

5075-0150-2500 Enforceable if done for conduct engaged in prior to resignation

5075-0150-2500—Cont.

Automobile Workers, Local 73 (McDonnell Douglas Corporation) 282 NLRB No. 064
[fines imposed on Ees who returned to work before resigning, not violative to extent that they covered preresignation conduct, but fining Ees for their postresignation conduct held unlawful]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144
[Ees did *not constructively resign* from U, during strike, even though U constitution contained unlawful resignation restrictions, since no evidence adduced that U's conduct would reasonably tend to create impression of futility. U constitution called for written communication of resignation rather than permissive non-violative oral resignation. Ees intending to resign from U did not take any affirmative action consistent with resignation and communicate such intention to U]

Teamsters Local No. 538 (Passavant Health Center) 275 NLRB No. 104
(fines imposed on Ees for conduct prior to their effective resignations, not violative)

Machinists, Local Lodge No. 1374 (Columbia Machine, Inc.) 274 NLRB No. 026
(U's filing charges and imposing fines on members who crossed picket line violative, notwithstanding contention that members had not resigned, since U created impression it would be futile to resign by telling members in pre-strike meeting that attempts to resign would be ineffective; however, other members who had not resigned and had attended a different meeting where rule restricting resignations was simply reiterated, could not claim resignation was futile and fines and charges against them were not unlawful)

Warehouse, Mail Order, Retail Employees and Wholesale Liquor Salespersons, Local No. 853, a/w Teamsters (Reliance Sheet and Strip Co.) JD-(SF)-106-86
[fining Ee for crossing picket line, not unlawful, where Ee did not resign as he stated to U agent that he was going to do but, instead, chose to seek *honorable withdrawal card* so that he could retain limited U rights and standing and at same time be free from U discipline for crossing picket line; request for withdrawal card was not granted and, in absence of unequivocal resignation, Ee remained U member at time he crossed picket line for which U could lawfully fine him]

5075-0150-5000 Unenforceable if done for conduct engaged in subsequent to resignation

Automobile Workers, Local 73 (McDonnell Douglas Corporation) 282 NLRB No. 064
[fines imposed on Ees who returned to work before resigning, not violative to extent that they covered preresignation conduct, but fining Ees for their postresignation conduct held unlawful]

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) 281 NLRB No. 164
[preferring internal U charges against and fining Ee for crossing picket line to work during strike, violation where Ee's resignation was effectively received when deposited in U's night-deposit box before he returned to work, notwithstanding resignation was not retrieved by U's agents until after Ee reported to work]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144
[U fining Ee who resigned from U during strike, violative]

Sheet Metal Workers, Local 208 (Paul Mueller Company) 278 NLRB No. 087
[bringing intra-U charges against member for alleged violations of U constitution, including slandor of another member, unlawful, where member had right to and had previously resigned from U; U's contentions issue moot since member found not guilty of charges, U subjected to double jeopardy because of relitigation of issues, trial was internal U matter and should be deferred to arbitration, rejected, inasmuch as fact member not found guilty did not rectify wrongfulness of proceesing charges, prohibition against resignations during strikes invalid, and no double jeopardy where U twice bought charges against member]

Sheet Metal Workers, Local 208 (Paul Mueller Company) 278 NLRB No. 087
[U charging and fining members for crossing picket line, unlawful, where members had previously resigned from U, inasmuch as resignations were effective upon submission and members thus became non-members and not subject to U discipline]

Sheet Metal Workers, Local 208 (Paul Mueller Company) 278 NLRB No. 087
[provision in U's constitution prohibiting acceptance of members' resignations proffered in anticipation or duirng pendency of U charges, or during strike or lockout, held unduly restrictive restrant on resignations, thus resignations of members valid, and U's charging and finding Ees who resigned and crossed picket line, unlawful]

Electrical Workers, Local 1547 (Teion electric Corporation) 278 NLRB No. 032
[initiating internal U charges against and fining Ee, assertedly for violating U's bylaws by going to work for non-U E with whom U had dispute, violative where Ee had effectively resigned from U at time he went to work for non-U E]

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) 278 NLRB No. 024
[U's refusal to give effect to Ees' valid resignations of U membership, and attempt to cause E to withhold resigned Ees' dues, unlawful, since U thereby impaired Ees' Sec. 7 right to resign or otherwise refrain from U or other concerted activities, and dues checkoff authorization, directing deduction of amounts owed by Ee for membership, made payment of dues quid pro quo for U membership, and dues were revoked as matter of law at time Ees' effectively resigned]

Union Independiente De Traba Jadores De Servicios Legales De Puerto Rico (Corporacion de Servicios Legales de Puerto Rico, Inc.) 277 NLRB No. 174
[bringing internal U charges against Ees for conduct following tender of their resignations, unlawful, notwithstanding U's contention that U security clause in contract barred Ees from resigning, since only aspect of U membership that U security clause required was financial one--to continue paying dues and fees assessed of U members]

Communications Workers, Local 9201 (Pacific Northwest Bell) 275 NLRB No. 214
(imposing ct-collectible fines on Ees for crossing picket line and working during strike w/o U authorization, violative where Fes had effectively resigned; violation was limited to period after U received Ees' certified letters of resignation, which were rebuttably presumed to have been received in the ordinary course of delivery of such mail and were, according to the evidence, received on day after posting; Bd, contrary to ALJ, rejected futility doctrine where no Ees were shown to have not resigned becaseof a belief that their resignations would not be accepted)

Communications Workers, Local 6012 (Southwestern Bell Telephone Co.) 275 NLRB No. 210
(fining Ees for failing to honor picket line and returning to work during strike violative where U had effectively prevented them from tendering resignations from membership)

Sheet Metal Workers Local Union No. 14 (C. L. Linfoot Co.) 275 NLRB No. 153
(fining members for returning to work during strike violative where, pursuant to unlawful constitutional provision that U not accept resignations during strike, U had previously refused to accept resignations)

Food & Commercial Workers, Local No. 1439 (Allied Employers, Inc.) 275 NLRB No. 140
(fining members for postresignation conduct of working behind picket line during strike, violative whether or not resigned members knew about U's requirement of 30 day notice before resignation effective. No restrictions can be made on resignations)

Local Lodge 758, Machinists (Menasco, Inc.) 275 NLRB No. 111
(rule restricting resignations from U, violative, and U's fining members for crossing picket line after receiving their various oral resignations, violative)

Teamsters Local No. 538 (Passavant Health Center) 275 NLRB No. 104
(imposing fines on Ees who resigned their membership and returned to work during strike, violative)

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) 275 NLRB No. 090
(U's refusal to accept resignations of members, threatening to bring and bringing disciplinary proceedings against members for crossing picket line after resigning, unlawful, notwithstanding U's contention actions justified where resignations were in violation of U's constitution, since U's maintenance of such restrictions was unlawful and thus its refusal to accept resignations based on such restrictions, unlawful; further, U's defense that resignations void ab initio due to improper E influence through E's memo advising Ees regarding their rights concerning resignation from U, rejected)

Food & Commercial Workers, Local No. 506 (Facciola Meat Company, et al.) 274 NLRB No. 211
(U's threat to fine Ees for working behind picket line after their resignation, violative, since U bylaws contained illegal prohibition on resignation during period of strike or economic action imminent)

San Francisco Lodge No. 68, Machinists (Holmestic, Inc.) 274 NLRB No. 108
(U's rule restricting resignations held unlawful and U's imposition of fines on members for returning to work and crossing picket line subsequent to their resignations from U, violative)

Machinists, Local Lodge No. 1374 (Columbia Machine, Inc.) 274 NLRB No. 026
(U's filing charges and imposing fines on members who crossed picket line violative, notwithstanding contention that members had not resigned, since U created impression it would be futile to resign by telling members in pre-

5075-0150-5000—Cont.

strike meeting that attempts to resign would be ineffective; however, other members who had not resigned and had attended a different meeting where rule restricting resignations was simply reiterated, could not claim resignation was futile and fines and charges against them were not unlawful)

General Drivers, Dairy Employees and Helpers Local Union No. 579, a/w Teamsters (Northern Conveyor Manufacturing Corporation) 274 NLRB No. 022

(disciplining and fining Ee for crossing picket line violative, where language of withdrawal card he obtained from U and of U bylaws equated withdrawal status with resignation, and nothing in that language or in the bylaws informed Ee on withdrawal status of possible discipline for crossing U's picket line)

Local Lodge No. D192, Cement Workers Division of Boilermakers (Riverside Cement/A Gifford-Hill Company) JD-(SF)-77-86

[U securing and enforcing ct judgment to collect strike victimization assessments against individuals for periods after they had effectively resigned from U, unlawful, since assessment was legally enforceable only as to Ees who had voluntarily remained members of U and assumed obligation, and nonmembers only liable for basic monthly dues under security clause]

Local Lodge No. D192, Cement Workers Division of Boilermakers (Riverside Cement/A Gifford-Hill Company) JD-(SF)-77-86

[member effectively resigned from U where he orally informed U's recording secretary that he was cancelling checkoff which included strike victimization assessment and regular dues and would not pay anything but basic dues, particularly where U's financial secretary subsequently informed member that if he wanted to get back in U he had only to pay his basic dues, thus acknowledging member had severed connection with U]

Electrical Workers Local 76 (Ryan Wright, an Individual) JD-(SF)-36-85

(U's fining Ee for working in non-U shop, assertedly because Ee had not followed U's elaborate procedure for resigning from U, violative, where Ee's resignation was clear and U was not prejudiced by procedure followed by Ee; further, U's by-laws required use of *magic formula* before it even considered a resignation request, thus encumbering Ee's right to seek employment with non-U Ee)

Telephone Commercial Employees Union, Local 643, Telecommunications International Union (Illinois Bell Telephone Company) JD-463-84

(U fining individuals for crossing picket line, unlawful, since individuals had resigned from U prior to cossing line, where U steward, agent of U, who knew individuals had resigned prior to crossing picket line, circulated ptn to bring charges before U's executive Bd. Further, even if U had acted in good faith, members' right to resign and then cross picket line would be endangered if U could impose fines in good faith belief individual had crossed picket line while still member)

5075-0150-6000 Duty to provide notice of restrictions on resignation

Local 441, International Union of Electrical, Radio & Machine Workers, AFL-CIO (Phelps Dodge Copper Products Company, a Division of Phelps Dodge Industries, Inc.) 281 NLRB No. 137

[U's attempt to restrict member's right to resign even when no strike or lockout present or iminent, violative, as *any* restriction on resignations are invalid, and attempt to cause E to discharge member also violative. Furthermore, U breached its fiduciary duty by not informing member of proper resignation procedure]

Food & Commercial Workers, Local No. 1439 (Allied Employers, Inc.) 275 NLRB No. 140

(fining members for postresignation conduct of working behind picket line during strike, violative whether or not resigned members knew about U's requirement of 30 day notice before resignation effective. No restrictions can be made on resignations)

5075-0150-6300 Reduction from full to financial core membership status

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) 281 NLRB No. 164

[threatening to cause Ee's discharge because he had refused to pay new initiation fee after he resigned from U during strike but continued to pay periodic dues, violation, notwithstanding letter of resignation did not state nature of resignation, since Ee thus retained financial core membership]

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) 281 NLRB No. 164

[Ee has financial core status when he resigns from U after paying initiation fee where he continues to pay dues, notwithstanding failure of letter of resignation to say anything about nature of resignation]

Upholsterer's, Local Union 406 (Boyertown Casket Company) 280 NLRB No. 134

[U's attempting to cause the discharge of Ee who had resigned from U and attempting to refund Ee's dues assertedly because Ee had resigned, violative, where Ee, although having resigned from U, had still complied with U security agreement by tendering dues (Ee was thus only a *financial core* member) and Ee's only obligation to U after resignation, was to tender initiation fees and dues]

Food & Commercial Workers, Local 115 (California Meat Company) 277 NLRB No. 083

(threatening to seek discharge of Ees, who had resigned from U, unless they paid additional initiation fee, and actually seeking to do so, unlawful, where Ees became *financial core* members inasmuch as their resignations did not revoke their checkoff authorizations or otherwise evidenced intent to sever all of their relationship with U; and motivation behind U's professed concern about violating law with respect to receipt of payments by Us from Es was to mask its desire to retaliate against Ees for resigning)

Carpenters District Council For Seattle, King County and Vicinity (Tullus Gordon Construction, Inc.) 277 NLRB No. 019

(filing intra-U charges against and fining Ees for crossing and working behind picket line during authorized strike, violative where Ee had reduced his membership status from full to *financial core* membership so as to eliminate any obligation to U except to pay dues, which he continued to do)

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) 277 NLRB No. 020

(members working under U security agreement who wrote letters to U during strike apprising U that they were changing membership status from *full* member to that of *financial core* member but were not resigning from U, held to have effectively resigned from U; further, U's fining these members for crossing picket line after receipt of those letters, violative. U cannot compel a financial core member by way of court collectible fine to support its strike or other activities)

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) 277 NLRB No. 020

(U was estopped to deny receipt of members' letters reducing U membership obligation to financial core where U consistently refused to accept communications from Ees crossing picket line by refusing to accept hand-delivered letters or letters sent by regular or certified mail)

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) 277 NLRB No. 020

(U's fining members for crossing picket line, assertedly because U had not received members' various letters reducing U membership obligation to *financial core*, violative, since members had sent letters through both regular and certified mail to U prior to crossing picket line and there is presumption, not herein rebutted, that mail correctly addressed, with sufficient postage, is received)

Warehouse, Mail Order, Retail Employees and Wholesale Liquor Salespersons, Local No. 853, a/w Teamsters (Reliance Sheet and Strip Co.) JD-(SF)-106-86

[instant case in which fining of U member, who had requested *honorable withdrawal card*, was found not unlawful, distinguished from situation in which member resigns and thereafter pays equivalent of dues to satisfy *financial core membership* requirement of U security clause; in such case, resignation is effective and member is not subject to U discipline; payment of equivalent of dues does not give individual *inactive* or any other type of meaningful membership in U, but only prevents discharge under U security clause]

Sausage Makers' Union, Local 203, Food & Commerical Workers (Western Employer Associates) JD-(SF)-47-86

[U violated its duty of fair representation by telling Ees it would not provide services; e.g., providing forms and assistance in completing forms necessary to secure health-related benefits available under collective bargaining agreement, in connection with conditions of work and work-related problems to Ees who had resigned from membership even though these Ees continued to satisfy their financial core requirements under contract]

5075-0150-7500 Resignation effective when submitted

Automobile Workers, Local 72 (McDonnell Douglas Corporation) 282 NLRB No. 064

[failure of Local Us to honor members' resignations, violative]

United States Postal Service 280 NLRB No. 169

[U's refusal to honor Ees' clearly communicated intention to resign, violative]

Sheet Metal Workers, Local 208 (Paul Mueller Company) 278 NLRB No. 087

[bringing intra-U charges against member for alleged violations of U constitution, including slandor of another member, unlawful, where member had right to and had previously resigned from U; U's contentions issue moot since member found not guilty of charges, U subjected to double jeopardy because of relitigation of issues, trial was internal U matter and should be deferred to arbitration, rejected, inasmuch as fact member not found guilty did not rectify wrongfulness of proceeding charges, prohibition against resig-

5075-0150-7500—Cont.

nations during strikes invalid, and no double jeopardy where U twice bought charges against member]

Shopmen's Local Union No. 539 (Zurn Industries, Inc.) **278 NLRB No. 034**

[Ees' letters to U stating their desire to *withdraw* their membership from U held to constitute effective resignations, since there is no requirement that Ee use any magic words in order to do so]

Local Lodge No. D192, Cement Workers Division of Boilermakers (Riverside Cement/A Gifford-Hill Company) **JD-(SF)-77-86**

[member did not effectively resign from U when he mailed resignation letter to U, since U overcame rebuttable presumption of receipt of letter properly mailed by its testimony that letter was never received]

Local Lodge No. D192, Cement Workers Division of Boilermakers (Riverside Cement/A Gifford-Hill Company) **JD-(SF)-77-86**

[member effectively resigned from U when he informed U's recording secretary that he *had had it with U and had quit* since resignation from U membership may be oral, and member's statement was not equivocal]

5075-0150-7550 Unless union rule or bylaw states otherwise

Local 441, International Union of Electrical, Radio & Machine Workers, AFL-CIO (Phelps Dodge Copper Products Company, a Division of Phelps Dodge Industries, Inc.) **281 NLRB No. 137**

[U's attempt to restrict member's right to resign even when no strike or lockout present or imminent, violative, as *any* restriction on resignations are invalid, and attempt to cause E to discharge member also violative. Furthermore, U breached its fiduciary duty by not informing member of proper resignation procedure]

Electrical Workers, Local 1547 (Homer Electric Association, et al.) **280 NLRB No. 158**

[*telex communication or telegram* from Ee senders to U whereby various Ees who were members of U sought to resign from U, held feasible method of resigning from U, since U does not contend that messages it received were not authorized by or caused to be sent by the Ees, or that U Constitution and By-Laws provided for exclusive method of resignation]

Food & Commercial Workers, Local No. 506 (Facciola Meat Company, et al.) **274 NLRB No. 211**

(U's threat to fine Ees for working behind picket line after their resignation, violative, since U bylaws contained illegal prohibition on resignation during period of strike or economic action imminent)

Food & Commercial Workers, Local No. 506 (Facciola Meat Company, et al.) **274 NLRB No. 211**

(portion of U's membership resolution which provided, inter alia, that with respect to any Ee seeking to resign, *his resignation shall be of no force and effect during any period in which economic action against Ee's current employer is imminent or actually in progress* held to be unenforceable restraint of Sec. 7 right of Ees to resign their membership in labor organization)

Communications Workers, Local 11500 (American Telephone & Telegraph Company) **JD-(SF)-40-86**

[E effectively resigned from U and thus U could not lawfully fine her for crossing picket line and working during strike, where she resigned by telephone call to strike headeuarters after strike started but prior to crossing picket line, inasmuch as U maintained no restrictions on resignations in its constitution or bylaws, and Ee communicated her resignation to person with authority to accept it where person with whom she spoke stated U was refusing to accept resignations, including those by certified mail]

5075-0150-7575 Unduly restrictive resignation procedure or conditions

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**

[Ees did *not constructively resign* from U, during strike, even though U constitution contained unlawful resignation restrictions, since no evidence adduced that U's conduct would reasonably tend to create impression of futility. U constitution called for written communication of resignation rather than permissive non-violative oral resignation. Ees intending to resign from U did not take any affirmative action consistent with resignation and communicate such intention to U]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**

[Bd justified in concluding that any restrictions on right of Ees to resign membership in their U impaired the congressional policy of voluntary unionism implicit in Act]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**

[notwithstanding U rules called fro sending letter of resignation by registered mail to Secretary-treasurer, resignation valid where member sent letter to president by regular mail as no dispute that U received letter and it was seen by official of U]

Sheet Metal Workers, Local 208 (Paul Mueller Company) **278 NLRB No. 087**

[provision in U's constitution prohibiting acceptance of members' resignations proffered in anticipation or duirng pendency of U charges, or during strike or lockout, held unduly restrictive restrant on resignations, thus resignations of members valid, and U's charging and finding Ees who resigned and crossed picket line, unlawful]

Electrical Workers Local 76 (Ryan Wright, an Individual) **JD-(SF)-36-85**

(U's fining Ee for working in non-U shop, assertedly because Ee had not followed U's elaborate procedure for resigning from U, violative, where Ee's resignation was clear and U was not prejudiced by procedure followed by Ee; further, U's by-laws required use of *magic formula* before it even considered a resignation request, thus encumbering Ee's right to seek employment with non-U Ee)

Machinists Local 1327 v. N.L.R.B. **773 F.2d 1070 (C.A. 9, Oct. 1985)**

[ct granted enforcement of Bd's order prohibiting fining U members who resigned either during or immediately before strike in contravention of U rule]

5075-0150-8700 Resignation effective when received

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) **281 NLRB No. 164**

[preferring internal U charges against and fining Ee for crossing picket line to work during strike, violation where Ee's resignation was effectively received when deposited in U's night-deposit box before he returned to work, notwithstanding resignation was not retrieved by U's agents until after Ee reported to work]

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) **281 NLRB No. 164**

[Bd follows effective receipt, rather than contract's *deposit*, rule in determining whether resignations are effective for purpose of escaping application of U rules]

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) **281 NLRB No. 164**

[in cases of U members' resignations deposited in regular mails Bd assumes, absent evidence to contrary, that resignation was received day after mailing, and when an Ee returns to work same day resignation is deemed received it is presumed, absent evidence to contrary, that resignation was received an hour before Ee crossed picket line]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**

[determination of when U would have received Ee's resignation, where U refused to accept it, left to compliance stage of instant proceeding]

Communications Workers, Local 9201 (Pacific Northwest Bell) **275 NLRB No. 214**

(imposing ct-collectible fines on Ees for crossing picket line and working during strike w/o U authorization, violative where Ees had effectively resigned; violation was limited to period after U received Ees' certified letters of resignation, which were rebuttably presumed to have been received in the ordinary course of delivery of such mail and were, according to the evidence, received on day after posting; Bd, contrary to ALJ, rejected futility doctrine where no Ees were shown to have not resigned becauseof a belief that their resignations would not be accepted)

Teamsters Local No. 538 (Passavant Health Center) **275 NLRB No. 104**

(when resignation is received on same day that Ee returns to work, resignation is *presumed to have been received... at an hour before the employee crossed the picket line* absent direct contrary evidence)

Warehouse, Mail Order, Retail Employees and Wholesale Liquor Salespersons, Local No. 853, a/w Teamsters (Reliance Sheet and Strip Co.) **JD-(SF)-106-86**

[since U member's desire to resign is not self-effectuating, and resignation is effective only when desire to resign is clearly communicated to U, member's application for *honorable withdrawal card* would not in itself have amounted to resignation even if he had intended it to do so]

Graphic Communications, Local 229 (Imperial Printing Company) **JD-183-85**

(U's requiring, pursuant to its constitution, executive board approval, membership in good standing, and that Ee not be employed in industry w/i U's jurisdiction before U accepted members' resignations, violative of their Sec. 7 right to refrain from U membership, notwithstanding assertion that U had right to prescribe rules as to retention of membership; however, Ees' attempts to make resignations retroactive found not effective, and resignations were effective from date of U's receipt)

5075-0150-8750 Where union bylaws contain no provision for voluntary resignation

5075-0150-8750—Cont.

Electrical Workers, Local 1547 (Homer Electric Association, et al.) 280 NLRB No. 158

[*telex communication or telegram* from Ee senders to U whereby various Ees who were members of U sought to resign from U, held feasible method of resigning from U, since U does not contend that messages it received were not authorized by or caused to be sent by the Ees, or that U Constitution and By-Laws provided for exclusive method of resignation]

Local Lodge 758, Machinists (Monasco, Inc.) 275 NLRB No. 111

(member who requested *Honorary Withdrawal* card from U held to have effectively resigned from U and U's fining member for crossing picket line after his receipt of *Honorary Withdrawal*, violative)

Local Lodge 758, Machinists (Monasco, Inc.) 275 NLRB No. 111

(member who asked U for a *release* from U held to have effectively resigned from U and U's fining member for crossing picket line after giving member a *release*, violative)

5075-0162 Rules consistent with collective bargaining agreement may be enforced

Shipbuilders (Bethlehem Steel Corporation) 277 NLRB No. 191

[parent U's attempt to repudiate Settlement Agreements negotiated by local U and E that modified or terminated parent U's agreements with E and parent U's discipline of principal officer of local U for refusing to join in its efforts, not violative where Settlement Agreements were not negotiated by parent U and were therefore void and parent U's conduct was w/i proviso where local U knew, or should have known, of parent U's constitutional requirement that parent U must be party to any agreement entered into by local]

Baltimore Newspaper Graphic Communications Union Local No. 31, International Printing and Graphic Communications Union, AFL-CIO (The A. S. Abell Company) JD-327-85

(U's fining Ee for sending letter to E, prior to filing grievance with U, not violative, since Ee was not engaged in concerted activity, and U's conduct did not impair any statutory policy, reflected legitimate U interest, and involved enforcement of U policy in reasonable manner)

5075-0175 Rule or rule change inconsistent with collective-bargaining agreement may not be enforced

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) 275 NLRB No. 127

(U's denial of financial core members' access to its pharmacy and eye and dental clinics in contravention of its strike settlement agreement, violative, even in absence of evidence that U was using dues of financial core members to finance its operation of these facilities)

Food & Commercial Workers, Local No. 1439 (Roosevelt's Supermarkets, Inc.) 275 NLRB No. 007

(threatening to censor, fine, suspend, and expel U members in one unit for violating U rules by failing to honor picket line of another unit of Ees of same employer also represented by U, unlawful, where U had expressly agreed in its contract with E covering threatened Ees not to discipline them for crossing U's primary picket line at E's premises, and its threat breached that no-discipline provision of its contract)

5075-0187 Rules may not seek to vindicate policy in conflict with NLRA

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. ———U.S.———

(U.S. SCT, June 1985)

[fining members who have attempted to resign at time such resignations prohibited under U's constitution, violative, as this is restraint on Sec. 7 rights to refrain from engaging in concerted activities and inconsistent with congressional policy of voluntary unionism. *retention of membership* set forth in provison relates to expulsion from membership and not resignation]

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[U's threatening Ees of neutral subcontractor that if they failed to leave construction project, they could be fined by U, violative where leaving project would violate 8(b)(4)(ii)(A) and (B)]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144

[Bd justified in concluding that any restrictions on right of Ees to resign membership in their U impaired the congressional policy of voluntary unionism implicit in Act]

Plumbers, Local 444 (T.S. Hanson Plumbing) 277 NLRB No. 137

(fining U members employed by neutral E for violating U's bylaws and rules by crossing lawful primary picket line of sister U at common situs, unlawful, since U's right to prescribe own rules under 8(b)(1)(A) proviso requires that rules impair no Congressional policy, and fining members did impair Congressional policy against application of 8(b)(4) secondary pressure on neutral E by having object of forcing fined members to stop working for neutral E and in turn cause latter to c/d/b with primary E)

Plumbers, Local 444 (T.S. Hanson Plumbing) 277 NLRB No. 137

(while Us have legitimate interest in having members honor picket lines whether in direct furtherance of primary labor dispute or in sympathetic support of primary U, and U may lawfully enforce such legitimate interest by fining members who have crossed picket lines; critical inquiry required by S.Ct's *Scofield* test is whether U's fining of members impaired policy Congress has embedded in labor laws, specifically policy against application of secondary pressure on neutral Es embodied in 8(b)(4); if such policy is impaired, 8(b)(1)(A) proviso affords no protection to Us)

Sheet Metal Workers Local Union No. 14 (C. L. Linfoot Co.) 275 NLRB No. 153

(U constitutional provision restricting members' right to resign during strike or lockout violative of their Sec. 7 right to refrain from U membership)

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) 275 NLRB No. 127

(U's refusal to allow financial core members to use services of dental and eye clinics and pharmacy (agents of U), violative, notwithstanding these benefits outside bargaining agreements as it has forseeable effect of coercing these financial core members from exercising their statutory right to refrain from joining U and remain core member. Defense that U's conduct priviledged under 8(b)(1)(A) proviso, rejected as against national policy to promote peaceful settlement of disputes where as part of strike settlement agreement U agreed it would not discriminate against core members)

Food & Commercial Workers, Local No. 1439 (Roosevelt's Supermarkets, Inc.) 275 NLRB No. 007

(threatening to censor, fine, suspend, and expel U members in one unit for violating U rules by failing to honor picket line of another unit of Ees of same employer also represented by U, unlawful, where U had expressly agreed in its contract with E covering threatened Ees not to discipline them for crossing U's primary picket line at E's premises, and its threat breached that no-discipline provision of its contract)

Graphic Communications, Local 229 (Imperial Printing Company) JD-183-85

(U's requiring, pursuant to its constitution, executive board approval, membership in good standing, and that Ee not be employed in industry w/i U's jurisdiction before U accepted members' resignations, violative of their Sec. 7 right to refrain from U membership, notwithstanding assertion that U had right to prescribe rules as to retention of membership; however, Ees' attempts to make resignations retroactive found not effective, and resignations were effective from date of U's receipt)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(U is free to enforce properly adopted rule which reflects legitimate U interest; but the internal affairs exception to Section 8(b)(1) does not apply when U's application of its rules is contrary to national labor policy; e.g., where it affects member's employment status)

5075-0198 Revocation of penalties on appeal does not eliminate potential violation by local union

General Teamsters and Food Processing Local 87, Teamsters (Harry Shain, an Individual) 273 NLRB No. 225

(International's reversal of local U's holding trial and disciplining members for violation of local's rules and removing all penalties imposed by local does not abrogate any potential violation by local U for its actions because International did not repudiate local's conduct)

5075-5000 Forms of enforcement

5075-5017 Fine

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010

(U's imposition of fine against Ee and his suspension from membership, pursuant to internal U charges brought against him for declining job referral while on U's out-of-work list and simultaneously working non-U, unlawful, where U breached its duty of fair representation, since charges against Ee reflected a change in U's previous referral policy made w/o advance notice of change to U's membership)

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[although U's imposition of fines on Ee members for their dissident activities against U officials *restrains* members' exercise of their Sec. 7 rights, terms *restrain or coerce* in 8(b)(1)(A) are not interpreted so literally as to make it an ULP for U to enforce compliance with U rules and policies, since 8(b)(1)(A) was not intended to give Bd power to regulate internal U affairs, including disciplinary charges and fines against members]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[although any disciplinary charge or fine is *coercive* to some degree, Congress did not intend provisions of 8(b)(1)(A) to apply to imposition of fines not affecting E-Ee relationship; Bd has authority to pass on U rules affecting individua's employment status but not rules affecting only his U membership

5075-5017—Cont.

status; and Congress has not empowered Bd to pass judgment on penalties U may impose so long as penalty does not impair member's status as Ee]

5075-5017-6100 Generally

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**

(following rationale of cases in which it was determined that disciplining U members by expulsion or fine for filing ULP charges against U or for initiating decertification or desauthorization ptns was unlawful, Bd has found it unlawful to fine member for signing authorization cards or otherwise supporting rival U seeking to replace incumbent U, concluding that there is no significant distinction, only difference in form, between conduct directed toward decertifying U and conduct directed toward replacing incumbent U)

Amalgamated Transit Union, Local Union 1222, Greyhound Drivers and Station Employees, AFL-CIO (Greyhound Lines, Inc.) **JD-(SF)-128-86**

[U's processing internal charge and determining to fine and expel Ee because he had violated U rule against giving testimony against fellow U member by answering E questions asked in preparation for anticipated grievance proceeding, violation, notwithstanding U claim that charge was premature because U had made no attempt to collect fine or carryout expulsion]

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[S.Ct has held that imposing fines against current U members does not *restrain or coerce* workers in their exercise of Sec. 7 rights on ground that, since U membership is purely voluntary, it is not unlawful for U to punish member by fine, suspension, or expulsion for infraction of U rules; relationship between member and U is contractual, and member is free to resign to escape U discipline]

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[S.Ct, ct herein, and Bd itself have concluded that 8(b)(1)(A) has nothing to say about reasonableness of U fines; similarly, S.Ct has concluded that questions such as U's motivation for imposing fine delve into internal affairs in manner Congress did not intend; and Act does not protect U members in their rights as members from arbitrary conduct by Us and U officials]

5075-5017-2500 Imposition not contrary to statutory intendment

Baltimore Newspaper Graphic Communications Union Local No. 31, International Printing and Graphic Communications Union, AFL-CIO (The A. S. Abell Company) **JD-327-85**

(U's fining Ee for sending letter to E, prior to filing grievance with U, not violative, since Ee was not engaged in concerted activity, and U's conduct did not impair any statutory policy, reflected legitimate U interest, and involved enforcement of U policy in reasonable manner)

5075-5017-3700 Imposition contrary to statutory intendment

Local 388, Plumbers (Daily Heating and Air Conditioning, Inc. **280 NLRB No. 141**

[U's picketing of E in attempt to cause E to c/d/b with subcontractor with whom U had primary dispute, bringing charges against Ee and fining him for having worked behind U's picket line and U's telling Ee that it had been good to him before but that was now over, violative; U's defense that picketing was lawful primary picketing done pursuant to valid work preservation clause with E, rejected, since U's object was not to preserve work but was to force E with whom U had contract from working on a jobsite with another E with whom U had long-standing primary area standards dispute]

Sheet Metal Workers Local Union No. 14 (C. L. Linfoot Co.) **275 NLRB No. 153**

(fining members for returning to work during strike violative where, pursuant to unlawful constitutional provision that U not accept resignations during strike, U had previously refused to accept resignations)

Telephone Commercial Employees Union, Local 643, Telecommunications International Union (Illinois Bell Telephone Company) **JD-463-84**

(U fining individuals for crossing picket line, unlawful, since individuals had resigned from U prior to crossing line, where U steward, agent of U, who knew individuals had resigned prior to crossing picket line, circulated ptn to bring charges before U's executive Bd. Further, even if U had acted in good faith, members' right to resign and then cross picket line would be endangered if U could impose fines in good faith belief individual had crossed picket line while still member)

5075-5017-5000 Reasonableness of amount not relevant

Millwright & Machinery Erectors, Local Union 720, Carpenters v. N.L.R.B. **798 F.2d 781 (C.A. 5, Aug. 1986)**

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[S.Ct, ct herein, and Bd itself have concluded that 8(b)(1)(A) has nothing to say about reasonableness of U fines; similarly, S.Ct has concluded that questions such as U's motivation for imposing fine delve into internal affairs in manner Congress did not intend; and Act does not protect U members in their rights as members from arbitrary conduct by Us and U officials]

5075-5017-6700 Unenforceable as sanction against member for filing or circulating decertification, desauthorization or representation petition

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**

(following rationale of cases in which it was determined that disciplining U members by expulsion or fine for filing ULP charges against U or for initiating decertification or desauthorization ptns was unlawful, Bd has found it unlawful to fine member for signing authorization cards or otherwise supporting rival U seeking to replace incumbent U, concluding that there is no significant distinction, only difference in form, between conduct directed toward decertifying U and conduct directed toward replacing incumbent U)

5075-5017-7200 Unenforceable as sanction against member for supporting rival union

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**

(monetary penalties imposed against U members for engaging in rival U activity during U's election campaign held to constitute fines imposed as punishment to vindicate U's authority over members, rather than assessment against members for election campaign expenses, as evidenced by provisions of U's constitution and by U's disciplinary decision which attempted to circumvent Bd law by referring to monetary penalties imposed by U as reimbursements)

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**

(following rationale of cases in which it was determined that disciplining U members by expulsion or fine for filing ULP charges against U or for initiating decertification or desauthorization ptns was unlawful, Bd has found it unlawful to fine member for signing authorization cards or otherwise supporting rival U seeking to replace incumbent U, concluding that there is no significant distinction, only difference in form, between conduct directed toward decertifying U and conduct directed toward replacing incumbent U)

5075-5017-7400 Unenforceable as sanction for refusing to violate bargaining agreement

International Molders and Allied Workers Union, Local No. 164 v. N.L.R.B. **765 F.2d 858 (C.A. 9, July 1985)**

(U's fining members and bringing internal U charges against them for failing to honor strike which was in violation of no strike clause, violative, since U may not use discipline to coerce members to act in contravention of bargaining agreement where blanket no-strike clause, except for sympathy strikes encompassed U's right to strike pending E's state ct action to vacate arbitration award)

5075-5017-7500 Refusal to honor picket line or to participate in strike

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) **281 NLRB No. 164**

[preferring internal U charges against and fining Ee for crossing picket line to work during strike, violation where Ee's resignation was effectively received when deposited in U's night-deposit box before he returned to work, notwithstanding resignation was not retrieved by U's agents until after Ee reported to work]

Communications Workers, Local 1101 (New York Telephone Company) **281 NLRB No. 064**

[fining Ee for crossing picket line and working during strike, unlawful, since Ee did not voluntarily became U member by checking membership box on dues-checkoff card which also contained box for deduction of agency fee, where U steward told Ee he had to join U, and Bd could not find that because steward did not tell Ee which box to check, Ee's checking of membership box manifested intent to become U member; nor did Ee's picketing manifest such intent where Ee picketed unwillingly after being coerced into becoming U member]

Local 388, Plumbers (Daily Heating and Air Conditioning, Inc. **280 NLRB No. 141**

[U's picketing of E in attempt to cause E to c/d/b with subcontractor with whom U had primary dispute, bringing charges against Ee and fining him for having worked behind U's picket line and U's telling Ee that it had been good to him before but that was now over, violative; U's defense that picketing was lawful primary picketing done pursuant to valid work preser-

5075-5017-7500—Cont.

vation clause with E, rejected, since U's object was not to preserve work but was to force E with whom U had contract from working on a jobsite with another E with whom U had long-standing primary area standards dispute]

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) **278 NLRB No. 138**
[U's threatening Ees of neutral subcontractor that if they failed to leave construction project, they could be fined by U, violative where leaving project would violate 8(b)(4)(ii)(A) and (B)]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**
[U fining Ee who resigned from U during strike, violative]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**
[Ees did *not constructively resign* from U, during strike, even though U constitution contained unlawful resignation restrictions, since no evidence adduced that U's conduct would reasonably tend to create impression of futility. U constitution called for written communication of resignation rather than permissive non-violative oral resignation. Ees intending to resign from U did not take any affirmative action consistent with resignation and communicate such intention to U]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**
[U's bringing up Ee on charges and fining her for working during strike, violative, since Ee was not member of U Ee took no action consistent with (U) membership]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) **278 NLRB No. 144**
[Ee who had filled out U authorization card at time first employed with E but did not do so when rehired, held member of U when at time of rehire Ee designated the *union dues* box on her checkoff authorization card. Therefore, U could validly enforce fines against these Ees for working during strike]

Sheet Metal Workers, Local 208 (Paul Mueller Company) **278 NLRB No. 087**
[U charging and fining members for crossing picket line, unlawful, where members had previously resigned from U, inasmuch as resignations were effective upon submission and members thus became non-members and not subject to U discipline]

Sheet Metal Workers, Local 208 (Paul Mueller Company) **278 NLRB No. 087**
[U charging and fining members who had crossed picket line, including one member who had not resigned from U prior to crossing picket line, unlawful, since by signing no-retaliation clause in strike settlement agreement U waived any right to discipline member for strike related activity; U's contention agreement signed under duress rejected, and parol evidence regarding U's contention no retaliation provision signed with understanding it was not applicable to internal U affairs, since provision clear and integrated into agreement]

Plumbers, Local 444 (T.S. Hanson Plumbing) **277 NLRB No. 137**
(fining U members employed by neutral E for violating U's bylaws and rules by crossing lawful primary picket line of sister U at common situs, unlawful, since U's right to prescribe own rules under 8(b)(1)(A) proviso requires that rules impair no Congressional policy, and fining members did impair Congressional policy against application of 8(b)(4) secondary pressure on neutral E by having object of forcing fined members to stop working for neutral E and in turn cause latter to c/d/b with primary E)

Plumbers, Local 444 (T.S. Hanson Plumbing) **277 NLRB No. 137**
(fining U members employed by neutral E for failing to honor lawful primary picket line of sister U at common situs held to have unlawful object, since U which induces neutral Ees to stop working must take responsibility for foreseeable consequences of its conduct; here, U knew fined members worked for E who was neutral in sister U's dispute with primary E, and natural and apparent object of U's fining of members was to force them to stop working for neutral E and in turn to cause latter to c/d/b with primary E)

Plumbers, Local 444 (T.S. Hanson Plumbing) **277 NLRB No. 137**
(where U's enforcement of sympathy strike violated 8(b)(1)(A) by fining U members employed by neutral E for failing to honor lawful primary picket line of sister U at common situs not having valid reserved gate system, Bd held 8(a)(4) places burden on *labor organizations* to conduct themselves in primary dispute so as not to needlessly entangle neutral Es; while absence of reserved gate may extend permissible physical limits of primary dispute on common situs, neutral contractors remain protected by 8(b)(4) against conduct having clear proscribed secondary objective even when there is no reserved gate)

Plumbers, Local 444 (T.S. Hanson Plumbing) **277 NLRB No. 137**
(where U was found to have violated 8(b)(1)(A) by fining U members employed by neutral E for failing to honor primary picket line of sister U at common situs, Bd held that to permit U's fines would lead to anomalous result that secondary U may attempt to influence Ees of neutral E by means denied to primary U itself; if primary U may not put such secondary pressure on neutral Ees at common situs, then it follows that neutral U may not do so either)

Carpenters District Council For Seattle, King County and Vicinity (Tullis Gordon Construction, Inc.) **277 NLRB No. 019**
(filing intra-U charges against and fining Ees for crossing and working behind picket line during authorized strike, violative where Ee had reduced his membership status from full to *financial core* membership so as to eliminate any obligation to U except to pay dues, which he continued to do)

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) **277 NLRB No. 020**
(members working under U security agreement who wrote letters to U during strike apprising U that they were changing membership status from *full* member to that of *financial core* member but were not resigning from U, held to have effectively resigned from U; further, U's fining these members for crossing picket line after receipt of those letters, violative. U cannot compel a financial core member by way of court collectible fine to support its strike or other activities)

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) **277 NLRB No. 020**
(U's fining members for crossing picket line, assertedly because U had not received members' various letters reducing U membership obligation to *financial core*, violative, since members had sent letters through both regular and certified mail to U prior to crossing picket line and there is presumption, not herein rebutted, that mail correctly addressed, with sufficient postage, is received)

Communications Workers, Local 9201 (Pacific Northwest Bell) **275 NLRB No. 214**
(imposing ct-collectible fines on Ees for crossing picket line and working during strike w/o U authorization, violative where Ees had effectively resigned; violation was limited to period after U received Ees' certified letters of resignation, which were rebuttably presumed to have been received in the ordinary course of delivery of such mail and were, according to the evidence, received on day after posting; Bd, contrary to ALJ, rejected futility doctrine where no Ees were shown to have not resigned because of a belief that their resignations would not be accepted)

Communications Workers, Local 6012 (Southwestern Bell Telephone Co.) **275 NLRB No. 210**
(fining Ees for failing to honor picket line and returning to work during strike violative where U had effectively prevented them from tendering resignations from membership)

Food & Commercial Workers, Local No. 1439 (Allied Employers, Inc.) **275 NLRB No. 140**
(fining members for postresignation conduct of working behind picket line during strike, violative whether or not resigned members knew about U's requirement of 30 day notice before resignation effective. No restrictions can be made on resignations)

Local Lodge 758, Machinists (Menasco, Inc.) **275 NLRB No. 111**
(member who asked U for a *release* from U held to have effectively resigned from U and U's fining member for crossing picket line after giving member a *release*, violative)

Teamsters Local No. 538 (Passavant Health Center) **275 NLRB No. 104**
(fines imposed on Ees for conduct prior to their effective resignations, not violative)

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) **275 NLRB No. 098**
(U's refusal to accept resignations of members, threatening to bring and bringing disciplinary proceedings against members for crossing picket line after resigning, unlawful, notwithstanding U's contention actions justified where resignations were in violation of U's constitution, since U's maintenance of such restrictions was unlawful and thus its refusal to accept resignations based on such restrictions, unlawful; further, U's defense that resignations void ab initio due to improper E influence through E's memo advising Ees regarding their rights concerning resignation from U, rejected)

San Francisco Lodge No. 68, Machinists (Holmestic, Inc.) **274 NLRB No. 108**
(U's rule restricting resignations held unlawful and U's imposition of fines on members for returning to work and crossing picket line subsequent to their resignations from U, violative)

Machinists, Local Lodge No. 1374 (Columbia Machine, Inc.) **274 NLRB No. 026**
(U's filing charges and imposing fines on members who crossed picket line violative, notwithstanding contention that members had not resigned, since U created impression it would be futile to resign by telling members in prestrike meeting that attempts to resign would be ineffective; however, other members who had not resigned and had attended a different meeting where

5075-5017-7500—Cont.

rule restricting resignations was simply reiterated, could not claim resignation was futile and fines and charges against them were not unlawful)

Warehouse, Mail Order, Retail Employees and Wholesale Liquor Salespersons, Local No. 853, a/w Teamsters (Reliance Sheet and Strip Co.) **JD-(SF)-106-86**

[fining Ee for crossing picket line, not unlawful, where Ee did not resign as he stated to U agent that he was going to do but, instead, chose to seek *honorable withdrawal card* so that he could retain limited U rights and standing and at same time be free from U discipline for crossing picket line; request for withdrawal card was not granted and, in absence of unequivocal resignation, Ee remained U member at time he crossed picket line for which U could lawfully fine him]

Warehouse, Mail Order, Retail Employees and Wholesale Liquor Salespersons, Local No. 853, a/w Teamsters (Reliance Sheet and Strip Co.) **JD-(SF)-106-86**

[instant case in which fining of U member, who had requested *honorable withdrawal card*, was found not unlawful, distinguished from situation in which member resigns and thereafter pays equivalent of dues to satisfy *financial core membership* requirement of U security clause; in such case, resignation is effective and member is not subject to U discipline; payment of equivalent of dues does not give individual *inactive* or any other type of meaningful membership in U, but only prevents discharge under U security clause]

Communications Workers, Local 11500 (American Telephone & Telegraph Company) **JD-(SF)-40-86**

[E effectively resigned from U and thus U could not lawfully fine her for crossing picket line and working during strike, where she resigned by telephone call to strike headeuarters after strike started but prior to crossing picket line, inasmuch as U maintained no restrictions on resignations in its constitution or bylaws, and Ee communicated her resignation to person with authority to accept it where person with whom she spoke stated U was refusing to accept resignations, including those by certified mail]

Telephone Commercial Employees Union, Local 643, Telecommunications International Union (Illinois Bell Telephone Company) **JD-463-84**

(U fining individuals for crossing picket line, unlawful, since individuals had resigned from U prior to cossing line, where U steward, agent of U, who knew individuals had resigned prior to crossing picket line, circulated ptn to bring charges before U's executive Bd. Further, even if U had acted in good faith, members' right to resign and then cross picket line would be endangered if U could impose fines in good faith belief individual had crossed picket line while still member)

Local 4103, Communications Workers (Michigan Bell Telephone Company; AT&T Information Systems) **JD-454-84**

(U imposing fine on individual and seeking to collect fine through civil lawsuit for allegedly violating U's bylaws and constitution by working during strike, unlawful, since she was not member of U with which her E had security agreement, but merely paying amount equivalent to dues, and thus was not subject to U's bylaws and constitution, and had so informed U, notwithstanding U had received printout form International based on information furnished by E that listed individual as member)

Machinists Local 1327 v. N.L.R.B. **773 F.2d 1070 (C.A. 9, Oct. 1985)**

[ct granted enforcement of Bd's order prohibiting fining U members who resigned either during or immediately before strike in contravention of U rule]

International Molders and Allied Workers Union, Local No. 164 v. N.L.R.B. **765 F.2d 858 (C.A. 9, July 1985)**

(U's fining members and bringing internal U charges against them for failing to honor strike which was in violation of no strike clause, violative, since U may not use discipline to coerce members to act in contravention of bargaining agreement where blanket no-strike clause, except for sympathy strikes encompassed U's right to strike pending E's state ct action to vacate arbitration award)

5075-5017-7600 Working in nonunion shop

Electrical Workers, Local 1547 (Telon electric Corporation) **278 NLRB No. 032**

[initiating internal U charges against and fining Ee, assertedly for violating U's bylaws by going to work for non-U E with whom U had dispute, violative where Ee had effectively resigned from U at time he went to work for non-U E]

Electrical Workers Local 76 (Ryan Wright, an Individual) **JD-(SF)-36-85**

(U's fining Ee for working in non-U shop, assertedly because Ee had not followed U's elaborate procedure for resigning from U, violative, where Ee's resignation was clear and U was not prejudiced by procedure followed by Ee; further, U's by-laws required use of *magic formula* before it even considered a resignation request, thus encumbering Ee's right to seek employment with non-U Es)

Millwright & Machinery Erectors, Local Union 720, Carpenters v. N.L.R.B. **798 F.2d 781 (C.A. 5, Aug. 1986)**

[no violation by fining member for not accepting referral of employment at U shop since member continued working at non-U shop so fine did not affect E-Ee relationship and falls w/i proviso. Fact that U never fined members previously for such conduct nor did it communicate change in its policy to membership, not relevant]

5075-5017-7700 Abandoning strike

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. **———U.S.———**

(U.S. SCT, June 1985)

[fining members who have attempted to resign at time such resignations prohibited under U's constitution, violative, as this is restraint on Sec. 7 rights to refrain from engaging in concerted activities and inconsistent with congressional policy of voluntary unionism. *retention of membership* set forth in provison relates to expulsion from membership and not resignation]

Local Lodge 758, Machinists (Monasco, Inc.) **275 NLRB No. 111**

(rule restricting resignations from U, violative, and U's fining members for crossing picket line after receiving their various oral resignations, violative)

Local Lodge 758, Machinists (Monasco, Inc.) **275 NLRB No. 111**

(member who requested *Honorary Withdrawal* card from U held to have effectively resigned from U and U's fining member for crossing picket line after his receipt of *Honorary Withdrawal*, violative)

5075-5017-7900 Engaging in dissident union activity

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[U's action in charging and fining U member, although motivated by member's expression of dissident views directed against U administration, held not unlawful, where U's action did not interfere with member's relationship with Es who used U labor, and U did not extend its efforts beyond use of internal U mechanisms to quiet member's dissident views]

5075-5017-8300 Court proceedings to collect fine

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**

(any doubt as to whether U's *requests for reimbursement* for election campaign expenses from members who engaged in viral U activity during U's election campaign were ct collectibel fines resolved against U, since whatever uncertainty existed came from U's attempt to circumbent Bd law by labeling fines as requests for reimbursement; and it was clear, from U's letters to disciplined members, that at all times U intended to enforce imposition of fines through ct proceedings)

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**

(imposing ct collectible fines on U members and threatening to take, and taking, legal action to collect fines, unlawful, where fines were imposed because members supported rival U in its attempts to replace U through Bd election, and U's claims that its disciplinary decision was not based on signing of authorization cards for rival U or for going to Bd or acting as observer for rival U at election were self-serving and not sufficient to change conclusion herein)

Communications Workers, Local 6012 (Southwestern Bell Telephone Co.) **275 NLRB No. 210**

(filing legal proceedings in state ct to collect fines that were unlawfully levied because members who were fined had been prevented from tendering their membership resignations during strike, violative)

Laundry Workers, Government and Industrial Service, Local 3 (Virginia Cleaners, Inc.) **275 NLRB No. 098**

(U filing state ct law suit against members to collect fines U had leveied against them for crossing picket line after resigning from U, unlawful, since suit had objective that was illegal under federal law, inasmuch as U's fines of Ees who had resigned from U could not lawfully be imposed under Act)

Local 4103, Communications Workers (Michigan Bell Telephone Company; AT&T Information Systems) **JD-454-84**

(U imposing fine on individual and seeking to collect fine through civil lawsuit for allegedly violating U's bylaws and constitution by working during strike, unlawful, since she was not member of U with which her E had security agreement, but merely paying amount equivalent to dues, and thus was not subject to U's bylaws and constitution, and had so informed U, notwithstanding U had received printout form International based on information furnished by E that listed individual as member)

5075-5025 Filing intra-union charges

Laborers', Local No. 373 (Arrow Enterprises) **282 NLRB No. 053**

[dissident intra-U activity, such as filing charges against local's president, held protected, and retaliation against member for engaging in such activity, unlawful]

5075-5025—Cont.

Sheet Metal Workers, Local 208 (Paul Mueller Company) **278 NLRB No. 087**
[bringing intra-U charges against member for alleged violations of U constitution, including slandor of another member, unlawful, where member had right to and had previously resigned from U; U's contentions issue moot since member found not guilty of charges, U subjected to double jeopardy because of relitigation of issues, trial was internal U matter and should be deferred to arbitration, rejected, inasmuch as fact member not found guilty did not rectify wrongfulness of processing charges, prohibition against resignations during strikes invalid, and no double jeopardy where U twice bought charges against member]

Sheet Metal Workers, Local 208 (Paul Mueller Company) **278 NLRB No. 087**
[U charging and fining members for crossing picket line, unlawful, where members had previously resigned from U, inasmuch as resignations were effective upon submission and members thus became non-members and not subject to U discipline]

Sheet Metal Workers, Local 208 (Paul Mueller Company) **278 NLRB No. 087**
[U charging and fining members who had crossed picket line, including one member who had not resigned from U prior to crossing picket line, unlawful, since by signing no-retaliation clause in strike settlement agreement U waived any right to discipline member for strike related activity; U's contention agreement signed under duress rejected, and parol evidence regarding U's contention no retaliation provision signed with understanding it was not applicable to internal U affairs, since provision clear and integrated into agreement]

Union Independiente De Traba Jadores De Servicios Legales De Puerto Rico (Corporacion de Servicios Legales de Puerto Rico, Inc.) **277 NLRB No. 174**
[bringing internal U charges against Ees for conduct following tender of their resignations, unlawful, notwithstanding U's contention that U security clause in contract barred Ees from resigning, since only aspect of U membership that U security clause required was financial one–to continue paying dues and fees assessed of U members]

Carpenters District Council For Seattle, King County and Vicinity (Tullus Gordon Construction, Inc.) **277 NLRB No. 019**
(filing intra-U charges against and fining Ees for crossing and working behind picket line during authorized strike, violative where Ee had reduced his membership status from full to *financial core* membership so as to eliminate any obligation to U except to pay dues, which he continued to do)

Local Lodge No. 707, Machinists (Pratt & Whitney Division of United Technologies Corporation) **276 NLRB No. 105**
(local and international U's filing and processing to hearing internal U charges against individuals, assertedly because they had engaged in a variety of conduct unbecoming of a U member and which was destructive of the local, violative, since real reason was their involvement in distributing leaflet which was highly critical of incumbent local's leadership, many of the charges against the individuals were either stale, based upon events condoned by the membership or unsubstantiated and internal trial committee was clearly biased against these members)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) **276 NLRB No. 010**
(U's threatening to file, filing, and announcing to its membership that it had filed internal U charges against Ee for declining job referral from U's hiring hall while on U's out-of-work list and simultaneously working non-U, unlawful, where U breached its duty of fair representation, since charges against Ee reflected a change in U's previous referral policy made w/o advance notice of charge to U's membership)

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) **275 NLRB No. 048**
(local U's filing internal U charges with district council against Ees for filing ULP charges with Bd alleging that local's hiring hall procedures violated 8(b)(1)(A) and district council's trying and finding them guilty because they failed to exhaust contractual remedies, violative, since these actions were retaliatory)

Machinists, Local Lodge No. 1374 (Columbia Machine, Inc.) **274 NLRB No. 026**
(U's filing charges and imposing fines on members who crossed picket line violative, notwithstanding contention that members had not resigned, since U created impression it would be futile to resign by telling members in pre-strike meeting that attempts to resign would be ineffective; however, other members who had not resigned and had attended a different meeting where rule restricting resignations was simply reiterated, could not claim resignation was futile and fines and charges against them were not unlawful)

General Teamsters and Food Processing Local 87, Teamsters (Harry Shain, an Individual) **273 NLRB No. 225**
(U bringing charges, expelling from membership and fining member who had berated U's office manager when he had discovered inadvertent omission of his name from out of work list, and removal from office of U president who had failed to restrain member, not unlawful, since member's action didn ot constitute protected activity, and thus president's failure to restrain member did not constitute refusal to interfere with protected activity of another)

Auto Workers, Local No. 171 (Mack Trucks, Inc.) **JD-33-85**
(filing of internal U charges against members for filing grievance against E and ULP charges with Bd over alleged preferential treatment E gave U official in accepting his application for posted job, and accepting and setting up trial board for hearing on such charges, unlawful, where stewards and committeemen, acting as U agents, filed internal charges in retaliation for members' filing of grievance against E; it was clearly evident that U agents' intent was also to punish members' recourse to Bd law; and internal charges were filed with knowledge of members' filing of ULP charge)

Auto Workers, Local No. 171 (Mack Trucks, Inc.) **JD-33-85**
(U's mtn to reopen record and dismiss C alleging unlawful filing of internal U charges against its members for filing grievance with E and ULP charges with Bd, denied, since withdrawal of unlawfully filed internal U charges is insufficient to dispel coercive effect of charge which has effect of discouraging Ees from seeking redress from Bd or through grievance procedure, and thus restrains and coerces Ees in exercise of teir statutory rights)

5075-5030 Prohibition against holding union office

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) **278 NLRB No. 008**
[U's bring internal charges against member for allegedly fraudently buying *unemployment stamps* rather than paying full dues when he was fully employed, cancelling his membership and stripping him of his U office and superseniority thus jeopardizing his employment, and preculding him from holding other U office, unlawful, since actions motivated by member internal U activities of distributing leaflets critical of U leadership, and filing ULP charges against U]

5075-5033 Expulsion

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) **276 NLRB No. 010**
(U's imposition of fine against Ee and his suspension from membership, pursuant to internal U charges brought against him for declining job referral while on U's out-of-work list and simultaneously working non-U, unlawful, where U breached its duty of fair representation, since charges against Ee reflected a change in U's previous referral policy made w/o advance notice of change to U's membership)

5075-5033-0100 Generally

Amalgamated Transit Union, Local Union 1222, Greyhound Drivers and Station Employees, AFL-CIO (Greyhound Lines, Inc.) **JD-(SF)-128-86**
[U's processing internal charge and determining to fine and expel Ee because he had violated U rule against giving testimony against fellow U member by answering E questions asked in preparation for anticipated grievance proceeding, violation, notwithstanding U claim that charge was premature because U had made no attempt to collect fine or carryout expulsion]

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**
[S.Ct has held that imposing fines against current U members does not *restrain or coerce* workers in their exercise of Sec. 7 rights on ground that, since U membership is purely voluntary, it is not unlawful for U to punish member by fine, suspension, or expulsion for infraction of U rules; relationship between member and U is contractual, and member is free to resign to escape U discipline]

5075-5033-3300 Refusal to honor picket line

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[threatening nonstriking members with expulsion, severe fines and even loss of jobs since plant was a U shop, violative, as illegal to threaten U discipline for other than nonpayment of U dues and initiation fees to deprive Ee of his job]

5075-5067 Suspension from membership

5075-5067-0100 Generally

5075-5067-0100—Cont.

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[S.Ct has held that imposing fines against current U members does not *restrain or coerce* workers in their exercise of Sec. 7 rights on ground that, since U membership is purely voluntary, it is not unlawful for U to punish member by fine, suspension, or expulsion for infraction of U rules; relationship between member and U is contractual, and member is free to resign to escape U discipline]

5075-5067-6700 Illegal where rule was discriminatorily applied

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) **278 NLRB No. 008**

[U's bring internal charges against member for allegedly fraudently buying *unemployment stamps* rather than paying full dues when he was fully employed, cancelling his membership and stripping him of his U office and superseniority thus jeopardizing his employment, and preculding him from holding other U office, unlawful, since actions motivated by member internal U activities of distributing leaflets critical of U leadership, and filing ULP charges against U]

5075-5067-7500 Not enforceable for crossing picket line

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**

[threatening nonstriking members with expulsion, severe fines and even loss of jobs since plant was a U shop, violative, as illegal to threaten U discipline for other than nonpayment of U dues and initiation fees to deprive Ee of his job]

5075-5076 Removal from job

Local 441, International Union of Electrical, Radio & Machine Workers, AFL-CIO (Phelps Dodge Copper Products Company, a Division of Phelps Dodge Industries, Inc.) **281 NLRB No. 137**

[U's attempt to restrict member's right to resign even when no strike or lockout present or imminent, violative, as *any* restriction on resignations are invalid, and attempt to cause E to discharge member also violative. Furthermore, U breached its fiduciary duty by not informing member of proper resignation procedure]

Upholsterer's, Local Union 406 (Boyertown Casket Company) **280 NLRB No. 134**

[U's attempting to cause the discharge of Ee who had resigned from U and attempting to refund Ee's dues assertedly because Ee had resigned, violative, where Ee, although having resigned from U, had still complied with U security agreement by tendering dues (Ee was thus only a *financial core* member) and Ee's only obligation to U after resignation, was to tender initiation fees and dues]

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) **278 NLRB No. 008**

[U's bring internal charges against member for allegedly fraudently buying *unemployment stamps* rather than paying full dues when he was fully employed, cancelling his membership and stripping him of his U office and superseniority thus jeopardizing his employment, and preculding him from holding other U office, unlawful, since actions motivated by member internal U activities of distributing leaflets critical of U leadership, and filing ULP charges against U]

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) **274 NLRB No. 110**

(local U's *deliberate pattern of conduct* consisting of threats and coercion designed to force travelers into quitting so that local U's members could be hired, violative, where local U refused to accept properly tendered travel service dues from travelers yet threatened them with internal charges if they worked w/o travel service dues receipts, threatened them with loss of employment after they refused U's request that they quit by stating that U was requesting E to lay them off and strictly applied dues collection policy against travelers when past practice was to have flexible and open-handed policy)

Hotel & Restaurant Employees, Local 50 (Plaza Inn Associates d/b/a Plaza International Inn) **JD-(SF)-87-85**

(U security clause does not survive expiration of contract, and therefore U's demand on E to discharge Ees for nonpayment of dues after expiration, violative)

Local 807, Teamsters (Paragon Paint & Varnish Corporation) **JD-(NY)-34-85**

(no violation, where U requested discharge of Ee who was in arrears in payment of dues for period during which he was on sick leave, since U had advised Ee of amount owed, method used to compute amount, when payments were to be made and that discharge would result from failure to pay, and where Ee failed to fulfill agreement made with U for payment)

5075-5083 Removal of member from office

5075-5083-0100 Generally

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) **278 NLRB No. 008**

[U's bring internal charges against member for allegedly fraudently buying *unemployment stamps* rather than paying full dues when he was fully employed, cancelling his membership and stripping him of his U office and superseniority thus jeopardizing his employment, and preculding him from holding other U office, unlawful, since actions motivated by member internal U activities of distributing leaflets critical of U leadership, and filing ULP charges against U]

5075-5083-2500 Union officers affected

Iron Workers (Walker Construction Company) **277 NLRB No. 099**

(International U bringing internal U charges, fining, and prohibiting president of local U from holding office, for filing ULP charges in name of local against International, unlawful, since International not entitled even to protect its legitimate institutional interests by restraining access to Bd, since such restraint coercive and against public policy of fostering unimpeded access to Bd, notwithstanding president could have filed charges as individual, and International's contention that president was not disciplined for filing of charges, but for misuse of office by acting w/o authority from membership or executive board)

5075-5083-2537 Recording secretary

Auto Workers, Local No. 171 (Mack Trucks, Inc.) **JD-33-85**

(U's removal of elected recording secretary from his position, unlawful, where he was among members who filed grievance against E and ULP charges with Bd over alleged preferential treatment E gave a U official in accepting his application for posted job; stewards and committeemen, acting as U agents, filed internal charges in retaliation for members' filing of grievance against E; it was clearly evident that U agents' intent was also to punish members' recourse to Bd law; and internal charges were filed with knowledge of members' filing of ULP charge)

5075-5083-2550 Job steward

Mail Handlers, Local Union No. 308 (United States Postal Service) **281 NLRB No. 143**

[U removing Ee from his position as shop steward because he had filed ULP charges previously against U violative, since internal U considerations raised by U-Respondent Ee's alleged dereliction of duty as shop steward and his alleged failure, as treasurer, to properly protect monies belonging to Ee's Social and Recreation committee as well as alleged altercation with U president cannot prevail in face of overriding public interest in unimpeded access to Bd and fact that violation turns on coercive nature of U's conduct rather than on U's motivation which may be factor to be considered]

5075-5095 Reporting employee to government agency

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[where U referred dissident U member to job which U knew he could not accept because he was scheduled to attend Bd hearing on his ULP charges against U on same day, ct held U's action in reporting to state unemployment agency that member had refused job referral, although made in retaliation for member's dissident U activity and contrary to U's nonreporting policy, was internal U affair beyond scope of 8(b)(1)(A), since report had no impact on member's relationship with an E nor interfered with his existing or prospective employment relations]

5075-5098 Denial of benefits

Mine Workers District 2, and Its Local 2202 (Old Devon Corporation, et al.) **282 NLRB No. 020**

[no violation where, even if GC had made prima facie case, U carried its burden and established that in absence of filing of ULP charge against U, Ee nonetheless would have been denied strike benefits for dues delinquency]

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) **275 NLRB No. 127**

(U's refusal to allow financial core members to use services of dental and eye clinics and pharmacy (agents of U), violative, notwithstanding these benefits outside bargaining agreements as it has forseeable effect of coercing these financial core members from exercising their statutory right to refrain from joining U and remain core member. Defense that U's conduct priviledged under 8(b)(1)(A) proviso, rejected as against national policy to promote peaceful settlement of disputes where as part of strike settlement agreement U agreed it would not discriminate against core members)

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) **275 NLRB No. 127**

(U's denial of financial core members' access to its pharmacy and eye and dental clinics in contravention of its strike settlement agreement, violative, even in absence of evidence that U was using dues of financial core members to finance its operation of these facilities)

5075-5098—Cont.

Sausage Makers' Union, Local 203, Food & Commerical Workers (Western Employer Associates) **JD-(SF)-47-86**

[U violated its duty of fair representation by telling Ees it would not provide services; e.g., providing forms and assistance in completing forms necessary to secure health-related benefits available under collective bargaining agreement, in connection with conditions of work and work-related problems to Ees who had resigned from membership even though these Ees continued to satisfy their financial core requirements under contract]

5085 PROHIBITION AGAINST USE OF BULLETIN BOARD

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) **JD-(NY)-136-85**

[U agent's removing notice from company bulletin board posted by *Fight Back Committee* (group opposed to incumbent U's officers) not restraint or coercion]

542 UNION COERCION OF EMPLOYER IN SELECTION OF REPRESENTATIVES

0100 GENERALLY

0125 SCOPE OF PRESCRIPTION

0125-9000 Maintains employer agent's freedom to act in employer's interest

Carpenters, Local 1597 (W. G. Clark Construction Co.) JD-(SF)-155-85

(U's imposing disciplinary fine and suspension of membership on Ee for performing supervisory work at job site on and after U established picket line at E's job site held unlawful, since when Ee invoked his supervisory status as defense to his disciplinary trial by U trial committee no proof had been offered to committee that Ee had performed any rank-and-file work and Ee could reasonably interpret his U's discipline as being directed at his performance of a purely supervisory function)

Sheet Metal Workers, Local Union No. 162 (Enterprise Mechanical, Inc.) JD-(SF)-114-85

(U fining president of E who was also member of U because he refused to sign collective bargaining agreement, not violative, as clauses involved in controversy were not mandatory subjects of bargaining which could be insisted upon by E to impass; furthermore, president was substantial owner (person owning 25% or more of business), and Sec. 8(b)(1)(B) inapplicable in cases where member is substantial owner since owner not susceptible to requisite subversion of loyalties necessary to find violation)

0125-9000 Preserves employer's right to select representative

Local Union 497, Electrical Workers (Canyon Valley Electric, Inc. 281 NLRB No. 158

[Sec. 8(b)(1)(A) proviso preserving right of Us to prescribe their own rules regarding membership is inapplicable to Sec. 8(b)(1)(B) which protects freedom of Es to choose their representatives unimpleded by coercive U pressures on representatives to cease working for them]

3300 FORMS OF RESTRAINT OR COERCION AND THREATS THEREOF

3333 ON EMPLOYER

3333-0100 Generally

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[finding of 8(b)(1)(B) violation will be upheld if 2 distinct factual circumstances appear from record evidence: (1) there must be individual who represents E in collective bargaining or grievance adjustment; and (2) U engaged in conduct restraining or coercing E in selection of that individual as its representative for those purposes]

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[both direct U pressure affecting selection of representative or willingness of that individual to act as representative, and indirect pressure on E's representative to coerce manner of conducting negotiations or grievance processing will violate Act]

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[when E is himself acting as his own representative in negotiations and handling grievances, there can be no danger that his selection of representative will be affected by any conduct of U, and U punishment of E, if otherwise appropriate, will be upheld]

3333-1700 Strike or work stoppage

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 046

(threatening to strike and striking to compel deletion of contract clause allowing Es to call foremen by name and thereby coercing Es in selection of representatives for adjustment of grievances, violation)

3333-3300 Picketing

Carpenters, Local 1098 (Milton J. Womack, Inc.) 280 NLRB No. 102

[peaceful picketing of home of E's vice president and chief negotiator not violative where sole object of picketing was to obtain contract and there was no showing that U sought to have E select another chief negotiator or to require E to continue in multi-E relationship]

3333-6700 Refusal to refer employees

Highway and City Freight Drivers, Dockmen and Helpers Local Union No. 600 (Directory Distributing Associates, Inc.) 276 NLRB No. 116

(U fining supervisor for acting in accordance with his duties as supervisor and laying off men in disregard of seniority and causing E not to employ supervisor assertedly because he was arrears in dues payments, violative, since U's reason for fining Ee and causing his unemployment was based on U's attempt to punish Ee for what U thought was a breach of bargaining agreement, thus infringing on E's control over its choice of bargaining representative)

3333-7100 Refusal to accept fund payments

Carpenters' District Council of St. Louis, an affiliate of Carpenters (Dan Ficken Construction Company) 276 NLRB No. 071

(U's refusal to accept benefit payments from Es, contending such acceptance prohibited by Section 302(b)(1) of Act in absence of signed bargaining agreement or letter of understanding, and bargaining agreement had expired, unlawful, since *written agreement* requirement of Act is not limited to bargaining agreement and there was in effect written trust agreement between parties; further, refusal was to pressure Es to sign letters of understanding with U)

3333-8900 Contractual arbitration provision

Carpenters' District Council of St. Louis, an affiliate of Carpenters (Dan Ficken Construction Company) 276 NLRB No. 071

(no violation by U where it filed grievance against E for failure to pay contractual wage rate since E gave dual bargaining authorization to 2 multi-E associations who, in turn, negotiated contracts with U, and U is just seeking to have E comply with the more expensive wage contract)

3333-9300 Fine levied against union member employer

Electrical Workers Local Union #46 (PAC, Inc.) 273 NLRB No. 167

(U discipline (fine) of charging party - member of U and President of E - for refusing to sign bargaining agreement, violative, since action had foreseeable effect of interfering with charging party's duties as E's representative for purposes of collective bargaining or adjustment of grievances)

Sheet Metal Workers, Local Union No. 162 (Enterprise Mechanical, Inc.) JD-(SF)-114-85

(U fining president of E who was also member of U because he refused to sign collective bargaining agreement, not violative, as clauses involved in controversy were not mandatory subjects of bargaining which could be insisted upon by E to impass; furthermore, president was substantial owner (person owning 25% or more of business), and Sec. 8(b)(1)(B) inapplicable in cases where member is substantial owner since owner not susceptible to requisite subversion of loyalties necessary to find violation)

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[when E is himself acting as his own representative in negotiations and handling grievances, there can be no danger that his selection of representative will be affected by any conduct of U, and U punishment of E, if otherwise appropriate, will be upheld]

3367 ON REPRESENTATIVE

3367-0100 Generally

Elevator Constructors Union, Local No. 1 of New York and Vicinity International Union of Elevator Constructors, AFL-CIO (Otis Elevator Company) 281 NLRB No. 123

[supervisor held to have exercised both collective bargaining and grievance handling functions for purposes of 8(b)(1)(B) where he determined what kind of work was maintenance work under bargaining agreement and assigned such work and he was involved in various Ee problems before they became grievances; it is not necessary in the construction of 8(b)(1)(B) that a representative handle contractual grievances to be considered a representative]

Elevator Constructors Union, Local No. 1 of New York and Vicinity International Union of Elevator Constructors, AFL-CIO (Otis Elevator Company) 281 NLRB No. 123

[U's fining of supervisor for performing unit work, violative; U's contention that supervisor was not vested with collective bargaining or grievance handling functions and thus, there could be no coercion of E's representative, rejected, since under Bd's *reservoir doctrine*, any supervisor is a representative of E for purposes of 8(b)(1)(B)]

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[when E is himself acting as his own representative in negotiations and handling grievances, there can be no danger that his selection of representative will be affected by any conduct of U, and U punishment of E, if otherwise appropriate, will be upheld]

3367-0150 Coercion of representative is indirect coercion of employer

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[both direct U pressure affecting selection of representative or willingness of that individual to act as representative, and indirect pressure on E's representative to coerce manner of conducting negotiations or grievance processing will violate Act]

3367-6700 Internal union discipline or threat thereof to enforce adherence to union authority

3367-6701 Generally

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) 281 NLRB No. 065

[expelling supervisor, who is also representative of E, from U membership for crossing a U picket line to perform his regular supervisory duties, including adjustment of grievances, held violative, since it is clear that E did *not* clearly and unmistakably waive its right under Sec. 8(b)(1)(B) of Act to be free from Respondent's restraint or coercion in selecting Assistant Chief Engineer as its representative for either collective bargaining or grievance adjustment purposes notwithstanding that under contract supervisor included in bargaining unit]

3367-6701-5000 Discipline for performing nonsupervisory work during work stoppage

Local Union No. 12, Operating Engineers (Hill Crane Service, Inc.) JD-(SF)-57-85

(in case involving disciplining of supervisor for performing struck work following hearing before U's pre-trial board, ALJ held ALJ, Bd, and reviewing ct may review facts underlying U board's factual findings and enter contrary findings only after preliminary determination no evidence was produced by complaining party before board supporting his claim defendant violated U's bylaws and/or constitution)

3367-6701-5033 Substantiality of work performed

Local Union No. 12, Operating Engineers (Hill Crane Service, Inc.) JD-(SF)-57-85

(fining and suspending supervisor for performing unit work during strike, unlawful, where supervisor spent minimal portion of his worktime (less than 1 percent) performing unit work normally performed by striking Ees and overwhelming proportion of such worktime (over 99 percent) performing his normal pre-strike supervisory/managerial duties)

3367-6717 Disciplinary charges

Local Union 497, Electrical Workers (Canyon Valley Electric, Inc. 281 NLRB No. 158

[U's maintaining charges against supervisor-member and expelling him from U, unlawful, notwithstanding U's contention that no violation should be found since it neither had nor sought bargaining relationship with E whose grievance representative it disciplined; U's further defense that expulsion was purely internal U matter under 8(b)(1)(A) proviso, rejected, since proviso is inapplicable to Sec. 8(b)(1)(B) which protects freedom of Es to choose their representatives unimpeded by coercive U pressures on representatives to cease working for them]

Plumbers, Local 469 (Valley Mechanical, Inc.) 281 NLRB No. 089

[U's charging, trying and fining U member because he worked as supervisor for non-signatory E]

Local 582, Graphic Communications International Union (Alco Gravure, Inc.) 279 NLRB No. 080

[U bringing intra-U charges and imposing suspended fine on supervisor/member who performed bargaining unit work where no unit member volunteered to work overtime to perform work by deadline, and threatening to impose fine and withdraw his U card if he again performed unit work, unlawful; contradictory provisions in contract that refusal of Ees to work overtime not violation of contract and no discipline should be imposed, and that no supervisor should perform unit work, resolved by supervisor performing work, and U filing grievance, during pendency of which supervisor summoned to answer intra-U charges]

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghiassi Drywall Construction, Inc., et al.) 275 NLRB No. 164

(U's bringing charges against supervisor and grievance adjuster because he worked for non-U contractor, violative; as supervisor and grievance adjuster he could not be charged with working during strike unless he was performing more than minimal nonsupervisory work and he was not doing so)

American Federation of Musicians; Miami Federal of Musicians, Local 655 (Royal Palm Dinner Theatre, Ltd.) 275 NLRB No. 097

(U's maintaining charges against E representative, found supervisor herein, and fining him for performing supervisory work for E, violative, notwithstanding U's contention that, since it did not represent Ees of E nor did it desire to do so, it did not violate Act)

Plumbers, Local Union #106 (Pat Briggs Plumbing, Inc.) 274 NLRB No. 153

(charging, expelling, and imposing fines in form of reinitiation fees on supervisors for performing rank-and-file work during strike, consisting of 10 minutes unloading pipe from trucks and 10 minutes shutting off valves, violative where supervisors were found E's representatives for adjustment of grievances and amount of rank-and-file work performed was *de minimis*)

3367-6750 Fines

Elevator Constructors Union, Local No. 1 of New York and Vicinity International Union of Elevator Constructors, AFL-CIO (Otis Elevator Company) 281 NLRB No. 123

[U's fining of supervisor for performing unit work, violative; U's contention that supervisor was not vested with collective bargaining or grievance handling functions and thus, there could be no coercion of E's representative, rejected, since under Bd's *reservoir doctrine*, any supervisor is a representative of E for purposes of 8(b)(1)(B)]

Plumbers, Local 469 (Valley Mechanical, Inc.) 281 NLRB No. 089

[U's charging, trying and fining U member because he worked as supervisor for non-signatory E]

Local 582, Graphic Communications International Union (Alco Gravure, Inc.) 279 NLRB No. 080

[U bringing intra-U charges and imposing suspended fine on supervisor/member who performed bargaining unit work where no unit member volunteered to work overtime to perform work by deadline, and threatening to impose fine and withdraw his U card if he again performed unit work, unlawful; contradictory provisions in contract that refusal of Ees to work overtime not violation of contract and no discipline should be imposed, and that no supervisor should perform unit work, resolved by supervisor performing work, and U filing grievance, during pendency of which supervisor summoned to answer intra-U charges]

Electrical Workers, Local 1547 (Telon electric Corporation) 278 NLRB No. 032

[initiating internal U charges against and fining supervisor, assertedly for violating U's bylaws by going to work for non-U E with whom U had dispute, at time when supervisor was representative of E, violative; U's actions against him were directed solely at his ability to represent E's interests loyally, and not at any dispute U may have had with him as member]

Highway and City Freight Drivers, Dockmen and Helpers Local Union No. 600 (Directory Distributing Associates, Inc.) 276 NLRB No. 116

(U fining supervisor for acting in accordance with his duties as supervisor and laying off men in disregard of seniority and causing E not to employ supervisor assertedly because he was arrears in dues payments, violative, since U's reason for fining Ee and causing his unemployment was based on U's attempt to punish Ee for what U thought was a breach of bargaining agreement, thus infringing on E's control over its choice of bargaining representative)

3367-6750—Cont.

Operating Engineers Local 501 (MGM Grand Hotel) **275 NLRB No. 108**

(imposing ct collectible fine on chief engineer and expelling both assistant chief engineers from U for performing unit work during strike, violative, notwithstanding these classifications are included w/i bargaining unit description under contract their; performance of supervisory functions did not make such functions bargaining unit work, E admitted these individuals were supervisors, they did not work with tools of the trade which was the demarcation line regarding unit work under rule of the shop and no allegation that individuals performed any unit work)

American Federation of Musicians; Miami Federal of Musicians, Local 655 (Royal Palm Dinner Theatre, Ltd.) **275 NLRB No. 097**

(U's maintaining charges against E representative, found supervisor herein, and fining him for performing supervisory work for E, violative, notwithstanding U's contention that, since it did not represent Ees of E nor did it desire to do so, it did not violate Act)

Tulsa Typographical Union No. 403 (Penwell Printing Company) **274 NLRB No. 201**

(vilation by U's threat to fine shift foreman members who were E's representatives for adjustment of grievances, for late dues payment, its attempt to enforce U security clause against them, its failure to explain to them how they might resign as desired where U denied them withdrawal cards, and its insistence that it would recognize only one person, the superintendent, under the contract, as foreman; contract clause permitting supervisors to be U members not waiver of E's 8(b)(1)(B) rights)

Plumbers, Local Union #106 (Pat Briggs Plumbing, Inc.) **274 NLRB No. 153**

(charging, expelling, and imposing fines in form of reinitiation fees on supervisors for performing rank-and-file work during strike, consisting of 10 minutes unloading pipe from trucks and 10 minutes shutting off valves, violative where supervisors were found E's representatives for adjustment of grievances and amount of rank-and-file work performed was *de minimis*)

Electrical Workers Local Union #46 (PAC, Inc.) **273 NLRB No. 167**

(U discipline (fine) of charging party - member of U and President of E - for refusing to sign bargaining agreement, violative, since action had foreseeable effect of interfering with charging party's duties as E's representative for purposes of collective bargaining or adjustment of grievances)

San Diego County District Council of Carpenters, etc. (C. E. Wylie Construction Co.) **JD-(SF)-188-85**

[U's fining of member for working for non-U E and behind U's picket line, unlawful, where fine was imposed during period when member was supervisor before resigning his U membership; U failed to prove defense that supervisor performed *more than minimal amount* of rank-and-file unit work; U acquired knowledge of claimed supervisory status of Ee when E filed instant charge; and then, instead of determining relevant facts, U proceeded ultimately to impose excessive fine thereby indicating less interest in determining member's supervisory status than in lashing out against struck E]

Local Union No. 12, Operating Engineers (Hill Crane Service, Inc.) **JD-(SF)-57-85**

(fining and suspending supervisor for performing unit work during strike, unlawful, where supervisor spent minimal portion of his worktime (less than 1 percent) performing unit work normally performed by striking Ees and overwhelming proportion of such worktime (over 99 percent) performing his normal pre-strike supervisory/managerial duties)

N.L.R.B. v. Operating Engineers Local 501 **806 F.2d 1405 (C.A. 9, Dec. 1986)**

[U imposing fines on chief engineer and expelling both assistant chief engineers from U for allegedly performing unit work during lockout, violative, since discipline of supervisors constituted coercion under Section 8(b)(1)(3), notwithstanding these classifications included in unit, inasmuch as their performance of supervisory functions did not make such functions bargaining unit work, where E admitted individuals were supervisors, they did not work with tools of trade during lockout, which was demarcation line regarding unit work, and absent evidence individuals performed unit work]

N.L.R.B. v. Electrical Workers Local Union #46 **793 F.2d 1026 (C.A. 9, July 1986)**

[when U members are disciplined for working for non-U E, fines imposed on representatives may constitute prohibited coercion because discipline may deprive E of representative's services; however, U does not violate 8(b)(1)(B) by disciplining member for working for non-U E in violation of U bylaw, even though member is also E's bargaining representative, if U neither represents nor has demonstrated intent to represent E's Ees' but it may be different if there is evidence U's actual purpose in enforcing bylaw was to interfere with E's selection]

N.L.R.B. v. Electrical Workers Local Union #46 **793 F.2d 1026 (C.A. 9, July 1986)**

[U violated 8(b)(1)(B) where, unlike case in which ct found no violation because there was no evidence of specific overt acts demonstrating U's intent to represent non-U E's Ees, evidence herein of U's intent to represent such Ees appeared directly in its letter notifying representative of substantial fine which would be reduced if representative would enter labor agreement on behalf of non-U E]

N.L.R.B. v. Electrical Workers, Local 340 **780 F.2d 1489 (C.A. 9, Jan. 1986)**

[fining E's representatives for working for nonsignatory Es, not violation where there was no bargaining relationship and no U intent to represent Es' Ees, as shown by U's disclaimer of interest following expiration of contract and lack of subsequent organizing effort or overt act, such as picketing, handbilling, or passing out cards, other than business agent's statement, at time of dissolution of relationship with multi-E association, that U wished to bargain with new E association]

3367-6751 Barring member from serving as supervisor

Naftali Deutsch and Alexander Coler d/b/a C–D Investment Co. **279 NLRB No. 090**

[denying permission for supervisor to work overtime one day, not violation where denial could not reasonably be said to have affected E's right to select its representative except for adjustment of grievances incidentally and minimally, threstened no *carryover effect* on way he might adjust grievances, and did not otherwise significantly deprive E of his services as to that function; supervisor had worked every workday for past 6 months, and it was not showing that grievances were adjusted on Saturday or grievances possibly arising during his absence could not have been delayed until his return]

3367-6767 Suspension

Local Union No. 12, Operating Engineers (Hill Crane Service, Inc.) **JD-(SF)-57-85**

(fining and suspending supervisor for performing unit work during strike, unlawful, where supervisor spent minimal portion of his worktime (less than 1 percent) performing unit work normally performed by striking Ees and overwhelming proportion of such worktime (over 99 percent) performing his normal pre-strike supervisory/managerial duties)

3367-6775 Revocation or denial of withdrawal card

Highway and City Freight Drivers, Dockmen and Helpers Local Union No. 600 (Directory Distributing Associates, Inc.) **276 NLRB No. 116**

Tulsa Typographical Union No. 403 (Penwell Printing Company) **276NLRB No. 201**

(violation by U's threat to fine shift foremen members who were E's representatives for adjustment of grievances, for late dues payment, its attempt to enforce U security clause against them, its failure to explain to them how they might resign as desired where U denied them withdrawal cards, and its insistence that it would recognize only one person, the superintendent, under the contract as foreman; contract clause permitting supervisors to be U members not waiver of E's 8(b)(1)(B) rights)

3367-6783 Expulsion

Local Union 497, Electrical Workers (Canyon Valley Electric, Inc. **281 NLRB No. 158**

[U's maintaining charges against supervisor-member and expelling him from U, unlawful, notwithstanding U's contention that no violation should be found since it neither had nor sought bargaining relationship with E whose grievance representative it disciplined; U's further defense that expulsion was purely internal U matter under 8(b)(1)(A) proviso, rejected, since proviso is inapplicable to Sec. 8(b)(1)(B) which protects freedom of Es to choose their representatives unimpeded by coercive U pressures on representatives to cease working for them]

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) **281 NLRB No. 065**

[expelling supervisor, who is also representative of E, from U membership for crossing a U picket line to perform his regular supervisory duties, including adjustment of grievances, held violative, since it is clear that E did *not* clearly and unmistakably waive its right under Sec. 8(b)(1)(B) of Act to be free from Respondent's restraint or coercion in selecting Assistant Chief Engineer as its representative for either collective bargaining or grievance adjustment purposes notwithstanding that under contract supervisor included in bargaining unit]

Local 582, Graphic Communications International Union (Alco Gravure, Inc.) **279 NLRB No. 080**

[U steward informing member of U who was supervisor, whose E had filed ULP charge against U for bringing intra-U charge against supervisor, fining him, and threstening him with future discipline and loss of U card if he should again perform unit work, that *supervisor would be only loser if E did not drop case, and threatening supervisor with loss of U card due to filing of ULP, charge, unlawful*]

Operating Engineers Local 501 (MGM Grand Hotel) **275 NLRB No. 108**

(imposing ct collectible fine on chief engineer and expelling both assistant chief engineers from U for performing unit work during strike, violative, notwithstanding these classifications are included w/i bargaining unit de-

3367-6783—Cont.

scription under contract; their performance of supervisory functions did not make such functions bargaining unit work, E admitted these individuals were supervisors, they did not work with tools of the trade which was the demarcation line regarding unit work under rule of the shop and no allegation that individuals performed any unit work)

Plumbers, Local Union #106 (Pat Briggs Plumbing, Inc.) 274 NLRB No. 153

(charging, expelling, and imposing fines in form of reinitiation fees on supervisors for performing rank-and-file work during strike, consisting of 10 minutes unloading pipe from trucks and 10 minutes shutting off valves, violative where supervisors were found E's representatives for adjustment of grievances and amount of rank-and-file work performed was *de minimis*)

N.L.R.B. v. Operating Engineers Local 501 806 F.2d 1405 (C.A. 9, Dec. 1986)

[U imposing fines on chief engineer and expelling both assistant chief engineers from U for allegedly performing unit work during lockout, violative, since discipline of supervisors constituted coercion under Section 8(b)(1)(3), notwithstanding these classifications included in unit, inasmuch as their performance of supervisory functions did not make such functions bargaining unit work, where E admitted individuals were supervisors, they did not work with tools of trade during lockout, which was demarcation line regarding unit work, and absent evidence individuals performed unit work]

3367-6799 Other disciplinary action

Naftali Deutsch and Alexander Coler d/b/a C–D Investment Co. 279 NLRB No. 090

[denying permission for supervisor to work overtime one day, not violation where denial could not reasonably be said to have affected E's right to select its representative for adjustment of grievances except incidentally and minimally, threatened no *carryover effect* on way he might adjust grievances, and did not otherwise significantly deprive E of his services as to that function; supervisor had worked every workday for past 6 months, and it was not shown that grievances were adjusted on Saturday or grievances possibly arising during his absence could not have been delayed until his return]

6700 REPRESENTATIVES AFFECTED

6701 GENERALLY

San Diego County District Council of Carpenters, etc. (C. E. Wylie Construction Co.) JD-(SF)-188-85

[supervisor held representative w/i meaning of 8(b)(1)(B) under *reservoir doctrine* holding that statutory supervisors are deemed to have authority to act for E in collective bargaining or in adjustment of grievances even absent specific evidence that they have such power]

6725 FOR COLLECTIVE BARGAINING

6725-3300 Employer association

Carpenters' District Council of St. Louis, an affiliate of Carpenters (Dan Ficken Construction Company) 276 NLRB No. 071

(refusal of U to meet with multi-E association and negotiate new contract because one member of negotiating team was signatory to another multi-E contract that U had recently negotiated, violative, since E has right to be represented by two bargaining representatives, if it so elects)

Teamsters Local 705 (Kankakee-Iroquois County Employers' Association) 274 NLRB No. 177

(U's demand that local country E association agree to same contract terms as regional E association found not to constitute unlawful insistence that local association make latter its representative for collective bargaining)

6725-5000 Employer's bargaining agent

Elevator Constructors Union, Local No. 1 of New York and Vicinity International Union of Elevator Constructors, AFL-CIO (Otis Elevator Company) 281 NLRB No. 123

[supervisor held to have exercised both collective bargaining and grievance handling functions for purposes of 8(b)(1)(B) where he determined what kind of work was maintenance work under bargaining agreement and assigned such work and he was involved in various Ee problems before they became grievances; it is not necessary in the construction of 8(b)(1)(B) that a representative handle contractual grievances to be considered a representative]

Carpenters, Local 1597 (W. G. Clark Construction Co.) JD-(SF)-155-85

(Bd's reservoir doctrine that every supervisor is a potential *reservoir* from which his or her E may in need draw collective bargaining and grievance-handling services, not decided by S.Ct as to whether doctrine is compatible with Contressional purpose underlying Section 8(b)(1)(B))

6750 FOR ADJUSTMENT OF GRIEVANCES

6750-0100 Generally

6750-0133 Grievance adjustment may include minor complaints handled informally

N.L.R.B. v. Electrical Workers, Local 340 780 F.2d 1489 (C.A. 9, Jan. 1986)

[supervisor found E's grievance representative where he occasionally handled Ees' personal problems on job]

6750-0167 Formal authority over grievances not required

Elevator Constructors Union, Local No. 1 of New York and Vicinity International Union of Elevator Constructors, AFL-CIO (Otis Elevator Company) 281 NLRB No. 123

[supervisor held to have exercised both collective bargaining and grievance handling functions for purposes of 8(b)(1)(B) where he determined what kind of work was maintenance work under bargaining agreement and assigned such work and he was involved in various Ee problems before they became grievances; it is not necessary in the construction of 8(b)(1)(B) that a representative handle contractual grievances to be considered a representative]

6750-3300 Supervisors

Elevator Constructors Union, Local No. 1 of New York and Vicinity International Union of Elevator Constructors, AFL-CIO (Otis Elevator Company) 281 NLRB No. 123

[supervisor held to have exercised both collective bargaining and grievance handling functions for purposes of 8(b)(1)(B) where he determined what kind of work was maintenance work under bargaining agreement and assigned such work and he was involved in various Ee problems before they became grievances; it is not necessary in the construction of 8(b)(1)(B) that a representative handle contractual grievances to be considered a representative]

Local Union 497, Electrical Workers (Canyon Valley Electric, Inc. 281 NLRB No. 158

[U's maintaining charges against supervisor-member and expelling him from U, unlawful, notwithstanding U's contention that no violation should be found since it neither had nor sought bargaining relationship with E whose grievance representative it disciplined; U's further defense that expulsion was purely internal U matter under 8(b)(1)(A) proviso, rejected, since proviso is inapplicable to Sec. 8(b)(1)(B) which protects freedom of Es to choose their representatives unimpeded by coercive U pressures on representatives to cease working for them]

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) 281 NLRB No. 065

[although assistant chief engineer does not actually adjust grievances w/i meaning of 8(b)(1)(B) of Act, he is an E representative w/i intent of Section 8(b)(1)(B) under Bd's *reservoir doctrine* that supervisor status alone is sufficient to involve Section 8(b)(1)(B)'s protection]

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) 281 NLRB No. 065

[expelling supervisor, who is also representative of E, from U membership for crossing a U picket line to perform his regular supervisory duties, including adjustment of grievances, held violative, since it is clear that E did *not* clearly and unmistakably waive its right under Sec. 8(b)(1)(B) of Act to be free from Respondent's restraint or coercion in selecting Assistant Chief Engineer as its representative for either collective bargaining or grievance adjustment purposes notwithstanding that under contract supervisor included in bargaining unit]

Naftali Deutsch and Alexander Coler d/b/a C–D Investment Co. 279 NLRB No. 090

[denying permission for supervisor to work overtime one day, not violation where denial could not reasonably be said to have affected E's right to select its representative except for adjustment of grievances incidentally and minimally, threatened no *carryover effect* on way he might adjust grievances, and did not otherwise significantly deprive E of his services as to that function; supervisor had worked every workday for past 6 months, and it was not showing that grievances were adjusted on Saturday or grievances possibly arising during his absence could not have been delayed until his return]

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(threatening to strike and striking to compel deletion of contract clause allowing Es to call foremen by name and thereby coercing Es in selection of representatives for adjustment of grievances, violation)

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(insisting, as condition of agreement, on deletion of clause in prior contract granting Es the right to call foremen by name, violation since they were supervisors for adjustment of grievances)

6750-3300—Cont.

American Federation of Musicians; Miami Federal of Musicians, Local 655 (Royal Palm Dinner Theatre, Ltd.) 275 NLRB No. 097

(U's maintaining charges against E representative, found supervisor herein, and fining him for performing supervisory work for E, violative, notwithstanding U's contention that, since it did not represent Ees of E nor did it desire to do so, it did not violate Act)

Plumbers, Local Union #106 (Pat Briggs Plumbing, Inc.) 274 NLRB No. 153

(charging, expelling, and imposing fines in form of reinitiation fees on supervisors for performing rank-and-file work during strike, consisting of 10 minutes unloading pipe from trucks and 10 minutes shutting off valves, violative where supervisors were found E's representatives for adjustment of grievances and amount of rank-and-file work performed was *de minimis*)

Carpenters, Local 1597 (W. G. Clark Construction Co.) JD-(SF)-155-85

(Bd, in its *reservoir* doctrine in June, 1984, reaffirmed its position that *supervisory status alone is sufficient to invoke Section 8(b)(1)(B) protections* see *Local 11, Electrical Workers (Bergelectric Corp.)*, 271 NLRB No. 2 (June 29, 1984))

Carpenters, Local 1597 (W. G. Clark Construction Co.) JD-(SF)-155-85

(Bd's reservoir doctrine that every supervisor is a potential *reservoir* from which his or her E may in need draw collective bargaining and grievance-handling services, not decided by S.Ct as to whether doctrine is compatible with Contressional purpose underlying Section 8(b)(1)(B))

Local Union No. 12, Operating Engineers (Hill Crane Service, Inc.) JD-(SF)-57-85

(supervisor held bargaining and grievance representative of E w/i meaning of 8(b)(1)(B) in accordance with *reservoir doctrine* which holds that supervisor is such representative whether or not he has acted or is acting as E's representative on theory that supervisors constitute reservoir from which E draws his representatives; moreover, supervisor herein handled and resolved Ee complaints, including complaints over performance of unit work by non-unit Ees, which Bd has held constitutes adjustment of grievances w/i meaning of Act)

N.L..R.B. v. Operating Engineers Local 501 806 F.2d 1405 (C.A. 9, Dec. 1986)

[U imposing fines on chief engineer and expelling both assistant chief engineers from U for allegedly performing unit work during lockout, violative, since discipline of supervisors constituted coercion under Section 8(b)(1)(3), notwithstanding these classifications included in unit, inasmuch as their performance of supervisory functions did not make such functions bargaining unit work, where E admitted individuals were supervisors, they did not work with tools of trade during lockout, which was demarcation line regarding unit work, and absent evidence individuals performed unit work]

6750-3333 Of nonbargaining unit employees

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Cianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(U's bringing charges against supervisor and grievance adjuster because he worked for non-U contractor, violative; as supervisor and grievance adjuster he could not be charged with working during strike unless he was performing more than minimal nonsupervisory work and he was not doing so)

6750-6700 Low level supervisors

Tulsa Typographical Union No. 403 (Pennwell Printing Company) 274 NLRB No. 201

(shift foreman found E's representatives for adjustment of grievances where they not only were Sec 2(11) supervisors but also were shown to handle Ee grievances)

6775 POTENTIAL REPRESENTATIVES

6775-0100 Generally

N.L.R.B. v. Electrical Workers, Local 340 780 F.2d 1089 (C.A. 9, Jan. 1986)

[supervisor found 8(b)(1)(B) representative under Bd's *reservoir doctrine*, which states that supervisors are part of E's *logical reservoir* from which E is likely to, but does not automatically, choose its representatives, and focuses on whether U sanctions might adversely affect representative's performance of his tasks as E's representative and thus restrain or coerce E]

6775-0150 Future representative resources of employer entitled to protection

Carpenters, Local 1597 (W. G. Clark Construction Co.) JD-(SF)-155-85

(Bd's reservoir doctrine that every supervisor is a potential *reservoir* from which his or her E may in need draw collective bargaining and grievance-handling services, not decided by S.Ct as to whether doctrine is compatible with Contressional purpose underlying Section 8(b)(1)(B))

7500 REPRESENTATIVE'S ACTION FOR WHICH DISCIPLINED

7533 PERFORMANCE OF RANK-AND-FILE WORK

Local 582, Graphic Communications International Union (Alco Gravure, Inc.) 279 NLRB No. 080

[U bringing intra-U charges and imposing suspended fine on supervisor/member who performed bargaining unit work where no unit member volunteered to work overtime to perform work by deadline, and threatening to impose fine and withdraw his U card if he again performed unit work, unlawful; contradictory provisions in contract that refusal of Ees to work overtime not violation of contract and no discipline should be imposed, and that no supervisor should perform unit work, resolved by supervisor performing work, and U filing grievance, during pendency of which supervisor summoned to answer intra-U charges]

Plumbers, Local Union #106 (Pat Briggs Plumbing, Inc.) 274 NLRB No. 153

(charging, expelling, and imposing fines in form of reinitiation fees on supervisors for performing rank-and-file work during strike, consisting of 10 minutes unloading pipe from trucks and 10 minutes shutting off valves, violative where supervisors were found E's representatives for adjustment of grievances and amount of rank-and-file work performed was *de minimis*)

San Diego County District Council of Carpenters, etc. (C. E. Wylie Construction Co.) JD-(SF)-188-85

[U's fining of member for working for non-U E and behind U's picket line, unlawful, where fine was imposed during period when member was supervisor before resigning his U membership; U failed to prove defense that supervisor performed *more than minimal amount* of rank-and-file unit work; U acquired knowledge of claimed supervisory status of Ee when E filed instant charge; and then, instead of determining relevant facts, U proceeded ultimately to impose excessive fine thereby indicating less interest in determining member's supervisory status than in lashing out against struck E]

Carpenters, Local 1597 (W. G. Clark Construction Co.) JD-(SF)-155-85

(U's imposing disciplinary fine and suspension of membership on Ee for performing supervisory work at job site on and after U established picket line at E's job site held unlawful, since when Ee invoked his supervisory status as defense to his disciplinary trial by U trial committee no proof had been offered to committee that Ee had performed any rank-and-file work and Ee could reasonably interpret his U's discipline as being directed at his performance of a purely supervisory function)

Carpenters, Local 1597 (W. G. Clark Construction Co.) JD-(SF)-155-85

(Ee's limited use of tools for inspection (and minor correction) purposes did not amount to performance of bargaining unit work; or, if so, such unit work may be properly regarded as *minimal* in any case)

Local Union No. 12, Operating Engineers (Hill Crane Service, Inc.) JD-(SF)-57-85

(fining and suspending supervisor for performing unit work during strike, unlawful, where supervisor spent minimal portion of his worktime (less than 1 percent) performing unit work normally performed by striking Ees and overwhelming proportion of such worktime (over 99 percent) performing his normal pre-strike supervisory/managerial duties)

N.L..R.B. v. Operating Engineers Local 501 806 F.2d 1405 (C.A. 9, Dec. 1986)

[U imposing fines on chief engineer and expelling both assistant chief engineers from U for allegedly performing unit work during lockout, violative, since discipline of supervisors constituted coercion under Section 8(b)(1)(3), notwithstanding these classifications included in unit, inasmuch as their performance of supervisory functions did not make such functions bargaining unit work, where E admitted individuals were supervisors, they did not work with tools of trade during lockout, which was demarcation line regarding unit work, and absent evidence individuals performed unit work]

7567 PERFORMANCE OF SUPERVISORY DUTIES

Operating Engineers Local 501 (MGM Grand Hotel) 275 NLRB No. 108

(imposing of collectible fine on chief engineer and expelling both assistant chief engineers from U for performing unit work during strike, violative, notwithstanding these classifications are included w/i bargaining unit description under contract; their performance of supervisory functions did not make such functions bargaining unit work, E admitted these individuals were supervisors, they did not work with tools of the trade which was the demarcation line regarding unit work under rule of the shop and no allegation that individuals performed any unit work)

7567—Cont.

N.L.R.B. v. Operating Engineers Local 501 806 F.2d 1405 (C.A. 9, Dec. 1986)

[U imposing fines on chief engineer and expelling both assistant chief engineers from U for allegedly performing unit work during lockout, violative, since discipline of supervisors constituted coercion under Section 8(b)(1)(3), notwithstanding these classifications included in unit, inasmuch as their performance of supervisory functions did not make such functions bargaining unit work, where E admitted individuals were supervisors, they did not work with tools of trade during lockout, which was demarcation line regarding unit work, and absent evidence individuals performed unit work]

7583 WORKING FOR NONUNION EMPLOYER

Orange Belt District Council of Painters and Allied Trades No. 48 et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(U's bringing charges against supervisor and grievance adjuster because he worked for non-U contractor, violative; as supervisor and grievance adjuster he could not be charged with working during strike unless he was performing more than minimal nonsupervisory work and he was not doing so)

Electrical Workers Local Union #46 (PAC, Inc.) 273 NLRB No. 167

(U discipline (fine) of charging party - member of U and President of E - for refusing to sign bargaining agreement, violative, since action had foreseeable effect of interfering with charging party's duties as E's representative for purposes of collective bargaining or adjustment of grievances)

San Diego County District Council of Carpenters, etc. (C. E. Wylie Construction Co.) JD-(SF)-188-85

[U's fining of member for working for non-U E and behind U's picket line, unlawful, where fine was imposed during period when member was supervisor before resigning his U membership; U failed to prove defense that supervisor performed *more than minimal amount* of rank-and-file unit work; U acquired knowledge of claimed supervisory status of Ee when E filed instant charge; and then, instead of determining relevant facts, U proceeded ultimately to impose excessive fine thereby indicating less interest in determining member's supervisory status than in lashing out against struck E]

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[when U members are disciplined for working for non-U E, fines imposed on representatives may constitute prohibited coercion because discipline may deprive E of representative's services; however, U does not violate 8(b)(1)(B) by disciplining member for working for non-U E in violation of U bylaw, even though member is also E's bargaining representative, if U neither represents nor has demonstrated intent to represent E's Ees' but it may be different if there is evidence U's actual purpose in enforcing bylaw was to interfere with E's selection]

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[U violated 8(b)(1)(B) where, unlike case in which ct found no violation because there was no evidence of specific overt acts demonstrating U's intent to represent non-U E's Ees, evidence herein of U's intent to represent such Ees appeared directly in its letter notifying representative of substantial fine which would be reduced if representative would enter labor agreement on behalf of non-U E]

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[ALJ properly refused to hear evidence on U's defense that, if allowed, U would have shown that individual, disciplined assertedly for operating non-U E as alter ego of U-E, was not entitled to 8(b)(1)(B) protection from U discipline, where individual never had any ownership interest in non-U E nor could he be classified under alter ego theory or otherwise; and non-U E was itself E on whose behalf individual possessed bargaining and grievance adjustment authority]

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[where U failed to make offer of proof regarding alter ego evidence excluded at hearing, on which it based its defense in 8(b)(1)(B) proceeding for disciplining individual assertedly for operating non-U E as alter ego of U-E, and now attempted to excuse its failure to do so assertedly because of ALJ's broad ruling, ct agreed with Bd that U, having failed to make offer of proof concerning individual's financial interest in non-U E, cannot now claim prejudicial error if it is asserting evidence of such interest]

N.L.R.B. v. Electrical Workers, Local 340 780 F.2d 1489 (C.A. 9, Jan. 1986)

[fining E's representatives for working for nonsignatory Es, not violation where there was no bargaining relationship and no U intent to represent Es' Ees, as shown by U's disclaimer of interest following expiration of contract and lack of subsequent organizing effort or overt act, such as picketing, handbilling, or passing out cards, other than business agent's statement, at time of dissolution of relationship with multi-E association, that U wished to bargain with new E association]

7587 DISREGARD OF SENIORITY RULES

Highway and City Freight Drivers, Dockmen and Helpers Local Union No. 600 (Directory Distributing Associates, Inc.) 276 NLRB No. 116

(U fining supervisor for acting in accordance with his duties as supervisor and laying off men in disregard of seniority and causing E not to employ supervisor assertedly because he was arrears in dues payments, violative, since U's reason for fining Ee and causing his unemployment was based on U's attempt to punish Ee for what U thought was a breach of bargaining agreement, thus infringing on E's control over its choice of bargaining representative)

548 UNION CAUSATION OF EMPLOYER DISCRIMINATION

0100 GENERALLY

0125 NATURE AND SCOPE OF PROSCRIPTION

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[contention that Ees' right to be free of U officials' superseniority's burden on their seniority rights contained in superseniority clause is economic right subject to waiver, rejected, since it is not related to right to engage in concerted activity for economic advantage, but right to be free of discrimination that encourages U membership]

0125-0100 Generally

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[determination of what circumstances justify discrimination inherent in any award of superseniority, w/i Bd's discretion]

0125-2000 Applicants for employment protected

General Teamsters, Professional and Public Employees Union, Local 986, Teamsters (MCA, Inc. d/b/a Universal Studios) JD-(SF)-3-86

[failure to give applicants notice of reopening of hiring hall and thus causing them to lose employment opportunity, not violative where such failure did not go beyond negligence to such degree that it could be considered *arbitrary, irrelevant, invidious or unfair*]

0125-6000 Actions must tend to encourage or discourage union membership

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132

[U's establishing seniority list which placed bargaining unit Ees at E's more recently organized plant behind previously unionized Ees at another of E's facilities, violative, since U could not refuse to consider or negotiate a dovetailing system solely because Ees at E's non-U plant joined U more recently than did Ees at E's unionized plant. By favoring Ees at its unionized plant, U in effect (if not intent) penalized Ees of non-U plant for refraining from engaging in U activity]

Mead Packaging 273 NLRB No. 181

(8(a)(3) and 8(b)(2) of the Act prohibit Es and Us, respectively, from discriminating against Ees *in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization...*, and absent appropriate justification, E or U policies are unlawful if they treat Ees disparately according to their level of U activity; and in addition, bargaining agreements which discourage or encourage U activities through a disparate grant of benefits are unlawful unless providing the benefit serves legitimate statutory purposes and indirectly benefits all unit Ees)

N.L.R.B. v. Electrical Workers, Local 952 758 F.2d 486 (C.A. 9, Apr. 1985)

0125-7000 Specific proof of intent not required where conduct inherently destructive of employee rights

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[contention that preferential seniority for non-steward U officials is not so inherently destructive of Ee rights that it should be held unlawful in spite of legitimate justification, rejected, since Bd's finding that only contract administration requiring U officials to be on the job justifies superseniority is not irrational or contrary to the Act, and cases cited in support of contention do not apply where they involve specific legislation, rather than superseniority clauses concerning which Congress did not legislate, and Selective Service Act's, rather than NLRA Sec. 7's, protection of Ee rights]

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

N.L.R.B. (Steven R. Lovell, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)

(by setting additional requirements than those provided for in contract for travellers to qualify for preferred group in referral from hiring hall w/o informing members of these requirements, U discriminated against Ees in regard to hire or tenure of employment to encourage or discourage membership in labor organization; no discriminatory intent need be proven by specific evidence of motive or purpose but may be inferred from natural and foreseeable consequences of local's conduct)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(no specific intent to discriminate need be shown to support finding of ULP in improper operation of hiring hall)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[while real motive or true purpose underlying challenged conduct is controlling, specific intent to encourage or discourage U membership is not always necessary to sustain violations of Section 8 of the Act; discrimination may be inferred and some conduct may by its very nature contain implications of required intent; natural foreseeable consequences of certain action may warrant inference; however, where intent is inferred from conduct, it may be difficult to identify true motive because of possible complex of motives]

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[whether particular E conduct caused by U actually encourages U membership need not be proved by direct evidence but may be presumed as *an inherent effect of certain discrimination*]

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[although *true purpose* or *real motive* in hiring or firing is test of statutorily required intent to encourage U membership, it need not be shown by specific proof, since some conduct may by its very nature contain implications of required intent; where E conduct inherently encourages or discourages U membership, common law rule that man is held to intend foreseeable consequences of his conduct, is applicable]

0125-7500 Not every form of interference prohibited though tending to encourage membership

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(not every action that encourages or discourages U membership is unlawful; if allegedly discriminatory action is not *inherently destructive* of Ee rights, E or U can prevail if it shows *legitimate and substantial business justifications* for the action)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[inquiry into motivation for challenged conduct is critical because Section 8 does not outlaw all encouragement or discouragement of membership in Us; only such as is accomplished by discrimination is prohibited; real purpose behind a U's action is crucial because all U-procured employment action demonstrates U's power and encourages membership and all U action is motivated by desire, proximate or ultimate, to encourage membership]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[U's continued efforts to have E replace *permit* men, who were traditionally temporary Ees under U's hiring agreement, with journeymen through U's hiring hall, not violative or inherently destructive of Ee rights, where U and E's referral practice had been in existence for years, U was not motivated by *permit* men's non-U status but rather by need to put experienced journeymen to work and such practice, although not contractually prescribed, is not *per se* illegal or illegitimate]

0125-7500—Cont.

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[in deciding that in some cases *inference* or *presumption* of alleged encouragement or intent to encourage will not be applied (as in U-procured firing to enforce provision of valid hiring hall agreement) what occurs is application of principle that Act was not intended to interfere significantly with those activities of E and U, whether encouraging or intending to encourage U membership, which are sufficiently important means by which Es achieve *nondiscriminatory business purpose* or by which Us *attempt to benefit all represented Ees*]

0125-8000 **Test is whether employer would violate Section 8(a)(3) by action caused by union**

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

0162 UNION ACQUIESCENCE IN EMPLOYER DISCRIMINATION

Donald Dunn d/b/a D.C. Construction Company 276 NLRB No. 097

(U held not to have unlawfully caused E's denial of reemployment to previously laid off Ee where, apart from single ambiguous confrontation between 2 U officials, which may or not be viewed as suggestive of U causation, there was no corroborative link tending to implicate U in any unlawful hiring scheme by demanding that E take alleged unlawful action)

2000 FORMS OF PRESSURE

2017 INDIRECT AS WELL AS DIRECT PRESSURE PROHIBITED

Graphic Arts International Union, Local 280 (Belzer-Shapes Litho Plate Company) 274 NLRB No. 119

(no violation where U did not cause or attempt to cause E to discharge Ee, as alleged; U official was not hostile to Ee because of Ee's apparent suspension by sister local or his failure as yet to join U pursuant to U security clause, as alleged, but, upon being told by E's officer that E was dissatisfied with Ee's conduct, simply asked what E intended to do, and, when E's officer said that E intended to discharge Ee, U official commented that U therefore would not pursue Ee's membership application)

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110

(U's requesting E to hire its members to replace travelers and draw up a layoff list when it knew E had no present plans to layoff and asking travelers to quit their job so U's unemployed members could work violative; U, in asking E to hire its members and layoff travelers, was not seeking job availability information but instead was attempting to pressure E into discriminatorily replacing travelers with its members and further, U's actions of coercing travelers to quit was form of *indirect* pressure on E to discriminate against travelers and accede to U request)

2035 UNION LIABLE FOR FORESEEABLE CONSEQUENCES OF CONDUCT

Graphic Arts International Union, Local 280 (Belzer-Shapes Litho Plate Company) 274 NLRB No. 119

(no violation where U did not cause or attempt to cause E to discharge Ee, as alleged; U official was not hostile to Ee because of Ee's apparent suspension by sister local or his failure as yet to join U pursuant to U security clause, as alleged, but, upon being told by E's officer that E was dissatisfied with Ee's conduct, simply asked what E intended to do, and, when E's officer said that E intended to discharge Ee, U official commented that U therefore would not pursue Ee's membership application)

N.L.R.B. (Steven R. Lowell, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)

(by setting additional requirements than those provided for in contract for travellers to qualify for preferred group in referral from hiring hall w/o informing members of these requirements, U discriminated against Ees in regard to hire or tenure of employment to encourage or discourage membership in labor organization; no discriminatory intent need be proven by specific evidence of motive or purpose but may be inferred from natural and foreseeable consequences of local's conduct)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[while real motive or true purpose underlying challenged conduct is controlling, specific intent to encourage or discourage U membership is not always necessary to sustain violations of Section 8 of the Act; discrimination may be inferred and some conduct may by its very nature contain implications of required intent; natural foreseeable consequences of certain action may warrant inference; however, where intent is inferred from conduct, it may be difficult to identify true motive because of possible complex of motives]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[Bd's inference of illegal motive, from U efforts to replace *permit* men who were temporary Ees, with journeymen from U's hiring hall, rejected, since encouragement of U membership is not consequence that *inescapably flows* from U's action such that U is presumed to have intended it, where long-standing practice of E was to seek journeymen from U and in traditional operation of U's referral system, *permit* men were considered temporary Ees with no expectation of permanent employment]

2067 REFUSAL TO REFER EMPLOYEES

Electrical Workers Local 211 (Atlantic Division of The Southern N.J. Chapter, Inc., et al.) 280 NLRB No. 010

[violation, where U made referrals which did not comport with its established hiring hall procedures while failing to demonstrate that its interference with employment was pursuant to valid U-security clause or was necessary to effective performance of its representative function]

Millwright and Machinery Erectors, Local Union 720, Carpenters (Stone & Webster Engineering Corp., etc.) 274 NLRB No. 219

(U business agent's causing contractor to rescind proper name request for referral of Ee, violative notwithstanding business agent was acting in honest effort to spread scarce work more evenly among unemployed Ees and at no time in discussion did U business agent mention Ee's name, since U business agent had no authority to alter name request provisions of labor agreement; that he intended no harm to any specific Ee, but rather sought to aid membership-at-large was no legal defense)

Carpenters, Local 745 (Dillingham Construction Pacific, Ltd. d/b/a Hawaiian Dredging & Construction Company) JD-(SF)-102-86,119[refusal to refer and causing discharge of Ee because he was member of 2 Us, violative]

N.L.R.B. (Steven R. Lowell, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)

(by setting additional requirements than those provided for in contract for travellers to qualify for preferred group in referral from hiring hall w/o informing members of these requirements, U discriminated against Ees in regard to hire or tenure of employment to encourage or discourage membership in labor organization; no discriminatory intent need be proven by specific evidence of motive or purpose but may be inferred from natural and foreseeable consequences of local's conduct)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(no specific intent to discriminate need be shown to support finding of ULP in improper operation of hiring hall)

2075 COURT ACTION OR ARBITRATION

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) 278 NLRB No. 168

[Bd assuming, w/o deciding, that where grievance filed *Bill Johnson*, 461 U.S. 731, may apply, held that under holding of that case it would be inapplicable to cases where gravamen of grievance has as objective that which is illegal under federal law; therefore, Bd refused to apply *Bill Johnson* where U's objective in filing grievance was in furtherance of proscribed objective of forcing E (neutral) to c/d/b with new subcontractor (primary) where U never represented Ees of old subcontractor (no unit work preservation) violative of 8(b)(4)(ii)(B)]

1115, Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board 275 NLRB No. 045

(U's filing ptn in S.Ct of N.Y. to confirm that portion of arbitrator's award determining that U gained majority support of Ees in several previously unrepresented departments of E, violative, since award was based on *tainted authorization cards*, obtained by supervisors' assistance removing them as basis for attaining majority support; no deferral as decision of arbitrator palpably wrong as it seeks to achieve prohibited objective and lacks reasonable basis in fact and law)

Bakery Workers, Local 42 (Gold Kist, Inc.) JD-(ATL)-42-85

(by requesting E to continue dues checkoff after Ees had resigned and by taking steps to grieve refusal of E to continue disputed checkoffs, U violated Act, notwithstanding Ees executed checkoff authorization since authorization directed deduction of dues *in accordance with regular membership dues* making payment of dues a quid pro quo for U membership and thereby revoking dues checkoff assignment as matter of law at time of each effective resignation from U membership. Therefore, by taking such action, U directly impairs Ee's Sec. 7 right to resign when it seeks to delay member's resignation)

2075—Cont.

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[U's contention that its filing of a grievance cannot be basis for ULP charge, rejected, since Bd is fully empowered to enjoin pursuit of a grievance where its object is enforcement of illegal contractual provision such as that he rein granting U officials superseniority solely because of their status]

2091 PICKETING

Laborers, Local Union No. 644 (Kellerman Brothers Construction Compan) 278 NLRB No. 162

[U's refusal to refer or consider non-member for referral while members of U were unemployed, violative; further, U's picketing E for employing non-member, causing E to discharge non-member by threatening to stop construction and threatening non-member with bodily harm if he continued working for E, violative]

Stage Employes IATSE, Local 46 (Joseph Cates Company) JD-(ATL)-55-86

[causing E to hire U members instead of nonU applicants who had been given commitments to be hired by threatening E with informational picketing, violation]

4000 MEANS OF ATTEMPTING TO CAUSE DISCRIMINATION

4001 GENERALLY

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[U steward informing Ee in presence of E's superintendent, who was also Ee's supervisor, thatEe could not work without paying *high time* insurance premium, followed by immediate granting Ee time off to go pay premiums, constituted unlawful request to discriminate since motive was Ee's efforts to achieve clearance into local U, in view of previous threats to Ee; notwithstanding no direct demand on E to discriminate where communication could be construed as inducement for action, inasmuch as remarks made in presence of superintendent implied request for cooperation]

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[Bd properly holds that U conduct which causes firing or prevents hiring demonstrates U's power so dramatically that its illegality is presumed; however, U can rebut such presumption by showing that its action *was necessary to effective performance of its function of representing its constituency*; for this purpose, merely demonstrating that it would be convenient for U, in enforcing its own internal rules of conduct, to have available an employment-related sanction, is insufficient]

4001-5000 Where illegal agreement or practice exists

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132

[U's estsblishing seniority list which placed bargaining unit Ees at E's more recently organized plant behind previously unionized Ees at another of E's facilities, violative, since U could not refuse to consider or negotiate a dovetailing system solely because Ees at E's non-U plant joined U more recently than did Ees at E's unionized plant. By favoring Ees at its unionized plant, U in effect (if not intent) penalized Ees of non-U plant for refraining from engaging in U activity]

4020 EXECUTION OR MAINTENANCE OF AGREEMENTS CONTAINING ILLEGAL PROVISIONS

4020-3000 Revocation of checkoff

The Hearst Corporation, San Antonio Light Division 281 NLRB No. 113

[U's demanding that E continue deducting dues from Ees who lawfully resigned from U, violative, notwithstanding Ees had failed to request revocation of dues deduction, since Ees' dues deduction authorizations made payment of dues a quid pro quo for U membership where contract established E would deduct all *membership dues* levied by U and authorizations assigned all *membership dues* to U, thus, it was clear dues were quid pro quo for U membership and was not intended to meet any other U financial obligations such as *financial core* payments]

Bakery Workers, Local 42 (Gold Kist, Inc.) JD-(ATL)-43-85

(by requesting E to continue dues checkoff after Ees had resigned and by taking steps to grieve refusal of E to continue disputed checkoffs, U violated Act, notwithstanding Ees executed checkoff authorization since authorization directed deduction of dues *in accordance with regular membership dues* making payment of dues a quid pro quo for U membership and thereby revoking dues checkoff assignment as matter of law at time of each effective resignation from U membership. Therefore, by taking such action, U directly impairs Ee's Sec. 7 right to resign when it seeks to delay member's resignation)

4020-8000 Seniority provisions

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(U's invoking contractual grievance procedure on or after U vice president filed grievance seeking reinstatement to job from which she had been bumped (contract granted U vice president *superseniority* for job bumping purposes) violative, since on-the-job presence of U vice president not necessary for performance of grievance processing duties and if grievant successful, result would displace another Ee)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(while grant of contractual superseniority to chief steward as to layoff and recall, lawful, lawfulness did not extend to job bumping protection since here, unlike *Scovill*, 266 NLRB 952, E had only one shift, and chief steward had plantwide responsibilities and so did not need to be in any particular job in order to perform plantwide grievance duties effectively)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(contention that superseniority grant of job bumping protection is lawful because, w/o such protection, chief steward may quit her job or stewardship, rejected, because it remains U's task to build and maintain its own organization, and where immediate problem is simply matter of encouraging Ees to serve as U representative U can handle situation by simply paying Ees or giving them other nonjob benefits)

Hotel and Restaurant Employes, Local 54 (Boardwalk Regency Corp-d/b/a Caesars Atlantic City) JD-104-86

[attempting to enforce shop stewards' contractual superseniority as to shift retention, not violation, since it protects continuity of U representation on shift because, stewards are responsible for processing grievances under contract, and presumption of lawfulness of their superseniority has not been rebutted]

Hotel and Restaurant Employes, Local 54 (Boardwalk Regency Corp-d/b/a Caesars Atlantic City) JD-104-86

[enforcing shop stewards' contractual superseniority for selecting days off, violation where U failed to establish that superseniority would be used to further representation process]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[determination of what circumstances justify discrimination inherent in any award of superseniority, w/i Bd's discretion]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[contention that preferential seniority for U officials in necessary to promote efficient and effective U representation, rejected, since U is responsible for maintaining its own organization, using job related benefits to do so is contrary to statutory purpose, and U has other means of accomplishing same end]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[contention that preferential seniority for non-steward U officials is not so inherently destructive of Ee rights that it should be held unlawful in spite of legitimate justification, rejected, since Bd's finding that only contract administration requiring U officials to be on the job justifies superseniority is not irrational or contrary to the Act, and cases cited in support of contention do not apply where they involve specific legislation, rather than superseniority clauses concerning which Congress did not legislate, and Selective Service Act's, rather than NLRA Sec. 7's, protection of Ee rights]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[maintaining and attempting to enforce contractual clauses granting superseniority for layoff to U's recording secretary and financial secretary, respectively, solely because of their status as U officials, violations where their presence on the job was not necessary for contract administration]

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

(granting U officer superseniority which enabled him to displace more senior Ee, violative, since officer was not necessary to administration of contract on the job; Bd considered Ees' right not to have job benefits tied to U activism more important than right to bargain through chosen representative and adjudged superseniority's lawfulness based on how much it encouraged U activism, not how little it discriminated; promotion of U's effectiveness and efficiency insufficient basis for U officer's superseniority after *Gulton*, and Bd has not endorsed U's allegation that superseniority assisted Ees' exercise of their rights

4020-8000—Cont.

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

(granting U recording secretary seniority as to shift preference by assigning her to day shift solely because it would make communication with U president easier, violative, since gain in convenience from face-to-face over telephonic or documentary communication did not justify tying seniority-linked job benefit to U office while denying it to Ee whose seniority otherwise entitled her to it)

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

]*Gulton* rule as to U officer's superseniority not misapplied to U recording secretary's assignment to day shift, notwithstanding her contract administrative duties, since under *Gulton* rule persons with on-the-job contract administrative duties may lawfully be granted only such seniority as is necessary to enable them to stay on the job to carry out those duties, and recording secretary did not have such duties)

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

(contention that U has waived Ee rights Bd seeks to vindicate under *Gulton* rule restricting U officers' superseniority to that necessary for on-the-job contract administration, rejected; Bd is protecting, not Ees' economic right, but their right to be free of discrimination that encourages U activism, and U cannot waive it through bargaining, since its purpose is to protect Ees from U conduct that benefits U at expense of Ees' Sec. 7 rights, and waiver would impair Ees' choice of U by enabling incumbent to encourage Ees' support through lure of employment benefits tied to U positions)

4060 ATTEMPTS TO ENFORCE VALID AGREEMENTS OR PRACTICES IN AN ILLEGAL MANNER (SEE 548- 6000)

Bakery Workers, Local 42 (Gold Kist, Inc.) JD-(ATL)-42-85

(U's requesting E to continue dues checkoff of Ees who had resigned membership and taking steps to grieve E's refusal to continue disputed checkoffs, violative)

6000 MEANS OF CAUSING OR ATTEMPTING TO CAUSE DISCRIMINATION

6001 GENERALLY

6001-1200 Causal link between union and employer's action

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(U that refused to properly dispatch workers is *clearly the cause of the E's refusing to hire these men*)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(no specific intent to discriminate need be shown to support finding of ULP in improper operation of hiring hall)

6001-1250 In absence of specific demand upon employer

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124

[no unlawful layoff of and denial of employment to Ee whom U business manager had rebuked for voting with dissident faction and replaced as U steward six years before, since there was insufficient causal nexus between U and E's actions where there was no admissible evidence that either constituted specific demand or could be construed as request for discrimination against Ee]

Carpenters, Local No. 2310 (Hazer Construction Co.) 280 NLRB No. 047

[where no contract, U sent member to E to fill job already occupied by nonmember, and E laid off one employed earlier to make room for member referred, violative, notwithstanding U did not specifically demand layoff of nonmember already employed. It is cause and effect that is important]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[U steward informing Ee in presence of E's superintendent, who was also Ee's supervisor, thatEe could not work without paying *high time* insurance premium, followed by immediate grasting Ee time off to go pay premiums, constituted unlawful request to discriminate since motive was Ee's efforts to achieve clearance into local U, in view of previous threats to Ee; notwithstanding no direct demand on E to discriminate where communication could be construed as inducement for action, inasmuch as remarks made in presence of superintendent implied request for cooperation]

Donald Dunn d/b/a D.C. Construction Company 276 NLRB No. 097

(U held not to have unlawfully caused E's denial of reemployment to previously laid off Ee where, apart from single ambiguous confrontation between 2 U officials, which may or not be viewed as suggestive of U causation, there was no corroborative link tending to implicate U in any unlawful hiring scheme by demanding that E take alleged unlawful action)

6001-2500 Union action need not be successful to constitute violation

Millwright and Machinery Erectors, Local Union 720, Carpenters (Stone & Webster Engineering Corp., etc.) 274 NLRB No. 219

(U business agent's encouraging contractor superintendent to lay off Ee because he was at hiring hall *aggravating* him, violative notwithstanding E refused to lay off Ee)

Retail Delivery Drivers, Driver-Salesmen, and Helpers,Local 278, a/w Teamsters (Labor Management Services, Inc. d/b/a L.M.S. Company) JD-(SF)-61-85

(U insisting upon application of bargaining agreement, including U-security provisions, to E's Ees at new location, violative, as this same issue was subject of UC proceeding in which RD held there was no accretion. E under no obligation to go to arbitration after UC proceeding though contract provides for arbitration)

6001-5000 Employer acquiescence in union conduct

Millwright and Machinery Erectors, Local Union 720, Carpenters (Stone & Webster Engineering Corp., etc.) 274 NLRB No. 219

(U business agent's encouraging contractor superintendent to lay off Ee because he was at hiring hall *aggravating* him, violative notwithstanding E refused to lay off Ee)

6001-7500 Agreement or practice need not be formal

6001-7533 May be shown by parties' conduct

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[U's continued efforts to have E replace *permit* men, who were traditionally temporary Ees under U's hiring agreement, with journeymen through U's hiring hall, not violative or inherently destructive of Ee rights, where U and E's referral practice had been in existence for years, U was not motivated by *permit* men's non-U status but rather by need to put experienced journeymen to work and such practice, although not contractually prescribed, is not *per se* illegal or illegitimate]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[fact that U's referral system, giving priority in jobs to experienced journeymen rather that inexperienced *permit* men, was not contractually prescribed, does not compel conclusion that U's desire to preserve system by asking E to replace *permit* men who were non-members, was based on illegal motives; U's desire was to protect apprenticeship program and fact U told members they could be fined for working beside *permit* men, was not beyond reasonable action taken to achieve effective representation of U's members]

6010 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT ENTERED INTO BY MINORITY UNION

Ryder/P.I.E. Nationwide 275 NLRB No. 084

(E's and U's execution of contract, found violative of 8(a)(2) and 8(b)(1)(A) because U did not have valid majority in Ee unit at time contract was executed, held not violative of 8(a)(3) or 8(b)(2) since contract did not have U-security provision)

Rainey Security Agency, Inc. 274 NLRB No. 041

(E violated 8(a)(3) and U violated 8(b)(2) by including U security clause in contract which they had unlawfully entered into, and thereafter by enforcing it, where U did not represent uncoerced majority either because it never obtained authorization cards from majority of Ees or because, if it did, authorization cards may have been poisoned by dues deduction forms furnished to applicants to fill out even before E's operations had begun and by accompanying statements made by U's agents that applicants had to join U)

6020 EXECUTION, MAINTENANCE AND/OR ENFORCEMENT OF AGREEMENT MADE WHILE QUESTION OF REPRESENTATION PENDING

Metropolitan Teletronics Corp. 279 NLRB No. 134

[U's acceptance of recognition as representative of E's new plant Ees transferred from E's two old plants and execution of contract covering them, not violation where U had previously represented 63 percent of Ees when employed at old plant, and other U had only represented 5 percent of merged work force and had no colorable claim]

6020—Cont.

Steven Muss, Cynthia Muss Lawrence and Debbie Muss Kushen, A Copartnership, d/b/a Alexander Muss & Sons 274 NLRB No. 193
(U's entering into contract with E after E withdrew recognition from another U which was striking E over failure of contract negotiations, not violative, since no R ptn had been filed with Bd thus raising qcr, and E had objective considerations for doubting striking U's majroity status where striking Ees had been on strike for over a year, all strikers had been permanently replaced and 13 of 17 current Ees had freely sign-cards authorizing instant U to represent them, giving no indication of support for striking U)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. 764 F.2d 182 (C.A. 3, June 1985)
(E's recognizing and entering into contract containing U security with U purusuant to card check, and that U's accepting recognition and entering into contract, violative, since, at time above events took place, there was real qcr where another U had on file with Bd a valid R ptn known to E at time it recognized former U; further, former U's defense that it had no knowledge of latter U's R ptn at time it initiated card check, rejected)

6030 HIRING AND EMPLOYMENT AGREEMENTS AND PRACTICES

6030-0100 Generally

Laborers', Local No. 373 (Arrow Enterprises) 282 NLRB No. 053
[in absence of lawful exclusive hiring hall agreement, U violates 8(b)(2) when it causes or attempts to cause E not to hire Ee because of conduct protected by Sec. 7]

Carpenters Local 608 (Various Employers) 279 NLRB No. 099
[U held to operate an exclusive hiring hall, notwithstanding E retained right to hire 50% of total workforce]

Donald Dunn d/b/a D.C. Construction Company 276 NLRB No. 097
(fact that E discriminates to encourage U membership on basis of its own perception of its obligations to U imposes no automatic liability upon U where E's action is *not* taken under compulsion of exclusive hiring arrangement or pursuant to U request)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010
(even in absence of unlawful motivation, any departure by U from established exclusive hiring hall procedures resulting in denial of employment is discrimination which inherently encourages U membership, breaches duty of fair representation and violates 8(b)(1)(A) and (2), unless U demonstrates that its interference with employment was pursuant to valid U-security clause or was necessary to effective performance of its representative function)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)
(even single instance of discriminatory treatment will support finding of ULP when hiring hall rules are not followed)

6030-3300 Illegal provisions or arrangements

N.L.R.B. (Steven R. Lovsall, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)
(by setting additional requirements than those provided for in contract for travellers to qualify for preferred group in referral from hiring hall w/o informing members of these requirements, U discriminated against Ees in regard to hire or tenure of employment to encourage or discourage membership in labor organization; no discriminatory intent need be proven by specific evidence of motive or purpose but may be inferred from natural and foreseeable consequences of local's conduct)

6030-3320 In referral

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) 281 NLRB No. 010
[changing established contractual exclusive hiring hall procedures to require that travellers be sent by their local U business managers w/o timely notifying users, violation absent evidence change was required for local's effective performance of its representative function; contention that change was necessary for local's reciprocal arrangement with other locals to apportion available jobs among locals rejected]

Plumbers, Local Union No. 447 (NPS Energy Services, Inc.) 281 NLRB No. 010
[refusing to register and dispatch travellers because they were not sent by their local's business manager, violation, as such procuedure failed to comply with international U's constitutional guidelines and contractual exclusive hiring hall procedures and resulted in denying travellers employment]

Big E Leasing and Service Corp. and RJE Leasing, Pittsburgh Division, Corp. 275 NLRB No. 182
(U's referring job applicants under hiring hall provisions of illegal prehire agreement and causing E to refuse to employ Ees w/o U referral, violative)

Local No. 11, Electrical Workers (Kirkwood Electric Co.) JD-(SF)-5-85
(violation where U refused to refer Ee pursuant to U security clause because he could not produce a current dues receipt, notwithstanding U had received and logged his dues a week before, and dropped his name to bottom of referral list because it treated his nonproduction of dues receipt as rejection of referral)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)
(U that refused to properly dispatch workers is *clearly the cause of the E's refusing to hire these men*)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)
[Bd's inference of illegal motive, from U efforts to replace *permit* men who were temporary Ees, with journeymen from U's hiring hall, rejected, since encouragement of U membership is not consequence that *inescapably flows* from U's action such that U is presumed to have intended it, where long-standing practice of E was to seek journeymen from U and in traditional operation of U's referral system, *permit* men were considered temporary Ees with no expectation of permanent employment]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)
[fact that U's referral system, giving priority in jobs to experienced journeymen rather that inexperienced *permit* men, was not contractually prescribed, does not compel conclusion that U's desire to preserve system by asking E to replace *permit* men who were non-members, was based on illegal motives; U's desire was to protect apprenticeship program and fact U told members they could be fined for working beside *permit* men, was not beyond reasonable action taken to achieve effective representation of U's members]

6030-3330 Preference to union members and/or members of local

Stage Employees, Local No. 41 (Atlanta Ballet) 280 NLRB No. 065
[forcing discharge of Ee specifically requested by ballet company who was on U's *C* list and refusing to refer Ee in accordance with established procedure and expired contract by which terms parties were still abiding violation, where U took such action because E had not agreed to new contract]

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110
(U's requesting E to hire its members to replace travelers and draw up a layoff list when it knew E had no present plans to layoff and asking travelers to quit their job so U's unemployed members could work violative; U, in asking E to hire its members and layoff travelers, was not seeking job availability information but instead was attempting to pressure E into discriminatorily replacing travelers with its members and further, U's actions of coercing travelers to quit was form of *indirect* pressure on E to discriminate against travelers and accede to U request)

M. W. Kellogg Constructors, Inc. 273 NLRB No. 134
(causing E to discriminate against travelers in assigning unscheduled overtime and selecting Ees for layoff because of nonmembership in local U, violative; discriminatory E-U understanding inferable where both E and U said travelers would not be assigned unscheduled overtime, travelers were laid off while local U members were being hired and were told that fighting it meant not working in area again, travelers could not examine dispatch books to verify their placement and U's adherence to dispatch system, and U said Book I was reserved for local U members and even qualified traveler would not receive Book I status)

Waterfront Service Co., Inc. JD-171-86
[maintaining and enforcing contractual referral provision which, on its face, conditioned work opportunities on membership in or clearance by U, violation]

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85
(U's maintenance of *second out-of-work list* in hiring hall situation which was for use by nonmembers and from which list no referrals made, violative)

M. W. Kellogg Constructors, Inc. v. N.L.R.B. 806 F.2d 1433 (C.A. 9, Dec. 1986)
[ct denies enforcement of Bd decision that found U and E unlawfully preferred local U members over travellers in layoff and overtime decisions, and remands for findings concerning whether statements of supervisors and stewards that locals would receive such preference constituted admissions of unlawful motive or were instead, as Respondents contended, merely descriptions of practical affect of applying lawful 8(f)(4) agreement]

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)
[Bd properly found that U's direct dealings with E were unlawful efforts to cause E to discriminate against travelers by replacing them with U's mem-

6030-3330—Cont.

bers, where U made repeated requests of E to hire its members or to prepare *layoff lists*; such requests were inconsistent except as invitation to fire some workers and hire others; there was no reason to believe E had any reason either to hire or fire; and added to all this was background of dispute between travelers and U]

6030-3335 Preference to union officers

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**

(U's invoking contractual grievance procedure on or after U vice president filed grievance seeking reinstatement to job from which she had been bumped (contract granted U vice president *superseniority* for job bumping purposes) violative, since on-the-job presence of U vice president not necessary for performance of grievance processing duties and if grievant successful, result would displace another Ee)

Mead Packaging **273 NLRB No. 181**

(E's unilateral discontinuance of insurance and pension benefits to U officers on leaves of absence for purpose of holding U office, not violative; granting such benefits to U officers alone under provision of contract would violate 8(a)(3) and 8(b)(2), since granting such benefits to U officers did not further effective administration of E's bargaining agreement where U officers were on U's payroll and acted as representatives of Ees at other Es premises, engaging in engotiations and arbitrations, and generally monitored compliance with U's bargaining agreements and further, granting of such benefits was not available to other Ees on an equal basis)

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Dec. 1985)**

[contention that preferential seniority for U officials in necessary to promote efficient and effective U representation, rejected, since U is responsible for maintaining its own organization, using job related benefits to do so is contrary to statutory purpose, and U has other means of accomplishing same end]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Dec. 1985)**

[contention that preferential seniority for non-steward U officials is not so inherently destructive of Ee rights that it should be held unlawful in spite of legitimate justification, rejected, since Bd's finding that only contract administration requiring U officials to be on the job justifies superseniority is not irrational or contrary to the Act, and cases cited in support of contention do not apply where they involve specific legislation rather than superseniority clauses concerning which Congress did not legislate, and Selective Service Act's, rather than NLRA Sec. 7's, protection of Ee rights]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Dec. 1985)**

[maintaining and attempting to enforce contractual clauses granting superseniority for layoff to U's recording secretary and financial secretary, respectively, solely because of their status as U officials, violations where their presence on the job was not necessary for contract administration]

6030-3340 In selection for hiring

Laborers', Local No. 373 (Arrow Enterprises) **282 NLRB No. 053**

[U operating non-exclusive hiring hall held to have unlawfully attempted to cause and caused E not to hire U member in good standing in order to retaliate against him because he had filed intra-U charges]

Carpenters Union Local No. 25 v. N.L.R.B. **769 F.2d 574 (C.A. 9, Aug. 1985)**

(even single instance of discriminatory treatment will support finding of ULP when hiring hall rules are not followed)

6030-3360 In continued employment

Upholsterer's, Local Union 406 (Boyertown Casket Company) **280 NLRB No. 134**

[U's attempting to cause the discharge of Ee who had resigned from U and attempting to refund Ee's dues assertedly because Ee had resigned, violative, where Ee, although having resigned from U, had still complied with U security agreement by tendering dues (Ee was thus only a *financial core* member) and Ee's only obligation to U after resignation, was to tender initiation fees and dues]

Stage Employees, Local No. 41 (Atlanta Ballet) **280 NLRB No. 065**

[forcing discharge of Ee specifically requested by ballet company who was on U's *C* list and refusing to refer Ee in accordance with established procedure and expired contract by which terms parties were still abiding violation, where U took such action because E had not agreed to new contract]

Shipbuilders, Local No. 9 (Todd Pacific Shipyards) **279 NLRB No. 087**

[U's causing or attempting to cause E to transfer Ee to another ship and attempting to cause E to demote him from shipfitter leadman position, violative]

Penn Yan Express, Inc. **274 NLRB No. 037**

(U principal officer's causing E to discharge Ee for supporting losing candidate in U election, violative where U official acted with apparent authority of U in that he could reasonably have been believed to be acting on U's behalf)

M. W. Kellogg Constructors, Inc. **273 NLRB No. 134**

(causing E to discriminate against travelers in assigning unscheduled overtime and selecting Ees for layoff because of nonmembership in local U, violative; discriminatory E-U understanding inferable where both E and U said travelers would not be assigned unscheduled overtime, travelers were laid off while local U members were being hired and were told that fighting it meant not working in area again, travelers could not examine dispatch books to verify their placement and U's adherence to dispatch system, and U said Book I was reserved for local U members and even qualified traveler would not receive Book I status)

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**

[incumbent U unlawfully caused transfer/demotion of Ee from driver to order picker where transfer/demotion was on recommendation of shop committee, since shop committee held to be agent of U and action taken because of Ee's support of rival U, where U had previously come to Ee's defense regarding complaints about his driving until he protested incumbent U's waiver of negotiated wage increase and began to support recognition of another U]

M. W. Kellogg Constructors, Inc. v. N.L.R.B. **806 F.2d 1435 (C.A. 9, Dec. 1986)**

[ct denies enforcement of Bd decision that found U and E unlawfully preferred local U members over travellers in layoff and overtime decisions, and remands for findings concerning whether statements of supervisors and stewards that locals would receive such preference constituted admissions of unlawful motive or were instead, as Respondents contended, merely descriptions of practical affect of applying lawful 8(f)(4) agreement]

6030-3380 Union control over hiring and employment

Oil Field Construction Company **JD-(SF)-104-86**

[even assuming foreman, who was also U president and steward, caused or attempted to cause E to discriminate against Ees, ALJ held U did not thereby violate Act, since foreman was not acting w/i scope of his authority as agent of U but was acting as agent of E where, as supervisor he was intimately involved in job assignment process, while, as steward, his sole authority was to adjust Ee grievances, and, as U president, to preside over U meetings and to sign checks and official documents]

Carpenters Union Local No. 25 v. N.L.R.B. **769 F.2d 574 (C.A. 9, Aug. 1985)**

(even single instance of discriminatory treatment will support finding of ULP when hiring hall rules are not followed)

Glaziers Local Union 558 v. N.L.R.B. **787 F.2d 1406 (C.A. 10, Mar. 1986)**

[U's continued efforts to have E replace *permit* men, who were traditionally temporary Ees under U's hiring agreement, with journeymen through U's hiring hall, not violative or inherently destructive of Ee rights, where U and E's referral practice had been in existence for years, U was not motivated by *permit* men's non-U status but rather by need to put experienced journeymen to work and such practice, although not contractually prescribed, is not *per se* illegal or illegitimate]

6030-3380-2500 Hiring or assignment of foreman and leadman

Shipbuilders, Local No. 9 (Todd Pacific Shipyards) **279 NLRB No. 087**

[U's causing Ee to resign his leadman position as result of Ee's performance of leadman's duties, violative where resignation was not truly voluntary act but instead demotion was constructively caused by U's unlawful pressure on E and Ee]

6030-3380-3300 Union stewards

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**

[U's invoking superseniority clause of contract to keep pyrometer steward on job, not unlawful discrimination against two Ees who were not allowed to bump steward from sole remaining pyrometer position but were laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

6030-3380-3600 Competency tests and apprenticeship requirements

Local No. 136, Plumbers (R. F. Shaw Company) **280 NLRB No. 099**

[individual's availability, dependability, regularity of service as well as competency are all nondiscriminatory considerations in determining order of job referals by U; whether individual maitained his card on deposit and paid traveler card dues is also legitimate nondiscriminatory consideration]

Glaziers Local Union 558 v. N.L.R.B. **787 F.2d 1406 (C.A. 10, Mar. 1986)**

[fact that U's referral system, giving priority in jobs to experienced journeymen rather that inexperienced *permit* men, was not contractually prescribed,

6030-3380-5000—Cont.

does not compel conclusion that U's desire to preserve system by asking E to replace *permit* men who were non-members, was based on illegal motives; U's desire was to protect apprenticeship program and fact U told members they could be fined for working beside *permit* men, was not beyond reasonable action taken to achieve effective representation of U's members]

6030-3390 Coercing employer to discriminate in employment

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(U that refused to properly dispatch workers is *clearly the cause of the E's refusing to hire these men*)

6030-3390-7500 Discharge nonunion employees

Local 441, International Union of Electrical, Radio & Machine Workers, AFL-CIO (Phelps Dodge Copper Products Company, a Division of Phelps Dodge Industries, Inc.) 281 NLRB No. 137

[U's attempt to restrict member's right to resign even when no strike or lockout present or imminent, violative, as *any* restriction on resignations are invalid, and attempt to cause E to discharge member also violative. Furthermore, U breached its fiduciary duty by not informing member of proper resignation procedure]

Carpenters, Local No. 2310 (Hazex Construction Co.) 280 NLRB No. 047

[where no contract, U sent member to E to fill job already occupied by nonmember, and E laid off one employed earlier to make room for member referred, violative, notwithstanding U did not specifically demand layoff of nonmember already employed. It is cause and effect that is important]

Laborers, Local Union No. 644 (Kellerman Brothers Construction Compan) 278 NLRB No. 163

[U's refusal to refer or consider non-member for referral while members of U were unemployed, violative; further, U's picketing E for employing nonmember, causing E to discharge non-member by threatening to stop construction and threatening non-member with bodily harm if he continued working for E, violative]

Greg Construction Co. 277 NLRB No. 163

(discharge of Ees to avoid paying wage rate in U contract, rather than because U demanded discharged because they were not U members, not unlawful)

Stage Employees IATSE, Local 46 (Joseph Cates Company) JD-(ATL)-55-86

[causing E to hire U members instead of nonU applicants who had been given commitments to be hired by threatening E with informational picketing, violation]

N.L.R.B. v. Electrical Workers, Local 952 758 F.2d 486 (C.A. 9, Apr. 1985)

(violation for fining U member-E as true purpose of fine was to force E to bring improper pressure to bear against his nonunion Ees to join U. Evidence showed that internal U charge against E referred to him as *owner of company*, and magnitude of fine, $20,000, with $5000 suspended if E would not commit further violations of U constitution; namely, working with nonunion Ees)

6030-6700 Discrimination in application of valid provisions and agreements

6030-6701 Generally

6030-6701-5000 Actual discrimination must be shown

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(no specific intent to discriminate need be shown to support finding of ULP in improper operation of hiring hall)

6030-6712 In registration for referral

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(Bd's holding that local U discriminated against travelers and nonmembers as compared with local U members in operating its hiring hall supported by substantial evidence: U's *A* book was restricted to local U members, and *B* book was used only after *A* book was exhausted; requiring *B* book job applicants to sign list each day burdened travelers and nonmembers; periodic discontinuation of *B* book violated local U's own procedures; U resisted production of *B* book until contempt procedures were initiated; and GC's statistics, though not determinative, at least suggested discrimination)

6030-6725 In referral

Millwright and Machinery Erectors, Local Union 720, Carpenters (UBC of Louisiana, Inc.) 276 NLRB No. 010

(even in absence of unlawful motivation, any departure by U from established exclusive hiring hall procedures resulting in denial of employment is discrimination which inherently encourages U membership, breaches duty of fair representation and violates 8(b)(1)(A) and (2), unless U demonstrates that its interference with employment was pursuant to valid U-security clause or was necessary to effective performance of its representative function)

6030-6725-0100 Generally

Local No. 136, Plumbers (B. F. Shaw Company) 280 NLRB No. 059

[while subjective criteria used by U agents in determining whom to refer to jobs leaves referral system open to all kinds of abuses, it is not w/i Bd's province to design or redesign system or lack of system which U may use in operating its hiring hall; rather, Bd is confined to determining whether unlawful discrimination has *in fact* been practiced; if strict rules of operation are to be required in running hiring hall, it is up to legislature, not Bd, to provide such]

Carpenters, Millwright Local 1412 (Oscar J. Boldt Construction Co.) JD-284-85

(violation, where bypass of Ees on out of work list gave rise to *prima facie* case of unlawful discrimination, thus shifting burden to U to show that preference accorded Ees beneath bypassed Ees on list was pursuant to legitimate, objective, hiring hall criteria which U failed to do)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(U that refused to properly dispatch workers is *clearly the cause of the E's refusing to hire these men*)

6030-6725-0200 Failure to maintain records

Local No. 136, Plumbers (B. F. Shaw Company) 280 NLRB No. 059

[U's failure to keep adequate records sufficient to enable GC to prove pattern of discrimination in U's job referrals, standing alone, held not unlawful, since conceivably U could prove by means of other evidence that it had consistently used objective standards for referrals w/o having established any written rules or kept any written records]

Teamsters Local Union #519 (Rust Engineering Co.) 276 NLRB No. 094

(violation, where U discarded referral cards of U dissidents; contention cards discarded because dissidents did not comply with alleged rule which required personally signing card monthly to renew registration, rejected, since other members were allowed to call in to renew their registration)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(Bd's holding that local U discriminated against travelers and nonmembers as compared with local U members in operating its hiring hall supported by substantial evidence: U's *A* book was restricted to local U members, and *B* book was used only after *A* book was exhausted; requiring *B* book job applicants to sign list each day burdened travelers and nonmembers; periodic discontinuation of *B* book violated local U's own procedures; U resisted production of *B* book until contempt procedures were initiated; and GC's statistics, though not determinative, at least suggested discrimination)

6030-6725-1700 Preference to union members

Local 426, Laborers (Joseph Brown, an Individual) 280 NLRB No. 074

[violation where U agents admitted preference to members over nonmembers in referrals notwithstanding lawful hiring hall provisions and informed Ee that he would not be referred while suspended from membership, and Ee, while suspended, received only three job referrals in contrast to eight or ten members' receipt of four to five referrals]

Electrical Workers, Local Union No. 46 (NECA) 277 NLRB No. 139

(U's refusal to let traveler take journeyman's exam for local members entitling Ee to get highest priority for referrals, while offering him opportunity to take referral exam for nonmembers, which tested same material and, if passed, would have entitled him to same referrals, not unlawful; contention that other locals would only accept journeyman's exam, rejected, since U's only duty under contract and Act was to preserve Ees' employment interest w/i local U's geographic area)

Electrical Workers, Local Union No. 46 (NECA) 277 NLRB No. 139

(local U's refusing for two months to offer Ee opportunity to take nonmember referral exam qualifying him for highest priority referrals, violation, notwithstanding contractual clause specifying reasonable interval of time for examination as ninety days, since U was obligated to offer Ee referral exam as expeditiously as it would schedule members for journeyman's exam designed for them and there was no evidence that members were not allowed to take the next scheduled exam or were routinely forced to wait the contractually permitted ninety days)

Teamsters, Local Union No. 328 (Flount Brothers Corporation) 274 NLRB No. 140

(refusing to refer job applicants because of nonmembership in U or lesser length of membership, violative)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(Bd's holding that local U discriminated against travelers and nonmembers as compared with local U members in operating its hiring hall supported by substantial evidence: U's *A* book was restricted to local U members, and *B* book was used only after *A* book was exhausted; requiring *B* book job

6030-6725-1700—Cont.

applicants to sign list each day burdened travelers and nonmembers; periodic discontinuation of *B* book violated local U's own procedures; U resisted production of *B* book until contempt procedures were initiated; and GC's statistics, though not determinative, at least suggested discrimination)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(fact nonmember complainant often signed U's *B* book, which it allowed travelers and nonmembers to sign while reserving *A* book for local U members, w/o receiving hiring hall referrals supported Bd's finding of discrimination against him in referrals; whether he was entitled to monetary redress, however, was left to compliance stage of proceeding)

6030-6725-3300 Priority based on residence or service in geographical area

Carpenters, Local Union No. 1243 (Northern Alaska Associated General Contractors) 281 NLRB No. 015

[business representative's dispatching travelers as stewards and recommending them as foremen when asked not violation as selection was not arbitrary in view of their recommendation by respected source, favorable impression at interview, and experience as foreman, and other registrants, who were ahead of them on U's referral lists, *passing* short-term jobs or resigning from them so as to retain position on list for long-term jobs, not being more qualified than travelers, not wanting position, or having personal problems]

Local No. 136, Plumbers (B. F. Shaw Company) 280 NLRB No. 099

[giving priority to certain referral applicants over others on basis of geography to insure employment to those living permanently w/i local's jurisdiction not unlawful since it is legitimate exercise of local operating hiring hall]

Local No. 136, Plumbers (B. F. Shaw Company) 280 NLRB No. 099

[U's purpose of supplying permanent local residents on priority basis to contractors doing business in area in order to insure contractors that they have pool of available, reliable and qualified Ees to choose from is corollary to proposition that local may give priority to permanent residents in making referrals to insure their employment]

Local No. 136, Plumbers (B. F. Shaw Company) 280 NLRB No. 099

[criterion of residence in area that can only be met by members of local for referral to jobs held not sufficient basis to warrant conclusion that U's motivation in making referrals is necessarily discrimination based on membership in one local rather than another]

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)

6030-6725-3800 Referral made arbitrarily without objective criteria

Construction and General Labors Union, Local No. 1334 (Western Sign Corp.) 281 NLRB No. 029

[referring Ees whose names were below that of charging party on referral list, not violation where U was not hostile to charging party and followed posted contractual hiring hall procedures, of which Ees had notice and which were based on objective criteria, and where all non-referrals of charging party were due to Es' requests for named Ees or Ees with particular types of experience, or E's rejection of charging party]

Carpenters, Local Union No. 1243 (Northern Alaska Associated General Contractors) 281 NLRB No. 015

[business representative's dispatching travelers as stewards and recommending them as foremen when asked not violation as selection was not arbitrary in view of their recommendation by respected source, favorable impression at interview, and experience as foreman, and other registrants, who were ahead of them on U's referral lists, *passing* short-term jobs or resigning from them so as to retain position on list for long-term jobs, not being more qualified than travelers, not wanting position, or having personal problems]

Electrical Workers Local 211 (Atlantic Division of The Southern N.J. Chapter, Inc., et al.) 280 NLRB No. 010

[violation, where U made referrals which did not comport with its established hiring hall procedures while failing to demonstrate that its interference with employment was pursuant to valid U-security clause or was necessary to effective performance of its representative function]

Teamsters, Local Union No. 328 (Flount Brothers Corporation) 274 NLRB No. 160

(failing to use objective, consistent, nondiscretionary criteria and standards in choosing which job applicants to refer, violative)

Carpenters, Millwright Local 1412 (Oscar J. Boldt Construction Co.) JD-294-85

(violation, where bypass of Ees on out of work list gave rise to *prima facie* case of unlawful discrimination, thus shifting burden to U to show that preference accorded Ees beneath bypassed Ees on list was pursuant to legitimate, objective, hiring hall criteria which U failed to do)

N.L.R.B. v. General Truckdrivers, Warehousemen and Helpers, et al. 778 F.2d 207 (C.A. 5, Dec. 1985)

[U's operation of exclusive hiring hall violative, notwithstanding U had written procedures to follow for referral, since U did not refer by objective standards where referral was based on business agent's personal knowledge of individual's qualifications and circumstances and there existed a set of unwritten irregular procedures which were w/i unfettered discretion of business agent to use or not]

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers 778 F.2d 284 (C.A. 6, Dec. 1995)

[U's call-back referrals, violation, where E was only entitled to receive referrals by customary procedures using U's hiring hall lists, rather than call-back certain Ees who had not worked for E w/i prior six months; contention that E would not accept other referrals, not credited, but, if it were, E would have had to reject Ees at time of referral]

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers 778 F.2d 284 (C.A. 6, Dec. 1985)

[referring U steward ahead of other Ees because he needed more weeks of employment to qualify for unemployment compensation, violation]

6030-6725-4200 Refusal to refer because of nonmembership

Plumbers Local No. 305 (Stone & Webster Engineering Corp. et al.) 282 NLRB No. 012

[refusal to let travellers sign out-of-work list, violation, notwithstanding U's contention Ees would have been allowed to register had they remained in hiring hall]

Local 426, Laborers (Joseph Brown, an Individual) 280 NLRB No. 074

[violation where U agents admitted preference to members over nonmembers in referrals notwithstanding lawful hiring hall provisions and informed Ee that he would not be referred while suspended from membership, and Ee, while suspended, received only three job referrals in contrast to eight or ten members' receipt of four to five referrals]

Laborers, Local Union No. 644 (Kellerman Brothers Construction Compan) 278 NLRB No. 162

[U's refusal to refer or consider non-member for referral while members of U were unemployed, violative; further, U's picketing E for employing non-member, causing E to discharge non-member by threatening to stop construction and threatening non-member with bodily harm if he continued working for E, violative]

Teamsters, Local Union No. 328 (Flount Brothers Corporation) 274 NLRB No. 160

(refusing to refer job applicants because of nonmembership in U or lesser length of membership, violative)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(Bd's holding that local U discriminated against travelers and nonmembers as compared with local U members in operating its hiring hall supported by substantial evidence: U's *A* book was restricted to local U members, and *B* book was used only after *A* book was exhausted; requiring *B* book job applicants to sign list each day burdened travelers and nonmembers; periodic discontinuation of *B* book violated local U's own procedures; U resisted production of *B* book until contempt procedures were initiated; and GC's statistics, though not determinative, at least suggested discrimination)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(fact nonmember complainant often signed U's *B* book, which it allowed travelers and nonmembers to sign while reserving *A* book for local U members, w/o receiving hiring hall referrals supported Bd's finding of discrimination against him in referrals; whether he was entitled to monetary redress, however, was left to compliance stage of proceeding)

6030-6725-4300 Refusal to refer because of collective bargaining agreement

Stage Employees, Local No. 41 (Atlanta Ballet) 280 NLRB No. 065

[forcing discharge of Ee specifically requested by ballet company who was on U's *C* list and refusing to refer Ee in accordance with established procedure and expired contract by which terms parties were still abiding violation, where U took such action because E had not agreed to new contract]

Millwright and Machinery Erectors, Local Union 720, Carpenters (Stone & Webster Engineering Corp., etc.) 274 NLRB No. 219

(U business agent's causing contractor to rescind proper name request for referral of Ee, violative notwithstanding business agent was acting in honest effort to spread scarce work more evenly among unemployed Ees and at no time in discussion did U business agent mention Ee's name, since U business agent had no authority to alter name request provisions of labor agreement; that he intended no harm to any specific Ee, but rather sought to aid membership-at-large was no legal defense)

Electrical Workers, Local 328 (Stone and Webster Engineering Corporation) JD-(NY)-17-85

(where E insisted in its hiring hall requisition on only journeymen for work at jobsite and U conveyed this requirement to sister local who, in disregard of this requirement, sent members who were not journeymen to job, no

6030-6725-4300—Cont.

violation of U's duty of fair representation where local U upon learing that these members lacked necessary requirements for job caused them to quit because U had to meet its contractual obligation with E in operating hiring hall to refer only Ees who met E's requirements)

6030-6725-4600 Refusal to refer because of dues delinquency

Electrical Workers, Local 11 (Choi Engineering Corp.) 277 NLRB No. 008

(U's refusal to refer traveler because it mistakenly believed he was delinquent in dues owed to a sister local, violative)

Laborers , Local 324 (The Associated General Contractors of California, Inc.) JD-(SF)-90-85

(violation where U twice removed Ee's name from out-of-work list at exclusive hiring hall for nonpayment of dues at times when Ee was not obligated to pay dues, since she was not member of bargaining unit and subject to contract containing U security clause)

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(District Council (Council) violated Act by preventing member from working overtime because he failed to present Council work card which evidenced member current in his dues. Under U security clause, dues delinquincy only reason Ee could not work. But dues could be paid to local, as was case here, and Ee did everything he could to prove he was current. Burden on Council to justify its actions and sanction of unemployment is sufficiently harsh to invoke U's fiduciary obligation which was not met by its reliance on absence of Council's card and its attempt to confirm status with local who refused inquiry)

6030-6725-4800 Refusal to refer because of membership in or registration with sister local or another union

Carpenters, Local 745 (Dillingham Construction Pacific, Ltd. d/b/a Hawaiian Dredging & Construction Company) JD-(SF)-102-86,I19[refusal to refer and causing discharge of Ee because he was member of 2 Us, violative]

Plumbers Local No. 365 (Stone & Webster engineering Corp. et al.) JD-(NY)-23-86

[U's refusal to allow travelers to sign out-of-work book, assertedly because U was not sure of their qualifications for work, violative, where U had not checked other members' qualifications and had referred these travelers out before and had no real reason to question their qualifications]

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

(U's maintenance of *second out-of-work list* in hiring hall situation which was for use by nonmembers and from which list no referrals made, violative)

N.L.R.B. (Steven R. Lovenll, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)

(by setting additional requirements than those provided for in contract for travellers to qualify for preferred group in referral from hiring hall w/o informing members of these requirements, U discriminated against Ees in regard to hire or tenure of employment to encourage or discourage membership in labor organization; no discriminatory intent need be proven by specific evidence of motive or purpose but may be inferred from natural and foreseeable consequences of local's conduct)

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[U's causing E to refuse to hire members of sister local assertedly because U's object in doing so was to enforce rule requiring them to deposit their travel cards with U before commencing to work, unlawful, where U's action was not justified under effective-performance-of-representative-function exception, since applicable contract provision made no mention of travel cards, and contract's general provisions applied only to persons not members of international, and travelers by definition are members]

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[U's causing E to refuse to hire members of sister local assertedly because they did not comply with travel-card rule requiring filing of their cards with U purportedly binding *an accepted practice* and *law of the shop*, unlawful, where testimony gave no indication that E had agreed to abide by rule but rather suggested the opposite; E correctly told U official he could hire anybody he wanted and official made no assertion invoking rule; and E had never refused to hire travelers who had not filed cards]

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[U's causing E to refuse to hire members of sister local assertedly because, even if not contractually required, they failed to deposit their travel cards with U, and sanction of denial of employment was essential to U's effective performance of its representative function in policing provisions of agreed-to contract, unlawful, where U had alternative methods of enforcing rule, including internal U discipline consisting of fines, suspension, expulsion from U, and the like; and record did not show that such methods would not have adequately served to enforce travel-card rule]

6030-6725-5000 Refusal to refer because of opposition to union leadership

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124

[refusing to refer Ees because of their intra-U political or protected activities, violation]

Teamsters Local Union #519 (Rust Engineering Co.) 276 NLRB No. 094

(U's oral modification of referral plan by selectively requiring some of its dissident members to sign or initial referral cards once a month to have their cards renewed after changing from referral book to card system, w/o adequately notifying members of any such requirement, violative)

Teamsters Local Union #519 (Rust Engineering Co.) 276 NLRB No. 094

(violation, where U discarded referral cards of U dissidents; contention cards discarded because dissidents did not comply with alleged rule which required personally signing card monthly to renew registration, rejected, since other members were allowed to call in to renew their registration)

The Mead Corporation-Publishing Paper Division-Escanaba 275 NLRB No. 082

(refusing to refer member who had filed ULP charges against U and E, initiated and won a state ct lawsuit against U, had filed intra-U charge alleging U's erroneous printing of approved amendments to its bylaws, and had engaged in concerted protected activities, violative)

N.L.R.B. v. General Truckdrivers, Warehousemen and Helpers, et al. 778 F.2d 207 (C.A. 5, Dec. 1985)

[U's refusal to refer men out because of business agent's personal animosity towards one and because of others' intra-U activity in actively opposing business agent, violative, where U's exclusive hiring hall was run w/o objective standards and left unfettered discretion to business agent who was referred to work]

6030-6725-5700 Refusal to refer because of criticism of referral system

Sheet Metal Workers, Local No. 16 (Parker Sheet Metal Co.) 275 NLRB No. 121

(local U's refusal to dispatch member to E at E's request because member had complained to International U concerning Local's refusal to refer him to that job because of his low position on out of work list, unlawful, notwithstanding absence of exclusive hiring hall agreement since U's refusal motivated by member's activity)

6030-6725-5800 Refusal to refer because of lack of necessary job experience or skills

Electrical Workers, Local 328 (Stone and Webster Engineering Corporation) JD-(NY)-17-85

(where E insisted in its hiring hall requisition on only journeymen for work at jobsite and U conveyed this requirement to sister local who, in disregard of this requirement, sent members who were not journeymen to job, no violation of U's duty of fair representation where local U upon learing that these members lacked necessary requirements for job caused them to quit because U had to meet its contractual obligation with E in operating hiring hall to refer only Ees who met E's requirements)

6030-6725-6300 Refusal to refer because of failure to follow internal union rule

Stage Employees IATSE, Local #41 (Theater of the Stars; Andrews-Bartlett and Associates, Inc.) 278 No. 004

[removal of member and non-member's name from referral list because non-member had crossed picket line and both had worked for non-U E while also seeking referrals from U, violative, since non-member was engaged in protected activity, plain language of referral system did not require users to depend exclusively on referral system and both Ees were not employed at time they registered for referral]

Stage Employees IATSE, Local #41 (Theater of the Stars; Andrews-Bartlett and Associates, Inc.) 278 No. 004

[placing member on probation 12 months for working for non-U E while at same time seeking referrals through U's hiring hall, violative, where plain language of referral system did not prohibit members from working part-time for nonsignatory and U did not notify member of any change in referral system]

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(District Council (Council) violated Act by preventing member from working overtime because he failed to present Council work card which evidenced member current in his dues. Under U security clause, dues delin-

6030-6725-8300—Cont.

quincy only reason Ee could not work. But dues could be paid to local, as was case here, and Ee did everything he could to prove he was current. Burden on Council to justify its actions and sanction of unemployment is sufficiently harsh to invoke U's fiduciary obligation which was not met by its reliance on absence of Council's card and its attempt to confirm status with local who refused inquiry)

6030-6725-8700 Refusal to refer because of personal animosity

N.L.R.B. v. General Truckdrivers, Warehousemen and Helpers, et al. 778 F.2d 207 (C.A. 5, Dec. 1985)

[U's refusal to refer men out because of business agent's personal animosity towards one and because of others' intra-U activity in actively opposing business agent, violative, where U's exclusive hiring hall was run w/o objective standards and left unfettered discretion to business agent who was referred to work]

6030-6725-9100 Refusal to refer because of charges filed with Board or other governmental bodies against union

The Mead Corporation-Publishing Paper Division-Escanaba 275 NLRB No. 052

(refusing to refer member who had filed ULP charges against U and E, initiated and won a state ct lawsuit against U, had filed intra-U charge alleging U's erroneous printing of approved amendments to its bylaws, and had engaged in concerted protected activities, violative)

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) 275 NLRB No. 048

(U's refusal to dispatch Ee who had filed charges against it with Bd, not unlawful, where dispatcher, consistent with contract and its past practice, insisted that Ee personally pick up his referral slip, rather than allowing Ee's wife to take it to him, and U had consistently adhered to this procedure with two exceptions, neither of which applied to Ee)

6030-6750 Selection for hiring, work on job, or training

Electrical Workers, Local 328 (Stone and Webster Engineering Corporation) JD-(NY)-17-85

(where E insisted in its hiring hall requisition on only journeymen for work at jobsite and U conveyed this requirement to sister local who, in disregard of this requirement, sent members who were not journeymen to job, no violation of U's duty of fair representation where local U upon learing that these members lacked necessary requirements for job caused them to quit because U had to meet its contractual obligation with E in operating hiring hall to refer only Ees who met E's requirements)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[U's continued efforts to have E replace *permit* men, who were traditionally temporary Ees under U's hiring agreement, with journeymen through U's hiring hall, not violative or inherently destructive of Ee rights, where U and E's referral practice had been in existence for years, U was not motivated by *permit* men's non-U status but rather by need to put experienced journeymen to work and such practice, although not contractually prescribed, is not *per se* illegal or illegitimate]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[fact that U's referral system, giving priority in jobs to experienced journeymen rather that inexperienced *permit* men, was not contractually prescribed, does not compel conclusion that U's desire to preserve system by asking E to replace *permit* men who were non-members, was based on illegal motives; U's desire was to protect apprenticeship program and fact U told members they could be fined for working beside *permit* men, was not beyond reasonable action taken to achieve effective representation of U's members]

6030-6750-5000 Requiring referral or work permit from union

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)

(U is free to enforce properly adopted rule which reflects legitimate U interest; but the internal affairs exception to Section 8(b)(1) does not apply when U's application of its rules is contrary to national labor policy; e.g., where it affects member's employment status)

6030-6762 In conditions of employment

Shipbuilders, Local No. 9 (Todd Pacific Shipyards) 279 NLRB No. 087

[U's causing or attempting to cause E to transfer Ee to another ship and attempting to cause E to demote him from shipfitter leadman position, violative]

Shipbuilders, Local No. 9 (Todd Pacific Shipyards) 279 NLRB No. 087

[U's causing Ee to resign his leadman position as result of Ee's performance of leadman's duties, violative where resignation was not truly voluntary act but instead demotion was constructively caused by U's unlawful pressure on E and Ee]

6030-6762-5000 Seniority position

6030-6762-5050 Overtime work

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[U steward informing Ee and E that Ee could not work overtime because he was not member of local U, notwithstanding no local members on job available to do work, unlawful]

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)

[local U president's causing E to change two members' starting time, an action which reduced overtime worked, violative, since reason was fact that one of the members had complained to local president concerning change in absentee program where immediately after Ee complained, president requested E to change starting time, president told Ee that didn't complain that he wasn't after him but was after the other Ee and disparate treatment was shown by fact that Ee who hadn't complained, eventually had his starting time changed back]

6030-6762-5080 Opportunity to take, or access to study material for, journeyman's examination

6030-6762-5080 Opportunity to take, or access to study material for, journeyman's examination

Electrical Workers Local 211 (Atlantic Division of The Southern N.J. Chapter, Inc., et al.) 280 NLRB No. 010

[U's denying qualified nonmember applicants opportunity to take its journeyman wireman's examination, violative]

6030-6775 In continued employment

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) 281 NLRB No. 164

[demanding that E discharge Ee for failing to pay new initiation fee after Ee resigned from U during strike but continued to pay dues, and filing grievance against E for refusing to comply, violation, since Ee retained his financial core membership in spite of his resignation]

Shipbuilders, Local No. 9 (Todd Pacific Shipyards) 279 NLRB No. 087

[U's causing or attempting to cause E to transfer Ee to another ship and attempting to cause E to demote him from shipfitter leadman position, violative]

Naftali Deutsch and Alexander Coler d/b/a C–D Investment Co. 279 NLRB No. 090

[District Council's action, and E's acquiescence, in reinstating two duly appointed stewards and causing discharge of steward appointed by U officer w/o authority to do so and in violation of hiring hall rules, not unlawful where District Council was preserving integrity of contractually prescribed referral practice, and discharge of steward appointed w/o proper authority was necessary to effective performance of its representative function]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[U steward informing Ee in presence of E's superintendent, who was also Ee's supervisor, thatEe could not work without paying *high time* insurance premium, followed by immediate granting Ee time off to go pay premiums, constituted unlawful request to discriminate since motive was Ee's efforts to achieve clearance into local U, in view of previous threats to Ee; notwithstanding no direct demand on E to discriminate where communication could be construed as inducement for action, inasmuch as remarks made in presence of superintendent implied request for cooperation]

Montgomery Elevator Company 278 NLRB No. 122

[U's insisting on and causing demotion and termination of Ee because of his non-membership in U, unlawful; contention Ee laid off since there were no helper positions available when he was returned to that status pursuant to agreement that Ees who failed mechanic test while working as mechanic with temporary permit be returned to *helper* status for 1 year, rejected, in view of disparate treatment of Ee and timing of termination soon after meeting of U's representative with E]

Dillingham Tug & Barge Corporation 278 NLRB No. 019

[attempting to cause and causing E to discharge Ee, who had been suspended for exercising Sec. 7 right of supporting rival U, for failure to pay dues when Ee had no dues obligation violation]

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(while grant of contractual superseniority to chief steward as to layoff and recall, lawful, lawfulness did not extend to job bumping protection since here, unlike *Scovill*, 266 NLRB 952, E had only one shift, and chief steward had plantwide responsibilities and so did not need to be in any particular job in order to perform plantwide grievance duties effectively)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) 276 NLRB No. 109

(contention that superseniority grant of job bumping protection is lawful because, w/o such protection, chief steward may quit her job or stewardship, rejected, because it remains U's task to build and maintain its own organization, and where immediate problem is simply matter of encouraging

6030-6775—Cont.

Ees to serve as U representative U can handle situation by simply paying Ees or giving them other nonjob benefits)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**
(grant of superseniority for purposes of recall and layoffs but not for job bumping protection, lawful, where president held impromptu meetings with company officials to discuss problems on plant floor before they became formal grievances which meetings are integral part of grievance procedure, in which she could not participate were she on layoff. In addition, she spends 2 full days per month in step 3 grievance meetings)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(U's requesting E to lay off Ee because of his activities on behalf of rival U, and E's compliance with U's request, unlawful, where Ee would not have been laid off but for U's request)

Millwright and Machinery Erectors, Local Union 720, Carpenters (Stone & Webster Engineering Corp., etc.) **274 NLRB No. 219**
(U business agent's encouraging contractor superintendent to lay off Ee because he was at hiring hall *aggravating* him, violative notwithstanding E refused to lay off Ee)

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[threatening nonstriking members with expulsion, severe fines and even loss of jobs since plant was a U shop, violative, as illegal to threaten U discipline for other than nonpayment of U dues and initiation fees to deprive Ee of his job]

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[incumbent U unlawfully caused discharge of Ee where discharge was on recommendation of shop committee, since shop committee held to be agent of incumbent U and discharge motivated by Ee's support of U opposing incumbent U, where president of incumbent U requested committee meeting regarding Ee, in view of prior threats of discharge to Ee by U's agents, and threats by Ee to other Ees for which allegedly discharged no more serious than others for which no discipline imposed]

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[incumbent U unlawfully caused transfer/demotion of Ee from driver to order picker where transfer/demotion was on recommendation of shop committee, since shop committee held to be agent of U and action taken because of Ee's support of rival U, where U had previously come to Ee's defense regarding complaints about his driving until he protested incumbent U's waiver of negotiated wage increase and began to support recognition of another U]

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[U causing discharge of driver-Ees, through intervention of U president, allegedly for not having proper drivers' licenses, unlawful, since motivated by drivers' support for rival U, where license requirement was instituted after rival U's campaign began, in view of threats of discharge made by agents of incumbent U and although some frivers who had signed ptn for rival U were retained, they werr not as vocal in their support for rival U as those discharge[]

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[incumbent U unlawfully caused discharge of Ee, allegedly for poor productivity, where upon consideration of Ee's grievance of discharge by shop committee, held agent of U, U president stated he did not care what was done about Ee, and where U motivated by Ee's support of rival U in view of previous threats of discharge to Ee by U's agents, and fact U had previously sought and gained reinstatement of Ees discharged for poor productivity]

Upholstery Division of The United Steelworkers of America, AFL-CIO, Local Union 406-U (Jody Becker, An Individual) **JD-130-86**
[U's seeking layoff of and filing grievance against resigned member, who had worked during strike and bumped another Ee, because he was not entitled to protection of contract, violation where Ee had never revoked dues checkoff authorization]

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**
[U's invoking superseniority clause of contract to keep pyrometer steward on job, not unlawful discrimination against two Ees who were not allowed to bump steward from sole remaining pyrometer position but were laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

Hotel & Restaurant Employees Union, Local No. 1 (Palmer House and Towers, a Hilton Hotel) **JD-75-85**
(violation where U caused E to terminate and/or refuse to hire Ee because he had not paid dues or fees to U pursuant to U-security clause where U had not previously notified Ee of amount owed, method used to compute that amount, to which local U payments were to be made, and fact that failure to make such payments could result in discharge; Ee was ignorant of need to arrange with U to keep his job after transferring membership to other local to get extra work)

N.L.R.B. v. Laborers International Union of North America, Local Union No. 576, AFL-CIO **754 F.2d 677 (C.A. 6, Feb. 1985)**
(Bd's finding that U president caused Ee to be discharged because he was nonmember filling a job that could have been filled by U member, supported by substantial evidence notwithstanding U president's testimony that he only sought to have future jobs filled by U members)

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. **778 F.2d 292 (C.A. D.C., Dec. 1985)**
[U's causing E to discharge non-U Ee, unlawful, where U did not, as claimed, seek to have Ee discharged because he lacked documentation of experience or U membership required under contract, but rather sought to exclude him as competitor for available work, in view of circumstances under which U official refused to permit Ee to join U, including imposition of condition on membership in U more onerous than that required by contract; and his disinterest in, and refusal to receive, evidence of Ee's qualification to work as non-U Ee]

6040 ENFORCEMENT OF UNION MEMBERSHIP REQUIREMENT

6040-0100 Generally

6040-0125 Obligation must be clearly expressed

Local 807, Teamsters (Paragon Paint & Varnish Corporation) **JD-(NY)-34-85**
(no violation, where U requested discharge of Ee who was in arrears in payment of dues for period during which he was on sick leave, since U had advised Ee of amount owed, method used to compute amount, when payments were to be made and that discharge would result from failure to pay, and where Ee failed to fulfill agreement made with U for payment)

6040-0137 After resignation from union membership

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) **278 NLRB No. 052**
[U's demand that E discharge Ees for having failed to maintain membership in good standing by payment of dues after expiration of contract, unlawful, where Ees resigned during last month of contract's duration, stating that resignations were effective upon expiration of contract; such result is consistent with literal term of maintenance of membership provision herein and with strict construction accorded to first proviso of 8(a)(3) exception to guarantees of right to refrain from membership and of right to be free from employment discrimination based upon U membership]

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) **278 NLRB No. 052**
[resignation from U does not constitute revocation of dues checkoff since U security and dues checkoff are distinct and separate matters; U security pertains to contract between E and U that subjects Ees to obligation of paying dues as condition of employment, while dues-checkoff authorization or wage assignment is contract between Ee and E designed as provision for administrative convenience in collecting dues; because of such distinction, revocation of checkoff must be accomplished during periods set out in checkoff authorization, even during hiatus between contracts]

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) **278 NLRB No. 052**
[U's attempt to cause E to discharge Ees who resigned their membership from U, unlawful, since U was not free to seek their terminations because it had not received their dues checkoff monies; Sec. 8(a)(3)'s first proviso applies only to agreements between E and U that require U membership as condition of employment; therefore, even if U's discharge demands had been based exclusively on failure to receive monies owed under Ees' checkoff authorizations, such demands were not permitted by 8(a)(3)'s first provisio nor any other provision of Act]

6040-2500 Illegal provisions or requirements

6040-2550 Membership in less than 30 days

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) **278 NLRB No. 025**

[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorization election which U won set aside, since members and nonmembers were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

6040-5000 **Discriminatory application of valid requirement**

6040-5025 Extension of contract to non-consenting employees

Harte & Company, Inc. **278 NLRB No. 128**

[no violation, where E and U agreed to extend bargaining agreement with security clause in effect at former facility to E's newly purchased facility, since new facility was essentially extension of E's old operation where new plant produced same products using same machinery, Ees performed essentially same functions. Contention move not mere relocation since it took too long for substantial percentage of transferees to arrive at new plant, rejected, since transferees constituted more than 40% of new work force on date transfer process *substantially completed*, and 8 month period to complete transfer operations not unreasonable herein]

Miss Elaine, Inc. **274 NLRB No. 036**

(E supported and assisted U in violation of 8(a)(1) and (2) and U violated 8(b)(1)(A) and (2) by entering into, maintaining, and enforcing memorandum agreement which extended coverage of existing U-security contract to Ees who had never before been members of unit, and requiring them to become members of U w/o affording them 30 days grace period w/i which to become U members; Ees were taken into unit w/o designating U through signed cards or election; and they received no explanation nor were they informed of 30-day grace period and were simply told to join U or lose their jobs)

6040-5050 For reasons other than failure to tender dues or initiation fees

Food & Commercial Workers, Local 115 (California Meat Company) **277 NLRB No. 083**

(threatening to seek discharge of Ees, who had resigned from U, unless they paid additional initiation fee, and actually seeking to do so, unlawful, where Ees became *financial core* members inasmuch as their resignations did not revoke their checkoff authorizations or otherwise evidenced intent to sever all of their relationship with U; and motivation behind U's professed concern about violating law with respect to receipt of payments by Us from Es was to mask its desire to retaliate against Ees for resigning)

6040-7500 **Maintenance-of-membership requirements**

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) **278 NLRB No. 052**

[maintenance of membership obligation is permitted by first proviso of 8(a)(3); but, as is true of all U security provisions, maintenance of membership requirements are subject to literal observation and to strict limitation because they are exceptions to basic statutory right to refrain from U membership]

6040-7530 After expiration of contract

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) **278 NLRB No. 052**

[U's demand that E discharge Ees for having failed to maintain membership in good standing by payment of dues after expiration of contract, unlawful, where Ees resigned during last month of contract's duration, stating that resignations were effective upon expiration of contract; such result is consistent with literal term of maintenance of membership provision herein and with strict construction accorded to first proviso of 8(a)(3) exception to guarantees of right to refrain from membership and of right to be free from employment discrimination based upon U membership]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) **278 NLRB No. 025**

[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorization election which U won set aside, since members and nonmembers were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

6040-7550 Resignation during contract hiatus

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) **278 NLRB No. 052**

[although most terms and conditions of employment continue during hiatus period after expiration of U contract, U security clause does not survive absent contractual provision continuing contract; consequently, during almost 2-month hiatus between contracts herein, Ees who resigned their U membership were relieved of U security obligation imposed by maintenance of membership provision, and nothing in Act gave U right to seek to enforce U security obligation by threat of discharge]

Graphic Communications District Council No. 2, etc. (Ray Cole, Division Manager Data Documents, Inc.) **278 NLRB No. 052**

[resignation from U during hiatus between contracts would not be nullified by subsequent negotiation of contract containing maintenance of membership provision that, by its terms, purports to be effective retroactively, since to construe first proviso to 8(a)(3) as also permitting contracts which require membership in past would bring about very result condemned by S.Ct in *Wallace Corp. v. N.L.R.B.*]

6040-8400 **Union shop requirements**

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**

[threatening nonstriking members with expulsion, severe fines and even loss of jobs since plant was a U shop, violative, as illegal to threaten U discipline for other than nonpayment of U dues and initiation fees to deprive Ee of his job]

6040-8700 **Means of enforcement**

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**

[threatening nonstriking members with expulsion, severe fines and even loss of jobs since plant was a U shop, violative, as illegal to threaten U discipline for other than nonpayment of U dues and initiation fees to deprive Ee of his job]

6050 ENFORCEMENT OF DUES AND INITIATION FEE REQUIREMENTS

6050-0100 **Generally**

Furriers Joint Council of New York, a/w Food & Commercial Workers (Associated Fur Manufacturers, Inc., et al.) **280 NLRB No. 107**

[where U assumed job of transmitting paychecks to Ees, its withholding of members' vacation paychecks in order to enforce collection of assessment for back dues and its deduction of back dues from those paychecks and giving members the balance thereof, violative; underlying purpose of 8(b)(1)(A) and (2) is to keep employment rights separate from membership obligations, such as payment of dues, and U may seek only the discharge of Ees who do not pay dues and may not resort to other methods to enforce compliance with membership obligations]

6050-3300 **Illegal provisions or requirements**

6050-3325 Payment required within 30-day grace period

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) **278 NLRB No. 025**

[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorization election which U won set aside, since members and nonmembers were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

6050-3387 Requiring payment of excessive and/or discriminatory initiation fees or dues

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(causing E to discharge Ee because of his failure to pay excessively unlawful initiation fee to U, unlawful)

6050-3399 Requiring that dues payment be current before giving job referral

Garage Employees Union Local No. 272, a/w Teamsters (Various Employers) **280 NLRB No. 138**

[U's failure to refer member, unlawful, since based solely on U considerations, where member had been in good standing when he requested withdrawal card; was under no obligation to pay dues while he held withdrawal card, and U refused to refer him out of hiring hall until he turned in his withdrawal card and paid dues for period he held card]

Carpenters Union Local No. 25 v. N.L.R.B. **769 F.2d 574 (C.A. 9, Aug. 1985)**

(District Council (Council) violated Act by preventing member from working overtime because he failed to present Council work card which evidenced member current in his dues. Under U security clause, dues delinquency only reason Ee could not work. But dues could be paid to local, as

6050-3399—Cont.

was case here, and Ee did everything he could to prove he was current. Burden on Council to justify its actions and sanction of unemployment is sufficiently harsh to invoke U's fiduciary obligation which was not met by its reliance on absence of Council's card and its attempt to confirm status with local who refused inquiry)

6050-6700 Discriminatory application of valid requirements

6050-6701 Generally

6050-6701-5000 Union obligation to inform employees of dues requirements

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) — 278 NLRB No. 025

[U's failure to explain in delinquency notice sent to Ees, how a fee was broken down between dues owed and initiation or reinstatement fees, violative, since, if Ees had questions concerning apportionment of fees owed, they would be required to seek assistance from the U]

Local Union No. 277, Painters (Del E. Webb New Jersey, Inc.) — 278 NLRB No. 027

[violation, where U caused E to discharge Ee for nonpayment of dues for period during which Ee was unemployed; further, U failed to give Ee adequate notice of dues obligations, nor did Ee seek to avoid U security obligations]

Helmsley-Spear, Inc. — 275 NLRB No. 043

(labor organizations seeking to enforce valid U security provisions have a strict fiduciary duty to advise Ees of their contractual obligations to maintain membership in good standing before initiating adverse action against them; this duty includes the obligation to apprise Ee of amount of dues arrearage, the time period in question and the precise amount of any reinstatement fee that may be required)

6050-6709 Requiring payment before expiration of grace period

General Teamsters Local 439, Teamsters (Melvin J. Leandro, III, an Individual) — 281 NLRB No. 037

[violation, where U invoked terms of U-security agreement to cause discharge of Ee for failure to pay his transfer-of-membership obligation that included building assessment fee which did not fall w/i definition of *periodic dues* and *fair share* fee for month Ee began employment with E and for which U did not afford Ee statutory grace period on his membership obligation]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) — 278 NLRB No. 025

[U's demand of members and nonmembers, that they pay initiation fees, reinstatement fees or dues and agency fees and E's subsequent discharge of Ees pursuant to U's demand for Ees' non-payment of fees, violative and deauthorization election which U won set aside, since members and nonmembers were under no obligation to pay such fees at time demand was made where U's old contract had expired and 30 day statutory period in 8(a)(3), under a new contract U had signed, had not yet run]

6050-6714 Requiring payment or reinitiation fee

General Teamsters Local 439, Teamsters (Melvin J. Leandro, III, an Individual) — 281 NLRB No. 037

[violation, where U invoked terms of U-security agreement to cause discharge of Ee for failure to pay his transfer-of-membership obligation that included building assessment fee which did not fall w/i definition of *periodic dues* and *fair share* fee for month Ee began employment with E and for which U did not afford Ee statutory grace period on his membership obligation]

Furriers Joint Council of New York, a/w Food & Commercial Workers (Associated Fur Manufacturers, Inc., et al.) — 280 NLRB No. 107

[where U assumed job of transmitting paychecks to Ees, its withholding of members' vacation paychecks in order to enforce collection of assessment for back dues and its deduction of back dues from those paychecks and giving members the balance thereof, violative; underlying purpose of 8(b)(1)(A) and (2) is to keep employment rights separate from membership obligations, such as payment of dues, and U may seek only the discharge of Ees who do not pay dues and may not resort to other methods to enforce compliance with membership obligations]

6050-6727 Inclusion of additional amounts as dues

6050-6727-6700 Building fund

General Teamsters Local 439, Teamsters (Melvin J. Leandro, III, an Individual) — 281 NLRB No. 037

[violation, where U invoked terms of U-security agreement to cause discharge of Ee for failure to pay his transfer-of-membership obligation that included building assessment fee which did not fall w/i definition of *periodic dues* and *fair share* fee for month Ee began employment with E and for which U did not afford Ee statutory grace period on his membership obligation]

6050-6767 Failure to inform member of obligation

Local Union No. 277, Painters (Del E. Webb New Jersey, Inc.) — 278 NLRB No. 027

[violation, where U caused E to discharge Ee for nonpayment of dues for period during which Ee was unemployed; further, U failed to give Ee adequate notice of dues obligations, nor did Ee seek to avoid U security obligations]

Helmsley-Spear, Inc. — 275 NLRB No. 043

(U seeking and obtaining discharge of Ee for failure to pay dues violative, since U's notices to Ee of dues delinquency were inadequate where two notices sent to Ee set forth conflicting periods of dues delinquency and failed to specify precise amount of reinstatement fee required of Ee; further, U's contention Ee was *free-rider* because he failed to read U mail, rejected, since negligence and inattention to U concerns are not equivalent to willful attempt to evade financial obligations and Ee followed pattern of sporadic dues payment, becoming delinquent and then paying in lump sum not only arrears but in advance)

Local 807, Teamsters (Paragon Paint & Varnish Corporation) — JD-(NY)-34-85

(no violation, where U requested discharge of Ee who was in arrears in payment of dues for period during which he was on sick leave, since U had advised Ee of amount owed, method used to compute amount, when payments were to be made and that discharge would result from failure to pay, and where Ee failed to fulfill agreement made with U for payment)

6050-6768 Requesting discharge for non-payment of dues obligation incurred at prior job

Hotel & Restaurant Employees (Southbay Limited Partnership d/b/a Sunnyvale Hilton) — 275 NLRB No. 72

(U unlawfully caused E to discharge Ee for nonpayment of dues allegedly accrued during prior employment with another E at which time Ee was never contacted by U in any way regarding any obligation to pay dues nor otherwise shown to have dues obligations absent evidence of any such obligation, U cannot lawfully require payment of dues as condition of employment even under valid U security contract)

6050-6779 Requiring proof of payment of dues

Carpenters Union Local No. 25 v. N.L.R.B. — 769 F.2d 574 (C.A. 9, Aug. 1985)

(District Council (Council) violated Act by preventing member from working overtime because he failed to present Council work card which evidenced member current in his dues. Under U security clause, dues delinquency only reason Ee could not work. But dues could be paid to local, as was case here, and Ee did everything he could to prove he was current. Burden on Council to justify its actions and sanction of unemployment is sufficiently harsh to invoke U's fiduciary obligation which was not met by its reliance on absence of Council's card and its attempt to confirm status with local who refused inquiry)

6050-6790 Requiring payment for period when no obligation

The Hearst Corporation, San Antonio Light Division — 281 NLRB No. 113

[U's demanding that E continue deducting dues from Ees who lawfully resigned from U, violative, notwithstanding Ees had failed to request revocation of dues deduction, since Ees' dues deduction authorizations made payment of dues a quid pro quo for U membership where contract established E would deduct all *membership dues* levied by U and authorizations assigned all *membership dues* to U, thus, it was clear dues were quid pro quo for U membership and was not intended to meet any other U financial obligations such as *financial core* payments]

Auto Workers, Local 785 (The Dayton Forging & Heat Treating Company) — 281 NLRB No. 102

[causing E to withhold dues pursuant to dues checkoff of current security provision for dues owed during precontract period, and threatening Ees with discharge for failure to pay such dues, violative]

Auto Workers, Local 785 (The Dayton Forging & Heat Treating Company) — 281 NLRB No. 102

[U's request to E that caused deduction of reinstatement fee from Ees, due to their alleged loss of good standing, violative where loss of good standing was caused by lack of payment during contract hiatus period when Ees had no statutory obligation to remit dues to retain their jobs]

Garage Employees Union Local No. 272, a/w Teamsters (Various Employers) — 280 NLRB No. 138

[U's failure to refer member, unlawful, since based solely on U considerations, where member had been in good standing when he requested withdrawal card; was under no obligation to pay dues while he held withdrawal card, and U refused to refer him out of hiring hall until he turned in his withdrawal card and paid dues for period he held card]

6050-6790—Cont.

Local Union No. 277, Painters (Del E. Webb New Jersey, Inc.) **278 NLRB No. 027**
[violation, where U caused E to discharge Ee for nonpayment of dues for period during which Ee was unemployed; further, U failed to give Ee adequate notice of dues obligations, nor did Ee seek to avoid U security obligations]

Dillingham Tug & Barge Corporation **278 NLRB No. 019**
[demanding that Ee, suspended for exercising Sec. 7 right of supporting rival U, pay dues pursuant to U security clause, violation, since Ee was not obligated to pay dues while denied membership; defense that Ee was obligated under *agency shop* or *financial core* doctrine rejected, since Ee did not voluntarily choose to avoid U membership and doctrine is not available to U which suspends or expels member]

Dillingham Tug & Barge Corporation **278 NLRB No. 019**
[attempting to cause and causing E to discharge Ee, who had been suspended for exercising Sec. 7 right of supporting rival U, for failure to pay dues when Ee had no dues obligation violation]

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**
(violation where U attempted to cause E to discharge Ees for failure to pay dues in accordance with contract's U security provision while simultaneously denying them rights and privileges of U membership by suspending them from membership because they joined and/or supported rival U in Bd election)

Bakery Workers, Local 42 (Gold Kist, Inc.) **JD-(ATL)-42-85**
(by requesting E to continue dues checkoff after Ees had resigned and by taking steps to grieve refusal of E to continue disputed checkoffs, U violated Act, notwithstanding Ees executed checkoff authorization since authorization directed deduction of dues *in accordance with regular membership dues* making payment of dues a quid pro quo for U membership and thereby revoking dues checkoff assignment as matter of law at time of each effective resignation from U membership. Therefore, by taking such action, U directly impairs Ee's Sec. 7 right to resign when it seeks to delay member's resignation)

Bakery Workers, Local 42 (Gold Kist, Inc.) **JD-(ATL)-42-85**
(U's requesting E to continue dues checkoff of Ees who had resigned membership and taking steps to grieve E's refusal to continue disputed checkoffs, violation)

6050-8700 Means of enforcement

Furriers Joint Council of New York, a/w Food & Commercial Workers (Associated Fur Manufacturers, Inc., et al.) **280 NLRB No. 107**
[where U assumed job of transmitting paychecks to Ees, its withholding of members' vacation paychecks in order to enforce collection of assessment for back dues and its deduction of back dues from those paychecks and giving members the balance thereof, violative; underlying purpose of 8(b)(1)(A) and (2) is to keep employment rights separate from membership obligations, such as payment of dues, and U may seek only the discharge of Ees who do not pay dues and may not resort to other methods to enforce compliance with membership obligations]

Local Union No. 277, Painters (Del E. Webb New Jersey, Inc.) **278 NLRB No. 027**
[violation, where U caused E to discharge Ee for nonpayment of dues for period during which Ee was unemployed; further, U failed to give Ee adequate notice of dues obligations, nor did Ee seek to avoid U security obligations]

6060 ENFORCEMENT OF SENIORITY AGREEMENTS AND PRACTICES

6060-0100 Generally

Mead Packaging **273 NLRB No. 181**
8(a)(3) and 8(b)(2) of the Act prohibit Es and Us, respectively, from discriminating against Ees *in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization...,* and absent appropriate justification, E or U policies are unlawful if they treat Ees disparately according to their level of U activity; and in addition, bargaining agreements which discourage or encourage U activities through a disparate grant of benefits are unlawful unless providing the benefit serves legitimate statutory purposes and indirectly benefits all unit Ees)

6060-5000 Enforcement of discriminatory seniority rules

6060-5050 Superseniority

Goodyear Tire and Rubber Company **278 NLRB No. 098**
[granting super-seniority to Executive Board members and Treasure of U for their terms of office for shift preference, surplus and layoff, and maintaining super-seniority clause with respect to Executive Board members and Treasurer of U, violative, where they had no responsibilities requiring on-the-job presence to further administration of bargaining agreement]

Goodyear Tire and Rubber Company **278 NLRB No. 098**
[according U's Executive Board member super-seniority under bargaining agreement with respect to shift preference and thereby causing Ee to be removed from first shift and placed on second shift, violative where Executive Board Member had no responsibility requiring on-the-job presence to further administration of bargaining agreement]

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**
(U's invoking contractual grievance procedure on or after U vice president filed grievance seeking reinstatement to job from which she had been bumped (contract granted U vice president *superseniority* for job bumping purposes) violative, since on-the-job presence of U vice president not necessary for performance of grievance processing duties and if grievant successful, result would displace another Ee)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**
(while grant of contractual superseniority to chief steward as to layoff and recall, lawful, lawfulness did not extend to job bumping protection since here, unlike *Scovill,* 266 NLRB 952, E had only one shift, and chief steward had plantwide responsibilities and so did not need to be in any particular job in order to perform plantwide grievance duties effectively)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**
(contention that superseniority grant of job bumping protection is lawful because, w/o such protection, chief steward may quit her job or stewardship, rejected, because it remains U's task to build and maintain its own organization, and where immediate problem is simply matter of encouraging Ees to serve as U representative U can handle situation by simply paying Ees or giving them other nonjob benefits)

Electronic Workers IUE, Local 663 (Gulton Electro Voice) **276 NLRB No. 109**
(grant of superseniority for purposes of recall and layoffs but not for job bumping protection, lawful, where president held impromptu meetings with company officials to discuss problems on plant floor before they became formal grievances which meetings are integral part of grievance procedure, in which she could not participate were she on layoff. In addition, she spends 2 full days per month in step 3 grievance meetings)

Laborers Local Union No. 380 (Mautz & Oren, Inc.) **275 NLRB No. 147**
(by maintaining and enforcing steward superseniority clause in contract, U violates 8(b)(1)(A) and (2) of Act, because clause gives them special economic or other on-the-job benefits, thereby going beyond preference for recall and layoff)

Laborers Local Union No. 380 (Mautz & Oren, Inc.) **275 NLRB No. 147**
(superseniority clause is presumptively unlawful, since it is not limited to layoff and recall of stewards, but extends by contract interpretation of arbitrator to overtime work and wage benefits for stewards on Saturday. Incumbent on Respondents to rebut presumption of unlawfulness, by demonstrating that Saturday overtime work for stewards serves legitimate statutory purpose other than impermissable one of giving stewards additional benefits to exclusion of nonsteward unit Ees)

Laborers Local Union No. 380 (Mautz & Oren, Inc.) **275 NLRB No. 147**
]*superseniority clause* in contract unlawful where Respondents did *not* demonstrate that payment for Saturday overtime work at date of time and one-half to steward would promote administration of collective-bargaining agreement beyond incidental and side benefits of having steward on job to police unit work)

Hotel and Restaurant Employees, Local 54 (Boardwalk Regency Corp-d/b/a Caesars Atlantic City) **JD-104-86**
[attempting to enforce shop stewards' contractual superseniority as to shift retention, not violation, since it protects continuity of U representation on shift because, stewards are responsible for processing grievances under contract, and presumption of lawfulness of their superseniority has not been rebutted]

Hotel and Restaurant Employees, Local 54 (Boardwalk Regency Corp-d/b/a Caesars Atlantic City) **JD-104-86**
[enforcing shop stewards' contractual superseniority for selecting days off, violation where U failed to establish that superseniority would be used to further representation process]

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**
[U's invoking superseniority clause of contract to keep pyrometer steward on job, not unlawful discrimination against two Ees who were not allowed to bump steward from sole remaining pyrometer position but were laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but

6060-5050—Cont.

statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(in considering propriety of Bd's *Gulton* rule pertaining to superseniority provisions and their enforcement by E and U, ct reviewed history of Bd's treatment of superseniority provisions in its prior decisions and affirmed Bd's decision herein that E and U unlawfully enforced superseniority provision causing layoff of Ees with greater seniority than U officials who were retained under superseniority clause)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(however ct might have decided superseniority matter at issue herein, Bd's formulation of new superseniority rule in its *Gulton* decision, after reconsidering *Limpco* line of cases was reasonable in allowing superseniority for layoff purposes only if U officials needed to be present at workplace; Bd is entitled to change its mind, so long as new general standard is applicable to all litigants)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(in affirming Bd's *Gulton* rule allowing enforcement of superseniority clause for layoff purposes only if U officials needed to be on job, ct held S.Ct's *Campbell* decision did not require different result; even if *Campbell*, in which S.Ct held veterans' retention of seniority under Selective Service Act did not invalidate superseniority of U officials over veterans during layoff, had been decided under NLRA, *Gulton* decision would not be inconsistent with *Campbell* since no reason existed to believe U officials therein did not meet *Gulton's* on job criteria)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(ct held Bd's superseniority line of cases proceed from premise that superseniority encourages workers to be good U members so that they might increase their chances of being selected for positions afforded superseniority; such premise, drawn from Bd's experience in labor relations, is reasonable and therefore should not be rejected by reviewing ct; nor does reasonableness of premise depend on whether U officials afforded superseniority are appointed by U hierarchy or are elected by U members)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(superseniority accorded U's recording secretary for layoff purposes held not justified under *Gulton* where secretary had neither significant representational nor contract administration duties requiring her presence in workplace; her duties were essentially clerical outside plant; and her maintenance of plant bulletin board took relatively little time and could be accomplished with only minor inconvenience of occasional trip to plant)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(superseniority accorded sergeant-at-arms held not justified under *Gulton* where his duties involved only regulating U meetings and did not entail representational or contract administration duties at or away from plant; nor did his position on U fair practices committee justify grant of superseniority since it was awarded not because of that position but because of his status as U official; Bd could plainly find that his layoff would not seriously interfere with his duties as executive board member)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(Ees did not waive right to challenge clause providing U officials with superseniority for puposes of layoff by ratifying agreement containing clause; right at issue herein is right to be free from discrimination that encourages U membership and is not *economic* right under S.Ct's *Metropolitan Edison* decision, such as right to strike or to refuse to cross lawful picket line, in attempt by Ees and U to achieve economic advantage and for which waiver is appropriate because Ee and U interests are presumed to coincide; if they do not, Ees remain free to change their representative)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(Ees did not waive right to challenge clause providing U officials with superseniority for puposes of layoff since, unlike economic rights which are subject to waiver, right at issue herein is one in which U and Ee interests are likely to conflict; under *Gulton* superseniority presumably encourages Ees to support U so as to increase their chances of attaining U office and greater job security; on the other hand, Ees have right not to be coerced into supporting incumbent U and, since superseniority encourages such support, Ees' ability to select representative no longer remains free)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(Bd properly retroactively applied its *Gulton* decision setting forth new rule pertaining to superseniority, where instant case was not of first impression nor abrupt departure from well established practice and, instead, resolved uncertainty created by Bd's earlier decisions; there was no reliance by parties on old rule and given uncertainty created by following cases, reliance thereon would have been calculated risk, and so there was nothing to oppose *statutory interest* in applying new rule; nor was it shown retroactive order will work inordinate hardship upon them)

N.L.R.B. v. Ensign Electric Division of Harvey Hubble, Inc., and Steelworkers, Local 5925 (Center on National Labor Policy, Inc.) 767 F.2d 1100 (C.A. 4, July 1985)

(contract provision's grant of superseniority for executive personnel of U, including recording secretary and treasurer, unlawful, notwithstanding U's contention that contract provision was negotiated at time superseniority was lawful under Bd decisions and Bd changed and retroactively applied rule on super seniority)

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[contention that preferential seniority for U officials in necessary to promote efficient and effective U representation, rejected, since U is responsible for maintaining its own organization, using job related benefits to do so is contrary to statutory purpose, and U has other means of accomplishing same end]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[contention that preferential seniority for non-steward U officials is not so inherently destructive of Ee rights that it should be held unlawful in spite of legitimate justification, rejected, since Bd's finding that only contract administration requiring U officials to be on the job justifies superseniority is not irrational or contrary to the Act, and cases cited in support of contention do not apply where they involve specific legislation, rather than superseniority clauses concerning which Congress did not legislate, and Selective Service Act's, rather than NLRA Sec. 7's, protection of Ee rights]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[maintaining and attempting to enforce contractual clauses granting superseniority for layoff to U's recording secretary and financial secretary, respectively, solely because of their status as U officials, violations where their presence on the job was not necessary for contract administration]

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

(granting U officer superseniority which enabled him to displace more senior Ee, violative, since officer was not necessary to administration of contract on the job; Bd considered Ees' right not to have job benefits tied to U activism more important than right to bargain through chosen representative and adjudged superseniority's lawfulness based on how much it encouraged U activism, not how little it discriminated; promotion of U's effectiveness and efficiency insufficient basis for U officer's superseniority after *Gulton*, and Bd has not endorsed U's allegation that superseniority assisted Ees' exercise of their rights

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

(granting U recording secretary seniority as to shift preference by assigning her to day shift solely because it would make communication with U president easier, violative, since gain in convenience from face-to-face over telephonic or documentary communication did not justify tying seniority-linked job benefit to U office while denying it to Ee whose seniority otherwise entitled her to it)

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

]*Gulton* rule as to U officer's superseniority not misapplied to U recording secretary's assignment to day shift, notwithstanding her contract administrative duties, since under *Gulton* rule persons with on-the-job contract administrative duties may lawfully be granted only such seniority as is necessary to enable them to stay on the job to carry out those duties, and recording secretary did not have such duties)

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

(contention that U has waived Ee rights Bd seeks to vindicate under *Gulton* rule restricting U officers' superseniority to that necessary for on-the-job contract administration, rejected; Bd is protecting, not Ees' economic right, but their right to be free of discrimination that encourages U activism, and U cannot waive it through bargaining, since its purpose is to protect Ees from U conduct that benefits U at expense of Ees' Sec. 7 rights, and waiver

6060-5050—Cont.

would impair Ees' choice of U by enabling incumbent to encourage Ees' support through lure of employment benefits tied to U positions)

6060-5800 Discriminatory enforcement of valid seniority rules

Automobile Workers, Local No. 1309 (International Harvester Company) JD-18-86

[U's invoking superseniority clause of contract to keep pyrometer steward on job, not unlawful discrimination against two Ees who were not allowed to bump steward from sole remaining pyrometer position but were laid off, notwithstanding U's letter stating it did not intend to have steward granted superseniority to represent himself and lack of pyrometer Ees remaining on job for steward to represent, since U letter was not binding contract but statement of intent, and steward was required on job to protect unit work, police its assignment, and represent laid-off Ees' recall rights]

6060-6700 'Dovetailing' or 'end tailing' of seniority

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132

[U's establishing seniority list which placed bargaining unit Ees at E's more recently organized plant behind previously unionized Ees at another of E's facilities, violative, since U could not refuse to consider or negotiate a dovetailing system solely because Ees at E's non-U plant joined U more recently than did Ees at E's unionized plant. By favoring Ees at its unionized plant, U in effect (if not intent) penalized Ees of non-U plant for refraining from engaging in U activity]

6070 ENFORCEMENT OF UNION RULES AS CONDITIONS OF EMPLOYMENT

6070-0100 Generally

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[Bd properly holds that U conduct which causes firing or prevents hiring demonstrates U's power so dramatically that its illegality is presumed; however, U can rebut such presumption by showing that its action *was necessary to effective performance of its function of representing its constituency*; for this purpose, merely demonstrating that it would be convenient for U, in enforcing its own internal rules of conduct, to have available an employment-related sanction, is insufficient]

6070-2500 Prohibition against working with delinquent member or non-member

N.L.R.B. v. Electrical Workers, Local 952 758 F.2d 486 (C.A. 9, Apr. 1985)

(violation for fining U member-E as true purpose of fine was to force E to bring improper pressure to bear against his nonunion Ees to join U. Evidence showed that internal U charge against E referred to him as *owner of company*, and magnitude of fine, $20,000, with $5000 suspended if E would not commit further violations of U constitution; namely, working with nonunion Ees)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[fact that U's referral system, giving priority in jobs to experienced journeymen rather that inexperienced *permit* men, was not contractually prescribed, does not compel conclusion that U's desire to preserve system by asking E to replace *permit* men who were non-members, was based on illegal motives; U's desire was to protect apprenticeship program and fact U told members they could be fined for working beside *permit* men, was not beyond reasonable action taken to achieve effective representation of U's members]

6070-7500 Rule against members on travelers cards working while local area residents unemployed

Local No. 136, Plumbers (B. F. Shaw Company) 280 NLRB No. 099

[individual's availability, dependability, regularity of service as well as competency are all nondiscriminatory considerations in determining order of job referals by U; whether individual maitained his card on deposit and paid traveler card dues is also legitimate nondiscriminatory consideration]

Iron Workers, Local No. 111 (Northern States Steel Builders, Inc.) 274 NLRB No. 110

(U's requesting E to hire its members to replace travelers and draw up a layoff list when it knew E had no present plans to layoff and asking travelers to quit their job so U's unemployed members could work violative; U, in asking E to hire its members and layoff travelers, was not seeking job availability information but instead was attempting to pressure E into discriminatorily replacing travelers with its members and further, U's actions of coercing travelers to quit was form of *indirect* pressure on E to discriminate against travelers and accede to U request)

6075 ENFORCEMENT OF DISCRIMINATION IN TERMS OR CONDITIONS OF EMPLOYMENT

6075-5000 Special benefits to stewards and/or union officials (for superseniority see 548-6060-5050)

Mead Packaging 273 NLRB No. 181

(E's unilateral discontinuance of insurance and pension benefits to U officers on leaves of absence for purpose of holding U office, not violative; granting such benefits to U officers alone under provision of contract would violate 8(a)(3) and 8(b)(2), since granting such benefits to U officers did not further effective administration of E's bargaining agreement where U officers were on U's payroll and acted as representatives of Ees at other Es premises, engaging in engotiations and arbitrations, and generally monitored compliance with U's bargaining agreements and further, granting of such benefits was not available to other Ees on an equal basis)

Hotel & Restaurant Employees, Local 5 (Turtle Bay Hilton and Country Club) JD-(SF)-81-86

[maintaining and enforcing clause in bargaining agreement with E, which provided that head shop stewards shall receive 25 cents an hour above their basic wage rate, unlawful]

N.L.R.B. v. Ensign Electric Division of Harvey Hubble, Inc., and Steelworkers, Local 5925 (Center on National Labor Policy, Inc.) 767 F.2d 1100 (C.A. 4, July 1985)

(contract provision's grant of superseniority for executive personnel of U, including recording secretary and treasurer, unlawful, notwithstanding U's contention that contract provision was negotiated at time superseniority was lawful under Bd decisions and Bd changed and retroactively applied rule on super seniority)

6090 DISCRIMINATORY ADMINISTRATION OF INSURANCE, PENSION, AND OTHER BENEFIT PLANS

Mead Packaging 273 NLRB No. 181

(E's unilateral discontinuance of insurance and pension benefits to U officers on leaves of absence for purpose of holding U office, not violative; granting such benefits to U officers alone under provision of contract would violate 8(a)(3) and 8(b)(2), since granting such benefits to U officers did not further effective administration of E's bargaining agreement where U officers were on U's payroll and acted as representatives of Ees at other Es premises, engaging in engotiations and arbitrations, and generally monitored compliance with U's bargaining agreements and further, granting of such benefits was not available to other Ees on an equal basis)

8000 AFFIRMATIVE DEFENSES

8020 COMPLIANCE WITH CONTRACT

Naftali Deutsch and Alexander Coler d/b/a C–D Investment Co. 279 NLRB No. 090

[District Council's action, and E's acquiescence, in reinstating two duly appointed stewards and causing discharge of steward appointed by U officer w/o authority to do so and in violation of hiring hall rules, not unlawful where District Council was preserving integrity of contractually prescribed referral practice, and discharge of steward appointed w/o proper authority was necessary to effective performance of its representative function]

Montgomery Elevator Company 278 NLRB No. 122

[U's insisting on and causing demotion and termination of Ee because of his non-membership in U, unlawful; contention Ee laid off since there were no helper positions available when he was returned to that status pursuant to agreement that Ees who failed mechanic test while working as mechanic with temporary permit be returned to *helper* status for 1 year, rejected, in view of disparate treatment of Ee and timing of termination soon after meeting of U's representative with E]

Local 807, Teamsters (Paragon Paint & Varnish Corporation) JD-(NY)-34-85

(no violation, where U requested discharge of Ee who was in arrears in payment of dues for period during which he was on sick leave, since U had advised Ee of amount owed, method used to compute amount, when payments were to be made and that discharge would result from failure to pay, and where Ee failed to fulfill agreement made with U for payment)

Electrical Workers, Local 328 (Stone and Webster Engineering Corporation) JD-(NY)-17-85

(where E insisted in its hiring hall requisition on only journeymen for work at jobsite and U conveyed this requirement to sister local who, in disregard of this requirement, sent members who were not journeymen to job, no violation of U's duty of fair representation where local U upon learing that these members lacked necessary requirements for job caused them to quit because U had to meet its contractual obligation with E in operating hiring hall to refer only Ees who met E's requirements)

8050 FAILURE TO EXHAUST INTERNAL UNION REMEDIES

8050—Cont.

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)

[U waived defense that discriminatees failed to exhaust internal U remedies where U failed to raise issue before ALJ and addressed issue for first time in its post-hearing briefs to ALJ]

554 UNION OBLIGATION TO BARGAIN

0100 GENERALLY

1400 NATURE AND EXTENT OF OBLIGATION AND DUTY TO BARGAIN

1433 MECHANICS OF BARGAINING

1433-1700 Time and place of meeting

1433-1750 Representative must be available at reasonable times

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(U unlawfully failed and refused to meet with E promptly and at reasonable times where U's claim that its only available negotiator was unable to attend meetings scheduled by E because of his *extremely hectic schedule* indicated policy and pattern of delay, procrastination, and avoidance; although U admittedly considered agreement with E of utmost importance, U's negotiator gave greater precedence to negotiation meetings of lesser importance; moreover, Bd has rejected asserted inability to bargain because of other business demands on time)

1433-3300 Authority of representative

Pacific Coast Metal Trades District Council 282 NLRB No. 041

[assertion that ALJ erred in failing to find that trades council had authority under contract to bind constituent locals to terms of subsequent mid-term contract modification agreement held not determinative since, whether or not council had *authority* to reach agreement binding locals, it did not *intend* to do so w/o locals' consent and, consequently, ALJ did not have to decide whether council had binding authority]

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(U unlawfully failed and refused to meet with E where U's contention was perceived as untrue in claiming that its delay in meeting with E was occasioned by need for U official's presence at negotiations because of importance of contract with E and current negotiator's lack of experience and unfamiliarity with E's operations; U's present negotiator said nothing to E's representative to dispel impression that he had anything other than full authority to negotiate agreement; and U was less than diligent in giving directions and guidance to negotiator which he allegedly needed)

1433-3350 Presence of persons other than conferees at bargaining sessions

1433-3350-8300 Representatives of other employers

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(U's refusal to bargain unless E withdrew individual from its its negotiating committee, which demand U based on his employment by E's main competitor as negotiation consultant, thus purportedly threatening U with multi-E bargaining, unlawful, where U previously made no objection to participation of individual in E's bargaining process until E indicated its strong position on wage rollback; U's negotiator impeded bargaining by leaving negotiation meeting upon departure of individual as demanded by U; and U's reason was to forestall negotiations rather than concern with multi-E bargaining)

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(U's refusal to meet and bargain with E unless E withdrew individual from its negotiating committee, which demand U based on individual's employment by E's main competitor as negotiation consultant, thus purportedly threatening U with multi-E bargaining, unlawful, even assuming that U generally apprehended undesirable multi-E bargaining, it did not excuse U's refusal to meet with E's negotiating committee since U left negotiations before having opportunity to determine whether E's committee had, as it professed, come to negotiate agreement only for unit Ees)

1433-6700 Impasse

1433-6701 Generally

Laborers Local No. 225 (National Wrecking Company) 281 NLRB No. 021

[U's demanding to impasse that E and its multi-E association agree to change terms of parties' current bargaining agreement with respect to pension contributions, and wage rates, and in furtherance and support of demands picketing E and/or its association at one of E's sites, unlawful]

1433-8300 Failure to sign or reduce agreement to writing

Pacific Coast Metal Trades District Council 282 NLRB No. 041

[trades council held not to have unlawfully refused to execute mid-term contract modification agreement, where agreement was susceptible to review by 2 of council's constituent locals one of which raised objections, which were not made in bad faith, to terms of agreement and thereby prevented it from becoming binding on parties, leaving no agreement which council was obligated to sign]

Furniture Workers, Local No. 36 (The Telescope Folding Furniture Co., Inc.) 281 NLRB No. 166

[refusal to execute contract, violation where parties had reached agreement on all substantive terms and U's contentions to contrary were unsupported by evidence]

Electrical Workers Local Union No. 617 (San Mateo Chapter, National Electrical Contractors Association, Inc.) 281 NLRB No. 163

[U's failure to sign Mutual Reciprocal Agreement (MRA) as it had agreed to if collective bargaining agreement signed, which it was, violative. Contention that promise to reinstate MRA was nonbinding as it involved nonmandatory subject of bargaining, rejected, as MRA vitally affects terms and conditions of employment notwithstanding it contains no separate wage or benefit rates schedule]

Steelworkers, and Local 4754 (Warrior and Gulf Navigation Company) 280 NLRB No. 164

[U's refusal to sign and or give effect to negotiated agreement, unlawful, since there was no effective notice to E prior to reaching agreement that execution of agreement was conditioned upon member ratification]

1433-9100 Ratification by employees

Steelworkers, and Local 4754 (Warrior and Gulf Navigation Company) 280 NLRB No. 164

[U's refusal to sign and or give effect to negotiated agreement, unlawful, since there was no effective notice to E prior to reaching agreement that execution of agreement was conditioned upon member ratification]

Steelworkers, and Local 4754 (Warrior and Gulf Navigation Company) 280 NLRB No. 164

[U may condition execution of agreement upon ratification by membership only if U has given notice of that condition to E prior to reaching agreement, or E otherwise knew, that ratification of agreement was condition of its execution]

State County Employees AFSCME, Council 71 (Golden Crest Convalescent Centers, Inc.) 275 NLRB No. 013

(U's refusal to honor agreement reached by parties in negotiations not unlawful since agreement was subject to ratification where E was aware, or reasonably should have been aware, that authority of U negotiators was limited to negotiations and could not in absence of ratification bind U to contract; and there was no allegation of bad faith or attempts to deceive on part of U)

Hotel Employees and Restaurant Employees Local No. 8 (Executive Inn) JD-(SF)-101-85

(violation where business agent stated that if contract signed, Ees would not need to ratify, and after agreement executed, business agent said members would have to ratify, which they did not, and which caused U to repudiate contract)

1450 SUBJECT MATTER OF BARGAINING

1450-0100 Generally

1450-0120 Mandatory subjects defined

Electrical Workers Local Union No. 617 (San Mateo Chapter, National Electrical Contractors Association, Inc.) **281 NLRB No. 163**
[U's failure to sign Mutual Reciprocal Agreement (MRA) as it had agreed to if collective bargaining agreement signed, which it was, violative. Contention that promise to reinstate MRA was nonbinding as it involved nonmandatory subject of bargaining, rejected, as MRA vitally affects terms and conditions of employment notwithstanding it contains no separate wage or benefit rates schedule]

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) **280 NLRB No. 009**
[preparation, use and cost sharing of official transcripts in non-expedited (regular) arbitration hearings constitute mandatory subject of bargaining, since substantive component of grievance arbitration procedure; distinction may be drawn between presence of reporter at or tape recording of negotiating session, which Bd has held not to be mandatory subject of bargaining, and reporter at arbitration hearing]

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) **275 NLRB No. 127**
(U unilaterally eliminating financial core members (members who resigned during strike but continue paying dues) access to eye and dental clinics and pharmacy (agents of U), violative, as these are mandatory subjects of bargaining notwithstanding these benefits outside bargaining agreements since strike settlement agreement provided that there would be no discrimination against any Ee because of their actions with respect to financial core status and use of these facilities involve significant aspect of employment relationship between Ees and E, namely, Ees' decision to work or not during strike

1450-0140 Permissible or nonmandatory subjects defined

Nassau Insurance Company **280 NLRB No. 103**
[U's demand that E's final economic offer be made in presence of stenographer, not mandatory subject of bargaining]

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) **279 NLRB No. 122**
[enlargement of bargaining unit not mandatory subject, and one party may not insist on change in scope of existing unit absent mutual consent]

Pennsylvania Telephone Guild and The Philadelphia Division of The Pennsylvania Telephone Guild (Bell Telephone Company of Pennsylvania) **277 NLRB No. 055**
(party fails to bargain in good faith by insisting to impasse on use of recording device during grievance meeting, since Bd's decision in *Bartlett-Collins*, 237 NLRB 770, which held that presence of ct reporter or use of recording device during bargaining negotiations was permissive subject of bargaining that could not be insisted upon to impasse is equally applicable to grievance meetings)

Local Union No. 1464, Electrical Workers (Kansas City Power & Light Company) **275 NLRB No. 219**
(U bug or identifying mark, nonmandatory subject of bargaining)

1450-0160 Prohibited subjects defined

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) **277 NLRB No. 048**
(insisting to impasse on relinquishment of clause in prior contract granting Es right to call foremen by name, violation where clause involved E's statutory right to select representative for adjustment of grievances, and insistence on its deletion was illegal)

1450-0800 Scope and work of unit

1450-0875 Composition of unit

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) **279 NLRB No. 122**
[enlargement of bargaining unit not mandatory subject, and one party may not insist on change in scope of existing unit absent mutual consent]

1450-3300 Working conditions

1450-3333 Overtime

Local 12, Auto Workers (Teledyne CAE) **JD-236-85**
(violation, where U notified E and bargaining unit Ees that Ees would no longer work overtime on day of U membership meetings, and Ees refusing such overtime would not be charged with time worked for purposes of overtime distribution, informing members that those who worked overtime on U meeting days could be fined, and changing U meeting day to last Saturday of month when it would have greater impact on production, since U under bargaining agreement and past practice was obligated to solicit unit Ees for weekend overtime work and this change amounted to unilateral change in contractual overtime provisions)

1450-4100 Grievance and dispute resolving procedures

1450-4125 Grievances

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) **280 NLRB No. 009**
[preparation, use and cost sharing of official transcripts in non-expedited (regular) arbitration hearings constitute mandatory subject of bargaining, since substantive component of grievance arbitration procedure; distinction may be drawn between presence of reporter at or tape recording of negotiating session, which Bd has held not to be mandatory subject of bargaining, and reporter at arbitration hearing]

Pennsylvania Telephone Guild and The Philadelphia Division of The Pennsylvania Telephone Guild (Bell Telephone Company of Pennsylvania) **277 NLRB No. 055**
(party fails to bargain in good faith by insisting to impasse on use of recording device during grievance meeting, since Bd's decision in *Bartlett-Collins*, 237 NLRB 770, which held that presence of ct reporter or use of recording device during bargaining negotiations was permissive subject of bargaining that could not be insisted upon to impasse is equally applicable to grievance meetings)

Pennsylvania Telephone Guild and The Philadelphia Division of The Pennsylvania Telephone Guild (Bell Telephone Company of Pennsylvania) **277 NLRB No. 055**
(U's insistence to impasse on tape-recording grievance meetings held unlawful insistence on nonmandatory subject of bargaining)

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) **JD-(NY)-136-85**
[U & E can negotiate manner and means by which grievance procedure shall be established and maintained, therefore they can agree that grievance must be presented to department steward and not to any steward]

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) **JD-(NY)-136-85**
[fact that Ee's grievances were not arbitrated by time instant case came to trial before ALJ *not* indicative of bad faith on U's part, since U demonstrated that there exists large backlog of grievances pending arbitration with Ee's grievance processing in approximately its correct order]

1450-9300 Union bug on printed contract

Local Union No. 1464, Electrical Workers (Kansas City Power & Light Company) **275 NLRB No. 219**
(U bug or identifying mark, nonmandatory subject of bargaining)

1467 ACTS CONSTITUTING REFUSAL TO BARGAIN OR INDICATING BAD FAITH

1467-0100 Generally

1467-0150 Obstructing Contractual Grievance-Arbitration Procedures

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) **280 NLRB No. 009**
[U's contention that Voluntary Rules of American Arbitration Association which were incorporated by reference into bargaining agreement gave it option to refuse to order, and share costs of, preparation of official transcript of nonexpedited (regular) arbitration hearings, rejected, since rules incorporated for limited purpose of governing arbitrator's actual conduct of arbitration hearing and did not govern whole arbitration procedure, where parties had in past customarily deviated from rules]

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) **280 NLRB No. 009**
[U's refusal to continue to agree to preparation, use, and cost sharing of official transcripts of non-expedited arbitration hearings conducted pursuant to grievance-arbitration provisions of contract, unlawful, notwithstanding no express provision in contract regarding matter, since consistent past practice for over 30 years history of contractual relationship made it requirement of contract, and thus U's unilateral refusal to continue practice threatened to nullify grievance-arbitration provisions of contract]

Oil Workers, Local Union No. 4--23 (Gulf Oil Corporation) **274 NLRB No. 063**
(expelling supervisor for testifying adversely against grievant at contractual arbitration hearing (though supervisor was only rank-and-file Ee at time of testimony), violative, as any U rules and discipline which are designed to discourage or prevent individuals from testifying or being called as witnesses in grievance arbitration hearings are inherently destructive of contractual arbitral process and are therefore unlawful)

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) **JD-(NY)-136-85**
[U & E can negotiate manner and means by which grievance procedure shall be established and maintained, therefore they can agree that grievance must be presented to department steward and not to any steward]

1467-0150—Cont.

N.L.R.B. v. Pennsylvania Telephone Guild 799 F.2d 84 (C.A. 3, Aug. 1986)

[U insisting to impasse that it be allowed to tape record all of grievance meeting, a nonmandatory subject of bargaining, violative, as grievance meeting substantially similar to bargaining negotiations and insistence on tape recorder at latter was held unlawful as it could inhibit free and open discussions]

1467-1200 Demand for bargaining in inappropriate unit

1467-1250 Broader than certified unit

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) 279 NLRB No. 122

[U's demanding arbitration of grievances seeking to merge three historically separate units by dovetailing seniority lists or otherwise in face of E's refusal to participate, violation, since enlargement of unit is nonmandatory bargaining subject, and U cannot lawfully demand merger of historically separate units w/o E's consent]

1467-1800 Surface bargaining

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

1467-2400 Dilatory tactics

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(U unlawfully failed and refused to meet with E where U's contention was perceived as untrue in claiming that its delay in meeting with E was occasioned by need for U official's presence at negotiations because of importance of contract with E and current negotiator's lack of experience and unfamiliarity with E's operations; U's present negotiator said nothing to E's representative to dispel impression that he had anything other than full authority to negotiate agreement; and U was less than diligent in giving directions and guidance to negotiator which he allegedly needed)

1467-2410 Failure to make or keep bargaining conference appointment

New Jersey Esso Employees' Association 275 NLRB No. 046

(U's insisting that bargaining agreement had renewed itself, after sending letter to E which served as notice pursuant to agreement of U's intention to terminate agreement and negotiate new agreement and thereafter failing to attend and participate in negotiation sessions agreed upon, violative)

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(U unlawfully failed and refused to meet and confer with E promptly and at reasonable times, where U passively waited for E to make almost all requests for bargaining, and w/o counter-proposing any alternate dates; U cancelled and/or failed to attend most negotiation meetings scheduled by E's representative whom U representative usually failed to notify in time of inability to attend scheduled meetings; and U failed to advise E, as promised, when another meeting could be arranged after cancelling or failing to attend E's scheduled meetings)

1467-2433 Behavior in negotiations

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(U unlawfully failed and confer with E where U's intention to impede and delay bargaining process and frustrate negotiations with E was most vividly demonstrated when at first full negotiation meeting in which U's chief negotiator participated, he demanded withdrawal of one of E's negotiators and, when E acceded to demand and challenged negotiator was preparing to leave, ostensibley *indispensable* chief negotiator announced that, since E's negotiator was leaving, he too would leave and that E could negotiate with claimed *inexperienced* negotiator)

1467-2433-5000 Change of position

Pacific Coast Metal Trades District Council 282 NLRB No. 041

[Us' sudden change in bargaining position held not deceitful or in bad faith, where E's threatened unilateral implementation of its bargaining proposal if Us did not bargain was misstatement of law, and when Us learned of correct state of law on matter their bargaining position changed; Us are not to be held accountable for sudden change in bargaining position as result of E-caused misapprehension of their rights]

Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70 of Alameda County, a/w Teamsters (Republic Supply Company of California) JD-(SF)-87-86

[U's claim that after contract expired, by withdrawing its timely notice of intent to cancel contract, it could cease negotiations with E for new contract and allow automatic renewal clause of expired contract to take effect, rejected, and U guilty of failure to bargain]

Hotel Employees and Restaurant Employees Local No. 8 (Executive Inn) JD-(SF)-101-85

(violation where business agent stated that if contract signed, Es would not need to ratify, and after agreement executed, business agent said members would have to ratify, which they did not, and which caused U to repudiate contract)

1467-3000 Proposals and demands

1467-3025 Insistence on execution of preferred contract

Carpenters' District Council of St. Louis, an affiliate of Carpenters (Dan Ficken Construction Company) 276 NLRB No. 071

(U's refusal to negotiate contract with one multi E association in order to force members to sign contract or letter of understanding to be bound by contract U had negotiated with another multi-E association, violative)

1467-3033 Illegal and/or unreasonable provisions

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(insisting to impasse on relinquishment of clause in prior contract granting Es right to call foremen by name, violation where clause involved E's statutory right to select representative for adjustment of grievances, and insistence on its deletion was illegal)

Chicago District Council of Carpenters, AFL-CIO (Polk Bros., Inc.) 275 NLRB No. 051

(violation, where U conditioned consummation of any bargaining agreement between it and E not in construction industry upon E's agreement to contract provisions therefore prohibited by 8(e))

Retail Delivery Drivers, Driver-Salesmen, and Helpers Local 278, a/w Teamsters (Labor Management Services, Inc. d/b/a L.M.S. Company) JD-(SF)-61-85

(U insisting upon application of bargaining agreement, including U-security provisions, to E's Ees at new location, violative, as this same issue was subject of UC proceeding in which RD held there was no accretion. E under no obligation to go to arbitration after UC proceeding though contract provides for arbitration)

1467-3050 Initial and final proposals essentially same

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

1467-3500 Insistence that nonmember Employer agree to terms of multi-employer contract

Teamsters Local 705 (Kankakee-Iroquois County Employers' Association) 274 NLRB No. 177

(no violation where U had stated after, rather than before, negotiations began that there would not be two contracts and thus had not decided before impasse to demand that local E association accept terms of contract U negotiated with regional E association; although U's statements reflected hard bargaining, its behavior suggested *open,' 'accessible' position* where it met with U four times for two hours each in two months, listened to and gave reasons for rejecting association's proposals and justified its bargaining position)

1467-3600 Imposing conditions outside area of mandatory bargaining

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(threatening to strike and striking to compel deletion of contract clause allowing Es to call foremen by name and thereby coercing Es in selection of representatives for adjustment of grievances, violation)

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(insisting to impasse on relinquishment of clause in prior contract granting Es right to call foremen by name, violation where clause involved E's statutory right to select representative for adjustment of grievances, and insistence on its deletion was illegal)

1467-6000 Uncompromising attitude or refusal to make concessions

1467-6075 Intransigence

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(entering negotiations with closed mind and intransigence as to inclusion of contract clauses demanded by international U with which local U was

1467-6075—Cont.

affiliated, lack of local U negotiator's authority to compromise as to these demands, and threatening to strike if E refused to agree to demands, violation)

New Jersey Esso Employees' Association 275 NLRB No. 046
(U's insisting that bargaining agreement had renewed itself, after sending letter to E which served as notice pursuant to agreement of U's intention to terminate agreement and negotiate new agreement and thereafter failing to attend and participate in negotiation sessions agreed upon, violative)

Teamsters Local 705 (Kankakee-Iroquois County Employers' Association) 274 NLRB No. 177
(no violation where U had stated after, rather than before, negotiations began that there would not be two contracts and thus had not decided before impasse to demand that local E association accept terms of contract U negotiated with regional E association; although U's statements reflected hard bargaining, its behavior suggested *open,' 'accessible' position* where it met with U four times for two hours each in two months, listened to and gave reasons for rejecting association's proposals and justified its bargaining position)

1467-6600 Commission of unfair labor practices

1467-6684 Refusal to deal with employer's designated representative

Carpenters' District Council of St. Louis, an affiliate of Carpenters (Dan Ficken Construction Company) 276 NLRB No. 071
(refusal of U to meet with multi-E association and negotiate new contract because one member of negotiating team was signatory to another multi-E contract that U had recently negotiated, violative, since E has right to be represented by two bargaining representatives, if it so elects)

1467-7200 Refusal to sign or reduce agreement to writing

Electrical Workers Local Union No. 617 (San Mateo Chapter, National Electrical Contractors Association, Inc.) 281 NLRB No. 163
[U's failure to sign Mutual Reciprocal Agreement (MRA) as it had agreed to if collective bargaining agreement signed, which it was, violative. Contention that promise to reinstate MRA was nonbinding as it involved nonmandatory subject of bargaining, rejected, as MRA vitally affects terms and conditions of employment notwithstanding it contains no separate wage or benefit rates schedule]

Automobile Mechanics Local No. 701, Machinists (Avis Rent A Car System, Inc.) 280 NLRB No. 149
[U's refusal to execute bargaining agreement including all terms and conditions to which parties had previously agreed, violative]

Local Union No. 30 and 30A, Operating Engineers (Hyatt Management Corporation of New York, Inc.) 280 NLRB No. 018
[U's refusal to execute agreed upon contract, violation, notwithstanding contentions that contract was not drafted as negotiated and that Ees failed to ratify it]

Local Union No. 1464, Electrical Workers (Kansas City Power & Light Company) 275 NLRB No. 219
(U's refusal to sign contract which had no U bug, not violative where parties had had U bug on contracts printed by outside parties for past 30 years, and E had told U that including U bug on current contract, which was to be printed inhouse, would be *no problem;* although U bug was not mandatory bargaining subject, its inclusion was agreed on early on in negotiations, and for Bd to order U to execute contract which did not have it would be equivalent to rewriting parties' contract in contravention of Sec. 8(d))

Steelworkers, Local Union No. 5503 (Ingersoll-Rand Company) 275 NLRB No. 106
(refusal to execute contract which was submitted to members and ratified, violative)

District 65, Automobile Workers (Whitehead Brothers, Inc.) JD-95-86
[no violation where U local officials had to ratify contract before binding agreement came into effect]

1467-7300 Refusal to honor executed contract

Laborers Local No. 225 (National Wrecking Company) 281 NLRB No. 021
[U's demanding to impasse that E and its multi-E association agree to change terms of parties' current bargaining agreement with respect to pension contributions, and wage rates, and in furtherance and support of demands picketing E and/or its association at one of E's sites, unlawful]

Food & Commercial Workers, Local 274 (Millco, Inc.) 279 NLRB No. 026
[E's contention that U bargained in bad faith by not including most-favored-nations clause in final ratified contract, rejected and U's refusal to include such clause not violative, where such clause was never part of E's last and final offer to U, which was accepted, and issue of clause came up only after E realized that U had negotiated lower wages with a competitor, a fact not indicating mistake or fraud]

Shipbuilders (Bethlehem Steel Corporation) 277 NLRB No. 191
[parent U's attempt to repudiate Settlement Agreements negotiated by local U and E that modified or terminated parent U's agreements with E, not violative where Settlement Agreements were not negotiated by parent U or any of its actual, or apparent, agents and were therefore void; further, parent U's attempt to repudiate agreements and to attempt to have parties return to agreements not yet expired were protected by 8(d)]

Heck's, Inc. JD159-86
[activity concerted where three Ees met and discussed problem, one Ee solicited other Ees' involvement, and E knew from conversations with supervisors and own investigation of concerted nature of activity]

Hotel Employees and Restaurant Employees Local No. 8 (Executive Inn) JD-(SF)-101-85
(violation where business agent stated that if contract signed, Ees would not need to ratify, and after agreement executed, business agent said members would have to ratify, which they did not, and which caused U to repudiate contract)

Hotel & Restaurant Employees Local No. 8 (Executive Inn) JD-(SF)-101-85
(failure to honor executed contract because it was not ratified by membership, violative where ratification had been removed as contingency during negotiations and was not reintroduced as valid contingency by remark of U spokesman at time of execution of contract)

1467-7500 Unilateral changing of terms and conditions of employment

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009
[U's contention that zipper clause in collective bargaining agreement precluded any finding that past practice of parties created any binding contractual obligation, rejected, since past practice concerning preparation, use, cost sharing of transcripts in arbitration hearings was not extrinsic, but served to define provisions in bargaining agreement concerning grievance arbitration]

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009
[U's contention that it gave E notice of its intention to change established practice regarding preparation, use and cost sharing of transcripts of nonexpedited arbitration hearings, and by failing to request bargaining E waived its rights, rejected, where E objected to U's proposed change, nor was E under any obligation to bargain about matter; further, supplemental agreement regarding dispensing with transcripts in certain arbitration cases which did not effect E could not be considered effective notice to E that U was considering modifying its arbitration transcript practice with E at some future date]

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009
[U's refusal to continue to agree to preparation, use, and cost sharing of official transcripts of non-expedited arbitration hearings conducted pursuant to grievance-arbitration provisions of contract, unlawful, notwithstanding no express provision in contract regarding matter, since consistent past practice for over 30 years history of contractual relationship made it requirement of contract, and thus U's unilateral refusal to continue practice threatened to nullify grievance-arbitration provisions of contract]

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009
[no duty imposed on E to request bargaining regarding change in practice regarding transcripts of arbitration hearings, and U's refusal to continue to agree to longstanding practice of preparation, use and cost sharing of official transcripts of such hearings conducted pursuant to contract, unlawful, where during negotiations for new agreement U withdrew its notice that it would no longer routinely agree that arrangements be made for court reporter and official transcript of arbitration hearings or to share cost with E, and did not serve notice until afternew agreement went into effect]

Food & Commercial Workers, Local 274 (Millco, Inc.) 279 NLRB No. 026
[E's contention that U bargained in bad faith by not including most-favored-nations clause in final ratified contract, rejected and U's refusal to include such clause not violative, where such clause was never part of E's last and final offer to U, which was accepted, and issue of clause came up only after E realized that U had negotiated lower wages with a competitor, a fact not indicating mistake or fraud]

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048
(assertion of right to unilaterally rescind and unilaterally rescinding provisions of parties' contract, violation)

1467-7500—Cont.

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) 275 NLRB No. 127

(U unilaterally eliminating financial core members (members who resigned during strike but continue paying dues) access to eye and dental clinics and pharmacy (agents of U), violative, as these are mandatory subjects of bargaining notwithstanding these benefits outside bargaining agreements since strike settlement agreement provided that there would be no discrimination against any Ee because of their actions with respect to financial core status and use of these facilities involve significant aspect of employment relationship between Ees and E, namely, Ees' decision to work or not during strike

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) 275 NLRB No. 127

(U's denial of financial core members' access to its pharmacy and eye and dental clinics in contravention of its strike settlement agreement, violative, even in absence of evidence that U was using dues of financial core members to finance its operation of these facilities)

Local 12, Auto Workers (Teledyne CAE) JD-236-85

(violation, where U notified E and bargaining unit Ees that Ees would no longer work overtime on day of U membership meetings, and Ees refusing such overtime would not be charged with time worked for purposes of overtime distribution, informing members that those who worked overtime on U meeting days could be fined, and changing U meeting day to last Saturday of month when it would have greater impact on production, since U under bargaining agreement and past practice was obligated to solicit unit Ees for weekend overtime work and this change amounted to unilateral change in contractual overtime provisions)

1467-7800 Actions to compel agreement to contract or contract modification

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) 279 NLRB No. 122

[U's demanding arbitration of grievances seeking to merge three historically separate units by dovetailing seniority lists or otherwise in face of E's refusal to participate, violation, since enlargement of unit is nonmandatory bargaining subject, and U cannot lawfully demand merger of historically separate units w/o E's consent]

1467-7850 Strikes and work stoppages, or threats thereof

1467-7850 Strikes and work stoppages, or threats thereof

Local Union No. 3, Electrical Workers (Burroughs Corp.) 281 NLRB No. 147)

[U's threat to strike in order to force E to negotiate new agreement after existing contract had been automatically renewed held derogation of automatic renewal clause and repudiation of contract; such conduct was analogous to unlawful U pressure to force Es who are members of multi E association to abandon existing labor agreements]

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(entering negotiations with closed mind and intransigence as to inclusion of contract clauses demanded by international U with which local U was affiliated, lack of local U negotiator's authority to compromise as to these demands, and threatening to strike if E refused to agree to demands, violation)

1467-7880 Refusal of Employer's tender of contributions to employee benefit fund

Carpenters' District Council of St. Louis, an affiliate of Carpenters (Dan Ficken Construction Company) 276 NLRB No. 071

(U's refusal to accept benefit payments from Es, contending such acceptance prohibited by Section 302(b)(1) of Act in absence of signed bargaining agreement or letter of understanding, and bargaining agreement had expired, unlawful, since *written agreement* requirement of Act is not limited to bargaining agreement and there was in effect written trust agreement between parties; further, refusal was to pressure Es to sign letters of understanding with U)

1467-8700 Actions nullifying contractual arbitration proceedings

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009

[U's contention that it gave E notice of its intention to change established practice regarding preparation, use and cost sharing of transcripts of nonexpedited arbitration hearings, and by failing to request bargaining E waived its rights, rejected, where E objected to U's proposed change, nor was E under any obligation to bargain about matter; further, supplemental agreement regarding dispensing with transcripts in certain arbitration cases which did not effect E could not be considered effective notice to E that U was considering modifying its arbitration transcript practice with E at some future date]

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009

[U's refusal to continue to agree to preparation, use, and cost sharing of official transcripts of non-expedited arbitration hearings conducted pursuant to grievance-arbitration provisions of contract, unlawful, notwithstanding no express provision in contract regarding matter, since consistent past practice for over 30 years history of contractual relationship made it requirement of contract, and thus U's unilateral refusal to continue practice threatened to nullify grievance-arbitration provisions of contract]

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009

[no duty imposed on E to request bargaining regarding change in practice regarding transcripts of arbitration hearings, and U's refusal to continue to agree to longstanding practice of preparation, use and cost sharing of official transcripts of such hearings conducted pursuant to contract, unlawful, where during negotiations for new agreement U withdrew its notice that it would no longer routinely agree that arrangements be made for court reporter and official transcript of arbitration hearings or to share cost with E, and did not serve notice until after new agreement went into effect]

Oil Workers, Local Union No. 4--23 (Gulf Oil Corporation) 274 NLRB No. 063

(expelling supervisor for testifying adversely against grievant at contractual arbitration hearing (though supervisor was only rank-and-file Ee at time of testimony), violative, as any U rules and discipline which are designed to discourage or prevent individuals from testifying or being called as witnesses in grievance arbitration hearings are inherently destructive of contractual arbitral process and are therefore unlawful)

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) JD-(NY)-136-85

[fact that Ee's grievances were not arbitrated by time instant case came to trial before ALJ *not* indicative of bad faith on U's part, since U demonstrated that there exists large backlog of grievances pending arbitration with Ee's grievance processing in approximately its correct order]

1467-9000 Breach of no-strike, grievance, and arbitration clauses to force employer to yield to union's bargaining demands

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009

[U's refusal to continue to agree to preparation, use, and cost sharing of official transcripts of non-expedited arbitration hearings conducted pursuant to grievance-arbitration provisions of contract, unlawful, notwithstanding no express provision in contract regarding matter, since consistent past practice for over 30 years history of contractual relationship made it requirement of contract, and thus U's unilateral refusal to continue practice threatened to nullify grievance-arbitration provisions of contract]

Oil Workers, Local Union No. 4--23 (Gulf Oil Corporation) 274 NLRB No. 063

(expelling supervisor for testifying adversely against grievant at contractual arbitration hearing (though supervisor was only rank-and-file Ee at time of testimony), violative, as any U rules and discipline which are designed to discourage or prevent individuals from testifying or being called as witnesses in grievance arbitration hearings are inherently destructive of contractual arbitral process and are therefore unlawful)

1467-9600 General refusal to bargain

Hotel & Restaurant Employees, Local 19 (Vicorp Restaurants, Inc. d/b/a Seasons Restaurant) 277 NLRB No. 090

(U's refusal to negotiate new contract with purchaser of businesses on ground that E was bound by U's contracts with predecessor E, violation, since, although E had hired predecessor's Ees and recognized U as their representative, it had not assumed predecessor's contract that conditioned predecessor's sale of business on E's assumption of contract)

Tex Munshack, Inc. JD-(SF)-64-85

(U's refusal to accept as valid Es' notice of termination of contract in accordance with their respective memorandum agreements with U and refusal to bargain for new contracts on ground that master agreement that was incorporated by reference in memorandum agreements governed termination of contract, violative, since express language of memorandum agreements governed termination procedures)

1467-9650 Totality of conduct

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(entering negotiations with closed mind and intransigence as to inclusion of contract clauses demanded by international U with which local U was affiliated, lack of local U negotiator's authority to compromise as to these demands, and threatening to strike if E refused to agree to demands, violation)

1475 DUTY TO FURNISH INFORMATION

1475-0100 Generally

1475-0137 Standard for furnishing is relevancy of information to Employer's role as bargaining agent

1475-0137-2000 Relevance to bargaining negotiations

Local Union 497, Electrical Workers (Apple City Electric, Inc., et al.) **275 NLRB No. 176**
(U's refusal to provide E with list of names and addresses of persons subject to U's referral procedure, violative, notwithstanding U's contention disclosure would breach members expectation of privacy and U had offered to allow inspection of books but no copying, where information was clearly relevant to ongoing negotiations over U's hiring hall and procedure, there was no *clear and present* danger E would harrass people on list and list was so detailed that no ordinary person could memorize it and thus, copies must be provided to E's negotiator)

N.L.R.B. v. Local Union 497, Electrical Workers **795 F.2d 836 (C.A. 9, July 1986)**
[parties to bargaining must disclose information that aids in bargaining process. A broad discovery standard is used for relevance. However, bare assertion that information is needed to process grievance does not oblige party from whom it is requested to turn it over. Moreover, S.Ct has rejected Bd's position that interests in arguably relevant information must always predominate over all other interests. Bd's responsibility is to balance arguable relevance of material against any harm that will stem from disclosure]

1475-0137-4000 Relevant to policing agreement

N.L.R.B. v. Local Union 497, Electrical Workers **795 F.2d 836 (C.A. 9, July 1986)**
[parties to bargaining must disclose information that aids in bargaining process. A broad discovery standard is used for relevance. However, bare assertion that information is needed to process grievance does not oblige party from whom it is requested to turn it over. Moreover, S.Ct has rejected Bd's position that interests in arguably relevant information must always predominate over all other interests. Bd's responsibility is to balance arguable relevance of material against any harm that will stem from disclosure]

1475-0137-8000 Relevancy of other data must be demonstrated

Culinary Workers Union, Local 226, a/w Hotel & Restaurant Employees (Desert Palace, Inc. d/b/a Caesars Palace, et al.) **281 NLRB No. 043**
[failure to supply requested area arbitration decisions to which U was a party, violation, notwithstanding information was outside scope of multi-E bargaining unit, where requester demonstrated relevance to Ea' arbitration of grievances, based on *substantially identical* contracts of all area Es, U's use of arbitration decisions in arbitration proceedings, and arbitrators' practice of giving decisions precedential weight]

1475-6700 Nature of information to be supplied

1475-6760 Wage and or employment data

1475-6760-0600 Hiring hall

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, the Honolulu Chapter of the National Electrical Contractors Association) **264 NLRB No. 097**
(no violation, where U denied E association access to its hiring hall records for stated purpose of determining if hiring hall was complying with requirement that referral be w/o regard to race, color, religion, sex, national origin, or U membership, since E association did not avail itself of U's offer to permit association to examine records for one hour per day between 1:30-4:30 p.m.)

1475-6760-0610 Registration, placement, classifications, experience, etc.

Local Union 497, Electrical Workers (Apple City Electric, Inc., et al.) **275 NLRB No. 176**
(U's refusal to provide E with list of names and addresses of persons subject to U's referral procedure, violative, notwithstanding U's contention disclosure would breach members expectation of privacy and U had offered to allow inspection of books but no copying, where information was clearly relevant to ongoing negotiations over U's hiring hall and procedure, there was no *clear and present* danger E would harrass people on list and list was so detailed that no ordinary person could memorize it and thus, copies must be provided to E's negotiator)

1475-6770 Equal employment and/or affirmative action (statistical data, plans, etc.)

Electrical Workers, Local Union No. 1186 (Pacific Electrical Contractors Association, the Honolulu Chapter of the National Electrical Contractors Association) **264 NLRB No. 097**
(no violation, where U denied E association access to its hiring hall records for stated purpose of determining if hiring hall was complying with requirement that referral be w/o regard to race, color, religion, sex, national origin, or U membership, since E association did not avail itself of U's offer to permit association to examine records for one hour per day between 1:30-4:30 p.m.)

1475-7500 Hiring hall records

N.L.R.B. v. Local Union 497, Electrical Workers **795 F.2d 836 (C.A. 9, July 1986)**
[U's refusal to let Es, parties to multi-E bargaining agreement, copy names and addresses of users of hiring hall, which information Es claimed would aid in determining competence of workers, unlawful, since information relevant to bargaining process; U's contention that disclosure would violate first amendment right of freedom of association, rejected, since Es could require Ees to disclose their names and addresses as condition of employment, U was willing to allow outsiders to inspect list, U failed to show harassment likely, nor was list of such sensitive nature as to justify non-disclosure]

1483 REQUIREMENTS FOR TERMINATION OR MODIFICATION OF CONTRACTS - 8(d) PROVISO

1483-0100 Generally

1483-0125 No obligation to discuss or agree to modification during fixed contract term

Shipbuilders (Bethlehem Steel Corporation) **277 NLRB No. 191**
[parent U's attempt to repudiate Settlement Agreements negotiated by local U and E that modified or terminated parent U's agreements with E, not violative where Settlement Agreements were not negotiated by parent U or any of its actual, or apparent, agents and were therefore void, further, parent U's attempt to repudiate agreements and to attempt to have parties return to agreements not yet expired were protected by 8(d)]

1483-0150 Obligation to refrain from termination or modification without notice and bargaining

1483-0150-5000 Modification of terms without bargaining

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) **279 NLRB No. 122**
[U's demanding arbitration of grievances seeking to merge three historically separate units by dovetailing seniority lists or otherwise in face of E's refusal to participate, violation, since enlargement of unit is nonmandatory bargaining subject, and U cannot lawfully demand merger of historically separate units w/o E's consent]

Shipbuilders (Bethlehem Steel Corporation) **277 NLRB No. 191**
[parent U's attempt to repudiate Settlement Agreements negotiated by local U and E that modified or terminated parent U's agreements with E, not violative where Settlement Agreements were not negotiated by parent U or any of its actual, or apparent, agents and were therefore void; further, parent U's attempt to repudiate agreements and to attempt to have parties return to agreements not yet expired were protected by 8(d)]

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) **275 NLRB No. 127**
(U unilaterally eliminating financial core members (members who resigned during strike but continue paying dues) access to eye and dental clinics and pharmacy (agents of U), violative, as these are mandatory subjects of bargaining notwithstanding these benefits outside bargaining agreements since strike settlement agreement provided that there would be no discrimination against any Ee because of their actions with respect to financial core status and use of these facilities involve significant aspect of employment relationship between Ees and E, namely, Ees' decision to work or not during strike

1483-2000 Notice requirements

1483-2001 Generally

Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70 of Alameda County, a/w Teamsters (Republic Supply Company of California) **JD-(SF)-87-86**
[U's claim that after contract expired, by withdrawing its timely notice of intent to cancel contract, it could cease negotiations with E for new contract and allow automatic renewal clause of expired contract to take effect, rejected, and U guilty of failure to bargain]

1483-2001-1700 Applicable only as prerequisite to strike, lockout, modification, or termination

Local Union No. 3, Electrical Workers (Burroughs Corp.) **281 NLRB No. 147**
[U's threat to strike in order to force E to negotiate new agreement after existing contract had been automatically renewed held derogation of automatic renewal clause and repudiation of contract; such conduct was analogous to unlawful U pressure to force Es who are members of multi E association to abandon existing labor agreements]

1483-2001-5000 Actual notice required

Machinists, Lodge #1743 (Farmers Union Central Exchange, Inc. d/b/a Cenex) JD-(SF)-187-85

[timely notice given by E to reopen negotiations where E timely sent notice to last address known to E which address had been changed by U unbeknownst to E, and notwithstanding E received letters from U on letterhead that contained new address. Test of timeliness is whether delay resulted from *conditions beyond control of sender* and here, E had communicated with U under old address after U made change]

1483-2033 Sixty-day notice to other party

1483-2033-2000 Adequacy of service

Machinists, Lodge #1743 (Farmers Union Central Exchange, Inc. d/b/a Cenex) JD-(SF)-187-85

[timely notice given by E to reopen negotiations where E timely sent notice to last address known to E which address had been changed by U unbeknownst to E, and notwithstanding E received letters from U on letterhead that contained new address. Test of timeliness is whether delay resulted from *conditions beyond control of sender* and here, E had communicated with U under old address after U made change]

1483-2033-4000 Computation of 60-day period

1483-2033-4060 Automatically renewable contracts

Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70 of Alameda County, a/w Teamsters (Republic Supply Company of California) JD-(SF)-87-86

[U's claim that after contract expired, by withdrawing its timely notice of intent to cancel contract, it could cease negotiations with E for new contract and allow automatic renewal clause of expired contract to take effect, rejected, and U guilty of failure to bargain]

1483-4000 Obligation to meet and confer with other party on proposals

Local 12, Auto Workers (Teledyne CAE) JD-236-85

(violation, where U notified E and bargaining unit Ees that Ees would no longer work overtime on day of U membership meetings, and Ees refusing such overtime would not be charged with time worked for purposes of overtime distribution, informing members that those who worked overtime on U meeting days could be fined, and changing U meeting day to last Saturday of month when it would have greater impact on production, since U under bargaining agreement and past practice was obligated to solicit unit Ees for weekend overtime work and this change amounted to unilateral change in contractual overtime provisions)

Tex Manshack, Inc. JD-(SF)-64-85

(U's refusal to accept as valid Es' notice of termination of contract in accordance with their respective memorandum agreements with U and refusal to bargain for new contracts on ground that master agreement that was incorporated by reference in memorandum agreements governed termination of contract, violative, since express language of memorandum agreements governed termination procedures)

2800 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF UNION

4200 EFFECT UPON OBLIGATION OF CHANGE IN IDENTITY OF EMPLOYER

4250 SUCCESSOR EMPLOYER

Hotel & Restaurant Employees, Local 19 (Vicorp Restaurants, Inc. d/b/a Seasons Restaurant) 277 NLRB No. 090

(U's refusal to negotiate new contract with purchaser of businesses on ground that E was bound by U's contracts with predecessor E, violation, since, although E had hired predecessor's Ees and recognized U as their representative, it had not assumed predecessor's contract that conditioned predecessor's sale of business on E's assumption of contract)

5600 MULTI-EMPLOYER BARGAINING

5655 UNION ASSENT TO WITHDRAWAL OF EMPLOYER FROM MULTI-EMPLOYER BARGAINING

Electrical Workers Local Union 952 (D & R Electric, Inc.) 275 NLRB No. 080

(U's refusal to bargain directly with E, violative, as E timely withdrew from multi-E association and therefore was not bound by extension negotiated by U and association after its withdrawal)

Cement Masons, Local 627, Plasterers (Jack Hart Concrete Construction) 274 NLRB No. 187

(Bd dismissed C alleging U unlawfully refused to bargain with E where both parties had reasonable, though differing, interpretation of ambiguous termination provision of original contract agreed to by parties, and Bd refused to endorse any of parties' interpretation)

5688 INDIVIDUAL BARGAINING WITH EMPLOYER- MEMBERS OF ASSOCIATION

Marble Masons, Local No. 17of California, a/w Bricklayers (Ruhm Tile and Marble, Inc.) 278 NLRB No. 132

[U had no obligation to negotiate new contract with E association, and its refusal to bargain not unlawful where Es were each bound by 3-year short form agreements adopting prior agreement negotiated by one E on behalf of association; while 10 of 11 Es had withdrawn from multi-E bargaining before adopted agreement expired and therefore there was no multi-E agreement, Es nevertheless agreed to be bound by adopted agreement and, consequently, there was no basis for concluding Es would be bound by agreement only if it was multi-E agreement]

Marble Masons, Local No. 17of California, a/w Bricklayers (Ruhm Tile and Marble, Inc.) 278 NLRB No. 132

[U did not unlawfully fail to bargain with E association for new contract where E-members were each bound by 3-year short form agreements which had not expired, adopting prior agreement negotiated by one E-member on behalf of association; U had no obligation to bargain in midterm of short form agreements since members not only voluntarily adopted prior agreement but also successor agreements for period of 3 years; moreover, short form contracts explicitly provided that expiration of current or any succeeding agreement would not terminate 3-year contracts]

7000 MULTI-UNION BARGAINING

7025 INTENT OF UNIONS

Pacific Coast Metal Trades District Council 282 NLRB No. 041

[assertion that ALJ erred in failing to find that trades council had authority under contract to bind constituent locals to terms of subsequent mid-term contract modification agreement held not determinative since, whether or not council had *authority* to reach agreement binding locals, it did not *intend* to do so w/o locals' consent and, consequently, ALJ did not have to decide whether council had binding authority]

Pacific Coast Metal Trades District Council 282 NLRB No. 041

[*courtesy of review* term used by trades council with respect to mid-term contract modification agreement, reserving right of review in officials of council's constituent locals, held not by its terms sufficient alone to create real or effective ability on part of locals' officials to prevent agreement and not independently sufficient in law to render agreement dissolved upon subsequent dissent to its terms by 1 local's official]

8400 AFFIRMATIVE DEFENSES

8460 CONTRACT CONSIDERATIONS

Pacific Coast Metal Trades District Council 282 NLRB No. 041

[assertion that ALJ erred in failing to find that trades council had authority under contract to bind constituent locals to terms of subsequent mid-term contract modification agreement held not determinative since, whether or not council had *authority* to reach agreement binding locals, it did not *intend* to do so w/o locals' consent and, consequently, ALJ did not have to decide whether council had binding authority]

Communications Workers (Chesapeake and Potomac Telephone Company, et al.) 280 NLRB No. 009

[U's contention that zipper clause in collective bargaining agreement precluded any finding that past practice of parties created any binding contractual obligation, rejected, since past practice concerning preparation, use, cost sharing of transcripts in arbitration hearings was not extrinsic, but served to define provisions in bargaining agreement concerning grievance arbitration]

560 PROHIBITED STRIKES AND BOYCOTTS

0100 GENERALLY

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[S.Ct's holding in *Bill Johnson's Restaurants, Inc.* v. *N.L.R.B.*, 461 U.S. 731, that filing of lawsuit may constitute violation of Sec. 8(a)(1) if suit is filed with improper motive and w/o reasonable basis in law found applicable to determine whether U committed Sec. 8(b)(4) violation in seeking to enforce arbitrator's award that was contrary to Bd's 10(k) determination]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. 796 F.2d 1328 (C.A. 11, Aug. 1986)

[handbilling is protected by First Amendment even when designed to pressure others to act, but government has interest in certain forms of economic regulations, e.g. secondary boycotts and picketing, notwithstanding effects on rights of speech and association, as part of Congress' striking delicate balance between U's freedom of expression and neutral Es', Ees', and consumers' freedom from coerced participation in industrial strife]

2500 CONDUCT PROHIBITED WHEN FOR PROHIBITED OBJECT

2550 INDUCEMENT OR ENCOURAGEMENT OF - (i)

2550-3300 To strike

Construction and General Laborers Local Union No. 304, Laborers (Herring & Worley, Inc.) 282 NLRB No. 014

[U's representatives informing Ees of neutral E that Ees *should not be crossing picket line* at construction site, informing Ees *any time you cross picket line it isn't right*for VP to assume the presidency when president became incapacitated]

Construction and General Laborers Local Union No. 304, Laborers (Herring & Worley, Inc.) 282 NLRB No. 014

[U representatives informing neutral E's superintendent that *any time you cross picket line it is not right*, unlawful, where resulted in superintendent pulling neutral Ees off job pending guidance from his E and causing 1 Ee not to return to project that afternoon]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[U's and its locals' inducing Ees of E association and its members to engage in work stoppages or refusals to perform services in course of employment, violation where supplements covering disputed work they negotiated with E association had objective of forcing nonmember Es to d/c/b with Es not employing Ees represented by U to do disputed work]

2550-5000 To refuse to use, handle, or work on goods or commodities

Miscellaneous Drivers, Helpers & Public Employees Local Union 610, a/w Teamsters (Albert H. Hoppe, Inc.) JD-49-86

[U president informing president of company that provided livery service for funeral homes (neutral) that E's drivers would not perform any trips for funeral home (primary) against which it was on strike, violative, as object was to cause neutral to c/d/b with primary, and U president instructing its members not to perform any trips, violative also]

2550-5700 To refuse to perform services

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[where neutral subcontractor replaced primary subcontractor who had become delinquent in its contribution to contractual trust funds, U's inducement of neutral subcontractor's Ees w/i meaning of 8(b)(4)(i) not to work for their subcontractor with 8(b)(4)(B) object of forcing neutral subcontractor to cease doing business with neutral general contractor on project and 8(b)(4)(A) object of forcing neutral subcontractor to pay primary E's delinquencies under contract and thus comply with self-help contract provisions violative of 8(e), unlawful]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[U's and its locals' inducing Ees of E association and its members to engage in work stoppages or refusals to perform services in course of employment, violation where supplements covering disputed work they negotiated with E association had objective of forcing nonmember Es to d/c/b with Es not employing Ees represented by U to do disputed work]

Miscellaneous Drivers, Helpers & Public Employees Local Union 610, a/w Teamsters (Albert H. Hoppe, Inc.) JD-49-86

[U president informing president of company that provided livery service for funeral homes (neutral) that E's drivers would not perform any trips for funeral home (primary) against which it was on strike, violative, as object was to cause neutral to c/d/b with primary, and U president instructing its members not to perform any trips, violative also]

Service Employees, Local No. 254 (Yeoman Service Corporation) JD-63-85

(U picketing at neutral E's building at times it was known to U that Ees of E (primary) who provided janitorial services for building were not scheduled to work, violative, as picketing calculated to induce Ees of neutral to withhold services from their E, and to coerce and restrain neutral with object of forcing neutral to refrain from doing business with primary)

2550-8300 Forms of inducement or encouragement

2550-8333 Picketing

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) 273 NLRB No. 148

(picketing by U on behalf of independent contractors at E's facility at which only Ees represented by another U were employed, unlawful, even though Us ceased picketing upon being apprised no independent contractors were present at facility; Act does not permit U to picket whenever and against any E it may wish, and continue picketing while it determines in its own judgment whether it has right to do such picketing)

Carpenters, Local No. 33 (Project Management, Inc.)

[picket's with area standards signs naming neutral Es, after being told neutral had no Ees at site and picketing around entire site, including at gates reserved for rental Es, to encourage and coerce neutral Es to c/d/b with non-U E primary, violation]

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85

(ambulatory picketing of trucks of neutral trucking firm making deliveries for neutral sales company by U having dispute with E leasing drivers to trucking firm, unlawful, where picketing had unlawful object of inducing sales company's Ees to refuse to perform their job and of pressuring neutrals to put pressure on, or c/d/b with, primary E or with each other until either sales company or trucking firm hired U's members laid off when sales company discontinued former delivery service)

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85

(ambulatory picketing of neutral E's trucks, driven by Ees supplied by primary E, during deliveries made for neutral sales company which had discontinued prior delivery service resulting in lay off of U members, unlawful, since effect of picketing was to induce Ees of sales company to cease performing their job)

2550-8394 Imposition of union fines

Local 388, Plumbers (Daily Heating and Air Conditioning, Inc. 280 NLRB No. 141

[U's picketing of E in attempt to cause E to c/d/b with subcontractor with whom U had primary dispute, bringing charges against Ee and fining him for having worked behind U's picket line and U's telling Ee that it had been good to him before but that was now over, violative; U's defense that picketing was lawful primary picketing done pursuant to valid work preser-

2550-8394—Cont.

vation clause with E, rejected, since U's object was not to preserve work but was to force E with whom U had contract from working on a jobsite with another E with whom U had long-standing primary area standards dispute]

2575 THREATENING, COERCION, OR RESTRAINT OF - (ii)

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 020**

[U's and its locals' inducing Ees of E association and its members to engage in work stoppages or refusals to perform services in course of employment, violation where supplements covering disputed work they negotiated with E association had objective of forcing nonmember Es to d/c/b with Es not employing Ees represented by U to do disputed work]

2575-3300 Any person engaged in commerce

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**

[*owner of neutral E* who was member of U held *person* w/i meaning of subsection (ii) of Section 8(b)(4) of Act, and U fining him, violative, since purpose is to induce Ee to withhold services from neutral E for unlawful secondary objective; i.e. force neutral to c/d/b with primary; further, fining individual as owner is also violative as natural consequence of fine imposed on him was to force him, as neutral E to c/d/b with other Es with whom U had dispute]

2575-6700 Forms of threats, restraint, or coercion

2575-6701 Generally

United Scenic Artists, Local 829, Painters (Theatre Techniques, Inc.) **278 NLRB No. 046**

[no violation found by Bd, applying law of case on remand, in U's coercion of neutral E iacking control of disputed work, where there was no *new credible evidence* to support inference that U knew that E other than neutral E contractually controlled disputed work]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. **———F.2d———**

(C.A. 9, Oct. 1984)

[upon remanding to Bd for clarification, final resolution, and further hearings, if necessary, regarding 8(b)(4) coercion issue arising from U's handbilling of secondary E, ct held Bd may presume constitutionality of Act, as it did before in instant proceeding; nevertheless, Bd should not ignore constitutional concerns; if statutory definition of what constitutes coercion is legitimately open to more than one interpretation, Bd should choose interpretation that does not create constitutional problems, and such rule serves only to authorize construction of statute in manner that is fairly possible]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. **———F.2d———**

(C.A. 9, Oct. 1984)

[upon remanding to Bd for clarification, final resolution, and further hearings, if necessary, regarding 8(b)(4) coercion issue arising from U's handbilling of secondary E, ct noted that not all secondary activity necessarily constitutes coercive activity w/i meaning of 8(b)(4); S.Ct and this ct have recognized distinct differences between handbilling and picketing; therefore, secondary activity here may be subject to different test for coercion than those employed by cts and Bd in picketing cases; on remand Bd should specifically address issue of what constitutes coercion in handbilling cases]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[although labor picketing is entitled to less First Amendment protection than pure speech, because it involves patrolling a particular locality and may induce action, and communication which is merely a threat of retaliation based on misrepresentation and coercion is w/o First Amendment protection, handbilling herein, which was peaceful and orderly and involved none of non-speech elements justifying restrictions on picketing but instead relied entirely on persuasive force of idea it presented and left recipient free to act or not, was protected]

2575-6713 Filing grievances pursuant to contract procedure

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**

[Bd assuming, w/o deciding, that where grievance filed *Bill Johnson*, 461 U.S. 731, may apply, held that under holding of that case it would be inapplicable to cases where gravamen of grievance has as objective that which is illegal under federal law; therefore, Bd refused to apply *Bill Johnson* where U's objective in filing grievance was in furtherance of proscribed objective of forcing E (neutral) to c/d/b with new subcontractor (primary) where U never represented Ees of old subcontractor (no unit work preservation) violative of 8(b)(4)(ii)(B)]

Construction, Building Materials & Miscellaneous Drivers, Local No. 83 a/w Teamsters (John Cahill d/b/a Cahill Trucking Company) **277 NLRB No. 133**

(business agent's threatening to file grievance and filing grievance over nonsignatory subcontractor's doing jobsite construction work in violation of subcontracting clause not violation)

2575-6721 Lawsuits

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) **773 F.2d 1012 (C.A. 9, Oct. 1985)**

[U violated 8(b)(4)(D) where U brought *payment-in-lieu* grievance and filed 301 suit to enforce arbitrator's decision that was improperly motivated by desire to circumvent Bd's 10(k) determination, and U's suit to enforce arbitrator's award lacked reasonable basis in law since *supremacy doctrine* barred arbitrator from making award inconsistent with Bd determination]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) **773 F.2d 1012 (C.A. 9, Oct. 1985)**

[U's 301 suit against neutral subcontractor to enforce arbitration award granting U *time-in-lieu* payments inconsistent with Bd's 10(k) determination held to constitute secondary coercion of primary E since U may not enforce award when effect is to encourage neutral E to pressure primary E to hire U Ees]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) **773 F.2d 1012 (C.A. 9, Oct. 1985)**

[notwithstanding several ct and Bd decisions have held that 8(b)(4)'s *coercion* bar does *not* prevent U from bringing lawsuit to enforce its contractual rights, Bd's finding of 8(b)(4)(ii)(D) violation stemming from U's filing 301 suit to enforce arbitrator's decision was upheld where enforcement of U's contract would have resulted in conflict with existing 10(k) Bd determination; because 10(k) order expressly required U to refrain from using *means proscribed by Section 8(b)(4)(D)*]

2575-6725 Statements to employees of secondary

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**

[U business agent's statement to secondary E that he could *throw up a line* at primary E's job site, violative, since objective of statement was to coerce secondary E to c/d/b with primary E. Threat made w/o assurance that picketing would be w/i limitations established by Bd law]

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) **278 NLRB No. 138**

[U's threats inducing Ees of neutral subcontractor to leave project site, thereby coercing subcontractor w/i meaning of 8(b)(4)(ii), into complying with contract provisions violative of 8(e) and ceasing to do business with neutral general contractor, violative]

Miscellaneous Drivers, Helpers & Public Employees Local Union 610, a/w Teamsters (Albert H. Hoppe, Inc.) **JD-49-86**

[U president informing president of company that provided livery service for funeral homes (neutral) that E's drivers would not perform any trips for funeral home (primary) against which it was on strike, violative, as object was to cause neutral to c/d/b with primary, and U president instructing its members not to perform any trips, violative also]

2575-6730 Refusal to refer

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) **276 NLRB No. 156**

(contract clause prohibiting signatory Es from subcontracting any work covered by agreement to nonsignatory Es, held w/i construction industry proviso but violative of 8(b)(4)(ii)(A), where self-help provisions of contract allowed U to withhold services, remove workers from jobsites and refuse to refer members and U in fact engaged in work stoppage to protest E's subcontracting and attempted to have E's *working privileges* denied by filing charges against E)

2575-6737 Imposition of monetary penalties

Local 388, Plumbers (Daily Heating and Air Conditioning, Inc. **280 NLRB No. 141**

[U's picketing of E in attempt to cause E to c/d/b with subcontractor with whom U had primary dispute, bringing charges against Ee and fining him for having worked behind U's picket line and U's telling Ee that it had been good to him before but that was now over, violative; U's defense that picketing was lawful primary picketing done pursuant to valid work preservation clause with E, rejected, since U's object was not to preserve work but was to force E with whom U had contract from working on a jobsite with another E with whom U had long-standing primary area standards dispute]

2575-6746 Handbilling

Florida Gulf Coast Building Trades Council, AFL-CIO (The Edward J. Debartolo Corporation) **273 NLRB No. 172**
(Building Trades Council's distributing handbills requesting public not to patronize shopping mall tenants because contruction company building store for future mall tenant allegedly paid substandard wages and fringe benefits to its Ees found violative since, council thus coerced shopping mall tenants to c/d/b with mall owner so as to force mall owner and/or future tenant with construction company)

Florida Gulf Coast Building Trades Council, AFL-CIO (The Edward J. Debartolo Corporation) **273 NLRB No. 172**
(contention that First Amendment protected U's handbilling of secondary Es to coerce them to c/d/b with other secondary Es and force those secondary Es to c/d/b with primary E rejected, since literal language of statute and applicable case law required finding a violation; further, Bd would not consider First Amendment issued since the Act prohibited the handbilling, and Bd presumed constitutionality of the Act it administered, and S.Ct had not asked Bd to consider the First Amendment issue)

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**
[although labor picketing is entitled to less First Amendment protection than pure speech, because it involves patrolling a particular locality and may induce action, and communication which is merely a threat of retaliation based on misrepresentation and coercion is w/o First Amendment protection, handbilling herein, which was peaceful and orderly and involved none of non-speech elements justifying restrictions on picketing but instead relied entirely on persuasive force of idea it presented and left recipient free to act or not, was protected]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**
[peaceful and orderly handbilling at mall entrance urging consumers to boycott all mall tenants because of allegedly substandard wages paid by one tenant's building contractor, not violation, since, absent non-speech elements permitting restrictions on labor picketing and in view of First Amendment protection afforded handbilling, construing Sec. 8(b)(4)(ii)(B) to prohibit handbilling raises serious constitutional questions requiring clearly expressed intent of Congress to prohibit nonpicketing labor publicity, which is not shown by legislative history of Sec. 8(b)(4) amendments]

2575-6767 Picketing

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) **273 NLRB No. 148**
(picketing by U on behalf of independent contractors at E's facility at which only Ees represented by another U were employed, unlawful, even though Us ceased picketing upon being apprised no independent contractors were present at facility; Act does not permit U to picket whenever and against any E it may wish, and continue picketing while it determines in its own judgment whether it has right to do such picketing)

Carpenters, Local No. 33 (Project Management, Inc.)
[picket's with area standards signs naming neutral Es, after being told neutral had no Ees at site and picketing around entire site, including at gates reserved for rental Es, to encourage and coerce neutral Es to c/d/b with non-U E primary, violation]

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) **JD-86-85**
(ambulatory picketing of trucks of neutral trucking firm making deliveries for neutral sales company by U having dispute with E leasing drivers to trucking firm, unlawful, where picketing had unlawful object of inducing sales company's Ees to refuse to perform their job and of pressuring neutrals to put pressure on, or c/d/b with, primary E or with each other until either sales company or trucking firm hired U's members laid off when sales company discontinued former delivery service)

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) **JD-86-85**
(ambulatory picketing of neutral E's trucks, driven by Ees supplied by primary E, during deliveries made for neutral sales company which had discontinued prior delivery service resulting in lay off of U members, unlawful, since U's threats demonstrated that object of picketing was to enmesh neutrals in U's dispute with primary E and to have neutrals bring pressure on, or c/d/b with, primary E in order to have truck drivers replaced by U members)

Hospital & Service Employees Union, Local 399 v. N.L.R.B. **———F.2d———**
(C.A. 9, Oct. 1984)
[upon remanding to Bd for clarification, final resolution, and further hearings, if necessary, regarding 8(b)(4) coercion issue arising from U's handbilling of secondary E, ct noted that not all secondary activity necessarily constitutes coercive activity w/i meaning of 8(b)(4); S.Ct and this ct have recognized distinct differences between handbilling and picketing; therefore, secondary activity here may be subject to different test for coercion than those employed by cts and Bd in picketing cases; on remand Bd should specifically address issue of what constitutes coercion in handbilling cases]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**
[although labor picketing is entitled to less First Amendment protection than pure speech, because it involves patrolling a particular locality and may induce action, and communication which is merely a threat of retaliation based on misrepresentation and coercion is w/o First Amendment protection, handbilling herein, which was peaceful and orderly and involved none of non-speech elements justifying restrictions on picketing but instead relied entirely on persuasive force of idea it presented and left recipient free to act or not, was protected]

2575-6767-2500 Consumer

Local 703, a/w Teamsters (Freed Produce Company, Inc.) **JD-31-86**
[threatening to picket restaurant, neutral secondary E, if it took any more deliveries from produce seller, primary E, which had refused to renegotiate its contract with U, violation where threat was not limited to time when produce seller's trucks might be present]

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) **JD-86-85**
(U's unlawful picketing at neutral E's place of business calling on public *please don't patronize* amounted to unlawful request for general boycott of neutral E, since picketing, urging total boycott, did not name primary E involved in dispute with U and boycott did not limit boycotted items to those products produced by primary E and distributed by neutral E)

2575-6775 Strike

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**
[U violated Act by threatening E with strike in several cities if E changed subcontractors and awarded work of picking up and delivering packages to new subcontractor who did not have contract with U or U that represented Ees of old subcontractor as this was unambiguous attempt to force E (neutral) to c/d/b with new subcontractor (primary) that did not have contract with either of 2 favored Us]

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**
[strike against E violative where E replaced subcontractor, which Ees U never represented, with new subcontractor who did not observe area standards since strike was coercive effort on part of U to force E to c/d/b with new subcontractor, object that is proscribed by Act]

2575-6780 Work stoppage

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) **276 NLRB No. 156**
(contract clause prohibiting signatory Es from subcontracting any work covered by agreement to nonsignatory Es, held w/i construction industry proviso but violative of 8(b)(4)(ii)(A), where self-help provisions of contract allowed U to withhold services, remove workers from jobsites and refuse to refer members and U in fact engaged in work stoppage to protest E's subcontracting and attempted to have E's *working privileges* denied by filing charges against E)

Newspaper and Mail Deliverers Union; etc. (B & W Distributors Corp.) **274 NLRB No. 136**
(U violated 8(b)(4)(i) and (ii)(B) by telling neutral E with whom it had contract that it would not distribute products delivered to neutral E by another E if neutral did not allow unit Ees to begin picking up that product, and by instructing unit Ees not to handle that product unless neutral E agreed to its demand, since work demanded by U was not traditional unit work or work preservation where U was aware that unit Ees had not picked up product for at least 6 years, thereby waiving any claim to that work, and neutral E had no right to control whether its unit Ees performed work of picking up product)

2575-6784 Statements

Construction and General Laborers Local Union No. 304, Laborers (Herring & Worley, Inc.) **282 NLRB No. 014**
[U representatives informing neutral E's superintendent that *any time you cross picket line it is not right*, unlawful, where resulted in superintendent pulling neutral Ees off job pending guidance from his E and causing 1 Ee not to return to project that afternoon]

2575-6784—Cont.

Construction, Building Materials & Miscellaneous Drivers, Local No. 83 a/w Teamsters (John Cahill d/b/a Cahill Trucking Company) 277 NLRB No. 133
(business agent's statements about posible violation of subcontracting clause by nonsignatory subcontractor's doing signatory contractor's jobsite construction work, not violation absent demand that subcontractor become signatory or coercive threats)

Stage Employees IATSE (Albatross Productions, Inc.) 275 NLRB No. 105
(remarks of U's business agent to E-member providing services to E that E-member cease working, not violative where agent did no more than inform E-member of existence of labor dispute and appealed to him not to work at that location pursuant to E's obligation as U member)

Stage Employees IATSE (Albatross Productions, Inc.) 275 NLRB No. 105
(U's threatening E-member, who provided services to E and was member of sister local, with expulsion from membership if he worked w/i U's territorial jurisdiction, violative, since E-member was doing business with E, with whom U had labor dispute)

Carpenters, Local No. 33 (Project Management, Inc.)
[U organizer's asking construction superintendent about identity of subcontractor on site and stating *I'll see you later,* upon being told subcontractor was non-U, not unlawful threat, where organizer made no reference to any specific future action and picketing did not begin until three and one-half weeks later]

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85
(U's statement to primary E leasing drivers to neutral trucking firm which was performing delivery services for neutral retail sales company, that U was picketing trucking firm because it wanted either trucking firm or sales company to hire U's members laid off when sales company discontinued its former delivery services, held to have unlawful object of pressuring neutral Es to put pressure on, or c/d/b with, primary E or with each other until U's demands were met, even though threatened trucking company was not present when statement was made)

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85
(threat of continued picketing of neutral E made to primary E in order to cause primary E to influence neutral E to hire U members, unlawful, even though neutral E was not present when threat was made since such threat coerces not only person threatened but also E from whom work assignment is sought; and threat here made to primary E for relaying to neutrals, was *directed toward* them to exert pressure on them to remove primary E from its lawful function)

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85
(U's statement to neutral E seeking to get rid of picketing by U that, if neutral E hired laid off U members who had worked for E whom neutral E had replaced, they could negotiate contract, unlawful, since, in substance, statement was threat to have trucking firm c/d/b with primary E to hire laid off U members, which is type of pressure and threat that falls w/i ambit of 8(b)(4)(ii)(B))

2575-6787 Shutdown to require compliance with contract provisions

Sheet Metal Workers, Local Union 263 (James P. Ryan) JD-242-85
(Us' business agent's telling newtral E get rid of primary E, violative; statements were not only evidence of unlawful object of picketing, they contained threat that Us would shut down job)

2575-6790 Penalty to observe contract

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) 276 NLRB No. 156
(contract clause prohibiting signatory Es from subcontracting any work covered by agreement to nonsignatory Es, held w/i construction industry proviso but violative of 8(b)(4)(ii)(A), where self-help provisions of contract allowed U to withhold services, remove workers from jobsites and refuse to refer members and U in fact engaged in work stoppage to protest E's subcontracting and attempted to have E's *working privileges* denied by filing charges against E)

2583 UNION RESPONSIBILITY FOR CONDUCT

2583-2500 Of representatives

Ironworkers Local 433, a/w Ironworkers (United Steel) 280 NLRB No. 152
[U business agent's statement to secondary E that he could *throw up a line* at primary E's job site, violative, since objective of statement was to coerce secondary E to c/d/b with primary E. Threat made w/o assurance that picketing would be w/i limitations established by Bd law]

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) 278 NLRB No. 168
[U responsible for Ees' decision to respect picket line of another U strike taken in presence of high U official, notwithstanding U official response to several inquiries asking what to do was do whatever you want to do]

Miscellaneous Drivers, Helpers & Public Employees Local Union 610, a/w Teamsters (Albert H. Hoppe, Inc.) JD-49-86
[U steward informing dispatcher and drivers at ambulance and hearse service that drivers would not make trips for funeral home against which U was engaged in strike, and posting notice to that effect on bulletin board, unlawful, since actions of steward imputed to U, notwithstanding dispatcher not in bargaining unit]

2583-5000 Of employees

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) 278 NLRB No. 168
[U responsible for Ees' decision to respect picket line of another U strike taken in presence of high U official, notwithstanding U official response to several inquiries asking what to do was do whatever you want to do]

5000 CONDUCT EXEMPTED FROM PROHIBITION

5067 PUBLICITY OTHER THAN PICKETING - (8(b)(4) PROVISO)

5067-2000 Forms of publicity

5067-2050 Handbilling

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) 281 NLRB No. 135
[handbills distributed by striking Ees of primary E at entrances of its neutral bankers not w/i ambit of publicity proviso absent producer-distributor relationship between primary and neutral Es]

Florida Gulf Coast Building Trades Council, AFL-CIO (The Edward J. Debartolo Corporation) 273 NLRB No. 172
(Building Trades Council's distributing handbills requesting public not to patronize shopping mall tenants because contruction company building store for future mall tenant allegedly paid substandard wages and fringe benefits to its Ees found violative since, council thus coerced shopping mall tenants to c/d/b with mall owner so as to force mall owner and/or future tenant with construction company)

Carpenters District Council of Greater St. Louis, AFL-CIO (Rinker and Yocham Construction) JD-107-86
[handbills distributed by U at secondary E's apartment complex at which primary subcontractor was performing work held unlawful since distribution was not for purpose of truthfully advising public w/i meaning of publicity proviso, where handbills failed to adequately identify that U's dispute was with subcontractor and contained material which was unrelated to primary dispute and constituted substantial portion of handbill devoted to extraneous issue of attacking alleged faulty construction of apartments]

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85
(distribution of handbills addressed to public requesting boycott of products delivered to retail sales company by named trucking firm which leased drivers from primary E held outside protection of proviso where U permitted handbilling knowing that drivers were Ees of primary E and not of trucking firm and therefore handbills were untruthful by incorrectly naming neutral trucking firm as primary E)

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)
[U's handbills distributed at secondary E's facility, calling for nonpatronization of secondary E's services, held not w/i protection of publicity proviso since handbills did not advise public of nature of primary dispute and secondary E's relationship to it by failing to identify primary E; distribution of handbills for about 1 week 8 hours a day covered significant period of time and was not *de minimis*; and fact U *voluntarily* withdrew handbills did not render issue moot since cessation of conduct did not ensure that it would not recur]

5067-2050—Cont.

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[U's handbill distributed at secondary E's facility calling for nonpatronization of secondary E's services held to have met minimum requirement of publicity proviso by identifying nature of U's dispute with primary-E maintenance company and secondary E's relationship to primary dispute; although handbill did not name primary E specifically but only as *maintenance company*, it sufficiently described nature of dispute by clearly revealing that maintenance company, and not secondary E, was directly responsible for hiring non-U labor]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[in finding that U's handbills distributed at secondary-E airline's facility, identifying primary dispute and calling for nonpatronization of airline, were not w/i protection of publicity proviso because they included unrelated consumer complaint and accident information pertaining to operation of airline, ct held legislative history on which U based its claim that it may distribute any information, short of picketing, including consumer complaint and accident information, did not serve as basis for any conclusive interpretation of publicity proviso]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[U's handbills distributed at secondary E's facility, identifying primary dispute and calling for nonpatronization of secondary E's services, and newspaper advertisement reprinting handbill, held not w/i protection of publicity proviso because handbills included unrelated consumer complaint and accident information pertaining to secondary E's operation; such information, totally unrelated to primary dispute, did not fulfill protected purpose of proviso which states that publicity *for the purpose of truthfully advising the public* about primary dispute may not be prohibited]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[where Bd found U's handbilling and newspaper ads directed at secondary E coercive because U thereby imposed economic pressure against secondary E designed to inflict economic injury, ct declined to review coercion issue since parties did not produce, and Bd did not require, evidence regarding economic pressure; Bd's cursory treatment and resulting ambiguity made it difficult to surmise whether handbilling and ads fit w/i S.Ct's definition of *coercion* as that which encourages consumer boycott of secondary E or that which threatens neutral parties with ruin or substantial loss]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ——F.2d—— (C.A. 9, Oct. 1984)

[ct declined to examine First Amendment issue as to U's handbills and newspaper ads directed at secondary E; ct must first address preliminary issue of coercion, resolution of which must await Bd's clarification of issue on remand; constitutional issues here are novel and complex, involving use of handbilling; constitutionality of restriction on handbills is more suspect than restraint on picketing which involves elements of conduct as well as communication of ideas; and application of 8(b)(4) to facts herein may infringe on other constitutional guarantees, freedom of press and freedom of association]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ——F.2d—— (C.A. 9, Oct. 1984)

[upon remanding to Bd for clarification, final resolution, and further hearings, if necessary, regarding 8(b)(4) coercion issue arising from U's handbilling of secondary E, ct held Bd may presume constitutionality of Act, as it did before in instant proceeding; nevertheless, Bd should not ignore constitutional concerns; if statutory definition of what constitutes coercion is legitimately open to more than one interpretation, Bd should choose interpretation that does not create constitutional problems, and such rule serves only to authorize construction of statute in manner that is fairly possible]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ——F.2d—— (C.A. 9, Oct. 1984)

[upon remanding to Bd for clarification, final resolution, and further hearings, if necessary, regarding 8(b)(4) coercion issue arising from U's handbilling of secondary E, ct noted that not all secondary activity necessarily constitutes coercive activity w/i meaning of 8(b)(4); S.Ct and this ct have recognized distinct differences between handbilling and picketing; therefore, secondary activity here may be subject to different test for coercion than those employed by cts and Bd in picketing cases; on remand Bd should specifically address issue of what constitutes coercion in handbilling cases]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ——F.2d—— (C.A. 9, Oct. 1984)

[in declining to examine First Amendment issue as to U's handbills and newspaper ads directed at secondary E since ct must await resolution of coercion issue by Bd on remand, ct held regulation of *coercion* publicity in 8(b)(4) is clearly content-based; instead of case in which handbilling is prohibited because handbillers are asking others to do something unlawful or is banned for reasons of public order, handbilling here, otherwise lawful, is prohibited only when it expresses particular views unrelated to primary dispute, thereby making restriction one intended to control speech content]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ——F.2d—— (C.A. 9, Oct. 1984)

[in declining to examine First Amendment issue as to U's handbills and newspaper ads directed at secondary E since ct must await resolution of coercion issue by Bd on remand, ct held Bd must demonstrate regulation is necessary to serve compelling state interest and that it is narrowly drawn to achieve that end; U's handbills and advertisements may not fit w/i definition of *commercial speech* developed by S.Ct, which presents difficult questions of interpretation which ct need not resolve now]

5067-2063 Newspaper advertising

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[where handbill distributed at secondary E's facility was found not w/i protection of publicity proviso because it did not advise public of nature or primary dispute and secondary E's relationship to it by failing to identify primary E, ct held publication in U newspaper of handbill and block advertisement soliciting nonpatronization of secondary E's services were also not w/i protection of publicity proviso for same reason as handbill]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[U's handbills distributed at secondary E's facility, identifying primary dispute and calling for nonpatronization of secondary E's services, and newspaper advertisement reprinting handbill, held not w/i protection of publicity proviso because handbills included unrelated consumer complaint and accident information pertaining to secondary E's operation; such information, totally unrelated to primary dispute, did not fulfill protected purpose of proviso which states that publicity *for the purpose of truthfully advising the public* about primary dispute may not be prohibited]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[where Bd found U's handbilling and newspaper ads directed at secondary E coercive because U thereby imposed economic pressure against secondary E designed to inflict economic injury, ct declined to review coercion issue since parties did not produce, and Bd did not require, evidence regarding economic pressure; Bd's cursory treatment and resulting ambiguity made it difficult to surmise whether handbilling and ads fit w/i S.Ct's definition of *coercion* as that which encourages consumer boycott of secondary E or that which threatens neutral parties with ruin or substantial loss]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ——F.2d—— (C.A. 9, Oct. 1984)

[ct declined to examine First Amendment issue as to U's handbills and newspaper ads directed at secondary E; ct must first address preliminary issue of coercion, resolution of which must await Bd's clarification of issue on remand; constitutional issues here are novel and complex, involving use of handbilling; constitutionality of restriction on handbills is more suspect than restraint on picketing which involves elements of conduct as well as communication of ideas; and application of 8(b)(4) to facts herein may infringe on other constitutional guarantees, freedom of press and freedom of association]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ——F.2d—— (C.A. 9, Oct. 1984)

[in declining to examine First Amendment issue as to U's handbills and newspaper ads directed at secondary E since ct must await resolution of coercion issue by Bd on remand, ct held Bd must demonstrate regulation is necessary to serve compelling state interest and that it is narrowly drawn to achieve that end; U's handbills and advertisements may not fit w/i definition of *commercial speech* developed by S.Ct, which presents difficult questions of interpretation which ct need not resolve now]

5067-4000 Purpose of truthfully advising public

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) 281 NLRB No. 135

[although finding it unnecessary to address truthfulness requirement of proviso because of disposition of producer-distributor issue, Bd noted that U

5067-4000—Cont.

handbills misleadingly claimed that neutral banks were responsible with primary E for labor policies being protested, handbills failed to distinguish between primary and secondary Es, they failed to identify nature of primary dispute and banks' relationship to it, and they referred to banks with no business relationship with primary E]

5067-4025 Public

Florida Gulf Coast Building Trades Council, AFL-CIO (The Edward J. Debartolo Corporation) 273 NLRB No. 172

(Building Trades Council's distributing handbills requesting public not to patronize shopping mall tenants because construction company building store for future mall tenant allegedly paid substandard wages and fringe benefits to its Ees found violative since, council thus coerced shopping mall tenants to c/d/b with mall owner so as to force mall owner and/or future tenant with construction company)

Carpenters District Council of Greater St. Louis, AFL-CIO (Rinker and Yocham Construction) JD-107-86

[handbills distributed by U at secondary E's apartment complex at which primary subcontractor was performing work held unlawful since distribution was not for purpose of truthfully advising public w/i meaning of publicity proviso, where handbills failed to adequately identify that U's dispute was with subcontractor and contained material which was unrelated to primary dispute and constituted substantial portion of handbill devoted to extraneous issue of attacking alleged faulty construction of apartments]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[U's handbills distributed at secondary E's facility, calling for nonpatronization of secondary E's services, held not w/i protection of publicity proviso since handbills did not advise public of nature of primary dispute and secondary E's relationship to it by failing to identify primary E; distribution of handbills for about 1 week 8 hours a day covered significant period of time and was not *de minimis*; and fact U *voluntarily* withdrew handbills did not render issue moot since cessation of conduct did not ensure that it would not recur]

5067-4075 Members of labor organization

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[where handbill distributed at secondary E's facility was found not w/i protection of publicity proviso because it did not advise public of nature or primary dispute and secondary E's relationship to it by failing to identify primary E, ct held publication in U newspaper of handbill and block advertisement soliciting nonpatronization of secondary E's services were also not w/i protection of publicity proviso for same reason as handbill]

5067-6000 Product or products produced

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) 281 NLRB No. 135

[expanding scope of publicity proviso by defning revenues as a product of any primary E's business and by defining as a distributor of such product any entity in a financial relationship with the primary E would contravene congressional entent]

5067-6050 Distributed by another employer

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) 281 NLRB No. 135

[handbills distributed by striking Ees of primary E at entrances of its neutral bankers not w/i ambit of publicity proviso absent producer-distributor relationship between primary and neutral Es]

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) 281 NLRB No. 135

[banks not covered by 8(b)(4) proviso as distributors of primary E meat packer's products where they merely received and distributed revenues generated by its business rather than products themselves]

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) 281 NLRB No. 135

[expanding scope of publicity proviso by defning revenues as a product of any primary E's business and by defining as a distributor of such product any entity in a financial relationship with the primary E would contravene congressional entent]

7500 PROHIBITED OBJECTS OF PROHIBITED CONDUCT

7501 GENERALLY

7501-5000 *An* object only required

Local Union No. 501, Electrical Workers v. N.L.R.B. 756 F.2d 888 (C.A.D.C., Apr. 1985)

[Although Act's distinction between primary and secondary activity is more often more nice than obvious, it is now well settled that U conduct violates Section 8(b)(4) if any object of that activity is to exert improper influence on secondary or neutral parties. Ultimate inquiry focuses on intent of U, not effects of its actions]

7520 CLAUSE 8(b)(4)(A) - FORCING OR REQUIRING

7520-2500 Joining of labor organization

7520-2567 By self-employed person

N.L.R.B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, a/w Teamsters 773 F.2d 921 (C.A. 7, Sep. 1985)

(agreements which limit E to subcontracting with businesses that recognize U or have U contract are violative. Clauses at issue here, which require owner-operators to join U by requiring them to be carried on payroll as Ees, are U signatory clauses which focus on U affiliation of, rather than compensation paid, a subcontractor's Ees and are presumptively invalid)

7520-5000 Joining of employer organization

7520-5075 Indicia of objective

7520-5075-6200 Statements to employers

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[threats to neutral general contractor that U would engage in work stoppage against neutral subcontractor for failure to pay primary subcontractor's trust fund debts, violative; moreover, neutral general contractor's relaying threats to neutral subcontractor as U expected it would, violative since by these threats, U also coerced neutral subcontractor to cease doing business with neutral general contractor]

7520-7500 Entering into agreement prohibited by section 8(e)

7520-7517 What constitutes entering into

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) 276 NLRB No. 156

(words *enter into* should not be construed narrowly to cover only initial execution of proscribed agreement, rather, language is to be construed broadly to encompass the *maintenance, enforcement and reaffirmation* of prohibited agreement)

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) 276 NLRB No. 156

(although U signed prohibited agreement on date outside 10(b) period, U was held to have *entered into* such agreement w/i 10(b) where U ratified and supported prohibited work stoppage w/i 10(b) and reaffirmed prohibited agreement by filing prohibited charges and attempting to revoke E's *working privileges* w/i 10(b))

7520-7533 Agreements prohibited by section 8(e) (See 584-0000-0000-0000)

Construction, Building Materials & Miscellaneous Drivers, Local No. 83 a/w Teamsters (John Cahill d/b/a Cahill Trucking Company) 277 NLRB No. 133

(seeking to apply master labor agreement's U signatory subcontracting clause to subcontractor, not violation, since it was application of jobsite provision to jobsite work covered by 8(e) construction industry exemption)

Construction, Building Materials & Miscellaneous Drivers, Local No. 83 a/w Teamsters (John Cahill d/b/a Cahill Trucking Company) 277 NLRB No. 133

(business agent's threatening to file grievance and filing grievance over nonsignatory subcontractor's doing jobsite construction work in violation of subcontracting clause not violation)

Newspaper and Mail Deliverers Union; etc. (B & W Distributors Corp.) 274 NLRB No. 126

(U and two Es, one of which had contract with U, violated 8(b)(4)(i), (ii)(A) and 8(e) by entering into agreement whereby E which didn't have contract with U ceased contracting out pick-up of its product to another neutral E and allowed E which had contract with U to assign that work to its unit Ees, since work of picking up product was not traditional work or work preservation of unit Ees where U and both Es knew that neutral E had picked up this product for at least 6 years and agreement was simply attempt to force that neutral E out of the picture and agree to U's demand for that work)

7520-7571 Employer action sought by union conduct

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) **277 NLRB No. 102**

(violation, where U picketed, thereby inducing and encouraging Ees of E to refuse to report to work, with objective of forcing E to give effect to contract provision which was violative of Section 8(e))

Newspaper and Mail Deliverers Union; etc. (B & W Distributors Corp.) **274 NLRB No. 136**

(U and two Es, one of which had contract with U, violated 8(b)(4)(i), (ii)(A) and 8(e) by entering into agreement whereby E which didn't have contract with U ceased contracting out pick-up of its product to another neutral E and allowed E which had contract with U to assign that work to its unit Ees, since work of picking up product was not traditional work or work preservation of unit Ees where U and both Es knew that neutral E had picked up this product for at least 6 years and agreement was simply attempt to force that neutral E out of the picture and agree to U's demand for that work)

7540 CLAUSE 8(b)(4)(B) - FORCING OR REQUIRING

7540-0100 Generally

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) **273 NLRB No. 148**

(in enacting 8(b)(4), Congress was concerned with dual objectives of preserving right of labor organizations to bring pressure to bear on offending Es in primary labor disputes and of shielding unoffending Es and others from pressures in controversies not their own, and mere fact that language of this Section comprehends familiar patterns of a labor dispute, does not inexorably dictate that it excludes all variations from those patterns)

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) **793 F.2d 323 (C.A. D.C., June 1986)**

[where Bd erred in finding U unlawfully picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held Congress specified more particular policies for 8(b)(4) than simply background policies of Act relied on by Bd; rather, Act contains specific provisions regarding prohibitions on peaceful picketing; and Bd did not show *clearest indication* nor legislative history of specific policy regarding secondary activity encompassing prohibition of U involvement in all picketing by independent contractors]

7540-0150 Absence of union's knowledge that neutral employer lacked control over disputed work

United Scenic Artists, Local 829, Painters (Theatre Techniques, Inc.) **278 NLRB No. 046**

[no violation found by Bd, applying law of case on remand, in U's coercion of neutral E lacking control of disputed work, where there was no *new credible evidence* to support inference that U knew that E other than neutral E contractually controlled disputed work]

7540-2000 Any person to cease using products of any other producer

7540-2020 Any person entitled to protection

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**

[*owner of neutral E* who was member of U held *person* w/i meaning of subsection (ii) of Section 8(b)(4) of Act, and U fining him, violative, since purpose is to induce Ee to withhold services from neutral E for unlawful secondary objective; i.e. force neutral to c/d/b with primary; further, fining individual as owner is also violative as natural consequence of fine imposed on him was to force him, as neutral E to c/d/b with other Es with whom U had dispute]

7540-2040 What constitutes cessation of use or dealing

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**

[U violated Act by threatening E with strike in several cities if E changed subcontractors and awarded work of picking up and delivering packages to new subcontractor who did not have contract with U or U that represented Ees of old subcontractor as this was unambiguous attempt to force E (neutral) to c/d/b with new subcontractor (primary) that did not have contract with either of 2 favored Us]

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**

[strike against E violative where E replaced subcontractor, which Ees U never represented, with new subcontractor who did not observe area standards since strike was coercive effort on part of U to force E to c/d/b with new subcontractor, object that is proscribed by Act]

7540-2070 Employer action sought by union conduct

Miscellaneous Drivers, Helpers & Public Employees Local Union 610, a/w Teamsters (Albert H. Hoppe, Inc.) **JD-49-86**

[U president informing president of company that provided livery service for funeral homes (neutral) that E's drivers would not perform any trips for funeral home (primary) against which it was on strike, violative, as object was to cause neutral to c/d/b with primary, and U president instructing its members not to perform any trips, violative also]

7540-4000 Any person to cease doing business with any other person

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**

[*the c/d/b element of Section 8(b)(4)(B) embraces prospective as well as existing business relationships, and does not require that the company--party to the primary dispute--even be known at the time of the U conduct in question*]

Miscellaneous Drivers, Helpers & Public Employees Local Union 610, a/w Teamsters (Albert H. Hoppe, Inc.) **JD-49-86**

[U president informing president of company that provided livery service for funeral homes (neutral) that E's drivers would not perform any trips for funeral home (primary) against which it was on strike, violative, as object was to cause neutral to c/d/b with primary, and U president instructing its members not to perform any trips, violative also]

7540-4001 Generally

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**

[Bd assuming, w/o deciding, that where grievance filed *Bill Johnson*, 461 U.S. 731, may apply, held that under holding of that case it would be inapplicable to cases where gravamen of grievance has as objective that which is illegal under federal law; therefore, Bd refused to apply *Bill Johnson* where U's objective in filing grievance was in furtherance of proscribed objective of forcing E (neutral) to c/d/b with new subcontractor (primary) where U never represented Ees of old subcontractor (no unit work preservation) violative of 8(b)(4)(ii)(B)]

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 838**

[U's and its locals' inducing Ees of E association and its members to engage in work stoppages or refusals to perform services in course of employment, violation where supplements covering disputed work they negotiated with E association had objective of forcing nonmember Es to d/c/b with Es not employing Ees represented by U to do disputed work]

7540-4001-5000 **Statutory labor dispute not prerequisite**

7540-4001-5075 Dispute regarding independent contractors' leasing arrangement

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) **793 F.2d 323 (C.A. D.C., June 1986)**

[where U picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held Bd's blanket rule, that secondary activity includes all picketing on behalf of independent contractors, would ban U involvement in picketing by independent contractors not only against neutral parties but also against parties, such as general contractors herein, who are directly and intimately involved in underlying dispute; 8(b)(4) does not prohibit U's picketing against party regardless of party's involvement in underlying issue]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) **793 F.2d 323 (C.A. D.C., June 1986)**

[where U picketed general contractors on behalf of independent contractors seeking better leasing agreement terms, ct held intent of Congress was that 8(b)(4) was designed to prohibit only pressure on *third person who is wholly unconcerned in the disagreement*, whether that pressure is called *secondary boycott* or *secondary activity*; moreover, Bd's conclusion that 8(b)(4) prohibits all U-aided picketing by independent contractors would scarcely qualify as *reasonable accomodation* of 8(b)(4)'s policies]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) **793 F.2d 323 (C.A. D.C., June 1986)**

[in finding that Bd erred in concluding that U unlawfully picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held Bd mimsapprehended Congress' intent in concluding that 8(b)(4) prohibits U involvement in all picketing by independent contractors; and Bd offered no apposite authority to support its conclusion nor adduced single case or shred of legislative history to support notion that pressure directed against party who is not neutral can be secondary]

7540-4001-5075—Cont.

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where Bd erred in finding U unlawfully picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held case law and legislative history contain *strong indication* Congress intended *primary activity* to include all picketing against non-neutral parties, whether by independent contractors or by anyone else; and dual Congressional objectives underlying 8(b)(4) of preserving right of labor organization to pressure offending primary Es and of shielding unoffending Es simply are not in tension herein]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where Bd erred in finding U unlawfully picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held Congress specified more particular policies for 8(b)(4) than simply background policies of Act relied on by Bd; rather, Act contains specific provisions regarding prohibitions on peaceful picketing; and Bd did not show *clearest indication* nor legislative history of specific policy regarding secondary activity encompassing prohibition of U involvement in all picketing by independent contractors]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[in finding that Bd applied wrong standard in determining that U's picketing of general contractors on behalf of independent contractors for better leasing agreement terms was unlawful, ct remanded to Bd so that it may apply correct standard: 8(b)(4) does not exclude U involvement in all picketing by independent contractors; rather, its proscription is limited to picketing against neutral parties]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where U picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held general contractors were not neutral third party *wholly unconcerned* in dispute between 2 other parties, since general contractors were not at all neutral inasmuch as dispute over leasing agreement terms was only with general contractors; ct rejected Bd's interpretation that general contractors were neutrals because dispute with independent contractors was not between Es and Ees]

7540-4020 Any other person entitled to protection

7540-4020-1200 Persons with right to control method of performing work

United Scenic Artists, Local 829, Painters (Theatre Techniques, Inc.) 278 NLRB No. 046

[no violation found by Bd, applying law of case on remand, in U's coercion of neutral E lacking control of disputed work, where there was no *new credible evidence* to support inference that U knew that E other than neutral E contractually controlled disputed work]

Newspaper and Mail Deliverers Union; etc. (B & W Distributors Corp.) 274 NLRB No. 136

(U violated 8(b)(4)(i) and (ii)(B) by telling neutral E with whom it had contract that it would not distribute products delivered to neutral E by another E if neutral did not allow unit Ees to begin picking up that product, and by instructing unit Ees not to handle that product unless neutral E agreed to its demand, since work demanded by U was not traditional unit work or work preservation where U was aware that unit Ees had not picked up product for at least 6 years, thereby waiving any claim to that work, and neutral E had no right to control whether its unit Ees performed work of picking up product)

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rui Labor Industries, Inc.) JD-86-85

(U held to have primary dispute with company leasing drivers to trucking firm over use of drivers to operate latter's truck, and not to have dispute with trucking firm which had no *right to control* selection of drivers for its trucks; instead, driver-leasing company, which controlled its own labor relations and was able to negotiate contract for drivers, could designate Ees for driving trucks)

7540-4020-2300 Common ownership and control of primary and secondary firms

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) 281 NLRB No. 135

[in dispute between U and primary E engaged in meat packing and food processing business, bank holding companies and their subsidiary banks entitled to protection as neutral Es, notwithstanding primary E's plant manager was director of first holding company's subsidiary, primary E had two directors or officers in common with second holding company's subsidiaries, and first holding company held 12.6 percent of primary E's stock in fiduciary capacity where there was no actual or potential control between primary E and banks which conducted only normal armslength business with primary E]

7540-4020-3700 Guarantors of contract obligation

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) 276 NLRB No. 156

(contract clause which made signatory Es liable for payment of all wages and fringe benefits if Es subcontracted work, violative of 8(e), where subcontracting clause itself was violative of 8(e), thus clause making Es liable constituted a penalty for Es doing business with nonsignatory Es)

7540-4020-4400 Employers of independent contractors

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[where neutral subcontractor replaced primary subcontractor who had become delinquent in its contribution to contractual trust funds, U's inducement of neutral subcontractor's Ees w/i meaning of 8(b)(4)(i) not to work for their subcontractor with 8(b)(4)(B) object of forcing neutral subcontractor to cease doing business with neutral general contractor on project and 8(b)(4)(A) object of forcing neutral subcontractor to pay primary E's delinquencies under contract and thus comply with self-help contract provisions violative of 8(e), unlawful]

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) 273 NLRB No. 148

(U held labor organization and subject to proscriptions of 8(b)(4) applicable to *labor disputes*, notwithstanding activities were on behalf of independent contractors rather than statutory Ees, since U admitted in ans it was albor organization w/i meaning of Act, and fact that U's ultimate objective was improved leases for group of independent contractors, rather than *mere customary union objectives*, cannot shield U if conduct is otherwise unlawful)

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[Bd properly asserted jurisdiction in case involving U picketing of general contractors on behalf of independent contractors for better leasing agreement terms, since Bd's jurisdiction is not circumbscribed by Sec. 2(9) which merely defines *labor dispute* as it appears elsewhere in Act, and Bd's task was not to identify conventional labor dispute but was, instead, to measure U's conduct against specific provisions of Act defining ULPs]

7540-4040 What constitutes cessation of business

Ironworkers Local 433, a/w Ironworkers (United Steel) 280 NLRB No. 182

[*the c/d/b element of Section 8(b)(4)(B) embraces prospective as well as existing business relationships, and does not require that the company--party to the primary dispute--even be known at the time of the U conduct in question*]

7540-4070 Employer action sought by union conduct

N.L.R.B. v. Longshoremen's ILA ——U.S.—— (S.CT, June 1985)

[U's enforcement of Rules on Containers Agreement in shipping industry pertaining to longshoremens' work of loading and unloading technologically innovative containerized cargo at pier, not unlawful, since Rules had primary work preservation objective and did not have secondary objective of affecting business relations of neutral Es]

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) 281 NLRB No. 135

[U's picketing and handbilling of neutral banks admittedly to solicit consumers, Ees, and other persons to withdraw their funds and break the connection between primary E and banks, violation where, despite several common directors and officer between primary E and neutral banks, there was no actual or potential control between operations and primary E's only relationship with banks was arms-length business relationship; moreover, handbilling was not protected by publicity proviso since banks were not distributors of primary E's food products but merely received and distributed revenues generated by E]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[U's picketing of all of neutral E's entrances after numerous requests by neutral E that U restrict its picketing to reserved gate, combined with U's reluctance to designate on its picket signs whom dispute was with, were all indicia not only that U failed to meet its obligation to avoid enmeshing neutral E in its dispute with primary E, but that U's true motive was to blur line between pressure brought against primary E and effects of such pressure on neutral E]

7540-4070—Cont.

United Scenic Artists, Local 829, Painters (Theatre Techniques, Inc.) **278 NLRB No. 046**

[no violation found by Bd, applying law of case on remand, in U's coercion of neutral E lacking control of disputed work, where there was no *new credible evidence* to support inference that U knew that E other than neutral E contractually controlled disputed work]

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 020**

[U's and its locals' inducing Ees of E association and its members to engage in work stoppages or refusals to perform services in course of employment, violation where supplements covering disputed work they negotiated with E association had objective of forcing nonmember Es to d/c/b with Es not employing Ees represented by U to do disputed work]

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) **277 NLRB No. 102**

(U conditioning removal of pickets on E's agreement to cease using services of subcontractor, or other person not cleared by U, and payment into U trust fund pursuant contract provision that was violative of Section 8(e), unlawful)

Newspaper and Mail Deliverers' Union of New York & Vicinity (Raritan Periodical Sales, Inc.) **277 NLRB No. 064**

(U's instructions to members working at various wholesalers, not to handle papers delivered to those Es by non-U drivers, assertedly because wholesalers breached contract by accepting deliveries from non-U drivers, violative, where secondary nature of U's action was clear from fact U told some Es they were concerned with non-U delivery and fact that one publisher who continued to utilize U's drivers for delivery, experienced no disruption in delivery of its paper, demonstrated U was motivated by non-U drivers rather than contract violations)

Plumbers, Local 114 (M & S Pipe and Supply Company, Incorporated) **277 NLRB No. 006**

(U's threatening neutral E with picketing and with cessation of further purchases by purchasing agents at air force base, with whom E did substantial amount of business, in effort to cause E to remove non-U plumbing contractor from E's warehouse project, violative)

Stage Employees IATSE (Albatross Productions, Inc.) **275 NLRB No. 105**

(U's threatening E-member, who provided services to E and was member of sister local, with expulsion from membership if he worked w/i U's territorial jurisdiction, violative, since E-member was doing business with E, with whom U had labor dispute)

District 17, Mine Workers, and its Local 5869 (Dehue Coal Company, et al.) **275 NLRB No. 101**

(picketing premises of secondary E and causing secondary Ees to strike in furtherance of labor dispute with non-U primary E, violative)

Newspaper and Mail Deliverers Union; etc. (B & W Distributors Corp.) **274 NLRB No. 136**

(U violated 8(b)(4)(i) and (ii)(B) by telling neutral E with whom it had contract that it would not distribute products delivered to neutral E by another E if neutral did not allow unit Ees to begin picking up that product, and by instructing unit Ees not to handle that product unless neutral E agreed to its demand, since work demanded by U was not traditional unit work or work preservation where U was aware that unit Ees had not picked up product for at least 6 years, thereby waiving any claim to that work, and neutral E had no right to control whether its unit Ees performed work of picking up product)

Florida Gulf Coast Building Trades Council, AFL-CIO (The Edward J. Debartolo Corporation) **273 NLRB No. 172**

(Building Trades Council's distributing handbills requesting public not to patronize shopping mall tenants because contruction company building store for future mall tenant allegedly paid substandard wages and fringe benefits to its Ees found violative since, council thus coerced shopping mall tenants to c/d/b with mall owner so as to force mall owner and/or future tenant with construction company)

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) **273 NLRB No. 148**

(U's picketing on behalf of independent contractor drivers for purpose of improving lease agreements between cab companies and drivers, violative, even though U had objective unrelated to representation of *employees* and thus was not primary in nature but had goal of causing interruption of leases between cab companies and drivers, conduct clearly w/i broad proscription of 8(b)(4)(ii)(B); nor is it necessary, in order to find unlawful *secondary* activity, that *primary* dispute exist at all)

Carpenters District Council of Greater St. Louis, AFL-CIO (Rinker and Yocham Construction) **JD-107-86**

[U's handbilling at secondary E's apartment complex at which primary subcontractor was performing work, unlawful, where handbilling, with handbills which failed to adequately identify that U's primary dispute was with subcontractor and contained material unrelated to primary dispute, had object of forcing secondary E to c/d/b with subcontractor]

Carpenters, Local No. 33 (Project Management, Inc.)

[picket's with area standards signs naming neutral Es, after being told neutral had no Ees at site and picketing around entire site, including at gates reserved for rental Es, to encourage and coerce neutral Es to c/d/b with non-U E primary, violation]

Local 703, a/w Teamsters (Freed Produce Company, Inc. **JD-31-86**

[threatening to picket restaurant, neutral secondary E, if it took any more deliveries from produce seller, primary E, which had refused to renogiate its contract with U, violation where threat was not limited to time when produce seller's trucks might be present]

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) **JD-86-85**

(picketing and handbilling of neutral retail sales company and trucking firm making deliveries for sales company with truckdrivers leased from primary E, unlawful, where purpose of U's conduct was employment of U members laid off when sales company discontinued former delivery service)

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[peaceful and orderly handbilling at mall entrance urging consumers to boycott all mall tenants because of allegedly substandard wages paid by one tenant's building contractor, not violation, since, absent non-speech elements permitting restrictions on labor picketing and in view of First Amendment protection afforded handbilling, construing Sec. 8(b)(4)(ii)(B) to prohibit handbilling raises serious constitutional questions requiring clearly expressed intent of Congress to prohibit nonpicketing labor publicity, which is not shown by legislative history of Sec. 8(b)(4) amendments]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. **796 F.2d 1328 (C.A. 11, Aug. 1986)**

[legislative history of Sec. 8(b)(4) and amendments contains no clearly expressed intent of Congress to prohibit distribution of handbills urging secondary boycott]

7540-4080 Indicia of objective

7540-4080-1200 Picket signs

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) **JD-86-85**

(picket signs asking public not to patronize retail sales company because its delivery services were being performed by non-U trucking company, unlawful, since picket signs enmeshed neutral sales company and trucking firm in U's primary dispute with E providing drivers for trucking firm whom U wanted replaced with U members; even if it was merely *mistake* in having picket signs name trucking firm as primary E, signs would cause picketing at sales company's locations to violate 8(b)(4)(i)(ii)(B))

7540-4080-2500 Place of picketing

District 17, Mine Workers, and its Local 5869 (Dehue Coal Company, et al.) **275 NLRB No. 101**

(picketing premises of secondary E's coal mining operation and causing secondary Ees to strike in furtherance of labor dispute with non-U primary E operating coal mine unlawful, where U agents crowded entrance to secondary E premises, made statements to secondary E that U was not going to let him buy non-U coal for processing, stopped trucks delivering coal to secondary E, and accosted drivers as *scabs*)

7540-4080-6200 Statements to employers

Construction and General Laborers Local Union No. 304, Laborers (Herring & Worley, Inc.) **282 NLRB No. 014**

[U representatives informing neutral E's superintendent that *any time you cross picket line it is not right*, unlawful, where resulted in superintendent pulling neutral Ees off job pending guidance from his E and causing 1 Ee not to return to project that afternoon]

Electrical Workers, Local Union No. 211 (U.S. Capital Telecommunications Corp.) **279 NLRB No. 119**

[statement of IBEW steward to superintendents of general contractor that *his U didn't recognize CWA and if they are in, we are out and they would walk off*, held violative, since statement had as its object requiring general contractor (neutral E) to c/d/b with primary E who employed CWA members. Statement was threat against, coercion of, and restraint on neutral busines]

Plumbers, Local 114 (M & S Pipe and Supply Company, Incorporated) **277 NLRB No. 006**

(U's threatening neutral E with picketing and with cessation of further purchases by purchasing agents at air force base, with whom E did substantial amount of business, in effort to cause E to remove non-U plumbing contractor from E's warehouse project, violative)

7540-4080-6200—Cont.

District 17, Mine Workers, and its Local 5869 (Deluxe Coal Company, et al.) 275 NLRB No. 101
(picketing premises of secondary E's coal mining operation and causing secondary Ees to strike in furtherance of labor dispute with non-U primary E operating coal mine unlawful, where U agents crowded entrance to secondary E premises, made statements to secondary E that U was not going to let him buy non-U coal for processing, stopped trucks delivering coal to secondary E, and accosted drivers as *scabs*)

Newspaper and Mail Deliverers Union; etc. (B & W Distributors Corp.) 274 NLRB No. 136
(U violated 8(b)(4)(i) and (ii)(B) by telling neutral E with whom it had contract that it would not distribute products delivered to neutral E by another E if neutral did not allow unit Ees to begin picking up that product, and by instructing unit Ees not to handle that product unless neutral E agreed to its demand, since work demanded by U was not traditional unit work or work preservation where U was aware that unit Ees had not picked up product for at least 6 years, thereby waiving any claim to that work, and neutral E had no right to control whether its unit Ees performed work of picking up product)

Miscellaneous Drivers, Helpers & Public Employees Local Union 610, a/w Teamsters (Albert H. Hoppe, Inc.) JD-49-86
[U president informing president of company that provided livery service for funeral homes (neutral) that E's drivers would not perform any trips for funeral homes (primary) against which it was on strike, violative, as object was to cause neutral to c/d/b with primary, and U president instructing its members not to perform any trips, violative also]

Sheet Metal Workers, Local Union 263 (James P. Ryan) JD-242-85
(Us' business agent's telling newtral E get rid of primary E, violative; statements were not only evidence of unlawful object of picketing, they contained threat that Us would shut down job)

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85
(ambulatory picketing of neutral E's trucks, driven by Ees supplied by primary E, during deliveries made for neutral sales company which had discontinued prior delivery service resulting in lay off of U members, unlawful, since U's threats demonstrated that object of picketing was to enmesh neutrals in U's dispute with primary E and to have neutrals bring pressure on, or c/d/b with, primary E in order to have truck drivers replaced by U members)

7540-4080-6900 Statements to employees

Construction and General Laborers Local Union No. 304, Laborers (Herring & Worley, Inc.) 282 NLRB No. 014
[U's representatives informing Ees of neutral E that Ee *should not be crossing picket line* at construction site, informing Ees *any time you cross picket line it isn't right* and subsequently informing Ees crossing picket line that their actions were *going to hurt them in long run*, unlawful, since would reasonably be understood by Ees as sign or request to engage in work stoppage against their E]

Newspaper and Mail Deliverers' Union of New York & Vicinity (Raritan Periodical Sales, Inc.) 277 NLRB No. 064
(U's instructions to members working at various wholesalers, not to handle papers delivered to those Es by non-U drivers, assertedly because wholesalers breached contract by accepting deliveries from non-U drivers, violative, where secondary nature of U's action was clear from fact U told some Es they were concerned with non-U delivery and fact that one publisher who continued to utilize U's drivers for delivery, experienced no disruption in delivery of its paper, demonstrated U was motivated by non-U drivers rather than contract violations)

District 17, Mine Workers, and its Local 5869 (Deluxe Coal Company, et al.) 275 NLRB No. 101
(picketing premises of secondary E's coal mining operation and causing secondary Ees to strike in furtherance of labor dispute with non-U primary E operating coal mine unlawful, where U agents crowded entrance to secondary E premises, made statements to secondary E that U was not going to let him buy non-U coal for processing, stopped trucks delivering coal to secondary E, and accosted drivers as *scabs*)

7540-4080-8700 Handbills

Florida Gulf Coast Building Trades Council, AFL-CIO (The Edward J. Debartolo Corporation) 273 NLRB No. 172
(Building Trades Council's distributing handbills requesting public not to patronize shopping mall tenants because contruction company building store for future mall tenant allegedly paid substandard wages and fringe benefits to its Ees found violative since, council thus coerced shopping mall tenants to c/d/b with mall owner so as to force mall owner and/or future tenant with construction company)

Carpenters District Council of Greater St. Louis, AFL-CIO (Rinker and Yocham Construction) JD-107-86
[U's handbilling of out-of-state primary subcontractor performing work at secondary E's apartment complex, unlawful, where handbilling sought total consumer boycott of apartments by attempting to persuade prospective tenants not to rent in order to force secondary E to c/d/b with subcontractor by appealing to them to support area workers and prevailing wages; and appeal, which included attack on faulty construction of apartments, was partially effactive in precluding some investors from renting]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. 796 F.2d 1328 (C.A. 11, Aug. 1986)
[peaceful and orderly handbilling at mall entrance urging consumers to boycott all mall tenants because of allegedly substandard wages paid by one tenant's building contractor, not violation, since, absent non-speech elements permitting restrictions on labor picketing and in view of First Amendment protection afforded handbilling, construing Sec. 8(b)(4)(ii)(B) to prohibit handbilling raises serious constitutional questions requiring clearly expressed intent of Congress to prohibit nonpicketing labor publicity, which is not shown by legislative history of Sec. 8(b)(4) amendments]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. 796 F.2d 1328 (C.A. 11, Aug. 1986)
[legislative history of Sec. 8(b)(4) and amendments contains no clearly expressed intent of Congress to prohibit distribution of handbills urging secondary boycott]

7540-6000 Any other employer to recognize or bargain with union as representative

7540-6075 Employer action sought by union conduct

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)
[where U, whose members employed by stevedoring company performed work for E's customers, picketed E after it reassigned stevedoring work to its own Ees, Bd properly found that picketing was unlawful since it was not addressed to labor relations of E vis-a-vis its own Ees but rather was calculated to satisfy U's objectives elsewhere]

7540-6083 Indicia of objective

7540-6083-2500 Place of picketing

Construction and General Laborers Local Union No. 304, Laborers (Herring & Worley, Inc.) 282 NLRB No. 014
[U picketing entrance to building rehabilitation project in disregard of reserved gate policy, unlawful]

7540-8000 Exemption of primary strike or picketing

7540-8001 Generally

7540-8001-1700 Identification of primary employer

7540-8001-1750 *Right to Control* test

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. 734 F.2d 966 (C.A. 4, May 1984)
[to be a lawful exercise of work preservation doctrine, bargaining agreement must contain two elements: one, it must seek to preserve work traditionally performed by bargaining unit Ees and two, it must be addressed to an E who actually has the power to assign work in question]

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. 734 F.2d 966 (C.A. 4, May 1984)
[shipping companies retained *right to control* allocation of work of loading and unloading cargo from containers, work which longshoremen sought through negotiating Rules on Containers, where companies invested their own capital in developing technology of containerization, they own or lease containers and prescribe conditions under which containers may be released to shippers, consolidators, truckers and warehousemen]

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)
[in finding that U engaged in unlawful secondary picketing of E who reassigned to its own Ees work performed for E's customers by U Ees of another E, ct rejected U's contention that E was primary E because only it had right to control assignment of work; S.Ct's *Pipefitters* decision did not establish proposition that action against business that is clearly not primary E is permissible primary activity simply because such business may have power to fulfill U's request, and right to control work assignment is but one factor in determining unlawful secondary activity]

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)
[in finding that U engaged in unlawful secondary picketing of E who reassigned to its own Ees work performed for E's customers by U Ees of stevedoring company, ct held U Ees were not *Ees* of E under E's shipment

7540-8001-1750—Cont.

contracts with its customers, and Bd correctly found that fact that E had power to assign work to U did not make E primary E; E's customers hired stevedoring company's U Ees, and there was no contractual relationship whatsoever between E and U representing Ees]

7540-8001-3300 Primary activity defined

N.L.R.B. v. Longshoremen's ILA ——U.S.—— (S.CT, June 1985)

[where objective of agreement and its enforcement are clearly one of work preservation, it is lawful under 8(b)(4)(B) and 8(e), absent some other evidence of secondary purpose; relevant inquiry is whether U's efforts are primary in that they are directed at own E as to Ees' wages, hours or working conditions or, instead, are secondary in that U's efforts are directed at affecting business relations of neutral Es and are tactically calculated to achieve U objectives outside primary E-Ee relationship]

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) 273 NLRB No. 148

(U's picketing on behalf of independent contractor drivers for purpose of improving lease agreements between cab companies and drivers, violative, even though U had objective unrelated to representation of *employees* and thus was not primary in nature but had goal of causing interruption of leases between cab companies and drivers, conduct clearly w/i broad proscription of 8(b)(4)(ii)(B); nor is it necessary, in order to find unlawful *secondary* activity, that *primary* dispute exist at all)

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where U picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held Bd's blanket rule, that secondary activity includes all picketing on behalf of independent contractors, would ban U involvement in picketing by independent contractors not only against neutral parties but also against parties, such as general contractors herein, who are directly and intimately involved in underlying dispute; 8(b)(4) does not prohibit U's picketing against party regardless of party's involvement in underlying issue]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where Bd erred in finding U unlawfully picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held case law and legislative history contain *strong indication* Congress intended *primary activity* to include all picketing against non-neutral parties, whether by independent contractors or by anyone else; and dual Congressional objectives underlying 8(b)(4) of preserving right of labor organization to pressure offending primary Es and of shielding unoffending Es simply are not in tension herein]

7540-8001-6700 Secondary activity defined

N.L.R.B. v. Longshoremen's ILA ——U.S.—— (S.CT, June 1985)

[where objective of agreement and its enforcement are clearly one of work preservation, it is lawful under 8(b)(4)(B) and 8(e), absent some other evidence of secondary purpose; relevant inquiry is whether U's efforts are primary in that they are directed at own E as to Ees' wages, hours or working conditions or, instead, are secondary in that U's efforts are directed at affecting business relations of neutral Es and are tactically calculated to achieve U objectives outside primary E-Ee relationship]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where U picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held Bd's blanket rule, that secondary activity includes all picketing on behalf of independent contractors, would ban U involvement in picketing by independent contractors not only against neutral parties but also against parties, such as general contractors herein, who are directly and intimately involved in underlying dispute; 8(b)(4) does not prohibit U's picketing against party regardless of party's involvement in underlying issue]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[Bd's distinction between secondary boycott (pressure on neutral third party) and secondary activity (unspecified behavior that may or may not be directed against neutral party) is irrelevant because quality that makes behavior secondary is that it is directed against neutral party; no basis exists in meaning of *boycott* and *picketing* that would account for differential treatment, since picketing is usually means to promote boycott and secondary picketing is picketing initiated to prompt secondary boycott against neutral party]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where U picketed general contractors on behalf of independent contractors seeking better leasing agreement terms, ct held intent of Congress was that 8(b)(4) was designed to prohibit only pressure on *third person who is wholly unconcerned in the disagreement*, whether that pressure is called *secondary boycott* or *secondary activity*; moreover, Bd's conclusion that 8(b)(4) prohibits all U-aided picketing by independent contractors would scarcely qualify as *reasonable accomodation* of 8(b)(4)'s policies]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where Bd erroneously found U unlawfully picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held Bd's definition of *secondary* was erroneous even under relatively deferential standard that agency's interpretation of statute need only be *permissible construction* that reflects *reasonable accomodation of law's conflicting policies*; such standard requires ct to determine whether agency's interpretation is arguably consistent with statutory scheme and whether issue is adequately reasoned]

7540-9 0 Primary strikes or Inducements to Strike

7540-[illegible]020-5000 Primary objectives

7540-8020-5037 Area standards

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) 278 NLRB No. 168

[strike against E violative where E replaced subcontractor, which Ees U never represented, with new subcontractor who did not observe area standards since strike was coercive effort on part of U to force E to c/d/b with new subcontractor, object that is proscribed by Act]

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rel Labor Industries, Inc.) JD-86-85

(even w/o U's threats which showed object of picketing was unlawful, picketing still would be held unlawful since U's assertion of *area standards* as purpose of picketing was false because it was based on hearsay statements of competitor and U members which were not credited; but even if credited, U's investigation to support its *area standards* assertion was wholly inadequate)

7540-8020-5050 Unit work preservation

N.L.R.B. v. Longshoremen's ILA ——U.S.—— (S.CT, June 1985)

[Rules on Containers agreement negotiated by U pertaining to longshoremens' work of loading and unloading technologically innovative containerized cargo at pier, and enforcement of Rules by U held lawful as applied to *shortstopping* by land motor carriers and as to *traditional* warehousing practices, since Rules were motivated by longshoremens' desire to preserve their jobs; in view of such primary objective, extra-unit effects of agreement are insufficient basis for finding that it has unlawful secondary objective; and elimination of work because of innovation is no reason to find agreement unlawful]

N.L.R.B. v. Longshoremen's ILA ——U.S.—— (S.CT, June 1985)

[work preservation agreements held lawful absent some additional showing of attempt not to preserve, but to aggandize, work; distinction between *work preservation* and *work acquisition* upheld since agreement with objective of work preservation in face of genuine job threat is not *acquisitive* in sense it involves boycott to acquire new job tasks when U members' own jobs are not threatened; and agreement is not *acquisitive* even though it may have incidental effects of displacing work that otherwise might be done elsewhere or not be done at all]

N.L.R.B. v. Longshoremen's ILA ——U.S.—— (S.CT, June 1985)

[where objective of agreement and its enforcement are clearly one of work preservation, it is lawful under 8(b)(4)(B) and 8(e), absent some other evidence of secondary purpose; relevant inquiry is whether U's efforts are primary in that they are directed at own E as to Ees' wages, hours or working conditions or, instead, are secondary in that U's efforts are directed at affecting business relations of neutral Es and are tactically calculated to achieve U objectives outside primary E-Ee relationship]

N.L.R.B. v. Longshoremen's ILA ——U.S.—— (S.CT, June 1985)

[Rules on Containers Agreement negotiated by U pertaining to longshoremens' work of loading and unloading technologically innovative containerized cargo held to have sole lawful object of preserving longshoremens' work, where there was no evidence of any significant U interest in labor relations of class of Es boycotted under Rules, and avowed work preserva-

7540-8020-5050—Cont.

tion objective of Rules did not seek to claim work so different from that traditionally performed by longshoremen that secondary objective might be inferred]

N.L.R.B. v. Longshoremen's ILA ———U.S.——— (S.CT, June 1985)

[Rules on Containers pertaining to longshoremens' work of loading and unloading technologically innovative containerized cargo at piers held not to constitute form of *featherbedding* seeking to block full implementation of modern technological process, since Rules sought to preserve actual work of loading and unloading performed by longshoremen prior to containerization and did not constitute *featherbedding* that Congress has seen fit to prohibit; and it is up to Congress, and not ct, to explore methods for meeting economic problems arising from scientific advances]

N.L.R.B. v. Longshoremen's ILA ———U.S.——— (S.CT, June 1985)

[in finding Rules on Containers agreement in shipping industry and its enforcement by U as having lawful work preservation objective in face of technological changes involving containerized cargo, ct followed normal presumption of *stare decisis* in cases of statutory interpretation, where Congress had not altered statutory provisions at issue in 18 years since ct first ruled thereon, no new evidence was offered regarding Congress original intent, and management and labor have relied on work-preservation doctrine to guide their bargaining]

N.L.R.B. v. Longshoremen's ILA ———U.S.——— (S.CT, June 1985)

[Rules on Containers agreement in shipping industry and its enforcement by U held lawful as having work preservation objective in face of technological changes invo'ving containerized cargo, since nothing in record supported conclusion that U's enforcement of Rules had secondary, rather than primary, objective; basic premise of labor laws is that collective discussions backed by parties' economic weapons will result in decisions that are better for management, labor, and society as a whole; and Rules represent negotiated compromise of volatile problem bearing directly on well-being of national economy]

Local 388, Plumbers (Daily Heating and Air Conditioning, Inc. 280 NLRB No. 141

[U's picketing of E in attempt to cause E to c/d/b with subcontractor with whom U had primary dispute, bringing charges against Ee and fining him for having worked behind U's picket line and U's telling Ee that it had been good to him before but that was now over, violative; U's defense that picketing was lawful primary picketing done pursuant to valid work preservation clause with E, rejected, since U's object was not to preserve work but was to force E with whom U had contract from working on a jobsite with another E with whom U had long-standing primary area standards dispute]

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) 270 NLRB No. 168

[strike against E violative where E replaced subcontractor, which Ees U never represented, with new subcontractor who did not observe area standards since strike was coercive effort on part of U to force E to c/d/b with new subcontractor, object that is proscribed by Act]

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) 278 NLRB No. 168

[Bd assuming, w/o deciding, that where grievance filed *Bill Johnson*, 461 U.S. 731, may apply, held that under holding of that case it would be inapplicable to cases where gravamen of grievance has as objective that which is illegal under federal law; therefore, Bd refused to apply *Bill Johnson* where U's objective in filing grievance was in furtherance of proscribed objective of forcing E (neutral) to c/d/b with new subcontractor (primary) where U never represented Ees of old subcontractor (no unit work preservation) violative of 8(b)(4)(ii)(B)]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[U's and its locals' inducing Ees of E association and its members to engage in work stoppages or refusals to perform services in course of employment, violation where supplements covering disputed work they negotiated with E association had objective of forcing nonmember Ee to d/c/b with Es not employing Ees represented by U to do disputed work]

New Orleans Steamship Association; ILA Local No. 1497; et al., (New Orleans Cold Storage & Warehouse Co., Ltd.) 276 NLRB No. 045

(in view of S.Ct's decision reversing Bd's decision in *Longshoremen ILA (New York Shipping)* and holding that Rules on Containers were lawful work preservation agreement, Bd held that maintaining and enforcing Rules were not violative of 8(b)(4)(ii)(B) and 8(e) as applied to initial unloading of refrigerated containers of frozen meat destined for charging party's warehouse, since no basis existed for distinguishing between longshoremen's traditional work of unloading frozen cooked meat from ships and work of unloading frozen uncooked meat from containers)

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. 734 F.2d 966 (C.A. 4, May 1984)

[to be a lawful exercise of work preservation doctrine, bargaining agreement must contain two elements: one, it must seek to preserve work traditionally performed by bargaining unit Ees and two, it must be addressed to an E who actually has the power to assign work in question]

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. 734 F.2d 966 (C.A. 4, May 1984)

[Rules on Containers negotiated by U with various shipping E associations representing shipping lines had objective of preserving the steadily declining volume of work when U negotiated them and thus have valid work preservation objective where longshoremen had traditionally loaded cargo piece by piece into hold of ship and unloaded it piece by piece; Rules on Containers grant them the right in certain instances to load and unload cargo piece by piece to and from containers and thus, containerization has simply changed locus of the work, moving the operation shoreward]

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. 734 F.2d 966 (C.A. 4, May 1984)

[Rules on Containers, negotiated by longshoremen with various shipping E associations representing east coast shipping lines as preservation measure for work involving loading and unloading of containers w/i 50 miles of port not violative, since rules had valid work preservation object and shipping companies retained right to control assignment of work claimed by longshoremen]

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. 734 F.2d 966 (C.A. 4, May 1984)

[Bd's conclusion that Rules on Containers negotiated by longshoremen violated Act as applied to *shortstopping* by truckers and some *traditional warehouse functions* was error as a matter of law, since rules had valid work preservation object where truckers and warehousemen do precisely what they did before technological change in containerization and longshoremen have *acquired* none of that work; although rules may duplicate off-pier work of truckers and warehousemen, it is not ct's function to weigh their economic cost]

7540-8020-7500 Indicia of objective

7540-8020-7537 Time of picketing

Service Employees, Local No. 254 (Yeoman Service Corporation) JD-63-85

(U picketing at neutral E's building at times it was known to U that Ees of E (primary) who provided janitorial services for building were not scheduled to work, violative, as picketing calculated to induce Ees of neutral to withhold services from their E, and to coerce and restrain neutral with object of forcing neutral to refrain from doing business with primary)

7540-8040 Primary picketing

7540-8040-3300 Primary objectives

7540-8040-3325 Area standards

Local Union No. 501, Electrical Workers v. N.L.R.B. 756 F.2d 888 (C.A.D.C., Apr. 1985)

(remand to Bd to determine if U could have conveyed its grievance to public at site other than neutral gate which U chose to picket in lieu of picketing at primary gate which was located on dead end alley, unused by public, since communicating grievance to members of public is important aspect of area standards picketing)

7540-8040-3388 Interruption of independent contractors' leasing arrangement

Production Workers Union of Chicago and Vicinity, Local 707; etc. (Checker Taxi Company, Inc.) 273 NLRB No. 148

(U's picketing on behalf of independent contractor drivers for purpose of improving lease agreements between cab companies and drivers, violative, even though U had objective unrelated to representation of *employees* and thus was not primary in nature but had goal of causing interruption of leases between cab companies and drivers, conduct clearly w/i broad proscription of 8(b)(4)(ii)(B); nor is it necessary, in order to find unlawful *secondary* activity, that *primary* dispute exist at all)

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where U picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held general contractors were not neutral third party *wholly unconcerned* in dispute between 2 other parties, since general contractors were not at all neutral inasmuch as dispute over leasing agreement terms was only with general contractors; ct rejected Bd's interpretation that general contractors were neutrals because dispute with independent contractors was not between Es and Ees]

7540-8060 Common situs picketing

7540-8060-0100 Generally

Local Union No. 501, Electrical Workers v. N.L.R.B. 756 F.2d 888 (C.A.D.C., Apr. 1985)

[Although Act's distinction between primary and secondary activity is more often more nice than obvious, it is now well settled that U conduct violates Section 8(b)(4) if any object of that activity is to exert improper influence on secondary or neutral parties. Ultimate inquiry focuses on intent of U, not effects of its actions]

7540-8060-0120 Moore Dry Dock criteria of primary activity

Electrical Workers, Local 357 (P-Berry Electric, Inc. JD-(SF)-002-86

[Moore Dry Dock criteria were not meant to establish rigid formula for determining legality of common situs activity. Rather, doctrine simply establishes evidentiary aid for Bd to determine object of picketing where other evidence equivocal]

7540-8060-0140 Failure to meet criteria not per se violation

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[failure to comply with *Moore Dry Dock* standards does not establish *per se* violation; it does, however, create a strong but rebuttable presumption that picketing had an unlawful secondary purpose]

Electrical Workers, Local 357 (P-Berry Electric, Inc. JD-(SF)-002-86

[Moore Dry Dock criteria were not meant to establish rigid formula for determining legality of common situs activity. Rather, doctrine simply establishes evidentiary aid for Bd to determine object of picketing where other evidence equivocal]

7540-8060-0160 Effectiveness of picketing

Electrical Workers, Local 357 (P-Berry Electric, Inc. JD-(SF)-002-86

[U which had dispute with electrical contractor at project picketing gate reserved for use of neutral contractors and their suppliers, unlawful, where picketed gate marked with unambiguous signs, absent evidence, or reasonable basis for belief, that Ees or suppliers of contractor with which U had dispute used entrance picketed, notwithstanding prior ineffective reserved gate system, and notwithstanding fact Ees did not honor picket line, since legality of secondary picketing turns on object-not effect; nor was 1 day picketing de minimus]

7540-8060-1700 Picketing limited to times when situs of dispute located on common premises

Service Employees, Local No. 254 (Yeoman Service Corporation) JD-63-85

(U picketing at neutral E's building at times it was known to U that Ees of E (primary) who provided janitorial services for building were not scheduled to work, violative, as picketing calculated to induce Ees of neutral to withhold services from their E, and to coerce and restrain neutral with object of forcing neutral to refrain from doing business with primary)

7540-8060-5000 Picketing limited to places reasonably close to location of common situs

Sheet Metal Workers, Local Union 263 (James P. Ryan) JD-242-85

(violation, where U picketed both primary and neutral gates at construction site)

7540-8070 Reserved gate picketing

7540-8070-0100 Generally

Plumbers, Local 444 (T.S. Hanson Plumbing) 277 NLRB No. 137

(where U's enforcement of sympathy strike violated 8(b)(1)(A) by fining U members employed by neutral E for failing to honor lawful primary picket line of sister U at common situs not having valid reserved gate system, Bd held 8(a)(4) places burden on *labor organizations* to conduct themselves in primary dispute so as not to needlessly entangle neutral Es; while absence of reserved gate may extend permissible physical limits of primary dispute on common situs, neutral contractors remain protected by 8(b)(4) against conduct having clear proscribed secondary objective even when there is no reserved gate)

Electrical Workers, Local 357 (P-Berry Electric, Inc. JD-(SF)-002-86

[U which had dispute with electrical contractor at project picketing gate reserved for use of neutral contractors and their suppliers, unlawful, where picketed gate marked with unambiguous signs, absent evidence, or reasonable basis for belief, that Ees or suppliers of contractor with which U had dispute used entrance picketed, notwithstanding prior ineffective reserved gate system, and notwithstanding fact Ees did not honor picket line, since legality of secondary picketing turns on object-not effect; nor was 1 day picketing de minimus]

7540-8070-1700 Failure to use

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[use of neutral Ees' gates by primary E's owners and Ees, thereby assertedly *tainting* neutral gates held not to justify picketing such gates since their use by primary E's personnel constituted *isolated occurrences* which neutral E sought to correct quickly and permanently]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[U unlawfully picketed all entrances to neutral E's facility despite existence of entrances reserved for primary E; incident involving primary E's owners who used neutral gate to observe picket activity and to meet with neutral E's management could not be characterized *normal business* of primary E and, as such, did not breach integrity of reserved gate system; and other incidents involving supplier of primary E and primary Ees were at most *de minimis* breach of reserved gate system not justifying picketing of neutral gates]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[use of neutral gate by primary Ees, who had gate reserved for their use, in performing contractual duties of cleaning area in front of neutral E's building did not justify U's picketing of all of neutral E's entrances; situation here was not one where improperly established reserved gates interfere with U's right to convey its message by lawful picketing; rather, U had ample opportunity to convey its message to Ees and primary E's suppliers at gates reserved for that purpose]

Electrical Workers, Local Union No. 211 (Atlantic County Improvement Authority, and Atlantic City Convention Center Authority) 277 NLRB No. 111

(neutral gate compromised thereby making picketing of neutral gate lawful where producer of large generator attempted delivery at neutral gate rather than reserved primary gate and generator was essential to primary E's (electrical subcontractor) normal operations as significant part of primary's contract was to place generator in specified location and tying in generator to electrical system)

Carpenters, Local No. 33 (Project Management, Inc.)

[picket's with area standards signs naming neutral Es, after being told neutral had no Ees at site and picketing around entire site, including at gates reserved for rental Es, to encourage and coerce neutral Es to c/d/b with non-U E primary, violation]

Electrical Workers, Local 357 (P-Berry Electric, Inc. JD-(SF)-002-86

[U which had dispute with electrical contractor at project picketing gate reserved for use of neutral contractors and their suppliers, unlawful, where picketed gate marked with unambiguous signs, absent evidence, or reasonable basis for belief, that Ees or suppliers of contractor with which U had dispute used entrance picketed, notwithstanding prior ineffective reserved gate system, and notwithstanding fact Ees did not honor picket line, since legality of secondary picketing turns on object-not effect; nor was 1 day picketing de minimus]

Carpenters, Local Union No. 639 (D. Phillips Buchmann, d/b/a Buchmann Construction Company) JD-362-85

[picketing for recognition at front entrance of store where primary E had job remodeling, with purpose to enmesh neutrals, not violative, notwithstanding existence of separate gate at back of store, where U did not know that separate entrance had been established for primary E's Ees and suppliers and U quickly removed its pickets when told of its existence]

Sheet Metal Workers, Local Union 263 (James P. Ryan) JD-242-85

(picketing at neutral gate violative, notwithstanding U's contention that all picketing was lawful in view of primary E's driving one truck through neutral gate, since E's failure to adhere to technical requirements of reserved gate system does not give U right to picket where it chooses)

N.L.R.B. v. Carpenters Union Local No. 1622 786 F.2d 903 (C.A. 9, Jan. 1986)

[U's picketing of reserved gate for neutral Es, violative, notwithstanding gate was tainted by primary's use of gate, since primary E successfully rehabilitated reserved gate system when it posted new signs at jobsite entrances clearly designating primary and neutral gates, policed system to be sure it remained intact and advised U by mailgram as well as telling pickets that system had been rehabilitated]

Local Union No. 501, Electrical Workers v. N.L.R.B. 756 F.2d 888 (C.A.D.C., Apr. 1985)

(presumption of unlawful secondary objective where U pickets at reserved neutral gate not applied, when location of reserved primary gate substantially and unreasonably impairs U's ability to convey area standards picketing message to public)

7540-8070-1700—Cont.

Local Union No. 501, Electrical Workers v. N.L.R.B. 756 F.2d 888 (C.A.D.C., Apr. 1985)

(remand to Bd to determine if U could have conveyed its grievance to public at site other than neutral gate which U chose to picket in lieu of picketing at primary gate which was located on dead end alley, unused by public, since communicating grievance to members of public is important aspect of area standards picketing)

7540-8070-2500 Delivery of goods essential to primary's operation

Electrical Workers, Local Union No. 211 (Atlantic County Improvement Authority, and Atlantic City Convention Center Authority) 277 NLRB No. 111

(neutral gate compromised thereby making picketing of neutral gate lawful where producer of large generator attempted delivery at neutral gate rather than reserved primary gate and generator was essential to primary E's (electrical subcontractor) normal operations as significant part of primary's contract was to place generator in specified location and tying in generator to electrical system)

7540-8070-3300 Adequacy of designation of reserved gate

Electrical Workers, Local 357 (P-Berry Electric, Inc. JD-(SF)-002-86

[U which had dispute with electrical contractor at project picketing gate reserved for use of neutral contractors and their suppliers, unlawful, where picketed gate marked with unambiguous signs, absent evidence, or reasonable basis for belief, that Ees or suppliers of contractor with which U had dispute used entrance picketed, notwithstanding prior ineffective reserved gate system, and notwithstanding fact Ees did not honor picket line, since legality of secondary picketing turns on object-not effect; nor was 1 day picketing de minimus]

N.L.R.B. v. Carpenters Union Local No. 1622 786 F.2d 903 (C.A. 9, Jan. 1986)

[U's picketing of reserved gate for neutral Es, violative, notwithstanding gate was tainted by primary's use of gate, since primary E successfully rehabilitated reserved gate system when it posted new signs at jobsite entrances clearly designating primary and neutral gates, policed system to be sure it remained intact and advised U by mailgram as well as telling pickets that system had been rehabilitated]

7540-8070-5000 Location of reserved gate

Sheet Metal Workers, Local Union 263 (James P. Ryan) JD-242-85

(location of reserved gates, separated only by metal rod, thwarted purpose of reserved gate system where shielding of primary picketing was made unduly difficult by too close placement of gates)

Iron Workers Local 118 (B & A Electric Company) JD-(SF)-221-84

(violation where U picketed at side of only road to jobsite approximately 1/2 mile and 300 feet before primary gate which was located 200 feet before neutral gate (going east to west) as picketing not reasonably close to location of situs, and therefore assumed to be in pursuit of unlawful secondary objectives)

Iron Workers Local 118 (B & A Electric Company) JD-(SF)-221-84

(violation where U picketed at neutral gate. Defense that neutral and primary gates were too close together to avoid picketing at neutral gate, rejected, as they were 200 feet apart)

Local Union No. 501, Electrical Workers v. N.L.R.B. 756 F.2d 888 (C.A.D.C., Apr. 1985)

(presumption of unlawful secondary objective where U pickets at reserved neutral gate not applied, when location of reserved primary gate substantially and unreasonably impairs U's ability to convey area standards picketing message to public)

Local Union No. 501, Electrical Workers v. N.L.R.B. 756 F.2d 888 (C.A.D.C., Apr. 1985)

(remand to Bd to determine if U could have conveyed its grievance to public at site other than neutral gate which U chose to picket in lieu of picketing at primary gate which was located on dead end alley, unused by public, since communicating grievance to members of public is important aspect of area standards picketing)

7540-8080 Ambulatory picketing

7540-8080-1700 Picketing limited to times when situs of dispute is located on secondary employer's premises

7540-8080-1711 Trucks, etc.

Miscellaneous, Drivers Helpers & Public Employees Local Union No. Local 610, a/w Teamsters (Lin Rol Labor Industries, Inc.) JD-86-85

(ambulatory picketing of trucks of neutral trucking firm making deliveries for neutral sales company by U having dispute with E leasing drivers to trucking firm, unlawful, where picketing had unlawful object of inducing sales company's Ees to refuse to perform their job and of pressuring neutrals to put pressure on, or c/d/b with, primary E or with each other until either sales company or trucking firm hired U's members laid off when sales company discontinued former delivery service)

7540-8080-3300 Primary employer engaged in normal business at situs

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[U unlawfully picketed all entrances to neutral E's facility despite existence of entrances reserved for primary E; incident involving primary E's owners who used neutral gate to observe picket activity and to meet with neutral E's management could not be characterized *normal business* of primary E and, as such, did not breach integrity of reserved gate system; and other incidents involving supplier of primary E and primary Ees were at most *de minimis* breach of reserved gate system not justifying picketing of neutral gates]

7540-8080-5000 Picketing limited to places reasonably close to location of situs

7540-8080-5067 Availability of alternative locations for picketing

Iron Workers Local 118 (B & A Electric Company) JD-(SF)-221-84

(violation where U picketed at neutral gate. Defense that neutral and primary gates were too close together to avoid picketing at neutral gate, rejected, as they were 200 feet apart)

7540-8080-6700 Picketing clearly discloses that dispute is with primary employer

7540-8080-6733 Picket signs describing dispute

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[U's failure to clearly identify on its picket signs primary E whom it was picketing at neutral E's facility, unlawful, where picket signs, mentioning only *Company X*, were undeniably ambiguous as to E being picketed; U, upon learning name of primary E, failed to alter picket sign despite repeated requests by neutral E to have signs reflect name of primary E; and U's failure to identify primary E was not effectively countered by its claiming difficulty in altering waterproofed signs]

7540-8080-6791 Direct appeal to secondary employers

Ironworkers Local 433, a/w Ironworkers (United Steel) 280 NLRB No. 152

[U business agent's statement to secondary E that he could *throw up a line* at primary E's job site, violative, since objective of statement was to coerce secondary E to c/d/b with primary E. Threat made w/o assurance that picketing would be w/i limitations established by Bd law]

7580 CLAUSE 8(b)(4)D - FORCING OR REQUIRING

7580-0100 Generally

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)

[essence of dispute in 8(b)(4)(D) and 10(k) sense is existence of dispute between 2 or more groups of Ees over which is entitled to do certain work for E and, in most instances, dispute is of so little interest to E that he is willing to assign work to either Ee group; consequently characteristics of problem that 8(b)(4)(D) and 10(k) aim to solve are that, first, E faces jurisdictional dispute that is not of his own making and, two, dispute is between 2 Ee groups]

7580-2000 Any employer

Plumbers, Local 195 (Gulf Oil Corporation) 275 NLRB No. 069

(there was reasonable cause to believe Sec. 8(b)(4)(D) violated notwithstanding charging party E (E) was not ostensibly object of U's picketing and did not directly employ Ees who were performing work nor did E control assignment of work. (Work was contracted out by E.) Intent of Congress is to protect not only Es whose work is in dispute from such strike activity, but *any* E against whom U acts with such purpose

7580-4000 To assign particular work to particular employees rather than to other employees

7580-4001 Generally

Mine Workers (Bronzite Mining Company, Inc.) 280 NLRB No. 068

[allowing U, whose members have been terminated because their E ceased operations, to picket all future Ees who attempted to perform disputed work with own Ees in place of terminated Ees would be recipe for jurisdictional unrest unsupported by Bd precedent and contrary to letter and spirit of 8(b)(4)(D) and 10(k)]

Longshoremen's, Local 799 (Atlantic Cement Company, Inc.) 280 NLRB No. 024

[reasonable cause found to believe 8(b)(4)(D) violated, notwithstanding U claim it merely sought to preserve work for displaced Ees it represented, where U demanded assignment of disputed work to Ees, rather than reemployment of displaced Ees, and sought by picketing with signs alleging

7580-4001—Cont.

refusal to bargain to force E to sign contract despite fact E had not had contract covering displaced Ees but had merely abided by pay rate and hours of master contract w/o abiding by benefits terms]

7580-4033 What constitutes jurisdictional dispute

7580-4033-0100 Generally

Longshoremen's, Local 799 (Atlantic Cement Company, Inc.) **280 NLRB No. 034**
[reasonable cause found to believe 8(b)(4)(D) violated, notwithstanding U claim it merely sought to preserve work for displaced Ees it represented, where U demanded assignment of disputed work to Ees, rather than reemployment of displaced Ees, and sought by picketing with signs alleging refusal to bargain to force E to sign contract despite fact E had not had contract covering displaced Ees but had merely abided by pay rate and hours of master contract w/o abiding by benefits terms]

Longshoremen's, Local 62-B v. N.L.R.B. **781 F.2d 919 (C.A. D.C., Jan. 1986)**
[no jurisdictional dispute existed where E alone made decision to reassign work from Ees of another E represented by U to its own Ees, and E clearly had interest in doing so; although dispute herein may possibly be characterized as between 2 Ee groups, such fact alone does not establish existence of jurisdictional dispute since origins of dispute must be considered and, inasmuch as E created dispute, 8(b)(4)(D) and 10(k) do not apply]

7580-4033-1000 Demand for work assigned employee-member of another union

Sheet Metal Workers, Local Union No. 107 (The Lathrop Company) **276 NLRB No. 134**
(where U filed grievance alleging E violated contract by assigning disputed work to contractor not using U represented workers, and U agent stated to E that work in dispute was U work and he would have to do everything he could to see that U got the work)

Inlandboatmen's Union of The Pacific **JD-(SF)-81-85**
(U's threat to picket and actual picketing of E, assertedly because of valid work preservation objective, violative, where work in dispute had been awarded to another U in 10(k) proceeding and instant U had not complied with Bd's order and U's defense of work preservation objective was w/o merit since work in dispute involved a new E and was type of work instant U had not claimed in past and in no way displaced and of instant U's current members)

7580-4033-2000 Demand for work assigned to employer's own unrepresented employees

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[U agent held to have instigated, encouraged, and participated in picket at jobsite of E having unrepresented Ees, with at least one object of forcing E to reassign work to former Ees of E who had previously ceased operations at jobsite, where agent took leadership role in initiating picketing and actively participated in, encouraged and condoned picketing activity by providing *legal advice* to pickets to seek employment with E, and by talking to ex-Ees preparing campaign to force E to reassign disputed work to them]

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[Secs. 8(b)(4)(D) and 10(k) held applicable where U was responsible for picketing engaged in by terminated Ees of E who had previously ceased operations at jobsite of E having unrepresented Ees, since E was neutral party thrust into work dispute it did not cause; Bd cases holding that U's picketing to recover terminated Ees' jobs did not involve jurisdicitional dispute distinguished since here, unlike in those cases, E was not responsible for prior E's terminations, and there was no evidence E maintained any legal or contractual relationship with prior E that would allow Bd to infer responsibility]

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[in finding U responsible for picketing by terminated Ees of E who had previously ceased operations at jobsite of E having unrepresented Ees, Bd declined to accept position that picketing was lawful attempt to retrieve terminated Ees' jobs, with dispute being between U and prior E and not between competing groups of E's Ees; under such rationale, U whose members have been terminated because E ceased operations would be free to picket all future Es who attempted to perform disputed work with own Ees, w/o being subject to 8(b)(4)(D) and 10(k) proscriptions]

7580-4033-2500 Demand for work assigned to contractor's own unrepresented employees

Plumbers, Local 195 (Gulf Oil Corporation) **275 NLRB No. 069**
(there was reasonable cause to believe Sec. 8(b)(4)(D) violated notwithstanding charging party E (E) was not ostensibly object of U's picketing and did not directly employ Ees who were performing work nor did E control assignment of work. (Work was contracted out by E.) Intent of Congress is to protect not only Es whose work is in dispute from such strike activity, but *any* E against whom U acts with such purpose)

7580-4033-6000 Demand for assignment of work to be made in future

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[notice of hearing not quashed where U, while claiming no current interest in disputed work, stated it would claim such interest in the future if it was able to prove its *common E* contention; such purported disclaimer being conditioned on outcome of alleged pending legal action was not effective renunciation of U's claim to disputed work]

7580-4033-8000 Demand for continued employment of employees doing work

Steel, Paper House, Chemical Drivers & Helpers Local No. 578, Teamsters (USCP-Wesco, Inc.) **280 NLRB No. 095**
[notice of hearing concerning Sec. 10(k) of Act where in E (Safeway Stores), subcontractor (Wesco) and 2 Us disagreed with assignment of disputed work of *handling, pricing, stocking and ordering nonfood and variety items in facilities of E (Safeway)* quashed, since evidence fails to establish traditional jurisdictional dispute between 2 groups of Ees cognizable under 10(k) of Act. Real dispute here is between U (UFCW) and an E (Safeway), rather than between Ees represented by UFCW and Teamsters, and basically involves nothing more than UFCW's attempt to preserve unit work for itself]

7580-4050 Employer action sought through union conduct

Longshoremen's, Local 799 (Atlantic Cement Company, Inc.) **280 NLRB No. 034**
[reasonable cause found to believe 8(b)(4)(D) violated, notwithstanding U claim it merely sought to preserve work for displaced Ees it represented, where U demanded assignment of disputed work to Ees, rather than reemployment of displaced Ees, and sought by picketing with signs alleging refusal to bargain to force E to sign contract despite fact E had not had contract covering displaced Ees but had merely abided by pay rate and hours of master contract w/o abiding by benefits terms]

7580-4067 Indicia of objective

7580-4067-1200 Picket signs

Longshoremen's, Local 799 (Atlantic Cement Company, Inc.) **280 NLRB No. 034**
[reasonable cause found to believe 8(b)(4)(D) violated, notwithstanding U claim it merely sought to preserve work for displaced Ees it represented, where U demanded assignment of disputed work to Ees, rather than reemployment of displaced Ees, and sought by picketing with signs alleging refusal to bargain to force E to sign contract despite fact E had not had contract covering displaced Ees but had merely abided by pay rate and hours of master contract w/o abiding by benefits terms]

7580-4067-7500 Statements to employees

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[U's strike coordinator who acted as *representative* and spokesman for terminated Ees of E who had previously ceased operations at E's jobsite held agent of U in inducing and encouraging E's Ees to refuse to work at jobsite, where he informed E's Ees and its officials that ex-Ees of prior E had right to their former jobs and repeatedly urged them not to cross ex-Ees' picket line, that he was going to put ex-Ees back to work if E operated at jobsite, and that ex-Ees should have their jobs rather than E's Ees]

7580-4080 Unless employer failing to conform to Board order or certification determining representative of employees performing work

7580-4090 Failure to comply with Board determination of dispute

Iron Workers, Local No. 118 (Franklin D. Chiado, A Sole Proprietorship d/b/a Valley Industrial Machine Erectors **274 NLRB No. 062**
(Bd may rely on underlying 10(k) action when there is no showing of new evidence which is not merely cumulative. To support consequent ULP proceeding when Respondent declines to appear in previous 10(k) action, Bd must determine independently that preponderance of evidence supports result of 10(k) hearing)

Longshoremen's ILA (Atlantic Cement Company, Inc.) **JD-(NY)-122-85**
(failing to comply with Bd's work assignment in Sec. 10(k) proceeding by threatening to picket to secure disputed work of loading and unloading cement barges, violation)

Inlandboatmen's Union of The Pacific **JD-(SF)-81-85**
(U's threat to picket and actual picketing of E, assertedly because of valid work preservation objective, violative, where work in dispute had been awarded to another U in 10(k) proceeding and instant U had not complied with Bd's order and U's defense of work preservation objective was w/o merit since work in dispute involved a new E and was type of work instant U had not claimed in past and in no way displaced and of instant U's current members)

N.L.R.B. v. Millwrights Local 1102, Carpenters **779 F.2d 349 (C.A. 6, Dec. 1985)**
[Bd properly awarded disputed work to one of rival Us notwithstanding competing U's contention that Bd accorded undue weight to its former decision involving identical jurisdictional dispute, since prior Bd decision had been applied for 17 years w/o any significant work dispute; Bd consid-

7580-6050—Cont.

ered substantial disagreement among respective Us as to continuing validity of Bd's prior decision; and at 10(k) hearing testimony of U representatives was replete with contradiction as to whether or not Bd's prior decision had been superseded by national agreement]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[U violated 8(b)(4)(D) where U brought *payment-in-lieu* grievance and filed 301 suit to enforce arbitrator's decision that was improperly motivated by desire to circumvent Bd's 10(k) determination, and U's suit to enforce arbitrator's award lacked reasonable basis in law since *supremacy doctrine* barred arbitrator from making award inconsistent with Bd determination]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[notwithstanding several ct and Bd decisions have held that 8(b)(4)'s *coercion* bar does *not* prevent U from bringing lawsuit to enforce its contractual rights, Bd's finding of 8(b)(4)(ii)(D) violation stemming from U's filing 301 suit to enforce arbitrator's decision was upheld where enforcement of U's contract would have resulted in conflict with existing 10(k) Bd determination; because 10(k) order expresly required U to refrain from using *means proscribed by Section 8(b)(4)(D)*]

7580-8000 Section 10(k) proceedings for determination of jurisdictional dispute

7580-8001 Generally

Graphic Communications Union, Local 527--S (Dittler Brothers, Inc.) 276 NLRB No. 079

(Bd's determination in jurisdictional dispute is an act of judgment based on common sense and experience, reached by factors involved in particular case)

N.L.R.B. v. Millwrights Local 1102, Carpenters 779 F.2d 349 (C.A. 6, Dec. 1985)

[10(k) defines no standards to guide Bd in resolving jurisdictional disputes and S.Ct has mandated Bd to use its own special expertise and common sense in disposing of similar controversies]

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)

[essence of dispute in 8(b)(4)(D) and 10(k) sense is existence of dispute between 2 or more groups of Ees over which is entitled to do certain work for E and, in most instances, dispute is of so little interest to E that he is willing to assign work to either Ee group; consequently characteristics of problem that 8(b)(4)(D) and 10(k) aim to solve are that, first, E faces jurisdictional dispute that is not of his own making and, two, disp .te is between 2 Ee groups]

7580-8001-1000 Exclusive procedure for resolving jurisdictional dispute

Longshoremen's Union, Local 32 v. Pacific Maritime Association, et al. (NLRB) F.Supp.————(DC W.D. WA, Sep. 1984)

[U's mtn in district ct to enforce arbitral award based on U's contract with E--of disputed work and *time-in-lieu* payments to it's members for period when they had not performed disputed work dismissed, since ct found that the award was in conflict with Bd's 10(k) determination that members of another U were entitled to disputed work and that Bd's determination was controlling]

7580-8001-1100 Parties to dispute

Steel, Paper House, Chemical Drivers & Helpers Local No. 578, Teamsters (USCP-Wesco, Inc.) 280 NLRB No. 095

[notice of hearing concerning Sec. 10(k) of Act where in E (Safeway Stores), subcontractor (Wesco) and 2 Us disagreed with assignment of disputed work of *handling, pricing, stocking and ordering nonfood and variety items in facilities of E (Safeway)* quashed, since evidence fails to establish traditional jurisdictional dispute between 2 groups of Ees cognizable under 10(k) of Act. Real dispute here is between U (UFCW) and an E (Safeway), rather than between Ees represented by UFCW and Teamsters, and basically involves nothing more than UFCW's attempt to preserve unit work for itself]

7580-8001-2000 Board obligation to make affirmative award

Graphic Communications Union, Local 527--S (Dittler Brothers, Inc.) 276 NLRB No. 079

United Scenic Artists, Local 350 Painters (Cellomatic Productions Corporation) 276 NLRB No. 033

(regardless of fact that U which threatened to strike is currently performing disputed work)

7580-8001-4000 Representation determination aspects of Board determination

Steel, Paper House, Chemical Drivers & Helpers Local No. 578, Teamsters (USCP-Wesco, Inc.) 280 NLRB No. 095

[notice of hearing concerning Sec. 10(k) of Act where in E (Safeway Stores), subcontractor (Wesco) and 2 Us disagreed with assignment of disputed work of *handling, pricing, stocking and ordering nonfood and variety items in facilities of E (Safeway)* quashed, since evidence fails to establish traditional jurisdictional dispute between 2 groups of Ees cognizable under 10(k) of Act. Real dispute here is between U (UFCW) and an E (Safeway), rather than between Ees represented by UFCW and Teamsters, and basically involves nothing more than UFCW's attempt to preserve unit work for itself]

7580-8001-9000 Relationship to ULP proceeding

N.L.R.B. v. Longshoremen's, etc., Local 333 (Rukert Terminals Corporation, etc.) 764 F.2d 234 (C.A. 4, June 1985)

(Section 10(k) authorizes Bd to hear and resolve disputes that have engendered ULP charges where voluntary adjustment (by parties) does not occur. In context of Section 8(b)(4)(D) charge, Bd determines *who is entitled to contested work*)

7580-8020 Procedure under Section 10(k)

7580-8020-0100 Generally

Mine Workers (Bronzite Mining Company, Inc.) 280 NLRB No. 068

[in finding U responsible for picket line activity through its strike coordinator acting as its agent, Bd held that, although coordinator denied U's involvement in picketing activity at jobsite and that U sent him to picketing site only to *evaluate situation*, contrary to other witness' testimony, such conflict in testimony did not prevent Bd from proceeding under 10(k), since Bd is charged only with determining that reasonable cause exists for finding violation of 8(b)(4)(D), not that violation occurred]

7580-8020-1100 Parties to dispute

The Brockton Newspaper Guild 275 NLRB No. 022

(charging party's request to withdraw 8(b)(4)(D) charge approved by Bd, since interested U unequivocally disclaimed interest in disputed work at hearing)

7580-8020-1159 Groups of employees

Mine Workers (Bronzite Mining Company, Inc.) 280 NLRB No. 068

[in finding U responsible for picketing by terminated Ees of E who had previously ceased operations at jobsite of E having unrepresented Ees, Bd declined to accept position that picketing was lawful attempt to retrieve terminated Ees' jobs, with dispute being between U and prior E and not between competing groups of E's Ees; under such rationale, U whose members have been terminated because E ceased operations would be free to picket all future Es who attempted to perform disputed work with own Ees, w/o being subject to 8(b)(4)(D) and 10(k) proscriptions]

7580-8020-1167 Employer

Glaziers, Architectural Metal & Glass Workers Local Union No. 513 (Custom Contracting Company) 280 NLRB No. 112

[U's mtn to quash notice of hearing, on grounds E was not *employer* w/i meaning of Act since all of its *employees* were really *partners* in a partnership; thus, no competing Ees, denied. Although Ees had signed partnership agreement, they were partners in name only and were really Ees where they did not approve selection of other partners, had no monetary investment in partnership, did not share in profits but were paid a wage and had no real say in the management of the partnership]

7580-8020-1600 Scope of work in dispute

Steel, Paper House, Chemical Drivers & Helpers Local No. 578, Teamsters (USCP-Wesco, Inc.) 280 NLRB No. 095

[notice of hearing concerning Sec. 10(k) of Act where in E (Safeway Stores), subcontractor (Wesco) and 2 Us disagreed with assignment of disputed work of *handling, pricing, stocking and ordering nonfood and variety items in facilities of E (Safeway)* quashed, since evidence fails to establish traditional jurisdictional dispute between 2 groups of Ees cognizable under 10(k) of Act. Real dispute here is between U (UFCW) and an E (Safeway), rather than between Ees represented by UFCW and Teamsters, and basically involves nothing more than UFCW's attempt to preserve unit work for itself]

General Truck Drivers, Office, Food & Warehouse, Local 952, Teamsters (Westside Building Material Corporation; etc.) 275 NLRB No. 141

(determination of work in dispute, involving drywall stocking to points above third floor of high-rise construction project, limited to project where dispute arose and not extended to cover such work on all present and future projects, where dispute had not arisen in recent past, and there was no substantial likelihood that it will recur)

7580-8020-2200 Opportunity for voluntary adjustment

7580-8020-2225 Existence of agreed upon method for voluntary adjustment

7580-8020-2225—Cont.

General Truck Drivers, Office, Food & Warehouse, Local 952, Teamsters (Westside Building Material Corporation; etc.) 275 NLRB No. 141
(no agreed-upon method for voluntary resolution of work in dispute existed where dispute resolution mechanism did not find all parties)

Operating Engineers, Local 150 v. N.L.R.B. 755 F.2d 78 (C.A. 7, Jan. 1985)
]———*voluntary adjustment* (arbitration proceeding) *must be binding upon all disputing Us as well as E to come w/i the meaning of voluntary settlement as set out in Section 10(k)*)

Operating Engineers, Local 150 v. N.L.R.B. 755 F.2d 78 (C.A. 7, Jan. 1985)
(Bd has not allowed party to defeat submitting a dispute to forum upon which they had previously agreed simply because a party has decided not to comply in a particular situation)

Operating Engineers, Local 150 v. N.L.R.B. 755 F.2d 78 (C.A. 7, Jan. 1985)
(Bd's determination of work jurisdiction of two competing local U claimants pursuant to Section 10(k) of Act *enforced* where neither U claimant's agreement with E concerning work jurisdiction is giving way to the other)

Operating Engineers, Local 150 v. N.L.R.B. 755 F.2d 78 (C.A. 7, Jan. 1985)
(no agreed upon method for voluntary adjustment notwithstanding the 2 Us disputing work assignment belonged to *Council* that required jurisdictional disputes be submitted to JCB and E party to multi/E contract negotiated by 1 of competing Us and party to another multi E contract negotiated by Int'l of other competing U which provided for jurisdicitonal disputes to be decided by Int'l and E association and that any other method agreed upon with any of its locals is null and void even if local bound to submit dispute to JCB if an E not bound by Int'l agreement)

7580-8020-4400 **Quashing of notice of hearing**

7580-8020-4450 No reasonable cause to believe Act violated

Glaziers, Architectural Metal & Glass Workers Local Union No. 513 (Custom Contracting Company) 280 NLRB No. 112
[U's mtn to quash notice of hearing, on grounds E was not *employer* w/i meaning of Act since all of its *employees* were really *partners* in a partnership; thus, no competing Ees, denied. Although Ees had signed partnership agreement, they were partners in name only and were really Ees where they did not approve selection of other partners, had no monetary investment in partnership, did not share in profits but were paid a wage and had no real say in the management of the partnership]

The Brockton Newspaper Guild 275 NLRB No. 022
(Bd found *no* reasonable cause to believe that 8(b)(4)(D) violated where U threatened to *pursue all available remedies* in seeking assignment of disputed work where no evidence of other threats, restraint or coercion showing that prohibited activity intended. Threat to merely filed grievance or invoke arbitration as provided for in labor contract in pursuit of arguably meritorious contractual claim does not violate Act)

7580-8020-4467 No jurisdictional dispute

Steel, Paper House, Chemical Drivers & Helpers Local No. 578, Teamsters (USCP-Wesco, Inc.) 280 NLRB No. 095
[notice of hearing concerning Sec. 10(k) of Act where in E (Safeway Stores), subcontractor (Wesco) and 2 Us disagreed with assignment of disputed work of *handling, pricing, stocking and ordering nonfood and variety items in facilities of E (Safeway)* quashed, since evidence fails to establish traditional jurisdictional dispute between 2 groups of Ees cognizable under 10(k) of Act. Real dispute here is between U (UFCW) and an E (Safeway), rather than between Ees represented by UFCW and Teamsters, and basically involves nothing more than UFCW's attempt to preserve unit work for itself]

Glaziers, Architectural Metal & Glass Workers Local Union No. 513 (Custom Contracting Company) 280 NLRB No. 112
[U's mtn to quash notice of hearing, on grounds E was not *employer* w/i meaning of Act since all of its *employees* were really *partners* in a partnership; thus, no competing Ees, denied. Although Ees had signed partnership agreement, they were partners in name only and were really Ees where they did not approve selection of other partners, had no monetary investment in partnership, did not share in profits but were paid a wage and had no real say in the management of the partnership]

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)
[no jurisdictional dispute existed where E alone made decision to reassign work from Ees of another E represented by U to its own Ees, and E clearly had interest in doing so; although dispute herein may possibly be characterized as between 2 Ee groups, such fact alone does not establish existence of jurisdictional dispute since origins of dispute must be considered and, inasmuch as E created dispute, 8(b)(4)(D) and 10(k) do not apply]

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)
[Bd's 10(k) decision that object of U's picketing was to force assignment of work to its members and that its object was not limited to preserving work for Ees held wrong as matter of law and factually wrong in not considering that no jurisdictional dispute existed si nce origin of dispute was created by E in reassigning work from U Ees of another E to its own Ees]

7580-8020-4476 Disclaimer

Mine Workers (Bronzite Mining Company, Inc.) 280 NLRB No. 068
[notice of hearing not quashed where U, while claiming no current interest in disputed work, stated it would claim such interest in the future if it was able to prove its *common E* contention; such purported disclaimer being conditioned on outcome of alleged pending legal action was not effective renunciation of U's claim to disputed work]

Local 3, Electrical Workers (Mike G. Electric Corp.) 279 NLRB No. 072
[U's disclaimer of work ineffective since presented solely to avoid decision on merits where little work left to disclaim inasmuch as most of disputed work had been completed]

7580-8020-8800 **Board determination**

7580-8020-8850 Finding of reasonable cause to believe Act violated

Steel, Paper House, Chemical Drivers & Helpers Local No. 578, Teamsters (USCP-Wesco, Inc.) 280 NLRB No. 095
[notice of hearing concerning Sec. 10(k) of Act where in E (Safeway Stores), subcontractor (Wesco) and 2 Us disagreed with assignment of disputed work of *handling, pricing, stocking and ordering nonfood and variety items in facilities of E (Safeway)* quashed, since evidence fails to establish traditional jurisdictional dispute between 2 groups of Ees cognizable under 10(k) of Act. Real dispute here is between U (UFCW) and an E (Safeway), rather than between Ees represented by UFCW and Teamsters, and basically involves nothing more than UFCW's attempt to preserve unit work for itself]

Mine Workers (Bronzite Mining Company, Inc.) 280 NLRB No. 068
[reasonable cause to believe 8(b)(4)(D) was violated where U was responsible for picketing engaged in by terminated Ees of E who had previously ceased operations at E's jobsite; U's agent instigated, encouraged, and participated in picket at jobsite, having at least one object of forcing E to assign work to former E's terminated Ees, which was sufficient to bring U's conduct w/i coverage of 8(b)(4)(D) even if lawful purpose was also shown to exist]

Local 3, Electrical Workers (Mike G. Electric Corp.) 279 NLRB No. 072
[contention threat to E permissible and thus no reasonable cause to believe Act violated, where threat was relayed by U steward by telephone, and steward did not know he was speaking with E-president, rejected, since threat impermissibility under Sec. 8(b)(4)(D) is measured not by whether individual knew that he was speaking to E per se, but by whether foreseeable object of statements and conduct was to compel assignment of disputed work to Ees in given labor organization rather than to other Ees in particular trade or labor organization]

Local 3, Electrical Workers (Mike G. Electric Corp.) 279 NLRB No. 072
[hearing officer did not err in admitting hearsay testimony since hearsay corroborated nor double hearsay which solely supported finding of reasonable cause to believe Section 8(b)(4)(D) of Act violated]

Local 3, Electrical Workers (Mike G. Electric Corp.) 279 NLRB No. 072
[reasonable cause exists where steward of U claiming disputed work (Electrical Workers) telephoned president of general contractor and told him his U claimed work and that Ees doing work under subcontract and who were represented by another U should be replaced by Electrical Workers and later on Electrical Workers held obstructionist meetings on jobsite]

Iron Workers Local 433 (Crescent Corporation) 277 NLRB No. 077
(although Bd ultimately found reasonable cause to believe Act was violated, Bd specifically held that U attorney's statement to E attorney *indicating* U would engage in job action to retain disputed work and E attorney could *have your magic words*, was not *reasonable cause* since threat was clearly intended only as a sham to invoke Bd's authority to determine dispute, nor was letter by U's attorney which stated that U would *exercise all options legally available to them)*

Sheet Metal Workers, Local Union No. 107 (The Lathrop Company) 276 NLRB No. 134
(in 10(k) proceedings, conflict in testimony does not prevent Bd from finding of reasonable cause and proceeding with a determination of dispute)

General Truck Drivers, Office, Food & Warehouse, Local 952, Teamsters (Westside Building Material Corporation; etc.) 275 NLRB No. 141
(in finding reasonable cause existed to believe 8(b)(4)(D) was violated, Bd held dispute did not become moot by U's retraction of its threats to take

7580-8020-8850—Cont.

economic action, including picketing, if work in dispute was assigned to another U, where retraction was not made until hearing herein, and U continued to claim work in dispute)

7580-8040 Factors evaluated in making determination

7580-8040-0100 Generally

Iron Workers, Local Union No. 482 (Norment Glass Company, A Division of Normant Industries, Inc.) **273 NLRB No. 219**
(determination in jurisdictional dispute is act of judgment based on common sense and experience, reached by ballancing factors involved in a particular case)

7580-8040-1100 Collective bargaining agreements

Local 3, Electrical Workers (Mike G. Electric Corp.) **279 NLRB No. 072**
[hearing officer did not err in admitting evidence concerning E's membership in multi-E bargaining association since relevant to determining viability of E's bargaining agreement with one of Us claiming work]

7580-8040-3300 Board rulings in related representation proceedings

7580-8040-3350 In related 10(k) proceedings

N.L.R.B. v. Millwrights Local 1102, Carpenters **779 F.2d 349 (C.A. 6, Dec. 1985)**
[Bd properly awarded disputed work to one of rival Us notwithstanding competing U's contention that Bd accorded undue weight to its former decision involving identical jurisdictional dispute, since prior Bd decision had been applied for 17 years w/o any significant work dispute; Bd considered substantial disagreement among respective Us as to continuing validity of Bd's prior decision; and at 10(k) hearing testimony of U representatives was replete with contradiction as to whether or not Bd's prior decision had been superseded by national agreement]

7580-8040-3800 Joint Board decisions

7580-8040-3817 In earlier cases

Laborers', Local 1359 (Krull's Masonry, Inc.) **281 NLRB No. 140**
[where disputed work was similar to that involved in prior Bd cases and involved different E but same Us, similar circumstances and contract provisions, Bd held that, while prior cases were not controlling in its determination of dispute, they were factor it considered]

7580-8040-7700 Efficiency of operations

7580-8040-7717 Economy

Local 211, Electrical Workers (United Technicians) **276 NLRB No. 029**
(installation of MATV (private cable television) system by installing cable, risers, and outlet plates and installation of telephone system by terminating existing cables and running riser cables to the main private branch exchange at condominium assigned to Ees represented by Communications Workers rather than Electrical Workers in view of E's contract with CWA as to the telephone work and need to hire unnecessary Ee if it used Ees represented by IBEW)

7580-8060 Board determination of jurisdictional disputes (by SIC category)

7580-8060-1200 Bituminous coal and lignite mining

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[unrepresented Ees of E engaged in surface mining of coal, rather than Ees whom U sought to represent and who were terminated when their E ceased operations at E's minesite, held entitled to perform disputed coal mining and loading work]

7580-8060-1500 Building construction - General contractors

Local 223, Laborers (C.W.C. Builders, Inc.) **281 NLRB No. 056**
[unloading, transporting, uncrating and placement of appliances and disposal of debris at jobsite of E engaged in construction and rehabilitation of buildings awarded to Ees represented by Teamsters rather than Ees represented by Laborers]

Bricklayers Local #15 (Fusco Corporation) **278 NLRB No. 135**
[dry setting and laying precast concrete pavers for walkways awarded to Ees represented by Laborers rather than Bricklayers]

Laborers Local 223, et al. (Associated General Contractors of Massachusetts, Inc.) **277 NLRB No. 013**
(work of erecting and dismantling pipe scaffolding at site of building being restored and all general contractor's other building sites where jurisdiction of Laborers and Carpenters coincide assigned Ees represented by Laborers rather than by Carpenters)

7580-8060-1600 Construction other than building construction - General contractors

Construction and General Laborers Local Union No. 721, a/w Laborers (Bechtel Construction, Inc.) **277 NLRB No. 150**
[work of cutting, erection, and installation of plywood boards around conduit constructed as *duct bank* which holds cable for transmitting electricity at nuclear power station awarded to Ees represented by Carpenters rather than Laborers]

7580-8060-1700 Construction - Special trade contractors

Elevator Constructors, Local No. 091 (Otis Elevator Company) **281 NLRB No. 171**
[installation and surveying of elevator equipment used by elevator company, E, awarded to unrepresented Ees of company hired by E to develop monitoring device rather than to E's Ees represented by Elevator Constructors]

Laborers', Local 1359 (Krull's Masonry, Inc.) **281 NLRB No. 140**
[disputed work of operating forklifts used in connection with masonry subcontractor's work at construction project awarded to Ees represented by Laborers rather than by Operating Engineers]

Glaziers, Architectural Metal & Glass Workers Local Union No. 513 (Custom Contracting Company) **280 NLRB No. 112**
[work of removal of existing wooden windows and installation of preglazed aluminum windows for E engaged as subcontractor at construction site, awarded to E's unrepresented Ees rather than Ees represented by Glaziers]

Local 3, Electrical Workers (Mike G. Electric Corp.) **279 NLRB No. 072**
[installation of electrical conduit cable devices and fixtures on renovation job assigned to Ees of E represented by Food and Commercial Workers rather than to Ees represented by Electrical Workers]

Asbestos Workers Local Union No. 91 (Northern Tier Insulations, Inc.) **278 NLRB No. 165**
[installation of insulation for hot water heating systems for retirement community project and installation of insulation for underground steam and condensate piping at college, awarded to unrepresented Ees of contractor rather than Asbestos Workers]

Carpenter' District Council of Western Pennsylvania (Overhead Door Company of Greater Pittsburgh) **277 NLRB No. 157**
(work of unloading, distributing, erecting and installing overhead doors and grills at construction site, for E engaged in assembly and nonretail sale of overhead doors, awarded to E's unrepresented Ees rather than Ees represented by Carpenters)

Iron Workers Local 433 (Crescent Corporation) **277 NLRB No. 077**
(work of installing pre-glazed curtain wall or window wall for E specializing in fabricating such items and installing them in high-rise commercial buildings, awarded to Ees represented by Iron Workers rather than Glaziers)

Tri-State Building and Construction Trades Council **277 NLRB No. 052**
(all field work related to installation of dust collectors and sprouting, including chutes and supporting structual steel, at anhydrous ethanol plant, awarded to Ees of E represented by Sheetmetal Workers, rather than to Boilermakers, Carpenters, Millwrights or Ironworkers)

Sheet Metal Workers, Local Union No. 107 (The Lathrop Company) **276 NLRB No. 134**
(Ees of contractor at construction site represented by Sheet Metal Workers, rather than Ees represented by Iron Workers, awarded work of erecting sandwich sheet metal panels on exterior sides and application of corrugated metal sheets for decking purposes on roof of facility being constructed)

Local 211, Electrical Workers (United Technicians) **276 NLRB No. 029**
(installation of MATV (private cable television) system by installing cable, risers, and outlet plates and installation of telephone system by terminating existing cables and running riser cables to the main private branch exchange at condominium assigned to Ees represented by Communications Workers rather than Electrical Workers in view of E's contract with CWA as to the telephone work and need to hire unnecessary Ee if it used Ees represented by IBEW)

General Truck Drivers, Office, Food & Warehouse, Local 952, Teamsters (Westside Building Material Corporation; etc.) **275 NLRB No. 141**
(work limited to assignment of stocking drywall above first 3 floors of high-rise construction project assigned to Ees represented by Teamsters rather than by Laborers)

Plumbers, Local 195 (Gulf Oil Corporation) **275 NLRB No. 069**
(piping work at oil refinery, including joining and laying pipe, removal of existing pipe and installation of new pipe, assigned to unrepresented Ees of contractor, rather than to Ees of contractor represented by Pipe Fitters)

Local Union No. 423 Laborers **275 NLRB No. 034**
(work of removing asbestos from commercial buildings by construction contractor engaged in installation of commercial and industrial insulation

7580-8060-1700—Cont.

awarded to Ees represented by Laborers' U rather than Asbestos Workers U)

Glaziers, Architectural Metal, and Glassworkers Local Union No. 513, affiliate of Painters (McCarthy Brothers Construction Company) 275 NLRB No. 031
(handling and installation of glass panels to be placed in handrails at commercial building awarded to Ees of E represented by Ironworkers rather than Glaziers)

Local Lodge No. 374, Boilermakers (The Vogt and Conant Company) 274 NLRB No. 069
(erection of structural steel at generating station awarded to Ees represented by Ironworkers rather than Boilermakers)

General Laborers' Union Local No. 317 (McWad Inc.) 274 NLRB No. 028
(operation of forklift used in connection with E's masonry work awarded to Ees represented by Laborers rather than Operating Engineers)

Carpenters, Local 623 of Atlantic County (Atlantic Exhibit Services, Inc.; et al.) 274 NLRB No. 014
(installation and dismantling of prefabricated display booths for private contractors at convention hall awarded to Ees represented by Carpenters rather than Painters)

Iron Workers, Local Union No. 482 (Norment Glass Company, A Division of Normant Industries, Inc.) 273 NLRB No. 219
(work of installing aluminum and metal work in window units and entrance doors and other installation associated therewith at office building site assigned to Ees represented by Glaziers rather than to those represented by Iron Workers)

Glaziers, Architectural Metal & Glassworkers, Local Union No. 513 (SK Counsultants) 273 NLRB No. 171
(installation of operable and fixed aluminum replacement windows in public library awarded to Ees represented by Carpenters rather than Glaziers)

7580-8060-2000 Food and kindred products

Teamsters Local Union 158 (Holt Cargo Systems, Inc. 278 NLRB No. 051
[work of unpackaging, defrosting, inspection and repackaging meat for Es engaged in operation of cold storage warehouse and trucking and stevedoring operations, award to Ees represented by Teamsters rather than Longshoremen]

Golden Grain Macaroni Company 275 NLRB No. 162
(packaging of bread crumbs for stuffing mix at chocolate company plant awarded to Ees represented by Bakery Workers rather than Longshoremen)

7580-8060-2700 Printing, publishing, and allied industries

Newspaper and Mail Deliverers' Union of New York and Vicinity 281 NLRB No. 095
[delivery operation of newspaper at single facility assigned unrepresented Ees of independent contractor rather than Newspaper and Mail Deliverers' Union]

Graphic Communications Union, Local 527--S (Dittler Brothers, Inc.) 276 NLRB No. 079
(disputed work of mixing and repacking press-finished promotional game pieces by in-line automated printing press of E engaged in specialty printing awarded to specialty workers represented by Graphic Communications U rather than to bindery workers represented by Graphic Arts U)

7580-8060-2900 Petroleum refining and related industries

Longshoremen's, Local Union No. 1329 (C. H. Sprague & Son Co.) 280 NLRB No. 147
[work involving handling salt ship and offloading salt cargo at E's terminal, awarded to Ees represented by Fuel Handlers rather than Longshoremen's U]

7580-8060-3200 Stone, clay, glass, and concrete products

Longshoremen's, Local 799 (Atlantic Cement Company, Inc.) 280 NLRB No. 024
[disputed work involving hose hook-up, or shackling, associated with loading and unloading barges carrying bulk coment of E engaged in manufacture and sale of cement at its distribution facility assigned E's unrepresented custodial Ee, rather than Ees represented by Longshoremen, where disputed work requiring 3-4 minutes replaced work requiring 2 hours formerly performed by casually employed Longshoremen]

7580-8060-3500 Machinery, except electrical

Operating Engineers, Local 825 (GPU Nuclear Corporation and Jersey Central Power and Light Company) 282 NLRB No. 039
[operation of mobile crane at nuclear generating station awarded to Ees represented by Electrical Workers rather than to Ees represented by Operating Engineers]

7580-8060-3700 Transportation equipment

General Truck Drivers, Office, Food and Warehouse Local 952, Teamsters (Rockwell International Corporation) 275 NLRB No. 086
(work of driving vehicles from E's electric component manufacturing facility to outside points to have them serviced awarded to Ees represented by Teamsters rather than Ees represented by UAW in light of collective bargaining agreements, E practice in assigning work, and economy and efficiency of operations)

7580-8060-3900 Miscellaneous manufacturing

Painters, Sign, Pictorial and Display Artiest, Local Union No. 479 (Giltspur Exhibits/Pittsburgh, A Division of Giltspur Expo Industries, Inc.) 278 NLRB No. 148
[operation of machine to cut vinyl letters and letters made of ruby or amber lith awarded to unrepresented Ee in graphics design department of E rather than Ees represented by Painters]

7580-8060-4400 Water transportation

Longshoremen's, Local 1588 (Atlantic Cement Company, Inc. 273 NLRB No. 212
(tie up and hook up work associated with unloading of cement barges assigned to Ees of E represented by Operating Engineers rather than supplemental Ees hired for purpose)

7580-8060-4700 Transportation services

American Federation of Guards, Local No. 1 (Indies Terminal Company, d/b/a Stevedoring Services of America) 279 NLRB No. 171
[protecting, watching and safeguarding all property in sheds, on docks, or in adjacent cargo storage areas, by guards or watchmen, at shipping terminal, awarded to Ees of E represented by Guards rather than Longshoremen, particularly in view of fact that guards represented only guards while sister local of Longshoremen also represented longshoremen, clericals, and foremen employed by E]

7580-8060-4800 Communication

United Scenic Artists, Local 350 Painters (Cellomatic Productions Corporation) 276 NLRB No. 033
(work of performing physical placement of artwork on Oxberry Animation Stand, control of keyboards located under ADDA console, providing instructions and guidance to graphic room broadcast engineer as to composition and production of artwork, and ntification of engineer when artwork may be recorded by the camera, in graphics room of TV station awarded to Ees represented by United Scenic Artists rather than Ees represented by NABET)

7580-8060-7300 Miscellaneous business services

Brotherhood of Trade Show and Display Workers' Union, Local 349, a/w Southern Joint Board of ILGPNWU, AFL-CIO (Freeman Decorating Company) 281 NLRB No. 103
[work of installing, maintaining and dismantling of company-owned rental displays and hanging signs not attached to exhibits awarded to E's Ees represented by Display Workers rather than members of Stage Ees, because of their familiarity with the displays allow them to setup and dismantle displays and hang signs quicker, and further, since they are already on premises at shows they can make any repairs quicker than Stage Ees members who must be dispatched from hiring hall]

Window Cleaners Union Local 44, Service Employees (Sir Francis Drake Hotel) 274 NLRB No. 071
(work involving cleaning of exterior windows at hotel entitled to be done by *unrepresented Ees* of hotel rather than being assigned to Ees, represented by Window Cleaners U)

7580-8060-7800 Motion pictures

Directors Guild of America, Inc. 276 NLRB No. 059
(television series *location work*, consisting of locating and surveying potential film sites, arranging with appropriate parties for use of site, being present during filming and being responsible for followup claims for damage to property during its use, assigned Ees represented by the Teamsters rather than by the Directors Guild of America)

7580-8080 Scope of award

7580-8080-1000 Limited to instant dispute

Mine Workers (Bronzite Mining Company, Inc.) 280 NLRB No. 068

Local 3, Electrical Workers (Mike G. Electric Corp.) 279 NLRB No. 072
[award limited to specific site where dispute arose rather than encompassing all work in dispute, whereever located, by E]

7580-8080-1000—Cont.

Construction, General Laborers and Material Handlers Local Union No. 1058, AFL-CIO (Facchiano Construction, Inc.) 277 NLRB No. 134

(in finding nothing to indicate that U will resort to proscribed means to obtain similar disputed work in furture, Bd limited award to work in dispute)

7580-8080-2000 Similar dispute within entire geographic area of employer's normal operations

Laborers', Local 1359 (Krall's Masonry, Inc.) 281 NLRB No. 140

[Bd declined to issue broad award of disputed work to U's represented Ees found entitled to work covering jobsites throughout state or, alternatively, to jobs involving disputed work where their E is subcontractor at projects w/i state, where rival U claiming work had filed grievance concerning disputed work and did not engage in threats of picketing or picketing; rather, it was U representing Ees awarded disputed work that had engaged in such conduct]

7580-8080-6000 Similar disputes within employer's entire operations

Local 3, Electrical Workers (Mike G. Electric Corp.) 279 NLRB No. 072

[award limited to specific site where dispute arose rather than encompassing all work in dispute, whereever located, by E]

7580-8080-5700 Similar disputes in geographic area where competing unions' jurisdictions coincide

Laborers Local 223, et al. (Associated General Contractors of Massachusetts, Inc.) 277 NLRB No. 013

566 EXCESSIVE OR DISCRIMINATORY MEMBERSHIP FEES - (SEC. 8(b)(5))

2000 NATURE AND SCOPE OF PROSCRIPTION

2033 DESIGNED TO PREVENT IMPOSITION OF HIGH FEE TO PROTECT JOB SECURITY

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(legislative history indicates purpose of Sec. 8(b)(5) is to prevent Us, by exorbitant initiation fees, from circumventing prohibition against closed shops; in attempting to achieve such purpose, Bd has determined that relevant wages are starting wages since Ees who pay initiation fees are those in lowest wage bracket; but Bd has never determined a standard ratio and, rather, has concluded in each case to decide whether under all circumstances, with due consideration for practices and customs, initiation fees required are either excessive or discriminatory)

4000 EXCESSIVE OR DISCRIMINATORY FEE

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(terms *excessive* and *discriminatory* in 8(b)(5) are used in disjunctive and a finding of either is violative of Act; moreover, determination as to what constitutes an excessive fee is to be made on case-by-case basis)

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(Bd has declined to make any recommendations as to the amount of any initiation fee which U may establish, deeming that Bd is not empowered to set the amount of U's initiation fees but is charged merely with determining which fees are discriminatory or excessive)

4017 UNLAWFUL IF EITHER EXCESSIVE OR DISCRIMINATORY INITIATION FEES

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(requiring, as condition of employment, motion picture projectionist in commercial theater to pay $2000 initiation fee, amounting to about 7 weeks salary and 700% in excess of weekly salary of lower paid Ees, unlawful; such amount of fee is presumptively excessive, and U's contention as to reasonableness of fee based on amount of fees paid by members of other locals in area is unpersuasive, since there was no evidence as to such local's prevailing contractual wage rates, and they were not in same industry as local herein)

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(in finding imposition of initiation fee on motion picture projectionist in commercial theater unlawfully excessive, ALJ held that, even assuming other Us in area, whose initiation fees U proposed as support for reasonableness of its initiation fee, were in same industry, evidence as to practice and customs of such Us was insufficient to overcome impact of U's initiation fee/wage ratio which was so disproportionate as to be considered exorbitant and one which may well be so staggering as to preclude prospective projectionist from accepting employment)

6000 RELEVANT FACTORS

6000-0100 Generally

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(Bd's decisions in cases involving allegation that fees or increase in fees were excessive as well as discriminatory, or that fees were excessive w/o being discriminatory, indicate that in determining what is excessive Bd looks at what percentage initiation fee is of Ee's weekly salary and how that compares to initiation fee/wage ratio utilized by other Us in the industry)

6033 INITIATION FEE OF OTHER UNIONS IN PARTICULAR INDUSTRY

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(requiring, as condition of employment, motion picture projectionist in commercial theater to pay $2000 initiation fee, amounting to about 7 weeks salary and 700% in excess of weekly salary of lower paid Ees, unlawful; such amount of fee is presumptively excessive, and U's contention as to reasonableness of fee based on amount of fees paid by members of other locals in area is unpersuasive, since there was no evidence as to such local's prevailing contractual wage rates, and they were not in same industry as local herein)

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**

(in finding imposition of initiation fee on motion picture projectionist in commercial theater unlawfully excessive, ALJ held that, even assuming other Us in area, whose initiation fees U proposed as support for reasonableness of its initiation fee, were in same industry, evidence as to practice and customs of such Us was insufficient to overcome impact of U's initiation fee/wage ratio which was so disproportionate as to be considered exorbitant and one which may well be so staggering as to preclude prospective projectionist from accepting employment)

8000 AFFIRMATIVE DEFENSES

572 PAYMENT FOR SERVICES NOT PERFORMED - (SEC. 8(b)(6))

0100 GENERALLY

5000 SCOPE OF PROSCRIPTION

578 PICKETING FOR RECOGNITION AND BARGAINING

0100 GENERALLY

2000 CONDUCT PROHIBITED WHEN FOR PROHIBITED OBJECT

2025 PICKETING

2025-6700 What constitutes picketing

2025-6775 Absence of picket signs

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) **276 NLRB No. 046**
(picketing with signs displayed at mine entrances, unlawful, notwithstanding U's contention that its activities constituted pure speech since, while pickets did not carry signs nor patrol with them, their activity constituted picketing w/i meaning of Act)

2075 THREATENING TO PICKET

Highway Drivers, etc., Local 710, Teamsters (University of Chicago) **274 NLRB No. 142**
(mixed guard-nonguard U's threat to picket E, unlawful, regardless of whether threatened picketing actually occurred, where U was not qualified to represent E's security guards; U's sole purpose in making threat was to induce recognition from E as evidenced by U's communication to E that it was threatening to picket until agreement was reached on *all outstanding disputes*, and only dispute then was E's refusal to recognize and bargain with U)

Local Union No. 803, a/w Teamsters (St. Luke's-Roosevelt Hospital Center) **274 NLRB No. 133**
(threat to picket E made by U which had won election in guard unit but was not certified because it admits non-guards as members, unlawful, where election had been conducted w/i preceding 12 months, barring U from making such threat; Act clearly prohibits threat by U which is not currently certified representative of Ees and Act draws no distinction between U which has won or lost election; and election victory is insufficient reason to permit U to picket or threaten to picket in face of clear, express statutory mandate)

Local Union No. 803, a/w Teamsters (St. Luke's-Roosevelt Hospital Center) **274 NLRB No. 133**
(threat to picket E made by U which had won election in guard unit but was not certified because it admits non-guards as members, unlawful, notwithstanding U's claim that 8(b)(7)(C) is aimed only at picketing being conducted *w/o a ptn... being filed* and, consequently, 8(b)(7)(C) is not applicable inasmuch as U has won election and is majority Ee representative; 8(b)(7)(C) may be applied to proscribe picketing by majority Us, and U which admits guards and non-guards to membership violates 8(b)(7)(C)by picketing for guard unit, notwithstanding it is majority U)

4000 PROHIBITED OBJECTS--FORCING OR REQUIRING

4025 AN EMPLOYER TO RECOGNIZE OR BARGAIN WITH A LABOR ORGANIZATION AS REPRESENTATIVE OF HIS EMPLOYEES

4025-0100 Generally

Stage Employees IATSE (Albatross Productions, Inc.) **275 NLRB No. 105**
(8(b)(7)(C) applies even if there are legitimate purposes for picketing; it is sufficient to make out violation of 8(b)(7)(C) if one of U objects is recognitional)

Iron Workers, Local Union 55 (McCullough Construction, Inc.) **JD-162-86**
(evidence concerning violence (on picket line) or mass picketing is no more indicative of recognitional object than it is of area standards object, nor is such violence material to that aspect of Section 8(b)(7)(C) cases which turn on U objectives)

4025-5000 What constitutes recognition and bargaining

4025-5050 To obtain initial acceptance as representative

Stage Employees IATSE (Albatross Productions, Inc.) **275 NLRB No. 105**
(even assuming U's picketing was for purpose of reestablishing U's previous hiring relationship with E, that purpose was not for continued recognition which would be permissible object under 8(b)(7), since hiring relationship did not include recognition)

Stage Employees IATSE (Albatross Productions, Inc.) **275 NLRB No. 105**
(U's picketing violative, notwithstanding U's contention that purpose of picketing was to revive hiring relationship with E, where object of picketing was to obtain recognition from E as bargaining representative of E's stagehands)

Laborers, Local Union No. 1140 (Central States Asphalt Paving Co.) **275 NLRB No. 110**
(E's attempt to strike a deal with a minority U will not *alone* give rise to type of bargaining history contemplated by *Sullivan Electric Co.* 146 NLRB 1086, 1087 (1964), observing that Section 8(b)(7)(C) is designed to *...proscribe picketing having as its target forcing or requiring an E's initial acceptance of the U as the bargaining representative of his Ees*)

Highway Drivers, etc., Local 710, Teamsters (University of Chicago) **274 NLRB No. 142**
(mixed guard-nonguard U's threat to picket E, unlawful, regardless of whether threatened picketing actually occurred, where U was not qualified to represent E's security guards; U's sole purpose in making threat was to induce recognition from E as evidenced by U's communication to E that it was threatening to picket until agreement was reached on *all outstanding disputes*, and only dispute then was E's refusal to recognize and bargain with U)

Highway Drivers, etc., Local 710, Teamsters (University of Chicago) **274 NLRB No. 142**
(fact that mixed guard-nonguard U, unqualified to represent E's security guards, obtained majority vote in election held not to alter Bd's conclusion that U's threat to picket E for recognition was unlawful; in view of Bd's prior decision overruling *Bally's Park Place* and holding that 9(b)(3) precludes disqualified U from participating in Bd election, U's reliance on results of election is misplaced; and even if *Bally's Park Place* had not been overruled and U's participation in election was proper, result herein would be same)

4025-5083 Not applicable to union entitled to recognition

Stage Employees IATSE (Albatross Productions, Inc.) **275 NLRB No. 105**
(even assuming U's picketing was for purpose of reestablishing U's previous hiring relationship with E, that purpose was not for continued recognition which would be permissible object under 8(b)(7), since hiring relationship did not include recognition)

4093 PICKETING OR THREAT TO PICKET BY UNQUALIFIED LABOR ORGANIZATION

4093-5000 Mixed guard-nonguard union

Highway Drivers, etc., Local 710, Teamsters (University of Chicago) **274 NLRB No. 142**
(mixed guard-nonguard U's threat to picket E, unlawful, regardless of whether threatened picketing actually occurred, where U was not qualified to represent E's security guards; U's sole purpose in making threat was to induce recognition from E as evidenced by U's communication to E that it was threatening to picket until agreement was reached on *all outstanding*

4093-5000—Cont.

disputes, and only dispute then was E's refusal to recognize and bargain with U)

Highway Drivers, etc., Local 710, Teamsters (University of Chicago) 274 NLRB No. 142

(fact that mixed guard-nonguard U, unqualified to represent E's security guards, obtained majority vote in election held not to alter Bd's conclusion that U's threat to picket E for recognition was unlawful; in view of Bd's prior decision overruling *Bally's Park Place* and holding that 9(b)(3) precludes disqualified U from participating in Bd election, U's reliance on results of election is misplaced; and even if *Bally's Park Place* had not been overruled and U's participation in election was proper, result herein would be same)

6000 INDICIA OF OBJECTIVE

6007 PICKET SIGNS

6007-6700 Area standards signs

Over-The-Road, City Transfer, Inside Employees, Local Union No. 544, a/w Teamsters (Better Home Deliveries, Inc.) 274 NLRB No. 034

(U unlawfully picketed for recognition for more than 30 days w/o filing R ptn with signs stating *Notice to public... E pays substandard wages and fringe benefits*, notwithstanding contention picketing for area, standards, where U officer in response to inquiry from E as to what it would take to settle matter, answered either *sign the book* or *pay the book*, book being understood to be Master Freight Agreement; U did not fully investigate wages of Ees of E being picketed, and U began picketing w/o giving E opportunity to comply with area standards)

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85

(U running hiring hall at site of picketing (directing all persons seeking referrals to report to site for referrals) showed recognitional or contractual object as purpose for this was to show need of its members for work to reinforce picket signs that stated that U had qualified workers ready and willing to work, but E did not. Also use of word *scabs* by picketers referring to E's nonU workers is inconsistent with area standards objective and consistent with recognitional object)

6007-7700 Non-union conditions signs

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046

(change in message of picket signs, after new owner took over operations from E whose Ees were represented by U, from wording indicating picketing was directed at former owner to wording indicating that information picketing was being conducted by county's *group for job applicants* held subterfuge to conceal fact that U was continuing its picketing, where same persons continued picketing in same manner with the only difference being change in wording on picket signs)

6014 PLACE OF PICKETING

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85

(U running hiring hall at site of picketing (directing all persons seeking referrals to report to site for referrals) showed recognitional or contractual object as purpose for this was to show need of its members for work to reinforce picket signs that stated that U had qualified workers ready and willing to work, but E did not. Also use of word *scabs* by picketers referring to E's nonU workers is inconsistent with area standards objective and consistent with recognitional object)

6021 TIME OF PICKETING

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85

(U running hiring hall at site of picketing (directing all persons seeking referrals to report to site for referrals) showed recognitional or contractual object as purpose for this was to show need of its members for work to reinforce picket signs that stated that U had qualified workers ready and willing to work, but E did not. Also use of word *scabs* by picketers referring to E's nonU workers is inconsistent with area standards objective and consistent with recognitional object)

6025 ACTIONS OF PICKETS

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[pickets' chants during picketing of primary E performing services at neutral E's facility and U leaflets to the effect that U members, formerly employed by E whom primary E replaced, desired to work for neutral E again, and U's belated area standards picketing held insufficient evidence of recognitional objective, nor did it establish, absent evidence U or its members sought employment with primary E, that U's demand for mass reinstatement would necessarily establish U's majority status among primary Ees; forcing neutral E to c/d/b with primary E was U's only objective]

6028 STATEMENTS OF PICKETS

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85

(U running hiring hall at site of picketing (directing all persons seeking referrals to report to site for referrals) showed recognitional or contractual object as purpose for this was to show need of its members for work to reinforce picket signs that stated that U had qualified workers ready and willing to work, but E did not. Also use of word *scabs* by picketers referring to E's nonU workers is inconsistent with area standards objective and consistent with recognitional object)

6031 STATEMENTS OF UNION LEADERS

Over-The-Road, City Transfer, Inside Employees, Local Union No. 544, a/w Teamsters (Better Home Deliveries, Inc.) 274 NLRB No. 034

(U unlawfully picketed for recognition for more than 30 days w/o filing R ptn with signs stating *Notice to public... E pays substandard wages and fringe benefits*, notwithstanding contention picketing for area, standards, where U officer in response to inquiry from E as to what it would take to settle matter, answered either *sign the book* or *pay the book*, book being understood to be Master Freight Agreement; U did not fully investigate wages of Ees of E being picketed, and U began picketing w/o giving E opportunity to comply with area standards)

6035 STATEMENTS TO EMPLOYERS

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046

(picketing for more than 30 days w/o filing ptn held to have unlawful recognitional object, where U took adamant position that E, either as purchaser or successor, had bargaining obligation to U and informed E that it was interested in having Ees of former owner, whom it still represented, hired by E; U's proposed agreement and other documents showed that U's overall end was to secure recognition; and picket sign was used to identify Ees of former owner who would only work under U contract)

Over-The-Road, City Transfer, Inside Employees, Local Union No. 544, a/w Teamsters (Better Home Deliveries, Inc.) 274 NLRB No. 034

(U unlawfully picketed for recognition for more than 30 days w/o filing R ptn with signs stating *Notice to public... E pays substandard wages and fringe benefits*, notwithstanding contention picketing for area, standards, where U officer in response to inquiry from E as to what it would take to settle matter, answered either *sign the book* or *pay the book*, book being understood to be Master Freight Agreement; U did not fully investigate wages of Ees of E being picketed, and U began picketing w/o giving E opportunity to comply with area standards)

6063 AREA STANDARDS OBJECTIVES

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[pickets' chants during picketing of primary E performing services at neutral E's facility and U leaflets to the effect that U members, formerly employed by E whom primary E replaced, desired to work for neutral E again, and U's belated area standards picketing held insufficient evidence of recognitional objective, nor did it establish, absent evidence U or its members sought employment with primary E, that U's demand for mass reinstatement would necessarily establish U's majority status among primary Ees; forcing neutral E to c/d/b with primary E was U's only objective]

Over-The-Road, City Transfer, Inside Employees, Local Union No. 544, a/w Teamsters (Better Home Deliveries, Inc.) 274 NLRB No. 034

(U unlawfully picketed for recognition for more than 30 days w/o filing R ptn with signs stating *Notice to public... E pays substandard wages and fringe benefits*, notwithstanding contention picketing for area, standards, where U officer in response to inquiry from E as to what it would take to settle matter, answered either *sign the book* or *pay the book*, book being understood to be Master Freight Agreement; U did not fully investigate wages of Ees of E being picketed, and U began picketing w/o giving E opportunity to comply with area standards)

6081 DEMANDING THE HIRING OF UNION MEMBERS OR GRANTING OF UNION BENEFITS

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[pickets' chants during picketing of primary E performing services at neutral E's facility and U leaflets to the effect that U members, formerly employed by E whom primary E replaced, desired to work for neutral E again, and U's belated area standards picketing held insufficient evidence of recognitional objective, nor did it establish, absent evidence U or its members sought employment with primary E, that U's demand for mass reinstatement would necessarily establish U's majority status among primary Ees; forcing neutral E to c/d/b with primary E was U's only objective]

6081—Cont.

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046
(picketing for more than 30 days w/o filing ptn held to have unlawful recognitional object, where U took adamant position that E, either as purchaser or successor, had bargaining obligation to U and informed E that it was interested in having Ees of former owner, whom it still represented, hired by E; U's proposed agreement and other documents showed that U's overall end was to secure recognition; and picket sign was used to identify Ees of former owner who would only work under U contract)

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85
(sign protesting that E was not using qualified U workers is tantamount to protesting against use of nonunion workers or nonunion conditions is indicative of recognitional object, especially where no inquiry made as to qualification of E's Ees)

8000 CIRCUMSTANCE WHERE RECOGNITIONAL PICKETING PROHIBITED

8025 WHERE EMPLOYER HAS RECOGNIZED ANOTHER LABOR ORGANIZATION--SECTION 8(b)(7)(A)

8025-3300 Recognition lawful

8025-3360 Voluntary recognition

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) 279 NLRB No. 096
[violation where U picketed E who had contract with majority representative and continued picketing for total of 45 days including picketing after dismissal of its ptn]

8050 WHERE VALID ELECTION CONDUCTED WITHIN PRECEDING TWELVE MONTHS--SECTION 8(b)(7)(B)

8050-2000 Election among employees for whom recognition sought

Local Union No. 803, a/w Teamsters (St. Luke's-Roosevelt Hospital Center) 274 NLRB No. 133
(threat to picket E made by U which had won election in guard unit but was not certified because it admits non-guards as members, unlawful, where election had been conducted w/i preceding 12 months, barring U from making such threat; Act clearly prohibits threat by U which is not currently certified representative of Ees and Act draws no distinction between U which has won or lost election; and election victory is insufficient reason to permit U to picket or threaten to picket in face of clear, express statutory mandate)

8050-4000 Election pursuant to section 9(c)

8050-4075 Validity of conduct of election

California Teamsters, Local Union 911 (General Felt Industries, Inc.) 275 NLRB No. 136
(mtn for summary 8(b)(7)(B) judgment granted where, although U claimed it belatedly learned that Ees did not vote for it in election won by rival U because they feared E retaliation and w/held information for same reason, which fear they based on Ee discharge found unlawful by Bd in prior case, there was no evidence U attempted to secure such *newly discovered* evidence before or during ULP hearing and was unsuccessful in doing so; and U being unaware of newly discovered evidence at time of its 8(b)(7)(B) activity, may not justify such conduct based on information not known to it at time of its actions)

8075 WHERE PICKETING FOR MORE THAN REASONABLE TIME WITHOUT PETITION BEING FILED--SECTION 8(b)(7)(C)

8075-0100 Generally

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046
(U's defenses to alleged unlawful 8(b)(7)(C) picketing on ground picketed buyer-E was alter ego, successor, or single or joint E of seller-E whose Ees U had represented held properly considered for reasons stated in *Warwick Caterers* in which Bd abandoned its prior position that Us may be precluded from introducing evidence in support of defenses such as those herein and recognized that allowing U to present its 8(b)(7)(C) defenses in face of dismissal of 8(a)(5) charges against E is not tantamount to reviewing GC's decision not to issue C)

Stage Employees IATSE (Albatross Productions, Inc.) 275 NLRB No. 105
(8(b)(7)(C) applies even if there are legitimate purposes for picketing; it is sufficient to make out violation of 8(b)(7)(C) if one of U objects is recognitional)

8075-2000 Reasonable time of picketing

Motion Picture Projectionists, Local 150, Stage Employees (Landmark Theatre Corporation) JD-(SF)-36-86
[U's picketing E's theater with object of forcing E to recognize it as bargaining representative of those who were performing projectionist work at theater, at time when it had not been certified as bargaining representative of said Ees and no ptn had been filed under 9(c) w/i reasonable period of time, violative]

8075-2017 Not to exceed thirty days

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) 279 NLRB No. 096
[fact that there may have been no picketing on Sundays, or 24 hours a day, does not alter stipulated nature of picketing ---that it took place on virtually every working day during 45 days of picketing]

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046
(picketing for more than 30 days w/o filing ptn held to have unlawful recognitional object, where U took adamant position that E, either as purchaser or successor, had bargaining obligation to U and informed E that it was interested in having Ees of former owner, whom it still represented, hired by E; U's proposed agreement and other documents showed that U's overall end was to secure recognition; and picket sign was used to identify Ees of former owner who would only work under U contract)

Laborers, Local Union No. 1140 (Central States Asphalt Paving Co.) 275 NLRB No. 110
(uncertified U's picketing E in support of demands that E execute collective-bargaining agreement with U, which picketing continued for more than 30 days w/o U filing election ptn pursuant to Section 9(c) of Act, violative, since U was neither certified representative (of E's construction workers) nor did U demonstrate that it ever obtained majority support among E's construction workers)

8075-2033 Where accompanied by violence

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85
(violation notwithstanding picketing lasted 29 days where there was mass picketing which prevented ingress and egress of nonU workers and pickets used abusive language, threw rocks, rocked vehicles and dented vehicle trying to cross picket line showed that U did not want election)

8075-2092 Picketing at employer's different locations

Stage Employees IATSE (Albatross Productions, Inc.) 275 NLRB No. 105
(U's picketing violative, notwithstanding U's contention that purpose of picketing was to revive hiring relationship with E, where object of picketing was to obtain recognition from E as bargaining representative of E's stagehands)

8075-4000 Filing of petition

Motion Picture Projectionists, Local 150, Stage Employees (Landmark Theatre Corporation) JD-(SF)-36-86
[U's picketing E's theater with object of forcing E to recognize it as bargaining representative of those who were performing projectionist work at theater, at time when it had not been certified as bargaining representative of said Ees and no ptn had been filed under 9(c) w/i reasonable period of time, violative]

8075-4012 Dismissal of petition by Regional Director

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) 279 NLRB No. 096
[violation where U picketed E who had contract with majority representative and continued picketing for total of 45 days including picketing after dismissal of its ptn]

8075-5000 Picketing by union unable to obtain certification

8075-5000—Cont.

Rapid Armored Truck Corp. 281 NLRB No. 057
[E's discharge of and refusal to reinstate strikers, not unlawful, since their conduct unprotected, where strikers' objective was to compel E to recognize and bargain with U which was ineligible for certification because of its policy of admitting both guard and non-guard Ees to membership and picketing was also violative of Section 8(b)(7)(C)]

8075-5033 Non-guard union seeking to represent unit of guards

Local Union No. 803, a/w Teamsters (St. Luke's-Roosevelt Hospital Center) 274 NLRB No. 133
(threat to picket E made by U which had won election in guard unit but was not certified because it admits non-guards as members, unlawful, notwithstanding U's claim that 8(b)(7)(C) is aimed only at picketing being conducted *w/o a ptn... being filed* and, consequently, 8(b)(7)(C) is not applicable inasmuch as U has won election and is majority Ee representative; 8(b)(7)(C) may be applied to proscribe picketing by majority Us, and U which admits guards and non-guards to membership violates 8(b)(7)(C) by picketing for guard unit, notwithstanding it is majority U)

8075-5050 Mixed guard-nonguard union seeking to represent guards

Highway Drivers, etc., Local 710, Teamsters (University of Chicago) 274 NLRB No. 142
(mixed guard-nonguard U's threat to picket E, unlawful, regardless of whether threatened picketing actually occurred, where U was not qualified to represent E's security guards; U's sole purpose in making threat was to induce recognition from E as evidenced by U's communication to E that it was threatening to picket until agreement was reached on *all outstanding disputes*, and only dispute then was E's refusal to recognize and bargain with U)

Highway Drivers, etc., Local 710, Teamsters (University of Chicago) 274 NLRB No. 142
(fact that mixed guard-nonguard U, unqualified to represent E's security guards, obtained majority vote in election held not to alter Bd's conclusion that U's threat to picket E for recognition was unlawful; in view of Bd's prior decision overruling *Bally's Park Place* and holding that 9(b)(3) precludes disqualified U from participating in Bd election, U's reliance on results of election is misplaced; and even if *Bally's Park Place* had not been overruled and U's participation in election was proper, result herein would be same)

8075-8000 **Informational picketing not prohibited (second proviso, Section 8(b)(7)(C))**

8075-8025 Form of activity

8075-8025-3300 **Informational picketing**

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85
(evidence concerning violence (on picket line) or mass picketing is no more indicative of recognitional object than it is of area standards object, nor is such violence material to that aspect of Section 8(b)(7)(C) cases which turn on U objectives)

8075-8050 Purpose of activity

8075-8050-5600 **That employer does not employ members of or have contract with labor organizations**

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85
(evidence concerning violence (on picket line) or mass picketing is no more indicative of recognitional object than it is of area standards object, nor is such violence material to that aspect of Section 8(b)(7)(C) cases which turn on U objectives)

8075-8050-5900 **Picketing for area standards**

Over-The-Road, City Transfer, Inside Employees, Local Union No. 544, a/w Teamsters (Better Home Deliveries, Inc.) 274 NLRB No. 034
(U unlawfully picketed for recognition for more than 30 days w/o filing R ptn with signs stating *Notice to public... E pays substandard wages and fringe benefits*, notwithstanding contention picketing for area, standards, where U officer in response to inquiry from E as to what it would take to settle matter, answered either *sign the book* or *pay the book*, book being understood to be Master Freight Agreement; U did not fully investigate wages of Ees of E being picketed, and U began picketing w/o giving E opportunity to comply with area standards)

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85
(evidence concerning violence (on picket line) or mass picketing is no more indicative of recognitional object than it is of area standards object, nor is such violence material to that aspect of Section 8(b)(7)(C) cases which turn on U objectives)

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85
]*area standards picketing is not informational picketing protected by the second proviso* of Section 8(b)(7)(C) of Act. Even if picketing here is considered under second proviso, that defense unavailable to U because picketing (accompanied by *mass picketing and violence*) had effect of stopping E's Ees from working)

8075-8075 Except where having prohibited effect

8075-8075-6700 **Inducement of employees of any other person**

8075-8075-6767 Not to perform services

Iron Workers, Local Union 55 (McCullough Construction, Inc.) JD-162-85
]*area standards picketing is not informational picketing protected by the second proviso* of Section 8(b)(7)(C) of Act. Even if picketing here is considered under second proviso, that defense unavailable to U because picketing (accompanied by *mass picketing and violence*) had effect of stopping E's Ees from working)

584 AGREEMENTS TO CEASE DOING BUSINESS

0100 GENERALLY

0130 CONSTRUCTION OF CONTRACT CLAUSES

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) **277 NLRB No. 102**

(maintaining provision of contract which precluded E from doing business with all subcontractors who employed drivers of equipment owned by those subcontractors, thus permitting subcontracting only if owner-operators were driving trucks, and required subcontractors to obtain clearance from U hall not later than start of second day of U work, unlawful, where maintenance of article had no valid, primary objective, and provision permitted subcontracting only of owner-operator even if unit work and area standards were not involved; further, no evidence subcontracting interfered with unit work)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) **277 NLRB No. 102**

(contract clause whose basic aim is to limit subcontracting of unit work to Es who maintain same standard of employment, thus minimizing economic incentive to subcontract, so called *union standard*, lawful)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) **277 NLRB No. 102**

(contract clause whose basic aims are to limit subcontracting so as to preserve for unit Ees work which has customarily been performed by them, or in some instances to recapture work regarded as fairly claimable, so called *unit protection* clauses, lawful)

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) **276 NLRB No. 077**

(where depending on whether *owner-operators* are Ees or independent contractors, agreement alleged to violate Section 8(e) may be primary in nature and lawful, or secondary and unlawful, Bd applies rules of construction. If meaning of clause clear Bd will determine validity under 8(e) and where clause not clearly unlawful, Bd will interpret it to require no more than required by law. But, if ambiguous, Bd will not presume unlawfulness, and absent extrinsic evidence of whether clause intended to be administered in lawful or unlawful manner, Bd will not pass on its validity)

N.L.R.B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, a/w Teamsters **773 F.2d 921 (C.A. 7, Sep. 1985)**

(ct will accord weight to *the Bd's interpretation of the Act and the Bd's application of it in doubtful situations)*

0140 CONSTRUCTION OF LEGISLATIVE HISTORY

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) **277 NLRB No. 102**

]Sec. 8(e) addresses itself to what Congress considered a defect in law prior thereto, i.e., law that permitted contractual provisions directed at unoffending Es, rather than to conditions of work of contracting E. It was intent of Congress in enacting Sec. 8(e) to preclude secondary boycotts, and literal reading of statute indicates that all agreements for secondary action are covered. However, judicial pronouncements have resulted in allowance of some secondary agreements being outside statute)

1200 FACTORS MATERIAL TO APPLICABILITY OF SECTION 8(e)

1201 GENERALLY

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 020**

[for work preservation agreement to be lawful, it must have as its objective work traditionally performed by Ees represented by U and be directed at work which contracting E has power to award the Ees; where agreement is directed at work contracting E has no power to assign, agreement may reasonably be inferred to have secondary objective of influencing E having such power over the work]

1225 AGREEMENT BETWEEN LABOR ORGANIZATION AND EMPLOYER

1225-2500 Employers within section

Chicago District Council of Carpenters, AFL-CIO (Polk Bros., Inc.) **275 NLRB No. 051**

(home carpenting retailer not w/i construction industry)

1250 AGREEMENT *ENTERED INTO* WITHIN STATUTORY MEANING

1250-2500 Signing or executing agreement

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) **280 NLRB No. 082**

[E-association and U unlawfully entered into, maintained, and enforced contract provisions which required E-members to c/d/b with truck owner-operators who did not become U members under contract; its provisions applicable to owner-operators, herein found to be independent contractors, were secondary on their face and applied to work done both on and off jobsite and therefore did not fall w/i protection of construction industry proviso; and provisions did not serve purposes of preserving unit work or employment standards of unit Ees]

1250-5000 Reaffirming, maintaining or enforcing agreement

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) **280 NLRB No. 082**

[E-association and U unlawfully entered into, maintained, and enforced contract provisions which required E-members to c/d/b with truck owner-operators who did not become U members under contract; its provisions applicable to owner-operators, herein found to be independent contractors, were secondary on their face and applied to work done both on and off jobsite and therefore did not fall w/i protection of construction industry proviso; and provisions did not serve purposes of preserving unit work or employment standards of unit Ees]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) **277 NLRB No. 173**

[contention that subcontracting clauses were not protected under construction industry proviso to 8(e) on ground they encompassed work which was not on-site and were not *entered into*, as reaffirmed by U's claims in arbitration, rejected, where basis of claim being arbitrated arose in context of bargaining relationship, and record did not establish that such relationship did not exist]

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) **276 NLRB No. 156**

(words *enter into* should not be construed narrowly to cover only initial execution of proscribed agreement, rather, language is to be construed broadly to encompass the *maintenance, enforcement and reaffirmation* of prohibited agreement)

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) **276 NLRB No. 156**

(although U signed prohibited agreement on date outside 10(b) period, U was held to have *entered into* such agreement w/i 10(b) where U ratified and supported prohibited work stoppage w/i 10(b) and reaffirmed prohibited agreement by filing prohibited charges and attempting to revoke E's *working privileges* w/i 10(b))

1275 OBJECTIVES PROSCRIBED

1275-0100 Generally

1275-0100—Cont.

N.L.R.B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, a/w Teamsters 773 F.2d 921 (C.A. 7, Sep. 1985)

(Section 8(e) prohibits only agreements calculated to satisfy *secondary* objectives and not those where object was preservation of work)

1275-6700 Cease doing business with any other person

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[Sec. 8(e) should not be applied so literally that it bars all agreements between Es; prohibitions on subcontracting that legitimately protect jobs customarily performed by unit Ees, and contract clauses which limit subcontracting of unit work to Ees that maintain same employment standards as those of unit members, are lawful; and because of such legitimate primary interests, U may negotiate work preservation and U standard clauses despite their incidental effect of limiting group of persons E may do business with]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[E-association and U unlawfully entered into, maintained, and enforced contract provisions which required E-members to c/d/b with truck owner-operators who did not become U members under contract; its provisions applicable to owner-operators, herein found to be independent contractors, were secondary on their face and applied to work done both on and off jobsite and therefore did not fall w/i protection of construction industry proviso; and provisions did not serve purposes of preserving unit work or employment standards of unit Ees]

2500 EMPLOYEE OR UNION ACTION AUTHORIZED BY AGREEMENT

2511 REFUSAL TO HANDLE PRODUCTS

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[supplements to E association contract with U requiring all disputed work of loading and unloading cargo into and out of containers w/i 50 miles of a port to be performed by Ees represented by U, violation to extent supplements compelled member Es to c/d/b with nonmembers unless they used Ees U represented to perform disputed work where supplements applied to all containers and compelled members to cease handling containers used by nonmembers which were not owned by or leased from members and which members had no right to control]

2544 REFUSAL TO FURNISH WORKERS

2544-3300 Application of 8(e) proscription

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[violation, where U entered into, maintained and enforced secondary and self-help aspects of contractual provision which contemplated that when work on job commenced by one contractor is stopped by U because of contractor's failure to meet his contract obligations, U may refuse to permit persons to work on job and may remove workmen who have started working until wages and fringe benefits by original contractor have been paid as this permits U to employ self-help to enforce secondary restrictions on replacing contractor]

2583 SELF HELP

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[violation, where U entered into, maintained and enforced secondary and self-help aspects of contractual provision which contemplated that when work on job commenced by one contractor is stopped by U because of contractor's failure to meet his contract obligations, U may refuse to permit persons to work on job and may remove workmen who have started working until wages and fringe benefits by original contractor have been paid as this permits U to employ self-help to enforce secondary restrictions on replacing contractor]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173

[Bd applied *Jamco* (277 NLRB No. 128) rationale that, although self-enforcement provisions violate 8(e) to extent that they interrelate with secondary provisions in construction industry bargaining agreements, secondary provisions themselves retain protection of 8(e) proviso and may be enforced by resort to grievance-arbitration or judicial processes; accordingly, Bd modified ALJ's recommended order to make clear limited extent of inj against self-help provisions]

2583-3300 Lawsuits

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173

[contract provision which is exempt from proscription of 8(e) solely because it falls w/i construction industry proviso may be enforced only through lawsuits and not by threats, coercion, or restraint proscribed by 8(b)(4); definition of coercion includes concerted self-enforcement such as strike, picketing, or other economic retaliation or pressure in labor dispute; and contractual clauses which authorize use of proscribed measures to enforce secondary subcontracting provision removes clauses from protection of 8(e) proviso]

2583-6700 Any economic action necessary

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[contract's grievance procedure and self-help provisions as applied to subcontracting provision requiring subcontractors to comply with contract's terms held unlawful, even though self-help and subcontracting provision were contained in different contract articles, and remedy sought by U would be same if achieved by judicial means, since provisions, as construed together, contemplated direct economic action by U to enforce subcontracting provisions through self-help; however, validity of subcontracting provision not impaired]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173

[contract provision which is exempt from proscription of 8(e) solely because it falls w/i construction industry proviso may be enforced only through lawsuits and not by threats, coercion, or restraint proscribed by 8(b)(4); definition of coercion includes concerted self-enforcement such as strike, picketing, or other economic retaliation or pressure in labor dispute; and contractual clauses which authorize use of proscribed measures to enforce secondary subcontracting provision removes clauses from protection of 8(e) proviso]

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) 277 NLRB No. 128

(construction industry proviso is not absolute and contractual provisions which authorize *self-help* to enforce secondary subcontracting clauses are not authorized by proviso; self-help provisions for enforcing voluntary secondary agreements violate 8(e) in construction industry even though self-help and subcontracting provisions are in different articles of contract, remedy would be same if achieved by lawful judicial means, and means of enforcement reserved by U are not strictly limited to strikes and picketing)

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) 277 NLRB No. 128

(where U unlawfully entered into, maintained, or enforced secondary subcontracting clause permitted under construction industry proviso, Bd reaffirmed its *Ets-Hokin* (154 NLRB 839) concept of severability and held that where self-help enforcement provisions apply to secondary provisions in construction industry contracts, former cannot be protected under 8(e) proviso but latter will not lose such protection and may be enforced by judicial means; no policy reasons exist under Act justifying invalidation of lawful, voluntary bilateral agreement)

Construction, Building Materials & Miscellaneous Drivers, Local No. 83 a/w Teamsters (John Cahill d/b/a Cahill Trucking Company) 277 NLRB No. 133

(entering into, maintaining, and giving effect to self-help provision applicable to subcontracting clause of master labor agreement, that was classic U signatory clause, violation, notwithstanding subcontracting clause retains protection of 8(e) proviso and may be enforced by resort to grievance-arbitration procedure)

General Teamsters, Local No. 179 (Walter Sally d/b/a Walter and Sons) 277 NLRB No. 074

(clause in contract which forbids Es from contracting or subcontracting work done at construction site to any person, firm or corporation not a party to contract, held violative of Section 8(e), where subsequent clause in same Article of contract relating to restrictions on subcontracting gave U the right to strike in support of violations on subcontracting and thus, those restrictions lost protection of construction industry proviso because of this self-help clause)

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) 276 NLRB No. 077

[construction industry proviso in Section 8(e) is applicable to agreements which are sought and negotiated in context of collective bargaining relationship. However, construction industry proviso does not immunize agreements that permit use of economic pressure to secure compliance with any otherwise exempted agreement. Such secondary clauses can be enforced only through judicial proceedings. Herein, owner-operator provision incorporated by reference all terms and conditions of contract, including provisions which allow for economic pressure to secure compliance]

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) 276 NLRB No. 077

(applying provision of master agreement between U and multi-E association providing that where equipment belonging to owner-operator of said equipment shall be present on any job operator of said equipment shall be on

2583-6700—Cont.

payroll of agreement as to contributions to benefits funds and premium pay rates, and which further provided that if E failed to make said monetary contributions, U free to take any economic action against contractor, unlawful, where owner-operators held independent contractors, purpose was not preservation of unit work, nor was provision w/i construction industry proviso)

2588 EXTENSION OF AGREEMENT TO NONSIGNATORY EMPLOYERS

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[Sec. 8(e) should not be applied so literally that it bars all agreements between Es; prohibitions on subcontracting that legitimately protect jobs customarily performed by unit Ees, and contract clauses which limit subcontracting of unit work to Ees that maintain same employment standards as those of unit members, are lawful; and because of such legitimate primary interests, U may negotiate work preservation and U standard clauses despite their incidental effect of limiting group of persons E may do business with]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[contract provision requiring truck owner-operators, herein found to be independent contractors performing nonjobsite work at construction project, to become U members w/i specified time or be discharged by E, and also requiring them to be considered Ees subject to contract's terms and imposing penalties for noncompliance, held unlawful secondary provisions under 8(e) because their object was to force Es into adopting U contract rather than merely to preserve unit work or to maintain unit employment standrds]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[contract provision requiring signatory E to subcontract work at construction site exclusively to subcontractors who agree to comply with contract, while clearly secondary on its face because it did not limit subcontracting to entities that pay equivalent of contract wages and benefits but, instead, required subcontractors to become contract signatories, held protected by construction industry proviso since it was limited to onsite work; such protection, however, did not extend to related contractual provisions authorizing self-help]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[for work preservation agreement to be lawful, it must have as its objective work traditionally performed by Ees represented by U and be directed at work which contracting E has power to award the Ees; where agreement is directed at work contracting E has no power to assign, agreement may reasonably be inferred to have secondary objective of influencing E having such power over the work]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[supplements to E association contract with U had legitimate work preservation objective where there was close historical and functional relationship between work covered by contract and work traditionally performed by Ees represented by U, but nevertheless constituted violation to the extent that they covered work which E association members had no right to award]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[supplements to E association contract with U requiring all disputed work of loading and unloading cargo into and out of containers w/i 50 miles of a port to be performed by Ees represented by U, violation to extent supplements compelled member Es to c/d/b with nonmembers unless they used Ees U represented to perform disputed work where supplements applied to all containers and compelled members to cease handling containers used by nonmembers which were not owned by or leased from members and which members had no right to control]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173

[guarantee clauses restricting subcontracting to subcontractors who agree to pay contractual wages or fringe benefits provided for in U agreement held secondary and unlawful where it was consistent practice in enforcing clause to require E to pay delinquencies only when subcontractor did not have contract with U and, consequently, clause was not intended to only protect interests of unit Ees, but rather was directed at furthering general U objectives and regulating labor policies of Es other than E-signatories]

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) 277 NLRB No. 128

(contract provision prohibiting E from subcontracting construction work to nonsignatory subcontractors held secondary and w/i 8(e) prohibition, where provision did not merely limit subcontracting to firms whose Ees are paid wages and fringe benefits equivalent to those set forth in contract or otherwise protect integrity of or address labor relations policies of Es party to agreement; rather, provision herein required such Es to boycott services of nonsignatory subcontractors in order to influence labor relations policies of subcontractors)

3700 EMPLOYER ACTION LIMITED BY AGREEMENT

3701 GENERALLY

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[contractual clauses with primary purpose serving general institutional interest of U in organizing or regulating labor policies of Es with whom U does not have bargaining relationship are unlawful under Sec. 8(e) because they are secondary in character in that they are not aimed at preserving either unit work or employment standards of unit Ees]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[for work preservation agreement to be lawful, it must have as its objective work traditionally performed by Ees represented by U and be directed at work which contracting E has power to award the Ees; where agreement is directed at work contracting E has no power to assign, agreement may reasonably be inferred to have secondary objective of influencing E having such power over the work]

3720 TOTAL RESTRAINT UPON SUBCONTRACTING

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) 276 NLRB No. 156

(contract clause prohibiting signatory Es from subcontracting any work covered by agreement to nonsignatory Es, held w/i construction industry proviso but violative of 8(b)(4)(ii)(A), where self-help provisions of contract allowed U to withhold services, remove workers from jobsites and refuse to refer members and U in fact engaged in work stoppage to protest E's subcontracting and attempted to have E's *working privileges* denied by filing charges against E)

3740 PARTIAL RESTRAINT ON, OR CONDITIONING OF, SUBCONTRACTING

3740-1700 Requiring subcontractor or lessee to be union signatory or agree to adhere to union contract

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[Sec. 8(e) should not be applied so literally that it bars all agreements between Es; prohibitions on subcontracting that legitimately protect jobs customarily performed by unit Ees, and contract clauses which limit subcontracting of unit work to Ees that maintain same employment standards as those of unit members, are lawful; and because of such legitimate primary interests, U may negotiate work preservation and U standard clauses despite their incidental effect of limiting group of persons E may do business with]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[contract provision requiring truck owner-operators, herein found to be independent contractors performing nonjobsite work at construction project, to become U members w/i specified time or be discharged by E, and also requiring them to be considered Ees subject to contract's terms and imposing penalties for noncompliance, held unlawful secondary provisions under 8(e) because their object was to force Es into adopting U contract rather than merely to preserve unit work or to maintain unit employment standrds]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[contract provision requiring signatory E to subcontract work at construction site exclusively to subcontractors who agree to comply with contract, while clearly secondary on its face because it did not limit subcontracting to entities that pay equivalent of contract wages and benefits but, instead, required subcontractors to become contract signatories, held protected by construction industry proviso since it was limited to onsite work; such protection, however, did not extend to related contractual provisions authorizing self-help]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[contract's grievance procedure and self-help provisions as applied to subcontracting provision requiring subcontractors to comply with contract's terms held unlawful, even though self-help and subcontracting provision were contained in different contract articles, and remedy sought by U would be same if achieved by judicial means, since provisions, as construed together, contemplated direct economic action by U to enforce subcontracting provisions through self-help; however, validity of subcontracting provision not impaired]

3740-1700—Cont.

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) **280 NLRB No. 082**
[E-association and U unlawfully entered into, maintained, and enforced contract provisions which required E-members to c/d/b with truck owner-operators who did not become U members under contract; its provisions applicable to owner-operators, herein found to be independent contractors, were secondary on their face and applied to work done both on and off jobsite and therefore did not fall w/i protection of construction industry proviso; and provisions did not serve purposes of preserving unit work or employment standards of unit Ees]

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) **277 NLRB No. 128**
(contract provision prohibiting E from subcontracting construction work to nonsignatory subcontractors held secondary and w/i 8(e) prohibition, where provision did not merely limit subcontracting to firms whose Ees are paid wages and fringe benefits equivalent to those set forth in contract or otherwise protect integrity of or address labor relations policies of Es party to agreement; rather, provision herein required such Es to boycott services of nonsignatory subcontractors in order to influence labor relations policies of subcontractors)

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) **277 NLRB No. 128**
(Us unlawfully entered into, maintained, or enforced secondary provision, permitted by construction industry proviso, prohibiting nonsignatory subcontracting, where Us invoked grievance and arbitration provisions because of alleged breach of subcontracting restrictions which were contractually linked to aforementioned provisions, and separate provision, permitting U to strike or employ other economic pressure, authorized U to take any action necessary to enforce grievance and arbitration decision)

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) **277 NLRB No. 128**
(where U unlawfully entered into, maintained, or enforced secondary subcontracting clause permitted under construction industry proviso, Bd reaffirmed its *Ets-Hokin* (154 NLRB 839) concept of severability and held that where self-help enforcement provisions apply to secondary provisions in construction industry contracts, former cannot be protected under 8(e) proviso but latter will not lose such protection and may be enforced by judicial means; no policy reasons exist under Act justifying invalidation of lawful, voluntary bilateral agreement)

Construction, Building Materials & Miscellaneous Drivers, Local No. 83 a/w Teamsters (John Cahill d/b/a Cahill Trucking Company) **277 NLRB No. 133**
(master labor contract clause prohibiting subcontracting of signatory E's work to nonsignatory contractors covered by construction industry exemption although it was U signatory clause, valid neither as work preservation nor work standards clause, and secondary, since it was not concerned primarily with contracting E's labor relations but with those of other Es with which it might choose to do business)

Liquid Carbonic Corporation **277 NLRB No. 091**
(Bd held that contract clause requiring E to have its Ees employed by whomever E may choose to subcontract unit work to, and which required any subcontractor employing E's Ees to agree to entire contract covering unit Ees, was not violative on its face of Section 8(e); therefore, C was dismissed and deferral was appropriate to arbitrator's finding that E violated contract by subcontracting unit work since arbitrator expressly considered allegations of C)

General Teamsters, Local No. 179 (Walter Sally d/b/a Walter and Sons) **277 NLRB No. 074**
(clause in contract which forbids Es from contracting or subcontracting work done at construction site to any person, firm or corporation not a party to contract, held violative of Section 8(e), where subsequent clause in same Article of contract relating to restrictions on subcontracting gave U the right to strike in support of violations on subcontracting and thus, those restrictions lost protection of construction industry proviso because of this self-help clause)

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) **276 NLRB No. 156**
(contract clause prohibiting signatory Es from subcontracting any work covered by agreement unless subcontractor was signatory E, violative of Section 8(e) since clause was not valid work preservation or valid U standards requirement)

Chicago District Council of Carpenters, AFL-CIO (Polk Bros., Inc.) **275 NLRB No. 051**
(subcontracting clauses limiting subcontracting to persons who were covered by bargaining agreement with U or observe same benefits and employment conditions U's contract provides secondary in thrust and violative of 8(e))

N.L.R.B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, a/w Teamsters **773 F.2d 921 (C.A. 7, Sep. 1985)**
(agreements which limit E to subcontracting with businesses that recognize U or have U contract are violative. Clauses at issue here, which require owner-operators to join U by requiring them to be carried on payroll as Ees, are U signatory clauses which focus on U affiliation of, rather than compensation paid, a subcontractor's Ees and are presumptively invalid)

3740-3300 Union preference or approval requirement

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) **277 NLRB No. 102**
(maintaining provision of contract which precluded E from doing business with all subcontractors who employed drivers of equipment owned by those subcontractors, thus permitting subcontracting only if owner-operators were driving trucks, and required subcontractors to obtain clearance from U hall not later than start of second day of U work, unlawful, where maintenance of article had no valid, primary objective, and provision permitted subcontracting only of owner-operator even if unit work and area standards were not involved; further, no evidence subcontracting interfered with unit work)

3740-5000 Work on area standards criteria

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) **280 NLRB No. 082**
[Sec. 8(e) should not be applied so literally that it bars all agreements between Es; prohibitions on subcontracting that legitimately protect jobs customarily performed by unit Ees, and contract clauses which limit subcontracting of unit work to Ees that maintain same employment standards as those of unit members, are lawful; and because of such legitimate primary interests, U may negotiate work preservation and U standard clauses despite their incidental effect of limiting group of persons E may do business with]

3740-5900 Work preservation provision

N.L.R.B. v. Longshoremen's ILA **———U.S.——— (S.CT, June 1985)**
[Rules on Containers agreement negotiated by U pertaining to longshoremens' work of loading and unloading technologically innovative containerized cargo at pier, and enforcement of Rules by U held lawful as applied to *shortstopping* by land motor carriers and as to *traditional* warehousing practices, since Rules were motivated by longshoremens' desire to preserve their jobs; in view of such primary objective, extra-unit effects of agreement are insufficient basis for finding that it has unlawful secondary objective; and elimination of work because of innovation is no reason to find agreement unlawful]

N.L.R.B. v. Longshoremen's ILA **———U.S.——— (S.CT, June 1985)**
[work preservation agreements held lawful absent some additional showing of attempt not to preserve, but to aggandize, work; distinction between *work preservation* and *work acquisition* upheld since agreement with objective of work preservation in face of genuine job threat is not *acquisitive* in sense it involves boycott to acquire new job tasks when U members' own jobs are not threatened; and agreement is not *acquisitive* even though it may have incidental effects of displacing work that otherwise might be done elsewhere or not be done at all]

N.L.R.B. v. Longshoremen's ILA **———U.S.——— (S.CT, June 1985)**
[where objective of agreement and its enforcement are clearly one of work preservation, it is lawful under 8(b)(4)(B) and 8(e), absent some other evidence of secondary purpose; relevant inquiry is whether U's efforts are primary in that they are directed at own E as to Ees' wages, hours or working conditions or, instead, are secondary in that U's efforts are directed at affecting business relations of neutral Es and are tactically calculated to achieve U objectives outside primary E-Ee relationship]

N.L.R.B. v. Longshoremen's ILA **———U.S.——— (S.CT, June 1985)**
[Rules on Containers Agreement negotiated by U pertaining to longshoremens' work of loading and unloading technologically innovative containerized cargo held to have sole lawful object of preserving longshoremens' work, where there was no evidence of any significant U interest in labor relations of class of Es boycotted under Rules, and avowed work preservation objective of Rules did not seek to claim work so different from that traditionally performed by longshoremen that secondary objective might be inferred]

N.L.R.B. v. Longshoremen's ILA **———U.S.——— (S.CT, June 1985)**
[Rules on Containers pertaining to longshoremens' work of loading and unloading technologically innovative containerized cargo at piers held not to constitute form of *featherbedding* seeking to block full implementation of modern technological process, since Rules sought to preserve actual work of loading and unloading performed by longshoremen prior to containerization

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and did not constitute *featherbedding* that Congress has seen fit to prohibit; and it is up to Congress, and not ct, to explore methods for meeting economic problems arising from scientific advances]

N.L.R.B. v. Longshoremen's ILA ———U.S.———
(S.CT, June 1985)

[in finding Rules on Containers agreement in shipping industry and its enforcement by U as having lawful work preservation objective in face of technological changes involving containerized cargo, ct followed normal presumption of *stare decisis* in cases of statutory interpretation, where Congress had not altered statutory provisions at issue in 18 years since ct first ruled thereon, no new evidence was offered regarding Congress original intent, and management and labor have relied on work-preservation doctrine to guide their bargaining]

N.L.R.B. v. Longshoremen's ILA ———U.S.———
(S.CT, June 1985)

[Rules on Containers agreement in shipping industry and its enforcement by U held lawful as having work preservation objective in face of technological changes involving containerized cargo, since nothing in record supported conclusion that U's enforcement of Rules had secondary, rather than primary, objective; basic premise of labor laws is that collective discussions backed by parties' economic weapons will result in decisions that are better for management, labor, and society as a whole; and Rules represent negotiated compromise of volatile problem bearing directly on well-being of national economy]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[Sec. 8(e) should not be applied so literally that it bars all agreements between Es; prohibitions on subcontracting that legitimately protect jobs customarily performed by unit Ees, and contract clauses which limit subcontracting of unit work to Ees that maintain same employment standards as those of unit members, are lawful; and because of such legitimate primary interests, U may negotiate work preservation and U standard clauses despite their incidental effect of limiting group of persons E may do business with]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[for work preservation agreement to be lawful, it must have as its objective work traditionally performed by Ees represented by U and be directed at work which contracting E has power to award the Ees; where agreement is directed at work contracting E has no power to assign, agreement may reasonably be inferred to have secondary objective of influencing E having such power over the work]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[supplements to E association contract with U had legitimate work preservation objective where there was close historical and functional relationship between work covered by contract and work traditionally performed by Ees represented by U, but nevertheless constituted violation to the extent that they covered work which E association members had no right to award]

Longshoremen, Local 13 (Robert A. Curry) 278 NLRB No. 020

[Bd, in testing validity of work preservation agreement, will focus on unit Ees' work and examine relationship between their work as it existed before innovation and as agreement proposes to preserve it, rather than focusing on work performed after innovation by Ees allegedly displacing unit Ees]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173

[guarantee clauses restricting subcontracting to subcontractors who agree to pay contractual wages or fringe benefits and requiring E-signatory to pay any delinquencies held secondary clauses rather than permissible U standards clauses intended to preserve unit work; U standards clause is primary only if limited to requirement that subcontractors observe equivalent of U wages, hours, etc.; legitimacy of such clause is determined by U's interest in preventing undermining of work opportunities for, and standards of, Ees in unit by subcontractors who do not meet prevailing wages and benefits]

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) 277 NLRB No. 102

(maintaining provision of contract which precluded E from doing business with all subcontractors who employed drivers of equipment owned by those subcontractors, thus permitting subcontracting only if owner-operators were driving trucks, and required subcontractors to obtain clearance from U hall not later than start of second day of U work, unlawful, where maintenance of article had no valid, primary objective, and provision permitted subcontracting only of owner-operator even if unit work and area standards were not involved; further, no evidence subcontracting interfered with unit work)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) 277 NLRB No. 102

(contract clause whose basic aim is to limit subcontracting of unit work to Es who maintain same standard of employment, thus minimizing economic incentive to subcontract, so called *union standard*, lawful)

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) 277 NLRB No. 102

(contract clause whose basic aims are to limit subcontracting so as to preserve for unit Ees work which has customarily been performed by them, or in some instances to recapture work regarded as fairly claimable, so called *unit protection* clauses, lawful)

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) 276 NLRB No. 077

(applying provision of master agreement between U and multi-E association providing that where equipment belonging to owner-operator of said equipment shall be present on any job operator of said equipment shall be on payroll of agreement as to contributions to benefits funds and premium pay rates, and which further provided that if E failed to make said monetary contributions, U free to take any economic action against contractor, unlawful, where onwer-operators held independent contractors, purpose was not preservation of unit work, nor was provision w/i construction industry proviso)

Newspaper and Mail Deliverers Union; etc. (B & W Distributors Corp.) 274 NLRB No. 136

(U and two Es, one of which had contract with U, violated 8(b)(4)(i), (ii)(A) and 8(e) by entering into agreement whereby E which didn't have contract with U ceased contracting out pick-up of its product to another neutral E and allowed E which had contract with U to assign that work to its unit Ees, since work of picking up product was not traditional work or work preservation of unit Ees where U and both Es knew that neutral E had picked up this product for at least 6 years and agreement was simply attempt to force that neutral E out of the picture and agree to U's demand for that work)

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. 734 F.2d 966 (C.A. 4, May 1984)

[to be a lawful exercise of work preservation doctrine, bargaining agreement must contain two elements: one, it must seek to preserve work traditionally performed by bargaining unit Ees and two, it must be addressed to an E who actually has the power to assign work in question]

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. 734 F.2d 966 (C.A. 4, May 1984)

[Rules on Containers negotiated by U with various shipping E associations representing shipping lines had objective of preserving the steadily declining volume of work when U negotiated them and thus have valid work preservation objective where longshoremen had traditionally loaded cargo piece by piece into hold of ship and unloaded it piece by piece; Rules on Containers grant them the right in certain instances to load and unload cargo piece by piece to and from containers and thus, containerization has simply changed locus of the work, moving the operation shoreward]

N.L.R.B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, a/w Teamsters 773 F.2d 921 (C.A. 7, Sep. 1985)

(agreements which limit E to subcontracting with businesses that recognize U or have U contract are violative. Clauses at issue here, which require owner-operators to join U by requiring them to be carried on payroll as Ees, are U signatory clauses which focus on U affiliation of, rather than compensation paid, a subcontractor's Ees and are presumptively invalid)

3740-7500 Employer liable for subcontractor's delinquency

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[violation, where U entered into, maintained and enforced secondary and self-help aspects of contractual provision which contemplated that when work on job commenced by one contractor is stopped by U because of contractor's failure to meet his contract obligations, U may refuse to permit persons to work on job and may remove workmen who have started working until wages and fringe benefits by original contractor have been paid as this permits U to employ self-help to enforce secondary restrictions on replacing contractor]

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) 278 NLRB No. 138

[threats to neutral general contractor that U would engage in work stoppage against neutral subcontractor for failure to pay primary subcontractor's trust fund debts, violative; moreover, neutral general contractor's relaying threats to neutral subcontractor as U expected it would, violative since by these threats, U also coerced neutral subcontractor to cease doing business with neutral general contractor]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173

[guarantee clauses restricting subcontracting to subcontractors who agree to pay contractual wages or fringe benefits and requiring E-signatory to pay any delinquencies held secondary clauses rather than permissible U standards clauses intended to preserve unit work; U standards clause is primary only if limited to requirement that subcontractors observe equivalent of U wages,

3740-7500—Cont.

hours, etc.; legitimacy of such clause is determined by U's interest in preventing undermining of work opportunities for, and standards of, Ees in unit by subcontractors who do not meet prevailing wages and benefits]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) **277 NLRB No. 173**
[guarantee clauses restricting subcontracting to subcontractors who agree to pay contractual wages or fringe benefits provided for in U agreement held secondary and unlawful where it was consistent practice in enforcing clause to require E to pay delinquencies only when subcontractor did not have contract with U and, consequently, clause was not intended to only protect interests of unit Ees, but rather was directed at furthering general U objectives and regulating labor policies of Es other than E-signatories]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) **277 NLRB No. 173**
[payment of delinquencies by E-signatory to agreement containing U standards clause restricting subcontracting to subcontractors who agree to pay U wages and fringe benefits held penalty and U standards clause secondary, since payment of delinquencies, which included dues, would not inure to benefit of Ees of subcontractor]

3755 LIMITATION UPON EMPLOYMENT OF PERSONS

Building Material and Dump Truck Drivers, Teamsters Local Union No. 36 (Nelson & Sloan) **277 NLRB No. 102**
(maintaining provision of contract which precluded E from doing business with all subcontractors who employed drivers of equipment owned by those subcontractors, thus permitting subcontracting only if owner-operators were driving trucks, and required subcontractors to obtain clearance from U hall not later than start of second day of U work, unlawful, where maintenance of article had no valid, primary objective, and provision permitted subcontracting only of owner-operator even if unit work and area standards were not involved; further, no evidence subcontracting interfered with unit work)

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) **276 NLRB No. 077**
(applying provision of master agreement between U and multi-E association providing that where equipment belonging to owner-operator of said equipment shall be present on any job operator of said equipment shall be on payroll of agreement as to contributions to benefits funds and premium pay rates, and which further provided that if E failed to make said monetary contributions, U free to take any economic action against contractor, unlawful, where owner-operators held independent contractors, purpose was not preservation of unit work, nor was provision w/i construction industry proviso)

3758 LIMITATION UPON USE OF INDEPENDENT CONTRACTORS

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 020**
[supplements to E association contract with U requiring all disputed work of loading and unloading cargo into and out of containers w/i 50 miles of a port to be performed by Ees represented by U, violation to extent supplements compelled member Es to c/d/b with nonmembers unless they used Ees U represented to perform disputed work where supplements applied to all containers and compelled members to cease handling containers used by nonmembers which were not owned by or leased from members and which members had no right to control]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) **277 NLRB No. 173**
[U signatory clauses requiring E-signatory to subcontract only to subcontractors who are signatory to agreement held secondary in thrust and unlawful because they are directed at furthering general U objectives and regulating labor policies of Es other than E-signatory]

Newspaper and Mail Deliverers' Union of New York & Vicinity (Raritan Periodical Sales, Inc.) **277 NLRB No. 064**
(U's agreement with Es which forbids Es from using other companies other than those employing U's members to deliver papers to Es, violative)

Newspaper and Mail Deliverers Union; etc. (B & W Distributors Corp.) **274 NLRB No. 136**
(U and two Es, one of which had contract with U, violated 8(b)(4)(i), (ii)(A) and 8(e) by entering into agreement whereby E which didn't have contract with U ceased contracting out pick-up of its product to another neutral E and allowed E which had contract with U to assign that work to its unit Ees, since work of picking up product was not traditional work or work preservation of unit Ees where U and both Es knew that neutral E had picked up this product for at least 6 years and agreement was simply attempt to force that neutral E out of the picture and agree to U's demand for that work)

3760 LIMITATIONS UPON USE OF PRODUCTS OR EQUIPMENT IN OPERATIONS

N.L.R.B. v. Longshoremen's ILA **———U.S.———— (S.Ct, June 1965)**
[Rules on Containers agreement negotiated by U pertaining to longshoremens' work of loading and unloading technologically innovative containerized cargo at pier, and enforcement of Rules by U held lawful as applied to *shortstopping* by land motor carriers and as to *traditional* warehousing practices, since Rules were motivated by longshoremens' desire to preserve their jobs; in view of such primary objective, extra-unit effects of agreement are insufficient basis for finding that it has unlawful secondary objective; and elimination of work because of innovation is no reason to find agreement unlawful]

New Orleans Steamship Association; ILA Local No. 1497; et al., (New Orleans Cold Storage & Warehouse Co., Ltd.) **276 NLRB No. 048**
(in view of S.Ct's decision reversing Bd's decision in *Longshoremen ILA (New York Shipping)* and holding that Rules on Containers were lawful work preservation agreement, Bd held that maintaining and enforcing Rules were not violative of 8(b)(4)(ii)(B) and 8(e) as applied to initial unloading of refrigerated containers of frozen meat destined for charging party's warehouse, since no basis existed for distinguishing between longshoremen's traditional work of unloading frozen cooked meat from ships and work of unloading frozen uncooked meat from containers)

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. **734 F.2d 966 (C.A. 4, May 1984)**
[Rules on Containers, negotiated by longshoremen with various shipping E associations representing east coast shipping lines as preservation measure for work involving loading and unloading of containers w/i 50 miles of port not violative, since rules had valid work preservation object and shipping companies retained right to control assignment of work claimed by longshoremen]

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. **734 F.2d 966 (C.A. 4, May 1984)**
[Bd's conclusion that Rules on Containers negotiated by longshoremen violated Act as applied to *shortstopping* by truckers and some *traditional warehouse functions* was error as a matter of law, since rules had valid work preservation object where truckers and warehousemen do precisely what they did before technological change in containerization and longshoremen have *acquired* none of that work; although rules may duplicate off-pier work of truckers and warehousemen, it is not ct's function to weigh their economic cost]

3780 DIMINUTION OF UNIT WORK

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 020**
[Bd, in testing validity of work preservation agreement, will focus on unit Ees' work and examine relationship between their work as it existed before innovation and as agreement proposes to preserve it, rather than focusing on work performed after innovation by Ees allegedly displacing unit Ees]

3780-6700 Fairly claimable unit work

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 020**
[supplements to E association contract with U had legitimate work preservation objective where there was close historical and functional relationship between work covered by contract and work traditionally performed by Ees represented by U, but nevertheless constituted violation to the extent that they covered work which E association members had no right to award]

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 020**
[U not precluded from negotiating return of its traditional and historical work to Ees it represented, where, notwithstanding prior agreements covering the work, it had not bargained away unit Ees' right to perform it but had dealt with technological innovation affecting it as ongoing process like that of collective bargaining]

Longshoremen, Local 13 (Robert A. Curry) **278 NLRB No. 020**
[supplements to E association contract with U requiring all disputed work of loading and unloading cargo into and out of containers w/i 50 miles of a port to be performed by Ees represented by U, violation to extent supplements compelled member Es to c/d/b with nonmembers unless they used Ees U represented to perform disputed work where supplements applied to all containers and compelled members to cease handling containers used by nonmembers which were not owned by or leased from members and which members had no right to control]

4300 EMPLOYER ACTION REQUIRED BY AGREEMENT

4350 COMPLIANCE WITH FRINGE BENEFIT GUARANTEE CLAUSES

District Council of Painters and Allied Trades No. 36 (J. A. Stewart Construction Co.) **278 NLRB No. 138**
[where neutral subcontractor replaced primary subcontractor who had become delinquent in its contribution to contractual trust funds, U's induce-

4350—Cont.

ment of neutral subcontractor's Ees w/i meaning of 8(b)(4)(i) not to work for their subcontractor with 8(b)(4)(B) object of forcing neutral subcontractor to cease doing business with neutral general contractor on project and 8(b)(4)(A) object of forcing neutral subcontractor to pay primary E's delinquencies under contract and thus comply with self-help contract provisions violative of 8(e), unlawful]

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) **276 NLRB No. 156**

(contract clause which made signatory Es liable for payment of all wages and fringe benefits if Es subcontracted work, violative of 8(e), where subcontracting clause itself was violative of 8(e), thus clause making Es liable constituted a penalty for Es doing business with nonsignatory Es)

5000 CONSTRUCTION INDUSTRY EXEMPTION

5014 SCOPE AND PURPOSE, GENERALLY

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) **277 NLRB No. 173**

[contract provision which is exempt from proscription of 8(e) solely because it falls w/i construction industry proviso may be enforced only through lawsuits and not by threats, coercion, or restraint proscribed by 8(b)(4); definition of coercion includes concerted self-enforcement such as strike, picketing, or other economic retaliation or pressure in labor dispute; and contractual clauses which authorize use of proscribed measures to enforce secondary subcontracting provision removes clauses from protection of 8(e) proviso]

Operating Engineers, Local No. 701, etc. (Howard S. Lowe Construction Co. & Associates) **276 NLRB No. 077**

]*construction industry proviso in Section 8(e) is applicable to agreements which are sought and negotiated in context of collective bargaining relationship. However, construction industry proviso does not immunize agreements that permit use of economic pressure to secure compliance with any otherwise exempted agreement. Such secondary clauses can be enforced only through judicial proceedings.* Herein, owner-operator provision incorporated by reference all terms and conditions of contract, including provisions which allow for economic pressure to secure compliance)

5028 LABOR ORGANIZATION AND EMPLOYER IN INDUSTRY

L & J Equipment Company, Inc. **278 NLRB No. 074**

[whether E, not primarily in construction business, may be deemed E in construction industry for purposes of first proviso to 8(e) depends upon degree of control over construction site labor relations it elects to retail, and as its own general contractor E retains absolute control; similarly, where E hires general contractor but regularly makes decisions, including selection of subcontractors, normally w/i general contractor's duties and authority, such E is tantamount to general contractor, regardless of whether E is owner of premises under construction or prospective lessee]

Carpenters, Local 743, et al. (Longs Drug Stores, Inc.) **278 NLRB No. 062**

[whether E not primarily in construction business may be deemed E in construction industry for purposes of first proviso to 8(e) depends upon degree of control over construction site labor relations E elects to retain; similarly, where E hires general constractor but regularly makes decisions, including selection of subcontractors, normally w/i general contractor's duties and authority, such E is tantamount to general contractor, reguardless of whether E is owner of premises under construction or prospective lessee]

Carpenters, Local 743, et al. (Longs Drug Stores, Inc.) **278 NLRB No. 062**

[E operating drug store chain and having new facility built by general contractor held not E in construction industry, where construction work E elected to reserve to itself was of limited scope; E utilized own construction Ees for very limited purpose during final 14 days of 8-month construction project and did not directly become involved with labor relations at project until that time; and sporadic visits by E's project manager and coordinator were to ensure that work was done in compliance with plans and specifications]

Carpenters, Local 743, et al. (Longs Drug Stores, Inc.) **278 NLRB No. 062**

[E operating drug store chain and engaged in having new facility built by general contractor held not E in construction industry w/i meaning of first proviso to 8(e), where construction work E elected to reserve to itself was of limited scope; and fact that E owned building under construction and could have elected to become its own general contractor did not make it become an E in constraction industry]

Carpenters, Local 743, et al. (Longs Drug Stores, Inc.) **278 NLRB No. 062**

[in finding E not in construction industry w/i meaning of first proviso to 8(e), ALJ rejected Us' contention that E, having entered into agreement to hire only U contractors, should be estopped from contesting its status as E in construction industry, particularly since U's in reliance upon E's contractual commitments over years, furnished carpenters to E through their various hiring halls; such contention was unavailing particularly since there was no showing that contracts were entered with mutual understanding that E would act as its own general contractor or would hire only U general contractors]

5042 AGREEMENT RELATING TO CONTRACTING OR SUBCONTRACTING

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) **280 NLRB No. 082**

[contract provision requiring signatory E to subcontract work at construction site exclusively to subcontractors who agree to comply with contract, while clearly secondary on its face because it did not limit subcontracting to entities that pay equivalent of contract wages and benefits but, instead, required subcontractors to become contract signatories, held protected by construction industry proviso since it was limited to onsite work; such protection, however, did not extend to related contractual provisions authorizing self-help]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) **280 NLRB No. 082**

[E-association and U unlawfully entered into, maintained, and enforced contract provisions which required E-members to c/d/b with truck owner-operators who did not become U members under contract; its provisions applicable to owner-operators, herein found to be independent contractors, were secondary on their face and applied to work done both on and off jobsite and therefore did not fall w/i protection of construction industry proviso; and provisions did not serve purposes of preserving unit work or employment standards of unit Ees]

Carpenters, Local 743, et al. (Longs Drug Stores, Inc.) **278 NLRB No. 062**

[Us' entering into and enforcing agreement requiring E, operating drug store chain and having new facility built by general contractor, to hire only U subcontractors for its construction projects, unlawful, where E was not E in construction industry w/i meaning of first proviso to 8(e)]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) **277 NLRB No. 173**

[contention that subcontracting clauses were not protected under construction industry proviso to 8(e) on ground they encompassed work which was not on-site and were not *entered into*, as reaffirmed by U's claims in arbitration, rejected, where basis of claim being arbitrated arose in context of bargaining relationship, and record did not establish that such relationship did not exist]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) **277 NLRB No. 173**

[U unlawfully entered into, invoked, and gave effect to secondary subcontracting clauses in its joint agreement with E associations because of self-help provisions contained in agreement which gave U right to remove its members from any job to enforce such clauses, thereby removing clauses from construction industry proviso of 8(e)]

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) **277 NLRB No. 128**

(construction industry proviso is not absolute and contractual provisions which authorize *self-help* to enforce secondary subcontracting clauses are not authorized by proviso; self-help provisions for enforcing voluntary secondary agreements violate 8(e) in construction industry even though self-help and subcontracting provisions are in different articles of contract, remedy would be same if achieved by lawful judicial means, and means of enforcement reserved by U are not strictly limited to strikes and picketing)

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) **277 NLRB No. 128**

(where U unlawfully entered into, maintained, or enforced secondary subcontracting clause permitted under construction industry proviso, Bd reaffirmed its *Ets-Hokin* (154 NLRB 839) concept of severability and held that where self-help enforcement provisions apply to secondary provisions in construction industry contracts, former cannot be protected under 8(e) proviso but latter will not lose such protection and may be enforced by judicial means; no policy reasons exist under Act justifying invalidation of lawful, voluntary bilateral agreement)

Construction, Building Materials & Miscellaneous Drivers, Local No. 83 a/w Teamsters (John Cahill d/b/a Cahill Trucking Company) **277 NLRB No. 133**

(entering into, maintaining, and giving effect to self-help provision applicable to subcontracting clause of master labor agreement, that was classic U signatory clause, violation, notwithstanding subcontracting clause retains protection of 8(e) proviso and may be enforced by resort to grievance-arbitration procedure)

5042—Cont.

Construction, Building Materials & Miscellaneous Drivers, Local No. 83 a/w Teamsters (John Cahill d/b/a Cahill Trucking Company) 277 NLRB No. 133
(master labor contract clause prohibiting subcontracting of signatory E's work to nonsignatory contractors covered by construction industry exemption although it was U signatory clause, valid neither as work preservation nor work standards clause, and secondary, since it was not concerned primarily with contracting E's labor relations but with those of other Es with which it might choose to do business)

General Teamsters, Local No. 179 (Walter Sally d/b/a Walter and Sons) 277 NLRB No. 074
(clause in contract which forbids Es from contracting or subcontracting work done at construction site to any person, firm or corporation not a party to contract, held violative of Section 8(e), where subsequent clause in same Article of contract relating to restrictions on subcontracting gave U the right to strike in support of violations on subcontracting and thus, those restrictions lost protection of construction industry proviso because of this self-help clause)

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) 276 NLRB No. 156
(contract clause prohibiting signatory Es from subcontracting any work covered by agreement to nonsignatory Es, held w/i construction industry proviso but violative of 8(b)(4)(ii)(A), where self-help provisions of contract allowed U to withhold services, remove workers from jobsites and refuse to refer members and U in fact engaged in work stoppage to protest E's subcontracting and attempted to have E's *working privileges* denied by filing charges against E)

Chicago District Council of Carpenters, AFL-CIO (Polk Bros., Inc.) 275 NLRB N. 051
(subcontracting clauses limiting subcontracting to persons who were covered by bargaining agreement with U or observe same benefits and employment conditions U's contract provides secondary in thrust and violative of 8(e))

N.L.R.B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, a/w Teamsters 773 F.2d 921 (C.A. 7, Sep. 1985)
(agreements which limit E to subcontracting with businesses that recognize U or have U contract are violative. Clauses at issue here, which require owner-operators to join U by requiring them to be carried on payroll as Ees, are U signatory clauses which focus on U affiliation of, rather than compensation paid, a subcontractor's Ees and are presumptively invalid)

5056 WORK TO BE DONE AT CONSTRUCTION SITE

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082
[contract provision requiring signatory E to subcontract work at construction site exclusively to subcontractors who agree to comply with contract, while clearly secondary on its face because it did not limit subcontracting to entities that pay equivalent of contract wages and benefits but, instead, required subcontractors to become contract signatories, held protected by construction industry proviso since it was limited to onsite work; such protection, however, did not extend to related contractual provisions authorizing self-help]

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) 276 NLRB No. 156
(though a contractual provision may not be expressly limited to jobsite work, that fact *alone*, will not deprive contractual language of protection of construction industry proviso)

5070 RELATION TO OTHER PROVISIONS OF ACT

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173
[Bd applied *Jamco* (277 NLRB No. 128) rationale that, although self-enforcement provisions violate 8(e) to extent that they interrelate with secondary provisions in construction industry bargaining agreements, secondary provisions themselves retain protection of 8(e) proviso and may be enforced by resort to grievance-arbitration or judicial processes; accordingly, Bd modified ALJ's recommended order to make clear limited extent of inj against self-help provisions]

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173
[contract provision which is exempt from proscription of 8(e) solely because it falls w/i construction industry proviso may be enforced only through lawsuits and not by threats, coercion, or restraint proscribed by 8(b)(4); definition of coercion includes concerted self-enforcement such as strike, picketing, or other economic retaliation or pressure in labor dispute; and contractual clauses which authorize use of proscribed measures to enforce secondary subcontracting provision removes clauses from protection of 8(e) proviso]

6200 GARMENT INDUSTRY EXEMPTION

7500 AFFIRMATIVE DEFENSES

8700 SAVINGS CLAUSE

590 PREHIRE AGREEMENTS - SECTION 8(f)

0100 GENERALLY

2500 QUALIFICATION OF PARTIES TO ENTER AGREEMENT

5000 PERMISSIBLE CONDITIONS OF AGREEMENTS

5001 GENERALLY

5001-5000 Establishment of union's majority under section 9 prior to agreement not required

Wilder Construction **276 NLRB No. 104**
(while normally incumbent U enjoys presumption of majority support, in construction industry certain contracts are lawful even in absence of majority support; therefore, presumption of continued majority does not always apply)

7500 EFFECT OF AGREEMENT

7575 ESTABLISHMENT OF SECTION 8(d) BARGAINING OBLIGATION

7575-2500 Majority support must be established

C.I.M. Mechanical Co., formerly known as Egan Mechanical Co. **275 NLRB No. 100**
(E's notice terminating memorandum agreement that bound it to comply with U contract, lawful where E was in construction industry, was not signatory to U contract or participant in group bargaining negotiations or member of association's multi-E unit, but was, according to agreement, acting consistently with traditional area practice in using E association contract; E had signed memorandum agreement as valid Sec. 8(f) prehire agreement and could lawfully terminate it under Sec. 8(f) in view of its lack of permanent and stable work force and U's lack of majority status)

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**
[in construction industry, 8(f) agreement is voidable until U achieves majority status in unit; once U establishes majority status, however, pre-hire agreement attains status of bargaining agreement executed with U representing majority of Ees in unit]

M. L. Witcher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers **JD-74-86**
[8(f) collective-bargaining agreement enforceable at each jobsite (of E) since U had majority status at each of (Ea) jobsites]

7575-2525 Stable complement of employees

C.I.M. Mechanical Co., formerly known as Egan Mechanical Co. **275 NLRB No. 100**
(E's notice terminating memorandum agreement that bound it to comply with U contract, lawful where E was in construction industry, was not signatory to U contract or participant in group bargaining negotiations or member of association's multi-E unit, but was, according to agreement, acting consistently with traditional area practice in using E association contract; E had signed memorandum agreement as valid Sec. 8(f) prehire agreement and could lawfully terminate it under Sec. 8(f) in view of its lack of permanent and stable work force and U's lack of majority status)

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**
[attainment of majority status under 8(f) agreement varies according to character of work force in unit; if E maintains permanent and stable complement of unit Ees and U establishes majority status, 9(a) raltionship obtains for duration of agreement; however, where E has no stable work force and hires Ees on project-by-project basis, U must demonstrate its majority status at each new jobsite in order to have 9(a) relationship attach]

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**
[construction subcontractor's failure to make contributions to U's various benefit funds pursuant to 8(f) contract held unlawful unilateral change in terms and conditions of employment where, shortly after E signed pre-hire agreement with U which incorporated master agreement containing U security provision, U achieved majority status among Ees at project; and after completion of work thereat, E followed pattern of Ee carryover from job to job, thereby establishing permanent and stable work force of unit Ees during contract term]

United Sheetmetal of Arizona, Inc. **JD-(SF)-97-88**
(E's contention that U did not enjoy majority support because U did not show that 8(f) status had transformed to that of 9(a) representative since no authorization cards had ever been presented and thus it had no duty to bargain, rejected, where E employed at all relevant times a *core* group of Ees so as to constitute a permanent and stable workforce as well as 28 other Ees throughout the season; further, all Ees were U members and E knew that none of its Ees would work with non-U Ees; fact that all Ees at all relevant times were U members is sufficient indicia of majority U support)

7575-2550 Subsequent acquisition of majority status

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**
[in construction industry, 8(f) agreement is voidable until U achieves majority status in unit; once U establiahes majority status, however, pre-hire agreement attains status of bargaining agreement executed with U representing majority of Ees in unit]

United Sheetmetal of Arizona, Inc. **JD-(SF)-97-88**
(E's contention that U did not enjoy majority support because U did not show that 8(f) status had transformed to that of 9(a) representative since no authorization cards had ever been presented and thus it had no duty to bargain, rejected, where E employed at all relevant times a *core* group of Ees so as to constitute a permanent and stable workforce as well as 28 other Ees throughout the season; further, all Ees were U members and E knew that none of its Ees would work with non-U Ees; fact that all Ees at all relevant times were U members is sufficient indicia of majority U support)

7575-5000 Must define projects or area to which applicable

7575-5050 Majority must be established at each site

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**
[attainment of majority status under 8(f) agreement varies according to character of work force in unit; if E maintains permanent and stable complement of unit Ees and U establishes majority status, 9(a) raltionship obtains for duration of agreement; however, where E has no stable work force and hires Ees on project-by-project basis, U must demonstrate its majority status at each new jobsite in order to have 9(a) relationship attach]

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**
[construction subcontractor's failure to make contributions to U's various benefit funds pursuant to 8(f) contract held unlawful unilateral change in terms and conditions of employment where, shortly after E signed pre-hire agreement with U which incorporated master agreement containing U security provision, U achieved majority status among Ees at project; and after completion of work thereat, E followed pattern of Ee carryover from job to job, thereby establishing permanent and stable work force of unit Ees during contract term]

M. L. Witcher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers **JD-74-86**
[8(f) collective-bargaining agreement enforceable at each jobsite (of E) since U had majority status at each of (Ea) jobsites]

7587 WITHDRAWAL FROM AGREEMENT

Wilder Construction **276 NLRB No. 104**
(while normally incumbent U enjoys presumption of majority support, in construction industry certain contracts are lawful even in absence of majority support; therefore, presumption of continued majority does not always apply)

C.I.M. Mechanical Co., formerly known as Egan Mechanical Co. **275 NLRB No. 100**
(E's notice terminating memorandum agreement that bound it to comply with U contract, lawful where E was in construction industry, was not signatory to U contract or participant in group bargaining negotiations or member of association's multi-E unit, but was, according to agreement,

7587—Cont.

acting consistently with traditional area practice in using E association contract; E had signed memorandum agreement as valid Sec. 8(f) prehire agreement and could lawfully terminate it under Sec. 8(f) in view of its lack of permanent and stable work force and U's lack of majority status)

8700 ENFORCEMENT OF AGREEMENT

M. L. Wicher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers JD-74-86

[8(f) collective-bargaining agreement enforceable at each jobsite (of E) since U had majority status at each of (Es) jobsites]

593PICKETING AND STRIKES AT HEALTH CARE INSTITUTIONS (SECTION 8(g))

0100 GENERALLY

2000 ACTIVITY SUBJECT TO NOTICE REQUIREMENT

2025 FORMS OF ACTIVITY

2025-2000 Picketing

Hospital and Institutional Workers' Union, Local 250, Service Employees (Presbyterian Hospital of Pacific Medical Center) JD-(SF)-116-86

(picketing hospital by U (evidenced by U logo on at least 2 of pickets' jackets and U business representative's joining pickets) w/o first giving required notice, violative)

4000 NOTICE REQUIREMENT

6000 CONFORMANCE OF ACTIVITY TO NOTICE

8000 THREATS TO STRIKE, PICKET OR ENGAGE IN WORK STOPPAGE

596 PROCEDURE IN ULP PROCEEDINGS

0100 GENERALLY

0125 APPLICABILITY AND EFFECT OF APA

0125-1400 Section 5 - Adjudication (5 USC Sec. 554)

Maintenance Service Corporation 275 NLRB No. 198

(Bd may not make findings or order remedies on violations not charged in GC's C or litigated in subsequent hearing. Bd may, however, decide material issue fairly tried by parties regardless of whether it was specifically pleaded)

0125-8400 Section 8 - Decisions and Agency Review (5 USC Sec. 557)

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)

[primary purpose of APA requirement that agency's decisions include reasons or basis for its conclusions on all material issues of law is to impose discipline upon agency itself, assuring that it has undergone process of reasoned decision-making rather than haphazardly reached result that could (on one or another basis of analysis) be sustained; to achieve primary purpose, *post hoc rationalization* of why agency could have come out the way it did will not suffice]

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)

[in finding that Bd failed to meet APA requirement that agency's decision include its reasons or basis for its conclusions, ct held case herein was not one where legal issue raised is not substantial, e.g., there is no apparent conflict in earlier cases or reasons for departure therefrom are clear so that issue would not be *material* w/i meaning of APA, or failure to address it would come w/i meaning of APA's exemption of harmless error]

0137 APPLICABILITY OF FEDERAL RULES OF EVIDENCE

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170

[FRCP are not applicable to Bd's administrative hearings which are governed by APA]

Maritz Communications Company, A Wholly Owned Subsidiary of Maritz, Inc. 274 NLRB No. 016

(interrogation of Charging Party by Respondent's attorney during deposition in connection with age discrimination suit which Charging Party had also filed against Respondent, not unlawful, since questions asked fell w/i scope of relevance permitted by Rule 26(b)(1) of Federal Rules of Civil Procedure inasmuch as discovery not limited to pleadings, but may encompass any matter that bears on or could bear on or reasonably lead to other matter that could bear on any issue in case, notwithstanding not admissible at trial)

0150 PRESUMPTION OF ADMINISTRATIVE REGULARITY

Lord Jim's v. N.L.R.B. 772 F.2d 1446 (C.A. 9, Oct. 1985)

[Bd's finding that an EAJA application was received on a certain date because it was so marked with an NLRB date-stamp, upheld, since every presumption of regularity attends the action of the Bd]

0175 EFFECT OF PRIOR PROCEEDINGS (See also, RES JUDICATA 750-0000)

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 281 NLRB No. 117

[issue of U successorship, which arose subsequent to occurrence of E's ULPs herein and which Bd deferred to compliance stage in earlier proceeding involving E and U as parties held not to warrant abatement of Bd review of ALJ's decision in instant case]

Imperial House Condominium, Inc. 279 NLRB No. 154

[E's contention in case involving issue of Bd's jurisdiction over E's operation that prior Bd decision extending jurisdiction to include operation similar to that of E did not constitute precedent because E and U therein agreed that Bd should assert jurisdiction, rejected]

Superior Container, Inc. 276 NLRB No. 086

(GC's request that ALJ take judicial notice of ALJ's decision in prior case involving same E, for purpose of considering ALJ's findings and conclusions in prior case as dispositive of some elements of proof herein, denied, since seeking to attach finality to earlier findings of ALJ is result that can appropriately be accorded only to Bd decisions or those of ct; however, ALJ officially noticed existence of prior ULP proceeding and ALJ's decision to extent legitimately possible)

0175-2500 Where outstanding order prohibits conduct at issue

Dependable Building Maintenance Company; et al. 276 NLRB No. 007

(on remand of case for consideration of additional issues, GC's mtn to strike Es' exception to part of ALJ's order as untimely because Bd had affirmed this part of the order in its original decision, so that res judicata applied, denied, since this issue was not reached in Bd's original disposition of the case)

0175-5000 Where ULP proceeding based in whole or part upon facts certified in R proceeding

0175-5025 No relitigation in related subsequent ULP proceeding of issues resolved in R proceeding

0175-5025-2500 Where resolved by Board

Western Temporary Services, Inc. and The Classic Company, Inc. 278 NLRB No. 073

[ALJ's granting GC's mtn to strike certain of Es' denials from their individual answers, granting mtn for summary judgment, and deciding certain issues were res judicata because previously determined by Bd in underlying R proceeding, proper, notwithstanding Es' contention that they were denied due process in R proceedings for lack of adequate notice of amendment to ptn naming them as joint Es, where GC issued C alleging them as joint Es over two weeks before R ptn amendment and hearing, one E admitted joint E status in its answer, and other E presented evidence of their relationship at R hearing]

0175-5025-3300 Where stipulated by parties

Springfield Transit Management, Inc. 281 NLRB No. 017

[no relitigation in ULP case of supervisory or confidential-Ee status of individuals stipulated by parties to be unit Ees in R case]

Spring Valley Farms, Inc. 274 NLRB No. 091

(GC's failure to put on evidence in *C* case to support jurisdictional allegations of C under Bd's direct outflow standard, did not prevent Bd from asserting jurisdiciton where ALJ took judicial notice of fact that transcript in prior *R* case involving same E contained a stipulation that E had received goods valued in excess of $50,000 directly from suppliers outside the state, thus satisfying Bd's direct inflow standard for asserting jurisdiction)

0175-5025-7500 Where request for review denied

Accurate Web, Inc. 279 NLRB No. 030

[decision of RD in prior R case precludes, relitigation of issue in instant proceeding, since E's request for review of RD's dismissal was denied by Bd nor has E raised any issue properly litigible in ULP proceeding by using newly discovered or previously unavailable evidence or special circumstances requiring Bd reexamination]

0175-5050 Issues as to which relitigation precluded

0175-5050-3300 Unit determination

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[ct refused to consider E's argument that Bd erred in R proceeding by failing to review all evidence relied on by RD in finding challenged Ee ineligible to vote, since E waived its argument by failing to raise it at Bd ULP proceeding in either its answer or in its response to GC's mtn for summary judgment, and no extraordinary circumstances excused its failure to do so]

0175-5050-6000 Relitigation at compliance stage of matters previously litigated, decided and enforced

Greyhound Taxi Co., Inc. 274 NLRB No. 060
(amount of weekly reduction in wage rate included in discriminatee's backpay, where E, in instant supplemental proceeding sought to establish that reduction was due to nondiscriminatory reasons; such issue was barred by principle of *res judicata* since E was attempting to relitigate matter which had previously been decided in original ULP proceeding)

0175-5050-6500 Employer status

Western Temporary Services, Inc. and The Classic Company, Inc. 278 NLRB No. 073
[ALJ's granting GC's mtn to strike certain of Es' denials from their individual answers, granting mtn for summary judgment, and deciding certain issues were res judicata because previously determined by Bd in underlying R proceeding, proper, notwithstanding Es' contention that they were denied due process in R proceedings for lack of adequate notice of amendment to ptn naming them as joint Es, where GC issued C alleging them as joint Es over two weeks before R ptn amendment and hearing, one E admitted joint E status in its answer, and other E presented evidence of their relationship at R hearing]

0175-9075 Issues as to which relitigation permitted

0175-9075-3300 Confidential status of employee

Springfield Transit Management, Inc. 281 NLRB No. 017
[no relitigation in ULP case of supervisory or confidential-Ee status of individuals stipulated by parties to be unit Ees in R case]

0175-9075-5000 Supervisory status of employee

0175-9075-5033 Where employee held to be employer's agent

Benjamin Pontiac Inc. JD-(NY)-82-85
(fining by RD in decertification ptn case that individual who circulated ptn was agent of E not binding in ULP proceeding)

0175-7900 Prior court decision

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. 766 F.2d 812 (C.A. 3, July 1985)
(E's contention that collateral estoppel precluded Bd from making findings different than that of district ct as to E-Ee relationship in prior Sec. 301 action involving same parties, rejected, since prior 301 action was improperly removed from state ct to district ct because district ct had no original jurisdiction and therefore any *findings* made by district ct are w/o collateral estoppel effect)

0175-8100 Prior ULP proceeding

Sewell-Allen Big Star, Inc., No. 3 d/b/a Sewell-Allen Big Star No. 52 280 NLRB No. 137
[no inference of U animus or unlawful motivation on E's part held to exist as result of prior decision in which E's other facilities were individually found to have engaged in ULPs; while evidence from prior ULP proceeding may be used as evidence of present U animus, there was no evidence herein that E engaged in any ULP remotely similar to those found in prior decision; and even if some U animus was found in present case, there would still be no basis for finding violation herein]

Alamo Cement company 277 NLRB No. 108
(allegation in C of unlawful work rule barred where GC knew or should have known of rule through investigation of earlier charges; maintenance or enforcement of said rule, however not barred, since it was continuing course of conduct, and charge of E's enforcement of rule against Ee did not occur before proceedings in earlier case and could not have been litigated therein; also, permitting E to maintain and enforce invalid rule, promulgation of which was barred from C, would grant E license to violate Ees' Sec. 7 rights)

Alamo Cement Company 277 NLRB No. 034
]*res judicata* principle foreclosed adjudication of supervisory status of certain individuals in instant case where they had been found nonsupervisory in prior Bd case, and, with one exception, all material evidence was available and could have been litigated in prior proceeding)

Ballou Brick Co. 277 NLRB No. 009
(E's contention that instant C allegations must be dismissed because they were subject of prior settlement agreement, rejected, where prior settlement agreement was merely a private agreement between E and charging party (an individual) and charging party agreed to withdraw charge, no notice was posted and U, as charging party in instant case, was not a party to settlement)

The May Department Stores Company JD-(SF)-13-85
(U was estopped from denying that Ee, found herein to be an agent of U, had committed acts of misconduct where Ee's misconduct was subject of prior ULP hearing brought to contest her discharge and ALJ in prior case, found that Ee had in fact engaged in misconduct which was sufficient to deny her the protection of the Act; fully litigated findings in prior case which were *pro forma* adopted by the Bd, constitute *final determinations*, and are therefore binding)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 789 F.2d 9 (C.A. D.C., Apr. 1986)
[Bd may consider evidence relating to continuing violation. Bd not precluded from dealing with ULPs that occur after filing initial ULP charge if new ULPs are *related to* initial charge and *grew out of them while the proceeding is pending before the Bd*]

0181 EFFECT OF PENDING PROCEEDINGS

Chiappo Bus Company and Its Alter Egos, Comfort Coach and Nicholas Chiappo d/b/a G. R. Coach and Chiappo Bus Company 278 NLRB No. 071
[ptn for advisory opinion to determine whether Bd would assert jurisdiction over petitioning Es, dismissed where there was outstanding ULP proceeding in which binding adjudication of jurisdictional issue could be obtained, no other considerations suggested need for earlier determination of the issue, and Bd's confining itself to statutory proceeding before it would better serve advisory opinion procedure's underlying purpose and avoid unnecessary duplication and possible confusion]

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 789 F.2d 9 (C.A. D.C., Apr. 1986)
[Bd may consider evidence relating to continuing violation. Bd not precluded from dealing with ULPs that occur after filing initial ULP charge if new ULPs are *related to* initial charge and *grew out of them while the proceeding is pending before the Bd*]

0181-5000 Judicial proceedings

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. 281 NLRB No. 117
[fact that E may seek ct review of Bd's earlier decision in case involving E and U as parties held not to warrant suspending Bd action in instant case]

Gentzler Tool & Die Corp. 275 NLRB No. 134
(notwithstanding Bd has pending ptn for enforcement of its Order requiring execution of contract, retroactive application of contract and that E o/d from dealing directly with Ees, Bd issued another D/O arising from subsequent C finding E violations for refusal to bargain and withdrawal of recognition which are different violations than those found in firm decision, and therefore, Order in first decision would not remedy those violations found in second decision; hence, need for another Order)

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[Bd, acting on belief that its ULP proceeding was excepted from operation of automatic stay under Bankruptcy Act, held to have permissibly proceeded with ULP hearing w/o obtaining relief from stay in bankruptcy ct; however, Bd proceeded at its own risk and, if it was later determined that proceeding was *not* excepted from automatic stay, entire Bd proceeding would be void *ab initio*; nonetheless, exercise of governmental unit's police or regulatory powers is not void merely because used in belief that its action was excepted from automatic stay]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[Bd's ULP proceeding held excepted from operation of automatic stay of 362(b)(4) of Bankruptcy Act and not attempt to enforce money judgment, and therefore subject to automatic stay by operation of 362(b)(5), since Bd's adjudication that E violated federal labor law was not proceeding for primary purpose of protecting government's claim to entitlement to pecuniary interest in debtor's estate, and Bd was engaged in enforcing nation's labor laws in exercise of police or regulatory powers placing it w/i 362(b)(4) exemption to automatic stay]

0188 FAILURE TO EXHAUST OTHER REMEDIES

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)
[U waived defense that discriminatees failed to exhaust internal U remedies where U failed to raise issue before ALJ and addressed issue for first time in its post-hearing briefs to ALJ]

0194 QUALIFICATION OF COUNSEL TO REPRESENT PARTY BEFORE BOARD

Mack Trucks, Inc. 277 NLRB No. 004
(U's mtn to disqualify law firm from serving as E's counsel because of Bd's Regional attorney's prospective affiliation with that firm, denied, since no sufficient warrant had been shown for determination that there should be a substitution of GC's representative, no deficiencies in case record with respect to GC's prosecution of present matter have been shown. A merely conceivable *appearance of impropriety* must be considered too slender a reed upon which to rest a disqualification order)

0194—Cont.

Storer Communications, Inc. v. N.L.R.B. ———

F.Supp.———— (DC E.D. OH, Oct. 1984)

[district ct lacks subject matter jurisdiction over E's C alleging due process requires Bd to hold evidentiary hearing, prior to ULP proceeding, concerning allegations that U's counsel should be disqualified under ABA's DR 5-102(A) because E has subpoenaed him to testify about substance of ULP charges, since U's counsel is being called by E *as its* witness, and thus is not proscribed from testifying by DR 5-102(A)]

Storer Communications, Inc. v. N.L.R.B. ———

F.Supp.———— (DC E.D. OH, Oct. 1984)

[district ct lacks subject matter jurisdiction over E's C alleging due process requires Bd to hold evidentiary hearing, prior to ULP proceeding, concerning allegations that U's counsel should be disqualified under ABA's DR 5-102(A) because E has subpoenaed him to testify about substance of ULP charges, since, although testimony did not reveal whether U would call counsel as its witness, due process does not require a hearing on this matter, since E has not shown that qualified right to have opposing counsel disqualified is a property right and E may renew mtn to disqualify should U call counsel as its witness]

0400 LIMITATION OF ACTIONS

0420 SECTION 10(b) 6-MONTH LIMITATION

0420-0100 Generally

G. W. Galloway Company 281 NLRB No. 038

[Sec. 10(b) does not bar consideration of 8(a)(1) allegations contained in C which are properly raised by printed allegations contained in charge form alleging *other acts* of interference with and coercion of Ees' Sec. 7 rights]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121

[Section 10(b) was not affirmatively or properly asserted as affirmative defense where on 9th day of hearing in context of objection to admission of evidence of failure to submit payments to U benefit funds pre-dating 10(b) period]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda 279 NLRB No. 089

[amendment to C which named additional Respondent not named in original C and its Ees whom Respondent allegedly unlawfully refused to reinstate after economic strike, not barred by Section 10(b) since Respondent named in original charge, although its Ees were not, and amended complaint was based solely on matters arising out of same course of events set forth in timely filed charge]

Leward Nursing Home 278 NLRB No. 157

[Section 10(b) timely invoked by Respondent, notwithstanding it did not expressly invoke 10(b), when it stated at hearing *evidence has been before Bd on this issue for over a year. Specific charge has been filed and dismissed* (actually withdrawn), and procedual facts pertinent to 10(b) defense thereafter fully litigated]

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. 278 NLRB No. 102

[second amended C properly included allegations concerning discharges of two Ees not mentioned in original charge, where their discharges involved same incident and subject matter as original charge, charge's allegations were sufficiently broad to cover additional discharges, and original charge was filed w/i 10(b) period]

0420-1200 Has effect of statute of limitations

Nazareth Literary & Benevolent Institute, Inc., d/b/a Saints Mary and Elizabeth Hospital 282 NLRB No. 010

[E's refusal to bargain with U in which E's letter purported not to withdraw recognition unconditionally, but only to suspend negotiations *pending a final determination as to whether or not your labor organization represents a majority of nurses at our hospital* not untimely refusal, since, notwithstanding E's letter was over 6-months before any ULP charge as a refusal to bargain which is contingent on other occurrences does not start statute of limitations running]

Kou Fu, Inc. d/b/a Peng Teng 278 NLRB No. 080

[Section 10(b) defense rejected where raised for first time before Bd, since 10(b) provision is statute of limitations, not jurisdictional, thus it is affirmative defense and if not timely raised, waived]

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081

(Section 10(b) defense concerning conduct of U which *occurred far beyond six months from the filing and service of the charge herein*———, rejected, since U's present conduct can be considered in light of its earlier illegal conduct; further, activities of dissident U member continued into Section 10(b) (limitation) period)

Central Transport, Inc. JD-114-86

0420-2500 Not jurisdictional

Kou Fu, Inc. d/b/a Peng Teng 278 NLRB No. 080

[Section 10(b) defense rejected where raised for first time before Bd, since 10(b) provision is statute of limitations, not jurisdictional, thus it is affirmative defense and if not timely raised, waived]

Alpine Vending, Inc. JD-(SF)-99-85

(Sec. 10(b) defense is not jurisdictional but may be waived by failure to raise it in timely fashion as an affirmative defense. Must be raised before trial record closes, or if trial waived, then before parties have stipulated to closing of record. Indeed, to extent Federal Rules of Civil Procedures may be deemed to govern in this regard, it is clear under both F.R.C.P. 8(c) and 12(b) that, to be timely, affirmative defenses, must be averred in party's responsive pleading (here, the answer))

0420-3700 Not rule of evidence

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121

[Section 10(b) was not affirmatively or properly asserted as affirmative defense where on 9th day of hearing in context of objection to admission of evidence of failure to submit payments to U benefit funds pre-dating 10(b) period]

0420-5000 Runs from effective date of ULP

Carter-Glogau Laboratories, Inc. 280 NLRB No. 049

[C allegations regarding E's failure to reinstate former economic strikers held barred by 10(b) limitation, since E's letters to U, submitted outside 10(b) period, put U on sufficient notice of alleged ULP where, notwithstanding U's unconditional request to return to work, letters sufficiently indicated that only those former strikers who supplied E with their phone numbers and addresses were offered jobs, and that only those *additional individuals* who fulfilled such requirement would be placed on preferential hiring list and considered for reinstatement in future]

Marin Operating, Inc. d/b/a The Clarion Hotel-Marin; Colorado Marin Associates, A Joint Venture; and Preferred Properties Fund 82, A Limited Partnership 279 NLRB No. 070

[successor E's refusal to bargain on grounds predecessor E unlawfully recognized U in separate units of Ees, violative, since, even though predecessor E's recognition of U in separate units may have been improper in view of that certified by Bd, successor E is barred by 10(b) from challenging that recognition; to allow successor E to challenge that recognition would upset successful 12-year bargaining relationship and revive problems long ago put to rest]

J. K. Cowan Company 274 NLRB No. 031

(charge alleging unlawful failure to hire applicants because of their U affiliation timely filed w/i Sec. 10(b) period, where charge and complaint alleged failure to hire occurred on or about date w/i 10(b) period, GC did not plead or argue discrimination prior to 10(b) period, and absent evidence E ever notified or advised interviewees of its decision not to hire them; further, during interviews outside SEction 10(b) period, some alleged discriminatees were advised they were being considered for future employment)

Hospital & Service Employees Union, Local 399, Service Employees v. N.L.R.B. 798 F.2d 1245 (C.A. 9, Aug. 1986)

[10(b) held satisfied where C was both served and answered w/i 6 months of violation]

0420-5050 What constitutes effective date

Otten Truck Line; United Star Express, Inc.; and Claude Hayes, an Individual 282 NLRB No. 073

[each failure of E to deduct dues and transmit moneys to U under contractual dues-check-off clause and each failure to make payment to U's health and welfare fund and pension fund is separate violation of Act; therefore, even though some violations took place outside 10(b) period, and E is not liable for those payments under Act, E is liable for those payments w/i 19(b) period]

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat 281 NLRB No. 030

[charge not time-barred where it was filed w/i 25 days of first occurrence of E's refusal to meet with U's international representative as chairman of local's grievance committee, its prior statement that international representative was *unacceptable* as such did not constitute unconditional and unequivocal refusal]

Armco, Inc., Eastern Steel Division, Ashland Works 279 NLRB No. 143

[10(b) period began to run when E and assisted U signed Memorandum of Understanding and not on earlier date when competing U had notice E planned to recognize and sign contract with assisted U]

0420-5050—Cont.

Southern Lumber Company, Inc. **279 NLRB No. 027**
[charge not barred by fact that U's initial request to bargain was outside 10b period since Bd treats request as continuing]

Elevator Sales and Service, Inc. **278 NLRB No. 094**
[E's contention that C allegations that E repudiated bargaining agreement were time-barred by virtue of 10(b), rejected, notwithstanding E's assertion that E withdrew from multi-E bargaining association more than 6 months before charges were filed and that U knew of existence of E's alter ego for more than 6 months before it filed charges, since refusal to execute and apply agreement triggered 10(b) period, which did not begin to run until U learned that work was being performed contrary to terms of agreement]

Alamo Cement company **277 NLRB No. 108**
(C of promulgation of unlawful rule timebarred where it occurred five years before filing of any charge against E)

International Photographers Guild, Local 659, Stage Employees (Paramount Pictures Corp.) **276 NLRB No. 091**
(Sec. 10(b) period on charge against U for causing discharge of Ee commenced, not with notice from U to Ee that Ee's failure to pay dues by certain date would result in Es being informed of Ee's loss of good standing and his ineligibility for employment, but rather upon his subsequent discharge, since notice was conditional rather than final decision, terms of notice were partially satisfied when Ee made partial payment, U accepted payment, U's prior policy of allowing installment payments entitled Ee to believe there was no adverse decision against him, and thus no need to file charge)

Orange Belt district Council of Painters No. 48, AFL-CIO, CLC (Maloney Specialties, Inc.) **276 NLRB No. 156**
(although U signed prohibited agreement on date outside 10(b) period, U was held to have *entered into* such agreement w/i 10(b) where U ratified and supported prohibited work stoppage w/i 10(b) and reaffirmed prohibited agreement by filing prohibited charges and attempting to revoke E's *working privileges* w/i 10(b))

1115, Nursing Home and Hospital Employees Union, A Division of 1115 Joint Board **275 NLRB No. 045**
(GC not precluded by Section 10(b) of Act from issuing instant C, since GC has met Act's requirements where record is clear that ptn in state court was filed on Dec. 8, 1980 seeking to confirm arbitrators award and charge, based on this filing, was filed on Jan. 8, 1981 with Bd, 1 month later)

J. A. Croson Company **274 NLRB No. 031**
(where charge filed 5/27/83 alleged that on or about 11/3/82 *and thereafter...*, and C issues on 7/11/83 alleges with specificity that on or about 2/1/83 and since that date E has refused to hire potential Ees because of their U membership, C is not barred by 10(b) because 2/1/83 is appropriate date on which 10(b) period commenced, and therefore charge timely filed)

Central Transport, Inc. **JD-114-86**
[date of alleged unlawful act rather than date its consequences became effective is controlling date in determining whether period for filing charge under Section 10(b) has expired. Bd has uniformly held that 6 month limitation period does not begin to run until injured party has become, or should have become aware of respondent's unlawful actions. When respondent fraudulently conceals its unlawful conduct Section 10(b) period is tolled from date on which respondent's ULP commenced until injured party acquires knowledge of ULP]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Dec. 1985)**
[contention that charges based on contractual clauses granting U officials superseniority were time-barred, because negotiation of clauses and acquisition of superseniority occurred outside 10(b) period, rejected, since contracts were invalid on their face where seniority was granted officials solely due to their status, and maintaining and attempting to enforce them during 10(b) period provided all evidence necessary to prove violations concerned events occurring w/i 10(b) period]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**
[Sec. 10(b) period began to run upon E's refusal sign final multi-E agreement with U, which was w/i 6 month limitation, rather than upon E's earlier repudiation of multi-E bargaining agreement when it refused to abide by interim agreement, which was outside 10(b) period]

0420-5075 Day on which ULP occurred excluded from computation

MacDonald's Industrial Products, Inc. **281 NLRB No. 091**
[respondent's mtn for summary judgment filed on basis that charging party failed to file charge w/i 6 months of alleged violation, denied since computation of 10(b)'s 6-month limitation period properly begins on day following commission of ULP and thus charge was timely]

0420-5087 Fraudulent concealment of operative facts

Strawsine Manufacturing Co., Inc., et al. **280 NLRB No. 063**
[although U filed charge alleging E violated 8(a)(3) by closing plant and relocating operations more than 6 months after the event occurred, 10(b) did not bar C where E misrepresented plans about closing from U, concealed decision to relocate and U filed charge w/i 1 month of the time it learned E had opened another facility; limitations period begins to run on date U has knowledge of relocation decision]

Uniglass Industries, Div. United Merchants & Mfrs. **276 NLRB No. 035**
(Section 10(b) is subject to equity principals and is tolled where Respondent has fraudulently concealed unlawful conduct and person adversely affected by Respondent's actions is not put on notice of such actions. 6-month period of limitations runs from time discriminatees were put on notice, actual or constructive, of E's anti-nepotism rule which precluded their rehire. As 10(b) is affirmative defense, burden is on Respondent to establish facts that defense rests upon)

Garrett Railroad Car & Equipment, Inc. **275 NLRB No. 151**
(charge in instant case alleging failure to reinstate strikers not time barred because of charge filed in earlier decided case where amended charge in that case deleted allegation of refusal to recall strikers on or about 7/30/79 as U did not make unconditional offer on part of strikers to return to work until 9/30/79, 2 months after time specified in deleted allegation and E hired new Ees on 10/8/79. Further, E refused until 11/82 to furnish U with requested names of new hires and date of hire, thereby unlawfully concealing from U information necessary to put them on notice of *Laidlaw* violations. New charge timely filed)

Duff-Norton Company, Inc. **275 NLRB No. 093**
(applying *Ducane Heating* principles, Bd dismissed C where GC contravened purposes of 10(b) limitations proviso by reinstating originally dismissed charge some 16 months after alleged unlawful discharge of U activist for failing to properly inspect production of defective parts, and after second charge, alleging same violation, had failed for improper service; under circumstances herein, there was insufficient nexus between supervisor's asserted tampering with machine to produce defective parts and Ee's performance of his inspection duties so as to conclude E fraudulently concealed operative facts pertaining to discharge)

Ducane Heating Corporation **273 NLRB No. 175**
(GC contravened limited provison of 10(b) and authority under 3(d) of the Act by reinstating dismissed charge 10 months after alleged illegal action occurred, since charge may not be reinstated outside the 6-month limitations period of 10(b) absent special circumstances in which a respondent fraudulently conceals operative facts underlying the alleged violation, of which none were present in instant case; and further, where there is a fraudulent concealment, limitations period begins to run when charging party knows or should have known of the concealed facts, overruling *California Pacific Signs* and *Winer Motors*)

Scherer Brothers Lumber Company **JD-262-85**
(Sec. 10(b) defense rejected notwithstanding Ee was hired as mechanic 7 months before charge filed, and refused, with acquiescence of E, not to join U despite U security clause, where U did not have any knowledge of Ee's employment until 4 months before charge filed nor knowledge of E's plan to remove U as bargaining agent for E's mechanics)

0420-5500 Runs from date of knowledge

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[charge timely as w/i Section 10(b) period, notwithstanding alleged unlawful unilateral changes occured shortly after beginning of strike, more than 6 months prior to filing of charge, where U only learned of changes w/i 10(b) period when U adherents among strikers returned to work and informed U of changes, since lack of knowledge by U tolled running of 10(b) period]

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) **281 NLRB No. 132**
[in order to trigger 10(b) period, notice to Charging Party is required. Notice whether actual or constructive, must be clear and unambiguous and burden of showing such notice is on party raising affirmative defense of Section 10(b)]

Local 3036, New York City Taxi Drivers Union, SEIU, AFL-CIO (Linden Maintenance Corp.) **280 NLRB No. 115**
[charge timely filed where Ee did not receive clear and unequivocal, actual or constructive notice that his grievance was not being pursued until he went to U office and learned it had been abandoned; U's failure to return his phone calls insufficient to meet burden of showing notice, particularly where Ee was receiving contemporaneous assurances that U *would take care of it, but it would take time*]

Strawsine Manufacturing Co., Inc., et al. **280 NLRB No. 063**
[although U filed charge alleging E violated 8(a)(3) by closing plant and relocating operations more than 6 months after the event occurred, 10(b) did not bar C where E misrepresented plans about closing from U, concealed decision to relocate and U filed charge w/i 1 month of the time it learned E had opened another facility; limitations period begins to run on date U has knowledge of relocation decision]

0420-5500—Cont.

Safety-Kleen Corp. 279 NLRB No. 159
[charge untimely under 10(b) where charging party was on notice of facts that created suspicion sufficient to warrant requiring him to file his ULP charge w/i 6 months of his discharge]

Clark Equipment Company 278 NLRB No. 085
[allegations of unilateral conduct not time-barred, notwithstanding charge containing them was filed more than six months after conduct, since 10(b) period was tolled by U's lack of knowledge where, although change was subject of notice distributed to Ees on date it went into effect, this was not constructive notice to U, which had no stewards on job to police working conditions, change was so slight as to only be appreciated by one privy to prior policy, which U was not, and there was no showing that any affected Ee was aware of how change affected him and that U was made aware of enforcement of changed policy]

Consolidation Coal Company, Burning Star No. 4 & No. 5 277 NLRB No. 060
(charges time-barred where U knew of situation more than six months before it filed charges)

American Federation of Musicians; Miami Federal of Musicians, Local 655 (Royal Palm Dinner Theatre, Ltd.) 275 NLRB No. 097
(charge found timely with respect to notice of imposition of fines, since notice initiated running of new 10(b) period independent of any 10(b) period which may have begun based on U's institution of internal charges; however to extent that C independently alleges that filing and notice of internal charges against supervisor was unlawful, charge was untimely since it was filed almost year after those events)

Pennsylvania Energy Corporation 274 NLRB No. 174
(E's 10(b) defense regarding its subcontracting agreement with contractor to do bargaining unit work, held w/o merit where E failed to show that U acquired knowledge of unlawful conduct at time prior to 6-month 10(b) period of limitations)

San Francisco Lodge No. 68, Machinists (Holmestic, Inc.) 274 NLRB No. 108
(U's contention that 10(b) period should run from date U's Trial Committee imposed fines on members and thus C was time barred, rejected, since Trial Committee's action did not constitute U's final decision; rather, final adverse action occurred when U's membership voted to impose Committee's findings and punishment and mailed notice of such action to members, a date w/i 10(b) period)

Central Transport, Inc. JD-114-86
[C barred as untimely under Section 10(b) where U had knowledge of alleged unlawful implementation of bargaining contract addendum more than 6 months prior to filing of charge, notwithstanding impact of change on benefits effected not known until Ees applied for benefits after implementation of addendum]

Communications Workers, Local 11500 (American Telephone & Telegraph Company) JD-(SF)-40-86
[charge of unlawful fining by U for crossing picket line during strike barred by Section 10(b) where Ee was aware of U's efforts to discipline her for crossing picket line 18 months prior to filing charge]

Scherer Brothers Lumber Company JD-262-85
(Sec. 10(b) defense rejected notwithstanding Ee was hired as mechanic 7 months before charge filed, and refused, with acquiescence of E, not to join U despite U security clause, where U did not have any knowledge of Ee's employment until 4 months before charge filed nor knowledge of E's plan to remove U as bargaining agent for E's mechanics)

National Fire Protection, Inc., and Mutual Sprinkler Contractors & Engineers, Inc. JD-76-85
(C that unionized E violated contract where nonU E with which it formed single E did not abide by contract, time-barred by Sec. 10(b) where, when U wrote E to question single Ee status, U had had sufficient knowledge of objective facts for over 6 months to have been put on notice that non-U contractor had business relationship with unionized E such that U might reasonably go forward on basis that they were single integrated enterprise, but failed to act for more than six months)

Tectonic Industries, Inc. JD-(NY)-100-84
(amendments to C alleging unilateral changes in terms and conditions of employment held not barred by Sec. 10(b), since 10(b) does not become operative until affected party has actual or constructive notice, and E failed to satisfy its burden of notifying U and giving it opportunity to bargain before E instituted changes where U, which was on strike against E, become aware of changes when E testified concerning changes at hearing)

0420-6300 Six-month period dates from first charge

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. 280 NLRB No. 118
[10(b) no bar to amended 8(a)(3) allegations filed more than 6 months after discriminatory incident where discrimination was *integrally connected* and *closely related* to timely filed 8(a)(2) and (5) allegations in the original charge to replace one U with another; charge need not specifically mention every possible violation of the Act]

0420-6250 Reinstatement of charge after withdrawal

Norris Concrete Materials, Inc. 282 NLRB No. 045
[RD properly allowed reinstatement of withdrawn charge after expiration of Section 10(b) period, in view of E's post non-Bd settlement misconduct, since E entered into settlement with specific intent to circumvent its terms]

Hotel, Motel, Restaurant Employees and Bartenders Union Local 19 (Le Baron Hotel) 281 NLRB No. 006
[Section 10(b) (statute of limitations) defense rejected where GC litigated issues in a settlement that was withdrawn by RD. GC may litigate matters embraced in a settlement agreement later validly set aside]

Leeward Nursing Home 278 NLRB No. 157
[Bd has held that withdrawn, as opposed to dismissed, charge cannot be reinstated outside 6 months 10(b) period]

M & C Vending Co., Inc. and Its Wholly Owned Subsidiary Ada Automatic Sales Company, Inc. 278 NLRB No. 047
[notwithstanding settlement whereby U agreed to look to E for prospective future payments into U's pension plan, the breach and subsequent withdrawal of settlement agreement allowed C to allege failure to make payments into pension plan going back to period covered in original charge that led to settlement agreement]

Northwest Towboat Association 275 NLRB No. 024
(where RD dismissed charge alleging violation of 8(a)(5) because bumping rights contained in contract with another U affected seniority rights of its unit Ees as premature since no layoffs occurred, and after 6 months elapsed from charge E did have layoffs and U filed 2nd charge which RD dismissed as being barred under 10(b) but reinstated first charge on basis of newly discovered evidence, Bd held this improper, because. whether charge dismissed or withdrawn, it could *only* be reinstated when outside 10(b) period if party fraudulently concealed evidence)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(Sec. 10(b) did not preclude GC from issuing C based on 8(a)(3) charge which remained intact and pending after U withdrew other allegations, since GC could properly issue C or amended C containing allegations which were closely related to 8(a)(3) charge; and even if original charge were totally withdrawn, no 10(b) problem would be presented because none of alleged ULPs occurred more than 6 months prior to date when U filed charge)

Ducane Heating Corporation 273 NLRB No. 175
(GC contravened limited proviso of 10(b) and authority under 3(d) of the Act by reinstating dismissed charge 10 months after alleged illegal action occurred, since charge may not be reinstated outside the 6-month limitations period of 10(b) absent special circumstances in which a respondent fraudulently conceals operative facts underlying the alleged violation, of which none were present in instant case; and further, where there is a fraudulent concealment, limitations period begins to run when charging party knows or should have known of the concealed facts, overruling *California Pacific Signs* and *Winer Motors*)

0420-6275 Reinstatement of charge after dismissal

Leeward Nursing Home 278 NLRB No. 157
[Bd has held that withdrawn, as opposed to dismissed, charge cannot be reinstated outside 6 months 10(b) period]

Duff-Norton Company, Inc. 275 NLRB No. 093
(applying *Ducane Heating* principles, Bd dismissed C where GC contravened purposes of 10(b) limitations proviso by reinstating originally dismissed charge some 16 months after alleged unlawful discharge of U activist for failing to properly inspect production of defective parts, and after second charge, alleging same violation, had failed for improper service; under circumstances herein, there was insufficient nexus between supervisor's asserted tampering with machine to produce defective parts and Ee's performance of his inspection duties so as to conclude E fraudulently concealed operative facts pertaining to discharge)

Northwest Towboat Association 275 NLRB No. 024
(where RD dismissed charge alleging violation of 8(a)(5) because bumping rights contained in contract with another U affected seniority rights of its unit Ees as premature since no layoffs occurred, and after 6 months elapsed from charge E did have layoffs and U filed 2nd charge which RD dismissed as being barred under 10(b) but reinstated first charge on basis of newly discovered evidence, Bd held this improper, because, whether charge dismissed or withdrawn, it could *only* be reinstated when outside 10(b) period if party fraudulently concealed evidence)

Ducane Heating Corporation 273 NLRB No. 175
(GC's office of appeals did not abuse its discretion in accepting U's mtn for reconsideration of dismissal of charge, even if one business day late, and charge was not extinguished by operation of Bd R/R 102.19(c), notwithstanding Region's investigation and C thereon did not issue until 8 months after alleged illegal action, where GC granted mtn for reconsideration w/i 10(b) period and 102.19(c) gives discretion to GC to accept reconsideration

0420-6275—Cont.

mtns submitted w/i 10(b) time limit but beyond the 10-day period allowed by 102.19(c) itself; GC need only act w/i 10(b) period and that action can take the form of mere acceptance of an untimely mtn)

Duquesne Heating Corporation 273 NLRB No. 175

(GC contravened limited proviso of 10(b) and authority under 3(d) of the Act by reinstating dismissed charge 10 months after alleged illegal action occurred, since charge may not be reinstated outside the 6-month limitations period of 10(b) absent special circumstances in which a respondent fraudulently conceals operative facts underlying the alleged violation, of which none were present in instant case; and further, where there is a fraudulent concealment, limitations period begins to run when charging party knows or should have known of the concealed facts, overruling *California Pacific Signs* and *Winer Motors*)

E.I. Dupont De Nemours & Company JD-341-85

(charge properly reinstated where charge timely filed, was dismissed by RD who was reversed on appeal by GC in Washington, D.C. after six months expired as appeal put E on notice that RD's dismissal was not final action, was subject to reversal and charge had not been laid to rest)

E.I. Dupont De Nemours & Company JD-341-85

(charge which alleged specific refusal to furnish information relating to removal of work from unit which charge was dismissed but reinstated on appeal after 10(b) period expired could not be used as basis for C allegation of refusal to provide information about use and consequences of Voluntary Termination Incentive program at E's other Plants where refusal 6 months old as this allegation acts forth entirely separate violation arising out of issue wholly unrelated to removal of unit work, refusals made at different times, for different reasons and required different evidence to prove allegations)

0420-8700 Amendment of charge

A/Z Electric, Inc. 283 NLRB No. 057

[amendment of charge outside 10(b) period permitted, where additional allegation was closely related to matters in previous charge w/i statutory period and did not change substantive nature of charge]

0420-8750 New ULP after original charge and more than 6 months before amended charge may not be included

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[allegations in C based on amended charge was barred by Sec. 10(b); GC's contention conduct in amended charge same as in original charge, or at least related, rejected, where amended charge of restraint and coercion by U to cause E to discriminate against Ee, unlike original charge of unlawfully causing E to layoff Ee, did not allege unlawful pattern of discrimination, and omitted specific allegation of original charge, which referred only to discrimination, amended charge references additional discriminatees and refers to different E]

Garratt Railroad Car & Equipment, Inc. 275 NLRB No. 151

(charge in instant case alleging failure to reinstate strikers not time barred because of charge filed in earlier decided case where amended charge in that case deleted allegation of refusal to recall strikers on or about 7/30/79 as U did not make unconditional offer on part of strikers to return to work until 9/30/79, 2 months after time specified in deleted allegation and E hired new Ees on 10/8/79. Further, E refused until 11/82 to furnish U with requested names of new hires and date of hire, thereby unlawfully concealing from U information necessary to put them on notice of *Laidlaw* violations. New charge timely filed)

Millwright and Machinery Erectors, Local Union 720, Carpenters (Stone & Webster Engineering Corp., etc.) 274 NLRB No. 219

(original charge alleging violations based on U's failure to refer charging party (CP) did not toll 10(b) period as to allegations in amended charge of refusal to refer another Ee 2 months earlier than CP because neither charge alleges unlawful practice in U's referral process, and separation of 2 months between incidents made both events temporally unrelated. Therefore 2 incidents were separate and distinct acts, carried out at different times for different reasons and did not arise out of same course of conduct required for amended charge to relate back to original charge)

0420-8775 May relate back to original charge

M. J. Santulli Mail Service, Inc. 281 NLRB No. 170

[amended charge alleging 8(a)(5), as well as 8(a)(1) violation, held not so drastic departure from original charge, which alleged 8(a)(1) violation only, as to amount to different case and, consequently, 10(b) period properly calculated from date of filing of original charge]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. 280 NLRB No. 118

[10(b) no bar to amended 8(a)(3) allegations filed more than 6 months after discriminatory incident where discrimination was *integrally connected* and *closely related* to timely filed 8(a)(2) and (5) allegations in the original charge to replace one U with another; charge need not specifically mention every possible violation of the Act]

Brookhurst Professional Building, Inc., Number Three d/b/a Browning Manor Convalescent Hospital 279 NLRB No. 172

[Sec. 10(b) defense rejected and allegations of unlawful discharges must be decided on merits, where amendment of complaint to include allegations regarding discharges so closely related to original complaint as to warrant its inclusion upon timely notice, matter was fully litigated, and absent showing of any prejudice]

Glaziers, Architectural Metal and Glass Workers Local Union No. 558 a/w Painters (Bruce Raney, an Individual) 279 NLRB No. 023

[allegations in C based on amended charge was barred by Sec. 10(b); GC's contention conduct in amended charge same as in original charge, or at least related, rejected, where amended charge of restraint and coercion by U to cause E to discriminate against Ee, unlike original charge of unlawfully causing E to layoff Ee, did not allege unlawful pattern of discrimination, and omitted specific allegation of original charge, which referred only to discrimination, amended charge references additional discriminatees and refers to different E]

Millwright and Machinery Erectors, Local Union 720, Carpenters (Stone & Webster Engineering Corp., etc.) 274 NLRB No. 219

(original charge alleging violations based on U's failure to refer charging party (CP) did not toll 10(b) period as to allegations in amended charge of refusal to refer another Ee 2 months earlier than CP because neither charge alleges unlawful practice in U's referral process, and separation of 2 months between incidents made both events temporally unrelated. Therefore 2 incidents were separate and distinct acts, carried out at different times for different reasons and did not arise out of same course of conduct required for amended charge to relate back to original charge)

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. JD-(NY)-34-85

(E's contention that 8(a)(1) violations found herein were barred because they were not included in original charge which merely alleged violation of 8(a)(5), rejected, charge, as here, containing clause stating that E by enumerated and other acts interfered, restrained and coerced Ees, is sufficient to permit inclusion in C of allegations not specifically mentioned in charge)

0440 CONSIDERATION OF TIME-BARRED EVENTS AS BACKGROUND TO EXPLAIN LATER EVENTS PERMISSIBLE

0440-0100 Generally

Advertisers Manufacturing Company 275 NLRB No. 019

(Bd will take official notice of its own proceedings and decisions which it may rely on; where material issue of fact is identical and parties are same, finding in one proceeding may be evidence of finding in later proceeding and be considered as direct evidence of same where not prohibited by 10(b); or, if relevant fact e.g. be pre-10(b), although it may not be given independent and controlling weight, such fact may be used as background evidence for bearing on E motivation or U animus in regard to E's conduct w/i 10(b) period)

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

(event *anterior* to limitation period (10(b)) admissable to illuminate motivation for Respondent's conduct during limitation period)

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)

[Sec. 10(b) does not bar use of evidence of earlier events to illuminate conduct w/i 10(b) period constitute ULPs as substantive matter, but does so where conduct occurring w/i 10(b) period can be charged to a ULP only through reliance on earlier ULPs]

N.L.R.B. v. Oberle-Jordre Company, Division of The Bishopric Products Company 777 F.2d 1119 (C.A. 6, Nov. 1985)

[evidence concerning interrogation of Ee regarding his withdrawal from U, accompanied by explicit promises of employment conditioned on Ee's responses, while occurring outside 10(b) period, held to shed light on true character of matters w/i limitation period]

0440-1200 Where purpose is for fuller understanding of contention

Staff Officers Association of America (Delta Steamship Lines) 277 NLRB No. 125

(C not time-barred where events alleged and supporting evidence were w/i 10(b) period, and evidence of events outside 10(b) period was received only for light they shed on events w/i 10(b) period)

0440-1200—Cont.

General Coal Co., Inc. 275 NLRB No. 077

0440-1900 **Cannot be used as proof of earlier unfair labor practice**

Advertisers Manufacturing Company 275 NLRB No. 019
(Bd will take official notice of its own proceedings and decisions which it may rely on; where material issue of fact is identical and parties are same, finding in one proceeding may be evidence of finding in later proceeding and be considered as direct evidence of same where not prohibited by 10(b); or, if relevant fact e.g. be pre-10(b), although it may not be given independent and controlling weight, such fact may be used as background evidence for bearing on E motivation or U animus in regard to E's conduct w/i 10(b) period)

0440-2500 **Striker's right to reinstatement within period may be based on time-barred events**

Dayton Auto Electric, Inc. 278 NLRB No. 000
[ALJ erred in granting GC's mtn to amend complaint to allege Respondent unlawfully failed to reinstate ULP strikers, where mtn not made until midway through hearing and 14 months after 4 had made unconditional offer to return to work on behalf of strikers which was also 3 months after C issued at outset of trial GC stated reinstatement not an issue]

0440-5000 **Enforcement within period of contract illegal in execution because of time-barred events**

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)
[Sec. 10(b) does not bar use of evidence of earlier events to illuminate conduct w/i 10(b) period constitute ULPs as substantive matter, but does so where conduct occurring w/i 10(b) period can be charged to a ULP only through reliance on earlier ULPs]

0460 LIMITATION NOT APPLICABLE TO CONTINUING ULP

Otto Truck Line; United Star Express, Inc.; and Claude Hayes, an Individual 282 NLRB No. 073
[each failure of E to deduct dues and transmit moneys to U under contractual dues-checkoff clause and each failure to make payment to U's health and welfare fund and pension fund is separate violation of Act; therefore, even though some violations took place outside 10(b) period, and E is not liable for those payments under Act, E is liable for those payments w/i 19(b) period]

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170
[action held not barred under Sec. 10(b), despite fact that alleged unlawful unilateral discontinuance of payments to health and welfare fund occurred more than 6 months prior to filing of charge, since each failure to make contractually required monthly benefit fund payments constituted separate and distinct violation of E's bargaining obligation]

Carter-Glogau Laboratories, Inc. 280 NLRB No. 049
[in finding C allegations regarding E's failure to reinstate former economic strikers barred by 10(b), ALJ rejected GC's contention that gravamen of E's conduct was its failure to seek out and recall Ees when openings became available and not alleged conditioning of reinstatement, occurring outside 10(b) period, upon satisfaction of E's expressed requirement; such allegation did not constitute merely pleading of supporting evidence; rather, plain language of allegation, in conjunction with related allegations, was intended to be substantive allegation of unlawful conduct]

Southern Lumber Company, Inc. 279 NLRB No. 027
[charge not barred by fact that U's initial request to bargain was outside 10*b* period since Bd treats request as continuing]

Laborers Local Union No. 380 (Mautz & Oren, Inc.) 278 NLRB No. 147
(although parties' agreement containing unlawful superseniority clause was executed more than 6 months prior to filing instant C, Respondents' continued efforts to enfoce superseniority provision on dates subsequent to date of first Saturday steward worked overtime and up to date or arbitrator's award, one month before C issued; each effort renewed and re-affirmed unlawful tendency and effect of clause)

Operating Engineers Local 478 (Stone & Webster Engineering Corporation) 274 NLRB No. 081
(Section 10(b) defense concerning conduct of U which *occurred far beyond six months from the filing and service of the charge herein*——, rejected, since U's present conduct can be considered in light of its earlier illegal conduct; further, activities of dissident U member continued into Section 10(b) (limitation) period)

Local 73, Sheet Metal Workers (Safe Air, Inc.) 274 NLRB No. 054
(maintaining provision in constitution which stated *No resignation shall be accepted if offered in anticipation of charges being preferred against him, during pendency of any such charges or during a strike or lockout,* violative; limitation under 10(b) held inapplicable since provision is unlawful on its face and continued maintenance or adherence to clause constitutes ULP continuing up to and even after filing of charge and C)

Festival Enterprises, Inc. JD-(SF)-125-86
[E's negotiating with low level supervisor who belonged to U and administered contract for unit Ees, violative; further, fact that supervisor did not negotiate contract or process grievances w/i 6 month period preceding C did not bar issuance under 10(b) since E's interference in administration of U itself may have caused this lack of activity]

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-86

N.L.R.B. v. Ensign Electric Division of Harvey Hubbell, Inc., and Steelworkers, Local 5925 (Center on National Labor Policy, Inc.) 783 F.2d 1121 (C.A. 4, 1986)
[on ptn for rehearing ct held that provision in bargaining agreement which granted superseniority to U officials solely because of their status as U officials is unlawful on its face and thus no evidence outside terms of contract is required to prove ULP and 10(b) does not apply]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)
[contention that charges based on contractual clauses granting U officials superseniority were time-barred, because negotiation of clauses and acquisition of superseniority occurred outside 10(b) period, rejected, since contracts were invalid on their face where seniority was granted officials solely due to their status, and maintaining and attempting to enforce them during 10(b) period provided all evidence necessary to prove violations concerned events occurring w/i 10(b) period]

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 789 F.2d 9 (C.A. D.C., Apr. 1986)
[Bd may consider evidence relating to continuing violation. Bd not precluded from dealing with ULPs that occur after filing initial ULP charge if new ULPs are *related to* initial charge and *grew out of them while the proceeding is pending before the Bd*]

0465 TOLLING OF PERIOD

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[charge timely as w/i Section 10(b) period, notwithstanding alleged unlawful unilateral changes occured shortly after beginning of strike, more than 6 months prior to filing of charge, where U only learned of changes w/i 10(b) period when U adherents among strikers returned to work and informed U of changes, since lack of knowledge by U tolled running of 10(b) period]

Local 3036, New York City Taxi Drivers Union, SEIU, AFL–CIO (Linden Maintenance Corp.) 280 NLRB No. 115
[Sec. 10(b) tolled until charging party has actual or constructive notice of alleged ULP, and notice must be clear and unequivocal]

Uniglass Industries, Div. United Merchants & Mfrs. 276 NLRB No. 035
(Section 10(b) is subject to equity principals and is tolled where Respondent has fraudulently concealed unlawful conduct and person adversely affected by Respondent's actions is not put on notice of such actions. 6-month period of limitations runs from time discriminatees were put on notice, actual or constructive, of E's anti-nepotism rule which precluded their rehire. As 10(b) is affirmative defense, burden is on Respondent to establish facts that defense rests upon)

0600 AVAILABILITY OF BOARD PROCESSES TO PARTIES ENGAGING IN INVIDIOUS DISCRIMINATION

0700 FURTHER CONSIDERATION, RECONSIDERATION

0800 CHARGE

0801 GENERALLY

Staff Officers Association of America (Delta Steamship Lines) 277 NLRB No. 125
(contention that charge was identical in substance and form to charge withdrawn with RD's approval, rejected, since charge herein concerns events subsequent to filing of prior charge and were not considered in investigating it; further, disposition of prior charge by RD is not res judicata as to subsequent charge filed by same charging party covering identical subject matter)

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(U was not precluded from filing new or amended charges on withdrawn ULP allegations or GC from subsequently issuing C based on those allegations, where parties had agreed on *quid pro quo* for purposes of establishing basis on which election could be conducted, and agreed upon basis did not constitute settlement or comparable resolution of ULP charges)

0817 PREMATURE FILING

Amalgamated Transit Union, Local Union 1222, Greyhound Drivers and Station Employees, AFL-CIO (Greyhound Lines, Inc.) JD-(SF)-128-86

[U's processing internal charge and determining to fine and expel Ee because he had violated U rule against giving testimony against fellow U member by answering E questions asked in preparation for anticipated grievance proceeding, violation, notwithstanding U claim that charge was premature because U had made no attempt to collect fine or carryout expulsion]

0822 MAY BE FILED BY ANY PERSON

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170

[E's contention that charge filed by health and welfare fund was ineffective because fund lacked standing to file refusal to bargain charge, rejected, since anyone for any reason may file charge]

0827 PLACE OF FILING

Staff Officers Association of America (Delta Steamship Lines) 277 NLRB No. 125

(contention that region where charge was filed was *forum non-conveniens*, as U's office was in another region, and E no longer did business there, rejected, since regional office was located in city which was home port of ship on which Ee worked and Ee's home, and respondent E has not shown prejudice or requested a transfer of charge to other region)

0844 PARTICULARITY NOT ESSENTIAL

0844-3300 Lack of does not invalidate proceeding

Step N° Go Inc. 279 NLRB No. 052

[no dismissal of C on grounds of substantially deficient pleadings for failure of original charge to name proper parties, business enterprise unit of Ees, and important dates, where amended charged named same E and sections of Act violated but specifically set forth same unit, discriminatees, and general nature of independent 8(a)(1) violations as alleged in C]

Staff Officers Association of America (Delta Steamship Lines) 277 NLRB No. 125

(contention that charge was *vague and nonspecific*, rejected where charge provided sufficient basis for issuance of C, and respondent did not contend that allegations of C lacked requisite specificity to enable it to defend against them)

George C. Foss Company v. N.L.R.B. 752 F.2d 1407 (C.A. 9, Jan. 1985)

(where C charged that Ees were discharged because they were members of one U and ALJ found they were discharged before end of grace period because they were *not* members of second U, E was not guilty of ULP that was not charged in C because differences largely semantical, charge need not be technically precise as long as it generally informs party charged nature of alleged violations, and moreover, issue fully and fairly litigated)

0844-5000 General language of statute sufficient

G. W. Galloway Company 281 NLRB No. 038

[precedent interpreting significance of printed allegations contained in charge form alleging *other acts* of interference with and restraint and coercion of Ees' Sec. 7 rights holds that 8(a)(1) allegations contained in C are properly raised by *other acts* allegation set forth in charge and that Sec. 10(b) does not bar consideration of 8(a)(1) allegations]

0844-8300 Purpose to notify charged party of nature of allegation

George C. Foss Company v. N.L.R.B. 752 F.2d 1407 (C.A. 9, Jan. 1985)

(where C charged that Ees were discharged because they were members of one U and ALJ found they were discharged before end of grace period because they were *not* members of second U, E was not guilty of ULP that was not charged in C because differences largely semantical, charge need not be technically precise as long as it generally informs party charged nature of alleged violations, and moreover, issue fully and fairly litigated)

0855 TIMELINESS OF SERVICE TO STOP 10(b) PERIOD

Naftalis Deutsch, Frank Demascio, Kenneth Childs, a Partnership d/b/a Westbrook Bowl, Valley View Bowl, Verdugo Hills Bowl 274 NLRB No. 148

(C dismissed where Ea were not properly served with charges because they were misaddressed and Ea did not receive copies of charges until after trial had opened though they timely received C; there existed no reason why failure to serve Respondents w/i 10(b) period should be excused)

0866 AMENDMENT OF CHARGE

0866-0100 Generally

G. W. Galloway Company 281 NLRB No. 038

[Bd stressed importance of following Casehandling Manual guidelines providing that if allegations of charge are too narrow, amendment should be sought, and that if amendment is not filed, case should be reappraised in this light, and C issued, if any, should cover only matters *related* to specifications of charge]

0866-7500 May particularize original charge

Step N° Go Inc. 279 NLRB No. 052

[no dismissal of C on grounds of substantially deficient pleadings for failure of original charge to name proper parties, business enterprise unit of Ees, and important dates, where amended charged named same E and sections of Act violated but specifically set forth same unit, discriminatees, and general nature of independent 8(a)(1) violations as alleged in C]

0877 WITHDRAWAL OF CHARGE

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198

(objections to election and allegations of C which constituted same subject matter as allegations of charge which were withdrawn prior to election cannot be used as basis for setting aside election; *Ellicott City*, 54 NLRB 732, followed)

0877-0100 Generally

Staff Officers Association of America (Delta Steamship Lines) 277 NLRB No. 125

(contention that charge was identical in substance and form to charge withdrawn with RD's approval, rejected, since charge herein concerns events subsequent to filing of prior charge and were not considered in investigating it; further, disposition of prior charge by RD is not res judicata as to subsequent charge filed by same charging party covering identical subject matter)

0877-2500 By RD on his own motion (Rule 102.18)

Olympia Fields Osteopathic Medical Center 278 NLRB No. 119

[RD had discretion to withdraw C w/o leave of Bd notwithstanding case had been before Bd on Motion for Summary Judgment which Bd granted but later vacated and remanded case to RD for further consideration of R proceeding consistent with *St. Francis Hospital* has effect of putting C in prehearing posture; therefore RD may withdraw C on own motion]

0877-7500 Withdrawn charge may not be reinstated to circumvent 10(b) period

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011

[where allegation in charge timely, inclusion of allegation in amended C after failing to do so in original C, proper, as initial failure to include does not constitute dismissal by RD, and its subsequent inclusion in amended C does not constitute *revival* of charge already found insupportable in evidence or law. Neither does failure by Charging Party to appeal dropping of allegation in original C constitute waiver]

Garrett Railroad Car & Equipment, Inc. 275 NLRB No. 151

(charge in instant case alleging failure to reinstate strikers not time barred because of charge filed in earlier decided case where amended charge in that case deleted allegation of refusal to recall strikers on or about 7/30/79 as U did not make unconditional offer on part of strikers to return to work until 9/30/79, 2 months after time specified in deleted allegation and E hired new Ees on 10/8/79. Further, E refused until 11/82 to furnish U with requested names of new hires and date of hire, thereby unlawfully concealing from U information necessary to put them on notice of *Laidlaw* violations. New charge timely filed)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198

(GC's contention that ULP charge, even if subsequently withdrawn, operates to toll 10(b) limitation period and that, therefore, GC may consistently with 10(b), revive withdrawn charge at any time, rejected; Bd has consistently held that withdrawn charge cannot be reinstated more than 6 months after date of alleged ULPs)

0877-8000 Charging party's request for permission to withdraw charge

0877-8000—Cont.

Texaco, Inc. 273 NLRB No. 164
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

0888 DISMISSAL OF CHARGE

0888-0100 GENERALLY

Jaydon, Inc. 273 NLRB No. 199
(GC has plenary power to dismiss ULP charge and, once charge is dismissed, no power exists that can force him to issue C)

0888-6700 Appeal to General Counsel from RD dismissal

0888-6750 Motion for reconsideration

Ducane Heating Corporation 273 NLRB No. 175
(GC's office of appeals did not abuse its discretion in accepting U's mtn for reconsideration of dismissal of charge, even if one business day late, and charge was not extinguished by operation of Bd R/R 102.19(c), notwithstanding Region's investigation and C thereon did not issue until 8 months after alleged illegal action, where GC granted mtn for reconsideration w/i 10(b) period and 102.19(c) gives discretion to GC to accept reconsideration mtns submitted w/i 10(b) time limit but beyond the 10-day period allowed by 102.19(c) itself; GC need only act w/i 10(b) period and that action can take the form of mere acceptance of an untimely mtn)

0888-6767 Reinstatement of charge

Norris Concrete Materials, Inc. 282 NLRB No. 045
[RD properly allowed reinstatement of withdrawn charge after expiration of Section 10(b) period, in view of E's post non-Bd settlement misconduct, since E entered into settlement with specific intent to circumvent its terms]

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011
[where allegation in charge timely, inclusion of allegation in amended C after failing to do so in original C, proper, as initial failure to include does not constitute dismissal by RD, and its subsequent inclusion in amended C does not constitute *revival* of charge already found insupportable in evidence or law. Neither does failure by Charging Party to appeal dropping of allegation in original C constitute waiver]

1200 PARTIES

1201 GENERALLY

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual 274 NLRB No. 115
(ALJ's grant of GC's mtn to name E's sole shareholder and officer as respondent, correct, despite lack of evidence that he had disregarded corporate form, where he supervised Ees, managed E's factory, committed most of E's egregious and numerous ULPs, disregarded ct's inj to cease committing ULPs and reinstate strikers and most important, admitted that he planned to arrange his affairs to avoid any liability for backpay; Bd concluded that circumstances of case militated against waiting until backpay proceeding to see if he had acted on his stated intention to avoid backpay obligation to determine his liability)

1220 CHARGING PARTY

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170
[E's contention that charge filed by health and welfare fund was ineffective because fund lacked standing to file refusal to bargain charge, rejected, since anyone for any reason may file charge]

Jaydon, Inc. 273 NLRB No. 199
(where, after hearing but before filing of briefs, Bd reversed prior decision thereby changing law applicable herein and resulting in peculiar procedural process in which GC and E moved to dismiss C over objections of charging party, ALJ held that, in light of charging party's objections to dismissal or withdrawal of C, charging party becomes *de facto* prosecutor of C and, as a result, regular decision must be prepared and issued by ALJ pursuant to Bd's R/R Sec. 102.45, just as if no motions had been filed; however, it must perforce be governed by Bd's revised doctrine)

1260 NECESSARY PARTIES

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual 274 NLRB No. 115
(ALJ's grant of GC's mtn to name E's sole shareholder and officer as respondent, correct, despite lack of evidence that he had disregarded corporate form, where he supervised Ees, managed E's factory, committed most of E's egregious and numerous ULPs, disregarded ct's inj to cease committing ULPs and reinstate strikers and most important, admitted that he planned to arrange his affairs to avoid any liability for backpay; Bd concluded that circumstances of case militated against waiting until backpay proceeding to see if he had acted on his stated intention to avoid backpay obligation to determine his liability)

1260-2500 Union not necessary party to 8(a)(3) proceeding

Dubose Masonry, Inc. 279 NLRB No. 125
[notwithstanding charge filed against E and U for latter demanding and former discharging Ee for not being member of U in right to work state and RD issued C against E only, independent resolution of instant C against E proper and appropriate, since there is no showing, in instant case that RD has improperly failed to issue C in pending charge against U or that it has improperly failed to seek consolidation of these matters for hearing]

1260-8500 International Union

Kobell v. Thorsen Tool Co. ——— F.Supp.———(DC M.D. PA, Dec. 1982)
[international U has standing to file ULP charges against E, notwithstanding contention that since bargaining agreement only with local U and thus E need only bargain with local, thus, local would be only party with standing to file charges herein, where several sections of contract, such as provision for grievance procedure, require that international play a role, preamble to contract cites local as affiliated with international, international representative participated in negotiations leading to agreement, and signed contract as agent of international]

1260-9800 Primary employer

Louis Pappas' Homosassa Springs Restaurant, Inc. 275 NLRB No. 213
(E, successor not responsible for wrongful conduct of supervisor employed by predecessor E, since statement (—*there would be no U* at new operation) occurred before Respondent (E) became successor and predecessor is not Respondent in instant proceeding)

1270 PARTY IN INTEREST

Texas Bus Lines, Inc. 277 NLRB No. 075
(Ee committee not a party in interest where it was found to have abandoned and disclaimed any interest in representing Ees, and any efficacy it had had was displaced by Ee's election of another representative)

1290 ADEQUACY OF IDENTIFICATION OF PARTIES

Woodline Motor Freight, Inc. 278 NLRB No. 152
[discriminatee entitled to R/O notwithstanding GC did not seek reinstatement of discriminatee in C or at hearing, where consolidated C alleges that respondent *closed facility and terminated its Ees working there.* This allegation broad enought to encompass discriminatee since where there is discrimination against class of Ees, GC is not required to name every discriminatee at this stage of the proceeding. Respondent's contention may be addressed at compliance stage]

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)
(U's contention that it was denied due process due to lack of reasonable notice of an identifiable or recognizable group of alleged discriminatees for whom redress was sought, rejected, where C alleged broad discrimination in hiring hall operations generally, not just as to named parties; also, Bd's relegating determination of discriminatees to compliance stage let U contest individual awards and compliance procedures, whereas, if finding of general discrimination were established but redress given only named individuals, collateral estoppel might bar U from relitigating discrimination issue as to unnamed members of the class)

1600 SERVICE OF DOCUMENTS

1601 GENERALLY

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170
[E's claim that subpoenas sent to it by certified mail and returned to Bd marked *refused* were improperly addressed, rejected, where infirmities in address were corrected prior to delivery; subpoenas were delivered and refused by E who was determined to refuse any certified mail from Bd or U; E produced no record evidence denying that it refused delivery of subpoenas, and willful refusal to receive certified or registered mail cannot defeat purposes of Act]

1633 SERVICE BY PARTIES (RULE 102.112)

1633-5000 Failure to serve

Naftalie Deutsch, Frank Demascio, Kenneth Childs, a Partnership d/b/a Westbrook Bowl, Valley View Bowl, Verdugo Hills Bowl 274 NLRB No. 145
(C dismissed where Es were not properly served with charges because they were misaddressed and Es did not receive copies of charges until after trial had opened though they timely received C; there existed no reason why failure to serve Respondents w/i 10(b) period should be excused)

1683 SERVICE OF CHARGE OR COMPLAINT

1683-4700 Service on alter ego

Amateyus, Ltd., d/b/a Volk & Huxley, and Vulcan Typography Co. **280 NLRB No. 021**

[process not defective where E was not served with charge in which it was not named as Respondent, since it had ample notice to prepare for hearing where it was served with amended complaint in which it was named as co-Respondent, and particularly since it was alleged E was alter ego of co-Respondent]

1683-5000 Service on agent

M. L. Witcher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers **JD-74-86**

[nonappearance of one of joint Es at ULP hearing or absence of proof of direct personal service of C on that one joint E not bar to Bd asserting jurisdiction over subject matter alleged in C or that one joint E where counsel for that one member of joint E accepted service of C and filed a timely answer]

1683-5500 Service on joint employer

M. L. Witcher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers **JD-74-86**

[nonappearance of one of joint Es at ULP hearing or absence of proof of direct personal service of C on that one joint E not bar to Bd asserting jurisdiction over subject matter alleged in C or that one joint E where counsel for that one member of joint E accepted service of C and filed a timely answer]

1683-6000 Need not be personal service

1683-6050 Service by mail sufficient

Abdul Samad Ra'Oof Shabazz and Jacqueline Craig, A Co-Partnership d/b/a Michigan Expediting Service; et al. **282 NLRB No. 030**

[refusal or failure by E, who was properly served copies of charges and Cs, to claim certified mail should not serve to defeat purpose of Act]

Hotel & Restaurant Employees, Local 19 (Vicorp Restaurants, Inc. d/b/a Seasons Restaurant) **277 NLRB No. 090**

(E's original charges and documents certifying that copies of the charges were sent postage paid by certified mail to U, post office documents showing U's receipt, and admission by U's counsel in answer that charges were filed and served held sufficient proof thereof, notwithstanding U's denial)

2000 CONDUCT OF INVESTIGATION

2001 GENERALLY

Pacific Coast Metal Trades District Council **282 NLRB No. 041**

[ALJ disallowed GC's attempt to show that respondent U had not cooperated with GC during investigation of 8(b)(3) case and had not presented any defense until after prosecution rested, thereby making defense arguably more suspect than identical defense raised during investigation; Bd practice prohibits consideration or even introduction of such evidence into record since cooperation by respondent with government during investigation is voluntary, and drawing of adverse inference against respondent for failure to participate in investigation would substantially degrade concept of *voluntary* participation]

Alamo Cement company **277 NLRB No. 108**

(allegation in C of unlawful work rule barred where GC knew or should have known of rule through investigation of earlier charges; maintenance or enforcement of said rule, however not barred, since it was continuing course of conduct, and charge of E's enforcement of rule against Ee did not occur before proceedings in earlier case and could not have been litigated therein; also, permitting E to maintain and enforce invalid rule, promulgation of which was barred from C, would grant E license to violate Ees' Sec. 7 rights)

Radway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**

(E's contention that manner of GC's preliminary investigation was prejudicial to fair hearing, rejected; adequacy of investigation is administratively tested, not by examination of such investigation, but by GC's ability in open hearing to demonstrate by credible evidence that E has engaged in ULPs alleged in C)

2020 WITHIN GENERAL COUNSEL DISCRETION UNDER SECTION 3(d)

Ducane Heating Corporation **273 NLRB No. 175**

(GC contravened limited proviso of 10(b) and authority under 3(d) of the Act by reinstating dismissed charge 10 months after alleged illegal action occurred, since charge may not be reinstated outside the 6-month limitations period of 10(b) absent special circumstances in which a respondent fraudulently conceals operative facts underlying the alleged violation, of which none were present in instant case; and further, where there is a fraudulent concealment, limitations period begins to run when charging party knows or should have known of the concealed facts, overruling *California Pacific Signs* and *Winer Motors*)

2040 NOT SUBJECT TO ATTACK

Radway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**

(E's contention that manner of GC's preliminary investigation was prejudicial to fair hearing, rejected; adequacy of investigation is administratively tested, not by examination of such investigation, but by GC's ability in open hearing to demonstrate by credible evidence that E has engaged in ULPs alleged in C)

2400 RULINGS AND AUTHORITY OF REGIONAL DIRECTOR

Allied Lettercraft Company, Inc. **280 NLRB No. 113**

[purported settlement of backpay claim between claimant and E held ineffective, since settlement was conditioned upon approval by RD of claimant's request to partially withdraw charge and, as approval was not given, settlement never came into being; moreover, power of claimant, as non-charging party, to request withdrawal was doubtful, and RD has great deal of discretion in approving or refusing such withdrawal request]

2450 Authority to issue complaint

Springfield Transit Management, Inc. **281 NLRB No. 134**

[E's claim of constitutional disability on part of RD to issue C because of Civil Service Reform Act establishing Senior Executive Service, rejected, since E did not overcome presumption that RD, like other judicial or quasi-judicial officers, are unbiased, nor was it specifically shown that there was either inherently or demonstrably conflict of interest in application of Civil Service Reform Act to RDs, or in impact of that Act on their decisions]

Duff-Norton Company, Inc. **275 NLRB No. 093**

(applying *Ducane Heating* principles, Bd dismissed C where GC contravened purposes of 10(b) limitations proviso by reinstating originally dismissed charge some 16 months after alleged unlawful discharge of U activist for failing to properly inspect production of defective parts, and after second charge, alleging same violation, had failed for improper service; under circumstances herein, there was insufficient nexus between supervisor's asserted tampering with machine to produce defective parts and Ee's performance of his inspection duties so as to conclude E fraudulently concealed operative facts pertaining to discharge)

2800 SETTLEMENTS

2801 GENERALLY

Leeward Nursing Home **278 NLRB No. 197**

[allegations in C alleging pre-settlement conduct as violative barred by settlement, where not specifically reserved, and where reasonably clear that subsequently complained of pre-settlement matters were known to GC, or readily discoverable by investigation at time of settlement, especially matters as herein that were part of investigatory file when original charge settled, and were not of unique or concealed nature]

2801-2000 Purpose and objectives

Service Merchandise Company, Inc. **278 NLRB No. 023**

[Bd upheld ALJ's refusal to approve settlement of allegations of unlawful discharge of its drivers and subcontracting of driving operations, since proposed out of Bd lump sum settlement was not computed in accordance with Bd's backpay formulae, proposed settlement wholly inadequate for effectuating policies of Act in that Bd monitoring of parties' conduct would be required after approval of withdrawal of charge, approval also inappropriate in that would require Bd sanction of release of Respondent from any or all liabilities arising out of Ees' employment or cessation of employment, and sanction of waiver of reinstatement over objections of Ees

Teamsters Local 115 (Gross Metal Products, Inc.) **275 NLRB No. 230**

(formal unilateral settlement reached after hearing closed rejected by ALJ and Bd in view of respondent's failure to provide meaningful defense or present any witnesses to contest evidence of GC, that no remedy, less than the maximum can be accepted. Here, settlement contained narrow order and nonadmission clause and coupled with respondent's proclivity to violate Act settlement would not effectuate policy of Act)

District Council 47, AFSCME **274 NLRB No. 203**

[settlement should essentially remedy ULPs allegedly committed. Generally, notice to Ees should reassure them of their Section 7 rights, refer to how those rights may have been violated and advise them how their rights will be upheld in simple language. Bd has considerable latitude in determining what language will accomplish these goals. Settlement language is as varied as circumstances of cases. Act's policies are best effectuated if language in Bd notices expressed in simply and readily understandable words and phrases)

2801-6000 Policy of Board

2801-4000—Cont.

Teamsters Local 115 (Gross Metal Products, Inc.) 275 NLRB No. 220
(formal unilateral settlement reached after hearing closed rejected by ALJ and Bd in view of respondent's failure to provide meaningful defense or present any witnesses to contest evidence of GC, that no remedy, less than the maximum can be accepted. Here, settlement contained narrow order and nonadmission clause and coupled with respondent's proclivity to violate Act settlement would not effectuate policy of Act)

2801-6000 Authority and discretion of Board

District Council 47, AFSCME 274 NLRB No. 203
]*settlement should essentially remedy ULPs allegedly committed. Generally, notice to Ees should reassure them of their Section 7 rights, refer to how those rights may have been violated and advise them how their rights will be upheld in simple language. Bd has considerable latitude in determining what language will accomplish these goals. Settlement language is as varied as circumstances of cases. Act's policies are best effectuated if language in Bd notices expressed in simply and readily understandable words and phrases*)

2801-7500 Conditions of settlement

Service Merchandise Company, Inc. 278 NLRB No. 023
[Bd upheld ALJ's refusal to approve settlement of allegations of unlawful discharge of its drivers and subcontracting of driving operations, since proposed out of Bd lump sum settlement was not computed in accordance with Bd's packpay formulae, proposed settlement wholly inadequate for effectuating policies of Act in that Bd monitoring of parties' conduct would be required after approval of withdrawal of charge, approval also inappropriate in that would require Bd sanction of release of Respondent from any or all liabilities arising out of Ees' employment or cessation of employment, and sanction of waiver of reinstatement over objections of Ees

Goodman Holding Company, Inc., and Its Wholly-Owned Subsidiaries, Goodman Manufacturing Corp., etc. 276 NLRB No. 098
(E's contention that C allegations of unlawful surveillance should be dismissed and evidence of allegation be disregarded because GC insisted, as precondition to settlement, that she be allowed to present evidence of settled charge in ongoing ULP case involving same parties, rejected, since such issues are proper for background purposes to prove other allegations in C)

2801-8000 Effect of nonadmissions clause

Teamsters Local 115 (Gross Metal Products, Inc.) 275 NLRB No. 220
(inclusion of nonadmission clause in settlement agreement would preclude reliance on this case in determining breadth of remedy appropriate in other pending cases against Respondent)

2820 FORMAL SETTLEMENTS

2820-2500 Remedy provisions

Teamsters Local 115 (Gross Metal Products, Inc.) 275 NLRB No. 220
(unilateral settlement reached after hearing closed rejected by ALJ and Bd in view of respondent's failure to provide meaningful defense or present any witnesses to contest evidence of GC, that no remedy, less than the maximum can be accepted. Here, settlement contained narrow order and nonadmission clause and coupled with respondent's proclivity to violate Act settlement would not effectuate policy of Act)

2820-5000 Board order

Miles T. Jackman v. N.L.R.B. 784 F.2d 759 (C.A. 6, Mar. 1986)
[formal settlements whereby parties agree that Bd may issue order w/o hearing require approval of Bd as well as GC and constitute *final orders* subject to appellate review]

2840 INFORMAL SETTLEMENTS

2840-1000 Board order not required

Miles T. Jackman v. N.L.R.B. 784 F.2d 759 (C.A. 6, Mar. 1986)
[dismissal of C found nonreviewable discretionary prosecutorial act of GC rather than *final order* of Bd, since Sec. 3(d) vested GC with final authority to issue and prosecure Cs, and informal settlements of Cs, unlike formal settlements, do not require approval of Bd as well as GC and are not Bd *final orders*]

Miles T. Jackman v. N.L.R.B. 784 F.2d 759 (C.A. 6, Mar. 1986)
[ptn for review of GC's withdrawal of C and entry into informal settlement, denied, since ct lacked jurisdiction to do so where Sec. 3(d) vests GC with final authority to issue and prosecute Cs, which is unreviewable and must include power to drop C incapable of successful prosecution, and Bd regulations allowing informal settlements, which do not require Bd approval and are not Bd *final orders*, are reasonable and not in conflict with purposes of Act or congressional intent; also settlements are *lifeblood of the administrative process*, and GC's unreviewable power to negotiate them a desirable objective of the Act]

2840-4000 Approval of

2840-4050 Postcomplaint prehearing

Miles T. Jackman v. N.L.R.B. 784 F.2d 759 (C.A. 6, Mar. 1986)
[ptn for review of GC's withdrawal of C and entry into informal settlement, denied, since ct lacked jurisdiction to do so where Sec. 3(d) vests GC with final authority to issue and prosecute Cs, which is unreviewable and must include power to drop C incapable of successful prosecution, and Bd regulations allowing informal settlements, which do not require Bd approval and are not Bd *final orders*, are reasonable and not in conflict with purposes of Act or congressional intent; also settlements are *lifeblood of the administrative process*, and GC's unreviewable power to negotiate them a desirable objective of the Act]

2860 UNILATERAL SETTLEMENTS

2860-1400 Authority of General Counsel and Board to settle with less than all parties

River Grain Elevators, Inc. and Cooper Stevedoring Co., Inc. JD-185-86
[proposed non-Bd settlement agreement in which U and discriminatees were reinbursed for dues and lost wages, respectively approved, where all but 2 of 13 alleged discriminatees signified their assent to settlement agreement. Of 2 remaining discriminatees, one has since joined other alleged discriminatees in signifying his approval to non-Bd settlement while one other discriminatee has not responded to Judge's Order to Show Cause. Approval is compatible with policies and purposes of Act which are— *in the public interest and not in vindication of private rights*]

2860-4200 Opportunity to present objections to settlement

2860-4275 To Board

Electrical Workers, Local 11 (George A. Vanderberghe, an Individual) DS-1893-85 (04/12/85)
(settlement stipulation with Respondent U approved by Bd where Charging Party failed to timely submit to Bd statement in support of his objections to settlement which he had filed with GC, and in view of recommendation of approval by GC, who had rejected Charging Party's objections as basis for disapproval of settlement)

2860-8400 Basis of objections

2860-8420 Remedy provisions insufficient

2860-8420-1700 Notice provisions inadequate

District Council 47, AFSCME 274 NLRB No. 203
(Bd rejected Respondent's proposed settlement agreement since proposed notice so inadequate it could not serve as basis for appropriate settlement where its recitation of Ees' rights was attenuated from C allegations, not merely failing to track C but bearing no relation to allegations of C, and this attenuation impacted on propriety of notice's nonadmission clause which stated E had not violated its Ees' rights, which totally obfuscated meaning of notice because unclear whether E did not engage in alleged conduct or that conduct, even if occured, did not violate Ees' statutory right; further, no adverse parties joined in Respondent's proposal)

Electrical Workers, Local 11 (George A. Vanderberghe, an Individual) DS-1893-85 (04/12/85)
(Charging Party's objection that notice posting provirion of settlement stipulation which identified him as individual to be made whole as result of U's discrimination against him served to remind and motivate U to further harass him, rejected. Bd utilizes notice as remedy to vindicate public rights by informing other individuals interested in referrals of Respondent U's action to remedy ULPs, and its promise to operate hiring hall in nondiscriminatory manner. Further, Regional Office will investigate any reprisals)

2860-8420-5000 10(b) period

Electrical Workers, Local 11 (George A. Vanderberghe, an Individual) DS-1893-85 (04/12/85)
(charging party's objection that backpay period should begin when he first met eligibility requirements for highest priority referral group, rather than when he first demanded registration on highest priority referral group, asserting he would have known of his eligibility for that group if Respondent U had not refused to give him copy of bargaining agreement, rejected, since actions asserted by charging party as basis for beginning of backpay period outside Section 10(b) period, and thus had been dismissed and appeal of dismissal denied)

2860-8420-6200 Order provisions inadequate

District Council 47, AFSCME 274 NLRB No. 203
(Bd rejected Respondent's proposed settlement agreement since proposed notice so inadequate it could not serve as basis for appropriate settlement where its recitation of Ees' rights was attenuated from C allegations, not merely failing to track C but bearing no relation to allegations of C, and this attenuation impacted on propriety of notice's nonadmission clause which stated E had not violated its Ees' rights, which totally obfuscated meaning

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2860-8420-6200—Cont.

of notice because unclear whether E did not engage in alleged conduct or that conduct, even if occured, did not violate Ees' statutory right; further, no adverse parties joined in Respondent's proposal)

2860-8440 Backpay provisions

Electrical Workers, Local 11 (George A. Vanderberghe, an Individual) DS-1093-85 (04/29/85)

Electrical Workers, Local 11 (George A. Vanderberghe, an Individual) DS-1093-85 (04/12/85)

(charging party's objection that backpay period should begin when he first met eligibility requirements for highest priority referral group, rather than when he first demanded registration on highest priority referral group, asserting he would have known of his eligibility for that group if Respondent U had not refused to give him copy of bargaining agreement, rejected, since actions asserted by charging party as basis for beginning of backpay period outside Section 10(b) period, and thus had been dismissed and appeal of dismissal denied)

2860-8460 Nonadmissions clause

Carpenters 46 Northern California Counties Conference Board (Arntz Contracting Co., et al.) 277 NLRB No. 030

(settlement stipulation accepted by Bd where, contrary to previously submitted agreement, it set no time limits on viability of any ct decree entered in accord with its terms, and its nonadmission clause did not prevent GC's use of the agreement in future Bd or ct proceedings)

2860-8485 Prejudice to rights in court litigation

Carpenters 46 Northern California Counties Conference Board (Arntz Contracting Co., et al.) 277 NLRB No. 030

(settlement stipulation accepted by Bd where, contrary to previously submitted agreement, it set no time limits on viability of any ct decree entered in accord with its terms, and its nonadmission clause did not prevent GC's use of the agreement in future Bd or ct proceedings)

2880 SETTING ASIDE OF SETTLEMENT AGREEMENT

2880-3300 Authority of Regional Director

Hotel, Motel, Restaurant Employees and Bartenders Union Local 19 (Le Baron Hotel) 281 NLRB No. 086

[Section 10(b) (statute of limitations) defense rejected where GC litigated issues in a settlement that was withdrawn by RD. GC may litigate matters embraced in a settlement agreement later validly set aside]

Universal Blanchers, Inc. 275 NLRB No. 218

(mtn for summary judgment granted E in 8(a)(3) case where RD issued C after approving agreement settling E's alleged independent 8(a)(1) violations, since settlement agreement barred litigation of 8(a)(3) violations which predated settlement agreement and were known to RD when he approved it; RD's withdrawal of approval and issuance of 8(a)(3) C because he had not been notified of appeals on the 8(a)(3) allegations was improper, since he was GC's agent, and GC, through Office of Appeals, had such knowledge, and E had neither breached settlement agreement nor committed postsettlement violations)

2880-6700 Basis for setting aside

Universal Blanchers, Inc. 275 NLRB No. 218

(Bd will not set aside settlement agreement unless charged party breaches agreement or commits post-settlement violation, since settlement agreement disposes of all presettlement conduct unless it was not known to GC or readily discoverable through investigation, or was specifically reserved from settlement agreement by parties' mutual understanding)

2880-6733 Failure to reach backpay agreement

City Cab Company of Orlando, Inc.; et al. d/b/a Yellow Cab Company and Dixie Cab Company 273 NLRB No. 131

(setting aside settlement agreement (agreement) justified where E continued to make unilateral changes during post settlement agreement that were closely related, in fact, identical, to those unilateral changes that were subject of agreement; additionally, E agreed in agreement to pay backpay to its Ees, but Region and E are far apart on settling on appropriate backpay formula and under these circumstances RD can withdraw his approval of agreement and set case down for further processing)

2880-6750 Postsettlement conduct breaching agreement or constituting new unfair labor practice

2880-6750 Postsettlement conduct breaching agreement or constituting new unfair labor practice

Nador Corporation 281 NLRB No. 126

[settlement agreement vacated where there was postsettlement C of misconduct which both breached settlement agreement and constituted additional violations]

Schaeff Nameo, Inc. 280 NLRB No. 120

[GC's contention that E's unilateral implementation of its wage reduction proposal modified settlement agreement, settling previous charges of failure to bargain in good faith during wage reopener period, which reinstated second year wage rates in attempt to place parties in same position where they were before expiration of wage reopener period, rejected, where contract did not set wages for third year and implementation was pursuant to wage reopener provision, as modified by settlement agreement, which provided E *shall* implement its wage offer if parties do not reach agreement or initiate economic action]

Goren Printing Co., Inc. 280 NLRB No. 064

[settlement agreement set aside where E did not post notices required by agreement and did not make required payments]

Local 426, Laborers (Joseph Brown, an Individual) 280 NLRB No. 074

[settlement agreement withdrawn where U subsequently violated it by refusal to refer discriminatee]

Brocal Corp. d/b/a Alert Medical Transport 276 NLRB No. 066

(violations found on presettlement ULPs after E breached settlement agreement)

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186

(RD properly revoked settlement agreement, notwithstanding E's contention that it complied with agreement's requirements by rehiring unlawfully discharged Ees, paid them their backpay and posted required notice, where subsequent to approval of agreement E continued to interfere with Ees' rights by threatening closure of its operation)

City Cab Company of Orlando, Inc.; et al. d/b/a Yellow Cab Company and Dixie Cab Company 273 NLRB No. 131

(setting aside of settlement agreement warranted in view of post settlement violations consisting of unilateral in charges Ees who were taxi drivers were required to pay and increased number of shifts assignments to warrant issuance of cab to driver, and in bidding procedure, which were identical in nature to presettlement violations, and in view of fact no meeting of minds on backpay formula and amount in settlement agreement; E's contention that terms of settlement agreement did not preclude it from making future changes since settlement agreement, rejected)

City Cab Company of Orlando, Inc.; et al. d/b/a Yellow Cab Company and Dixie Cab Company 273 NLRB No. 131

(setting aside settlement agreement (agreement) justified where E continued to make unilateral changes during post settlement agreement that were closely related, in fact, identical, to those unilateral changes that were subject of agreement; additionally, E agreed in agreement to pay backpay to its Ees, but Region and E are far apart on settling on appropriate backpay formula and under these circumstances RD can withdraw his approval of agreement and set case down for further processing)

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)

[where ct determined that Ee's postsettlement discharge was unlawful, settlement agreement set aside, and remand to Bd to determine whether E committed presettlement violation by requiring same Ee who was unlawfully discharged to submit to psychiatric examination before returning to work after leave taken due to stress related to Ee's involvement in U organizing campaign]

2880-6760 Presettlement conduct only if unknown to GC, or newly discovered, or specifically reserved

Universal Blanchers, Inc. 275 NLRB No. 218

(mtn for summary judgment granted E in 8(a)(3) case where RD issued C after approving agreement settling E's alleged independent 8(a)(1) violations, since settlement agreement barred litigation of 8(a)(3) violations which predated settlement agreement and were known to RD when he approved it; RD's withdrawal of approval and issuance of 8(a)(3) C because he had not been notified of appeals on the 8(a)(3) allegations was improper, since he was GC's agent, and GC, through Office of Appeals, had such knowledge, and E had neither breached settlement agreement nor committed postsettlement violations)

Universal Blanchers, Inc. 275 NLRB No. 218

(Bd, in refusing to approve RD's withdrawal of approval of 8(a)(1) settlement agreement, rejected GC's contention that retraction of settlement was proper because RD was unaware of pending appeals on dismissals of 8(a)(3) charge and, thus, 8(a)(3) allegations could not have been encompassed w/i settlement agreement because those allegations had already been dismissed; Bd has previously rejected notion that settlement agreement disposes only matters encompassed by it and held that agreement disposes of all presettlement conduct with specified exceptions)

2880-7900 Effect on stipulation contained in agreement

2880-7500—Cont.

The Commissary of The Great Race Pizza Shoppes, Inc. 277 NLRB No. 130
(settlement stipulation which contained admission that parties were single E is conclusive and binding in all further litigation bearing on issue notwithstanding E alleged that admission made only to provide Bd with jurisdiction in underlying settlement agreement)

3200 COMPLAINT

3201 GENERALLY

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(U was not precluded from filing new or amended charges on withdrawn ULP allegations or GC from subsequently issuing C based on those allegations, where parties had agreed on *quid pro quo* for purposes of establishing basis on which election could be conducted, and agreed upon basis did not constitute settlement or comparable resolution of ULP charges)

Jayden, Inc. 273 NLRB No. 199
(when C is issued administrative process necessitates appropriate administrative and judicial review which, under Bd's R/R, is not to be thwarted; and Bd decisions make it clear that summary dismissal of C over objection of GC or charging party are contrary to its rules)

3201-5000 Purpose of complaint

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers 794 F.2d 1474 (C.A. 9, July 1986)
[U's challenge to Bd's jurisdiction to regulate its hiring hall practices absent proof of discrimination or animus on U's part, rejected; challenges to Bd's jurisdiction are reviewed de novo, and challenge herein lacked merit since Bd has jurisdiction *to determine* whether any person named in C had committed an ULP, and since C alleged ULP, Bd was empowered to decide issue; view that Bd's jurisdiction depends on specific factual findings relevant to merits confuses issue of jurisdiction with that of merits]

3212 GENERAL COUNSEL AUTHORITY OVER COMPLAINT

Olympia Fields Osteopathic Medical Center 278 NLRB No. 119
[RD had discretion to withdraw C w/o leave of Bd notwithstanding case had been before Bd on Motion for Summary Judgment which Bd granted but later vacated and remanded case to RD for further consideration of R proceeding consistent with *St. Francis Hospital* has effect of putting C in prehearing posture; therefore RD may withdraw C on own motion]

3212-1700 Final authority under Section 3(d) for issuance

John J. Fuller v. N.L.R.B. ——— F.Supp. ——— (DC MA, Mar. 1986)

John J. Fuller v. N.L.R.B. ——— F.Supp. ——— (DC MA, Mar. 1986)

3212-1725 Issuance may be delayed pending disposition of related 'C' case

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 799 F.2d 9 (C.A. D.C., Apr. 1986)
[Bd may consider evidence relating to continuing violation. Bd not precluded from dealing with ULPs that occur after filing initial ULP charge if new ULPs are *related to* initial charge and *grew out of them while the proceeding is pending before the Bd*]

3212-1750 Refusal to issue within administrative discretion

Dubow Masonry, Inc. 279 NLRB No. 125
[notwithstanding charge filed against E and U for latter demanding and former discharging Ee for not being member of U in right to work state and RD issued C against E only, independent resolution of instant C against E proper and appropriate, since there is no showing, in instant case that RD has improperly failed to issue C in pending charge against U or that it has improperly failed to seek consolidation of these matters for hearing]

Worcester Steel Erectors v. N.L.R.B. ——— F.2d ——— (C.A. 1, Jan. 1986)
[decision not to issue C is unreviewable by cts]

Worcester Steel Erectors v. N.L.R.B. ——— F.2d ——— (C.A. 1, Jan. 1986)
[decision not to issue C is unreviewable by cts]

Mobilab Union, Inc. v. N.L.R.B. 600 F.Supp. 826 (DC NJ, Jan. 1985)
(due process not violated by GC's refusal to issue C; charging party has no right to issuance of a C, in view of Act's limitations, including GC's exercise of discretion; due process rights have been confined to rights to an explanation and to administrative appeal, which have been satisfied here; point-by-point response to each objection seems no more useful or constitutionally mandated for GC than for ct of appeals)

3212-2500 Issuance after reconsideration (Rule 102.19(c))

Ducane Heating Corporation 273 NLRB No. 175
(GC's office of appeals did not abuse its discretion in accepting U's mtn for reconsideration of dismissal of charge, even if one business day late, and charge was not extinguished by operation of Bd R/R 102.19(c), notwithstanding Region's investigation and C thereon did not issue until 8 months after alleged illegal action, where GC granted mtn for reconsideration w/i 10(b) period and 102.19(c) gives discretion to GC to accept reconsideration mtns submitted w/i 10(b) time limit but beyond the 10-day period allowed by 102.19(c) itself; GC need only act w/i 10(b) period and that action can take the form of mere acceptance of an untimely mtn)

3212-3300 Refusal to issue not reviewable by Board or courts

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046
(U's defenses to alleged unlawful 8(b)(7)(C) picketing on ground picketed buyer-E was alter ego, successor, or single or joint E of seller-E whose Ees U had represented held properly considered for reasons stated in *Warwick Caterers* in which Bd abandoned its prior position that Us may be precluded from introducing evidence in support of defenses such as those herein and recognized that allowing U to present its 8(b)(7)(C) defenses in face of dismissal of 8(a)(5) charges against E is not tantamount to reviewing GC's decision not to issue C)

3212-5000 Amendment of complaint may not be made by other parties

Rebel Coal Company, Inc., and Richlands Supply Corp. 279 NLRB No. 022
[charging party's mtn to amend C denied where GC objected to such amendment]

3212-6700 Theory of case determined by General Counsel

Suburban Transit Corp. and Suburban Trails, Inc. 276 NLRB No. 005
(charging party though he raised allegation of *alter ego* in charge cannot advance this theory to ALJ as GC did not allege such status in C, at trial or posthearing briefs and GC controls theory of case)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010
(U's filing of internal charges against Ees for violating U's job referral policy, not unlawful, in view of C allegations referring to named Ee other than Ees herein; absence of amendment to C incorporating alleged violation as to them; failure to allege in general way that U unlawfully filed charges against individuals other than named Ee; absence of statement by GC at hearing that charges against Ees herein violated Act; and GC's objection to introduction of evidence that such charges had been filed)

3212-8300 May withdraw complaint on own motion

3212-8375 Withdrawal after opening of hearing

Consumers Distributing Company, Limited d/b/a Consumers Distributing 274 NLRB No. 050
(Bd upheld ALJ's granting of GC's posthearing mtn for permission to withdraw C, since mtn was legitimate exercise of GC's prosecutorial authority under Sec. 3(d) to determine, even after close of hearing, that *legal underpinnings* of C no longer existed as result of recent Bd decisions; therefore, treating charging party's request for review and exception as interim appeal of ruling of ALJ under R/R Sec. 102.26, Bd denied appeal because it found that ALJ did not act arbitrarily or capriciously or otherwise abuse his discretion in granting GC's mtn)

3212-8700 Reinstitution of charge after dismissal

Duff-Norton Company, Inc. 275 NLRB No. 093
(applying *Ducane Heating* principles, Bd dismissed C where GC contravened purposes of 10(b) limitations proviso by reinstating originally dismissed charge some 16 months after alleged unlawful discharge of U activist for failing to properly inspect production of defective parts, and after second charge, alleging same violation, had failed for improper service; under circumstances herein, there was insufficient nexus between supervisor's asserted tampering with machine to produce defective parts and Ee's performance of his inspection duties so as to conclude E fraudulently concealed operative facts pertaining to discharge)

Ducane Heating Corporation 273 NLRB No. 175
(GC contravened limited proviso of 10(b) and authority under 3(d) of the Act by reinstating dismissed charge 10 months after alleged illegal action occurred, since charge may not be reinstated outside the 6-month limitations period of 10(b) absent special circumstances in which a respondent fraudulently conceals operative facts underlying the alleged violation, of which none were present in instant case; and further, where there is a fraudulent concealment, limitations period begins to run when charging party knows or should have known of the concealed facts, overruling *California Pacific Signs* and *Winer Motors*)

3212-9100 Right to litigate allegations in face of settlement agreement

Hotel, Motel, Restaurant Employees and Bartenders Union Local 19 (Le Baron Hotel) **281 NLRB No. 086**
[Section 10(b) (statute of limitations) defense rejected where GC litigated issues in a settlement that was withdrawn by RD. GC may litigate matters embraced in a settlement agreement later validly set aside]

Leeward Nursing Home **278 NLRB No. 157**
[allegations in C alleging pre-settlement conduct as violative barred by settlement, where not specifically reserved, and where reasonably clear that subsequently complained of pre-settlement matters were known to GC, or readily discoverable by investigation at time of settlement, especially matters as herein that were part of investigatory file when original charge settled, and were not of unique or concealed nature]

Leeward Nursing Home **278 NLRB No. 157**
[adverse inference drawn that GC had knowledge of pre-settlement conduct that would bar post settlement allegations that conduct was unlawful, where GC did not make matter of record when regional office knew about pre-settlement matters, since GC presumed to be uniquely possessed of these facts, no Bd rule prohibits agent of GC giving testimony regarding such matters, (only procedural prerequisites) GC is not favored litigant before Bd and is not entitled to any privileges not accorded to any other litigant]

Ballou Brick Co. **277 NLRB No. 009**
(E's contention that instant C allegations must be dismissed because they were subject of prior settlement agreement, rejected, where prior settlement agreement was merely a private agreement between E and charging party (an individual) and charging party agreed to withdraw charge, no notice was posted and U, as charging party in instant case, was not a party to settlement)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(U was not precluded from filing new or amended charges on withdrawn ULP allegations or GC from subsequently issuing C based on those allegations, where parties had agreed on *quid pro quo* for purposes of establishing basis on which election could be conducted, and agreed upon basis did not constitute settlement or comparable resolution of ULP charges)

Over-The-Road, City Transfer, Inside Employees, Local Union No. 544, a/w Teamsters (Better Home Deliveries, Inc.) **274 NLRB No. 034**
(ALJ rejected evidence proferred by E where C alleged only 8(b)(7)(C) violation and rejected evidence would have been basis for 8(b)(1)(A) and 8(b)(4)(B) charges which had already been unilaterally settled. Further, offers of proof rejected also on grounds that evidence of another object proscribed by Act, such as secondary object, did not show object prohibited by 8(b)(7)(C) and conduct relevant to 8(b)(1)(A) C, such as violence, did not tend to establish recognitioned or organizational object)

3225 FORM AND CONTENT OF COMPLAINT

3225-0800 Scope of complaint

Union Boiler Company **281 NLRB No. 148**
[Bd did not adopt ALJ's implied finding that E's unlawful lockout of Ees also violated 8(a)(3) since C involved solely allegations of 8(a)(1) and (5) and GC did not allege such violation]

Modern Iron Works, Inc. **281 NLRB No. 151**
[charging party's request that E be compelled to bargain with Ee committee, denied; since E had no adequate notice that such relief would be sought or basis therefor, it would be improper to expand C to consider such request]

Alamo Cement Company **281 NLRB No. 110**
[where C only alleged that E's unilateral increase in uniform rental fees violated Act, C allegations held limited to such action and did not put in issue whether E violated 8(a)(5) by overall refusal to bargain with U about *uniforms*, despite evidence and arguments presented at hearing concerning latter issue]

United States Postal Service **281 NLRB No. 138**
[C alleging both that E violated 8(a)(5) by assertion of settlement of Ee's EEO claim as defense in arbitration proceedings on contract grievance involving same subject, and that U did not participate at meeting where EEO claim was settled, found sufficiently broad to support finding that violation occurred at time of claim adjustment rather than at time settlement was asserted as contract grievance defense]

United States Postal Service **281 NLRB No. 139**
[C supports violation found, for reasons stated in *United Postal Workers*, 281 NLRB No. 138]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[ALJ refused to rule on issue of overall bad faith bargaining since GC declined to amend C notwithstanding possibility that evidence may appear in record to support allegation]

Carter-Glogau Laboratories, Inc. **280 NLRB No. 049**
[in finding C allegations regarding E's failure to reinstate former economic strikers barred by 10(b), ALJ rejected GC's contention that gravamen of E's conduct was its failure to seek out and recall Ees when openings became available and not alleged conditioning of reinstatement, occurring outside 10(b) period, upon satisfaction of E's expressed requirement; such allegation did not constitute merely pleading of supporting evidence; rather, plain language of allegation, in conjunction with related allegations, was intended to be substantive allegation of unlawful conduct]

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) **276 NLRB No. 010**
(U's filing of internal charges against Ees for violating U's job referral policy, not unlawful, in view of C allegations referring to named Ee other than Ees herein; absence of amendment to C incorporating alleged violation as to them; failure to allege in general way that U unlawfully filed charges against individuals other than named Ee; absence of statement by GC at hearing that charges against Ees herein violated Act; and GC's objection to introduction of evidence that such charges had been filed)

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers **794 F.2d 1474 (C.A. 9, July 1986)**
[contrary to U's claim that C alleged only breach of duty of fair representation and that U lacked notice of independent violation of 8(b)(1)(A), ct held that, although C specifically alleged breach of fiduciary duty owed to Ees, it more generally alleged commission of ULPs sufficient to put U on notice that Bd might proceed under both legal theories]

3225-3300 Particularity not required

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[discriminatee entitled to R/O notwithstanding GC did not seek reinstatement of discriminatee in C or at hearing, where consolidated C alleges that respondent *closed facility and terminated its Ees working there.* This allegation broad enought to encompass discriminatee since where there is discrimination against class of Ees, GC is not required to name every discriminatee at this stage of the proceeding. Respondent's contention may be addressed at compliance stage]

Plumbers, Local No. 198 v. N.L.R.B. **747 F.2d 326 (C.A. 5, Nov. 1984)**
(U's contention that it was denied due process due to lack of reasonable notice of an identifiable or recognizable group of alleged discriminatees for whom redress was sought, rejected, where C alleged broad discrimination in hiring hall operations generally, not just as to named parties; also, Bd's relegating determination of discriminatees to compliance stage let U contest individual awards and compliance procedures, whereas, if finding of general discrimination were established but redress given only named individuals, collateral estoppel might bar U from relitigating discrimination issue as to unnamed members of the class)

3225-5000 Sufficient to inform respondent of nature of allegations

Chelsea Laboratories, Inc. **282 NLRB No. 074**
[complaint allegation that Ee was discharged for protesting E's grant of wage increase while election objection was pending found sufficient to encompass Ee's protest over E's apparent decision to renege on promise to engage in dialogue before deciding whether to recognize U, where C put E on notice that case focussed on announcement of wage increase and subsequent conversation, E would not have altered its conduct of case, and its brief addressed law and sufficiency of facts about protesting breach of promise]

Best Western Motor Inn **281 NLRB No. 026**
[question of E's unlawfully asking supervisors to interrogate Ees about their U activities not fully and fairly tried where C only alleged unlawful request that they surveil and gather information about Ees' U activities]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[E's contention that it was not given fair notice of allegation in complaint that its supervisor encouraged Ees to sign card to decertify U, and took actions, including but not limited to initiation, direction, coordination, and implementation of campaign to decertify U, rejected, *since allegation contained in amended complaint and original charge couched in practically identical language*, the relationship is explicit]

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(allegations of unlawful assistance to U dismissed where GC failed to give adequate or timely notice of allegation and it was not fairly litigated where, as result of vague, shifting, and untimely positions taken by GC, E was placed in position where it was forced to speculate as to what matters were alleged to constitute unlawful assistance)

Medallion Kitchens, Inc. v. N.L.R.B. **806 F.2d 185 (C.A. 8, Nov. 1986)**
[mtn to strike GC's brief and to reopen record on basis that Respondent E not given notice that permanent status of strike replacements in issue, denied, where violation alleged was that E failed to reinstate economic strikers, since status of Ees who replaced economic strikers need not be pleaded by

3225-5000—Cont.

GC inasmuch as permanent status of replacements affirmative defense to be raised by E]

Hospital & Service Employees Union, Local 399, Service Employees v. N.L.R.B. 798 F.2d 1245 (C.A. 9, Aug. 1986)

[Bd's finding that E did not have actual notice of charges was unsupported by substantial evidence on record as whole where E participated in investigation before C as filed; C was served and answered w/i 6 months; C included statement of charges on which it was based; and record strongly suggested that E was well aware of charges against it from beginning and raised service-of-charge issue to delay proceedings in ct]

3225-9000 Defective complaints

Abdul Samad Ra'Oof Shabazz and Jacqueline Craig, A Co-Partnership d/b/a Michigan Expediting Service; et al. 282 NLRB No. 030

[C did not allege sufficient facts to enable Bd to evaluate pervasiveness of violations and determine whether bargaining order was warranted, where allegations did not indicate size of unit or state number of Ees who witnessed alleged infliction of bodily injury on Ee, heard E's statement about discharge of Ee for U activities, and were subjected to E's threat of bodily injury; nor did C allege extent of dissemination, if any, of such violations among Ees not directly affected by them; accordingly, case remanded to ALJ to determine appropriateness of order]

R. L. Broker & Company, Inc. 274 NLRB No. 101

(GC's mtn for summary judgment denied, notwithstanding absence of *good cause* for E's failure to file ans, since C alleging violations of 8(a)(5) and 8(d) was defective where it was internally inconsistent and failed to establish information necessary to determine whether E violated Act and absent from C were allegations or facts demonstrating contract was in effect when E subcontracted work, whether contract prohibited subcontracting or facts which would enable Bd to determine whether decision to subcontract in fact required bargaining)

3237 RELATIONSHIP TO CHARGE

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198

(Sec. 10(b) did not preclude GC from issuing C based on 8(a)(3) charge which remained intact and pending after U withdrew other allegations, since GC could properly issue C or amended C containing allegations which were closely related to 8(a)(3) charge; and even if original charge were totally withdrawn, no 10(b) problem would be presented because none of alleged ULPs occurred more than 6 months prior to date when U filed charge)

3237-8100 Generally

G. W. Galloway Company 281 NLRB No. 038

[Bd stressed importance of following Casehandling Manual guidelines providing that if allegations of charge are too narrow, amendment should be sought, and that if amendment is not filed, case should be reappraised in this light, and C issued, if any, should cover only matters *related* to specifications of charge]

3237-3300 Legally sufficient relationship between subject matter of charge and complaint only requirement

G. W. Galloway Company 281 NLRB No. 038

[precedent interpreting significance of printed allegations contained in charge form alleging *other acts* of interference with and restraint and coercion of Ees' Sec. 7 rights holds that 8(a)(1) allegations contained in C are properly raised by *other acts* allegation set forth in charge and that Sec. 10(b) does not bar consideration of 8(a)(1) allegations]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle 280 NLRB No. 043

[underlying charges held sufficient to support factual allegations in C where ULP conduct was specifically alleged and all charges contained printed general allegation; *By the above and other acts ... E has interfered with, restrained, and coerced Ees in the exercise of rights guaranteed in Section 7 ...*; and so there was relationship between allegations in ULP charges and those in C]

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011

[E's contention that it was not given fair notice of allegation in complaint that its supervisor encouraged Ees to sign card to decertify U, and took actions, including but not limited to initiation, direction, coordination, and implementation of campaign to decertify U, rejected, *since allegation contained in amended complaint and original charge couched in practically identical language*, the relationship is explicit]

Raytheon Missile System Division, Raytheon Company 279 NLRB No. 035

Gatliff Business Products, Inc. and RBD Service Corporation 276 NLRB No. 060

(mtn made during hearing to amend C by adding three allegations granted where conduct involved was closely related to and grew directly from conduct charged, GC did not seek surprise or advantage, and ALJ offered respondent time and opportunity to prepare defenses; finally evidence on which third added allegation was based was already admissable as evidence of context showing respondent's motivation)

3237-6700 Contents of charge do not limit scope of complaint

Lucky Stores, Inc. d/b/a Gemco 279 NLRB No. 153

[mtn to dismiss C because there was no specific reference in charge to interrogation or creation of impression of surveillance alleged in C, denied, where charge recited that E violated 8(a)(1) as well as 8(a)(3) and that E's acts interfered with, restrained, and coerced Ees, which was sufficient to support allegations in C even though not enumerated specifically in charge; and it is C, and not charge which is not formal pleading, which is intended to give notice to respondent of allegations against it]

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. JD-(NY)-24-85

(E's contention that 8(a)(1) violations found herein were barred because they were not included in original charge which merely alleged violation of 8(a)(5), rejected; charge, as here, containing clause stating that E by enumerated and other acts interfered, restrained and coerced Ees, is sufficient to permit inclusion in C of allegations not specifically mentioned in charge)

3250 VARIANCE BETWEEN COMPLAINT AND CHARGE, PROOF, OR FINDINGS

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)

[Bd improperly found that U's *indirect coercion* of E through pressure on travelers to quit work so that U's members could replace them violated 8(b)(2), since such separate violation was neither included in C nor litigated by parties; while C specified with great precision conduct alleged to violate 8(b)(2), it made no mention of U's behavior toward travelers or of indirect effect of such behavior on E]

3250-3300 Complaint may allege ULP's not set forth in charge

3250-3333 If of similar nature

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011

[E's contention that it was not given fair notice of allegation in complaint that its supervisor encouraged Ees to sign card to decertify U, and took actions, including but not limited to initiation, direction, coordination, and implementation of campaign to decertify U, rejected, *since allegation contained in amended complaint and original charge couched in practically identical language*, the relationship is explicit]

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda 279 NLRB No. 089

[amendment to C which named additional Respondent not named in original C and its Ees whom Respondent allegedly unlawfully refused to reinstate after economic strike, not barred by Section 10(b) since Respondent named in original charge, although its Ees were not, and amended complaint was based solely on matters arising out of same course of events set forth in timely filed charge]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation 278 NLRB No. 118

[C properly alleged 8(a)(1) threats and promise, based on charge alleging 8(a)(5) refusal to bargain and unilateral changes, where additional incidents were part of same course of conduct]

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. 278 NLRB No. 102

[second amended C properly included allegations concerning discharges of two Ees not mentioned in original charge, where their discharges involved same incident and subject matter as original charge, charge's allegations were sufficiently broad to cover additional discharges, and original charge was filed w/i 10(b) period]

Clark Equipment Company 278 NLRB No. 085

[allegations in C of unilateral conduct not time-barred, notwithstanding they did not appear in original or amended charge, since they were closely related to allegations of general refusal to bargain in amended charge]

Gatliff Business Products, Inc. and RBD Service Corporation 276 NLRB No. 060

(mtn made during hearing to amend C by adding three allegations granted where conduct involved was closely related to and grew directly from conduct charged, GC did not seek surprise or advantage, and ALJ offered respondent time and opportunity to prepare defenses; finally evidence on which third added allegation was based was already admissable as evidence of context showing respondent's motivation)

3250-3367 If within 10(b) period

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda 279 NLRB No. 089

[amendment to C which named additional Respondent not named in original C and its Ees whom Respondent allegedly unlawfully refused to reinstate after economic strike, not barred by Section 10(b) since Respondent named

3250-3367—Cont.

in original charge, although its Ees were not, and amended complaint was based solely on matters arising out of same course of events set forth in timely filed charge]

Lectromelt Casting and Machinery Company, A Division of Akron Standard Division, Eagle Picher Industries, Inc.; et al. **278 NLRB No. 102**
[second amended C properly included allegations concerning discharges of two Ees not mentioned in original charge, where their discharges involved same incident and subject matter as original charge, charge's allegations were sufficiently broad to cover additional discharges, and original charge was filed w/i 10(b) period]

3250-6700 Cure of variance

Clark Equipment Company **278 NLRB No. 085**
[C alleging numerous 8(a)(1) violations, appropriate, notwithstanding charge alleging only 8(a)(3) and (5) conduct, where 8(a)(1) allegations depended solely on language of NLRB 401 charge form and were not time-barred]

3262 AMENDMENTS TO COMPLAINT

Salinas Valley Ford Sales, Inc.; et al. d/b/a Town & Country Olds/Cadillac/Honda **279 NLRB No. 989**
[amendment to C which named additional Respondent not named in original C and its Ees whom Respondent allegedly unlawfully refused to reinstate after economic strike, not barred by Section 10(b) since Respondent named in original charge, although its Ees were not, and amended complaint was based solely on matters arising out of same course of events set forth in timely filed charge]

3262-3300 Time of amendment

3262-3325 Before hearing

Without Reservation **280 NLRB No. 165**
[amendments to C offered at commencement of hearing permitted where there was no specific statement of how they impaired defendant's preparation of case or caused prejudice, there was no request or need for continuation, and claims of prejudice were dispelled by extensive cross-examination of witnesses who testified concerning alleged *surprise* factual allegations]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[where allegation in charge timely, inclusion of allegation in amended C after failing to do so in original C, proper, as initial failure to include does not constitute dismissal by RD, and its subsequent inclusion in amended C does not constitute *revival* of charge already found insupportable in evidence or law. Neither does failure by Charging Party to appeal dropping of allegation in original C constitute waiver]

3262-3350 During hearing

Link Manufacturing Co. **281 NLRB No. 028**
[GC's mtn to amend C to add to allegation of Ee's unlawful suspension allegation of unlawful layoff following suspension, denied as untimely, where mtn was made deep into GC's case when E would have had to completely change its focus of defense; amendment would have unduly prolonged hearing and injected issues inconsistent with GC's theory of layoff phase of case, and granting mtn would have raised issues that were not sufficiently related to remaining C allegations to be tried together with them]

Dayton Auto Electric, Inc. **278 NLRB No. 080**
[ALJ erred in granting GC's mtn to amend complaint to allege Respondent unlawfully failed to reinstate ULP strikers, where mtn not made until midway through hearing and 14 months after 4 had made unconditional offer to return to work on behalf of strikers which was also 3 months after C issued at outset of trial GC stated reinstatement not an issue]

Pioneer Hotel and Gambling Hall, Inc. **276 NLRB No. 072**
(GC's mtn to amend C containing 8(a)(1) allegation to include 8(a)(3) allegation denied on basis of *Winer Motors*, 265 NLRB 1457)

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**
(mtn made during hearing to amend C by adding three allegations granted where conduct involved was closely related to and grew directly from conduct charged, GC did not seek surprise or advantage, and ALJ offered respondent time and opportunity to prepare defenses; finally evidence on which third added allegation was based was already admissable as evidence of context showing respondent's motivation)

3262-3362 After hearing

La Salle Investment Co., Ltd., d/b/a Cafe La Salle **280 NLRB No. 043**
[GC's request in its post-hearing brief to find additional 8(a)(1) violations and to change particular allegation in C, denied, since respondent E did not receive timely notice on matters in question as required by Bd's R/R, where all evidence had been taken, hearing had closed, and post-hearing briefs had been filed; additional matters were not fully litigated; and change in specified allegation would be substantive change which was also untimely]

American Stores Packing Company, A Division of Acme Markets, Inc. **277 NLRB No. 190**
[GC's mtn to amend C at end of hearing to allege that Es were single integrated enterprise granted, notwithstanding contention that it would be highly prejudicial to permit GC to change her theory at that late stage of proceedings, where pleadings were sufficient to raise issue and issue of single E was fully litigated; GC's mtn sought to conform pleadings to proof and granting mtn did not prejudice E]

United Artists Theatre Circuit, Inc. **277 NLRB No. 015**
(GC's mtn to amend Cs denied where issues and evidence relevant to proposed amendments were not fully litigated, mtn was late, and issues were raised for first time in GC's post hearing brief to which E was not entitled to reply)

Spencer Trucking Corporation **274 NLRB No. 206**
(GC's request in his brief to amend C, which alleged violations of 8(a)(1) by telling Ees they were discharged for economic strike and discharging them for that reason, to add allegation of independent 8(a)(1) violation by instructing economic striker to bring in his trucker's freight bills, denied where respondent was not placed on notice of allegation during hearing and therefore did not specifically address it when presenting its defense or in its post-hearing brief)

Bertolucci's Fender and Body Shop, Inc. **JD-(SF)-143-85**
(GC's mtn in its post-hearing brief to amend the C to include allegation that E unilaterally changed its method of paying Ees, denied, since GC's failure to make the mtn at hearing resulted in lack of notice to E, inability to put on relevant evidence, and insufficient record evidence to support finding that matter was fully litigated)

3262-3375 By Board

Brookhurst Professional Building, Inc., Number Three d/b/a Browning Manor Convalescent Hospital **279 NLRB No. 172**
[Sec. 10(b) defense rejected and allegations of unlawful discharges must be decided on merits, where amendment of complaint to include allegations regarding discharges so closely related to original complaint as to warrant its inclusion upon timely notice, matter was fully litigated, and absent showing of any prejudice]

3262-6700 Adequacy of notice to respondent

Without Reservation **280 NLRB No. 165**
[amendments to C offered at commencement of hearing permitted where there was no specific statement of how they impaired defendant's preparation of case or caused prejudice, there was no request or need for continuation, and claims of prejudice were dispelled by extensive cross-examination of witnesses who testified concerning alleged *surprise* factual allegations]

La Salle Investment Co., Ltd., d/b/a Cafe La Salle **280 NLRB No. 043**
[GC's request in its post-hearing brief to find additional 8(a)(1) violations and to change particular allegation in C, denied, since respondent E did not receive timely notice on matters in question as required by Bd's R/R, where all evidence had been taken, hearing had closed, and post-hearing briefs had been filed; additional matters were not fully litigated; and change in specified allegation would be substantive change which was also untimely]

American Stores Packing Company, A Division of Acme Markets, Inc. **277 NLRB No. 190**
[GC's mtn to amend C at end of hearing to allege that Es were single integrated enterprise granted, notwithstanding contention that it would be highly prejudicial to permit GC to change her theory at that late stage of proceedings, where pleadings were sufficient to raise issue and issue of single E was fully litigated; GC's mtn sought to conform pleadings to proof and granting mtn did not prejudice E]

Bertolucci's Fender and Body Shop, Inc. **JD-(SF)-143-85**
(GC's mtn in its post-hearing brief to amend the C to include allegation that E unilaterally changed its method of paying Ees, denied, since GC's failure to make the mtn at hearing resulted in lack of notice to E, inability to put on relevant evidence, and insufficient record evidence to support finding that matter was fully litigated)

3262-6750 Continuance to prepare to meet new allegations

Gatliff Business Products, Inc. and RBD Service Corporation **276 NLRB No. 060**
(mtn made during hearing to amend C by adding three allegations granted where conduct involved was closely related to and grew directly from conduct charged, GC did not seek surprise or advantage, and ALJ offered respondent time and opportunity to prepare defenses; finally evidence on which third added allegation was based was already admissable as evidence of context showing respondent's motivation)

3275 AMENDMENT TO CONFORM PLEADINGS TO PROOF

3275—Cont.

American Stores Packing Company, A Division of Acme Markets, Inc. 277 NLRB No. 190
[GC's mtn to amend C at end of hearing to allege that Es were single integrated enterprise granted, notwithstanding contention that it would be highly prejudicial to permit GC to change her theory at that late stage of proceedings, where pleadings were sufficient to raise issue and issue of single E was fully litigated; GC's mtn sought to conform pleadings to proof and granting mtn did not prejudice E]

Barkman Contracting, Inc. 276 NLRB No. 112
(backpay not awarded to two discriminatees for particular quarter, since specification did not claim such. GC's mtn at hearing, to amend pleadings to conform to proof was insufficient to affect an amendment to specification. Moreover, (backpay) matter for these Ees was *not fully litigated* at hearing)

3282 AMENDMENT TO INCLUDE ULP'S FULLY LITIGATED

San Antonio Portland Cement Company 277 NLRB No. 036
(Bd refused to make finding that E's employment policies were unlawful where they were not alleged as violation in C or urged at hearing and, therefore, not fully litigated)

Bell Halter, Inc. 276 NLRB No. 136
(mtn to amend C to include supervisor's remark allegedly unlawfully threatening Ee, granted, since Bd may find and remedy violation even in absence of specific allegation in C so long as issue is clearly connected to subject matter of C and has been fully litigated; here, legality of supervisor's remark was put in issue by C with respect to interrogation, and evidence of violation was contained in supervisor's testimonial admission)

Bertolucci's Fender and Body Shop, Inc. JD-(SF)-143-85
(GC's mtn in its post-hearing brief to amend the C to include allegation that E unilaterally changed its method of paying Ees, denied, since GC's failure to make the mtn at hearing resulted in lack of notice to E, inability to put on relevant evidence, and insufficient record evidence to support finding that matter was fully litigated)

3298 DISMISSAL OF COMPLAINT OR ALLEGATIONS THEREIN

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170
[E's defense to unlawful unilateral discontinuance of payments to health and welfare fund on ground C should be dismissed because U instituted ct action to collect monies due to fund, rejected, since it is not Bd law to defer or to dismiss due to pendency of ct action]

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170
[although dispute arising from E's unilateral discontinuance of payments to health and welfare fund was clearly encompassed by contract's grievance-arbitration clause and there was no time limit for E to waive, deferral held inappropriate where E, who sought deferral, never indicated willingness to arbitrate but asked for dismissal of C; dismissal and deferral are distinct remedies, and by asking that C be dismissed, E rejected possibility of arbitration]

Rebel Coal Company, Inc., and Richlands Supply Corp. 279 NLRB No. 022
[E's mtn to dismiss C on grounds that Bankruptcy Ct had discharged E of all liabilities except those approved by ct, of which liability for ULPs was not one, denied since nothing in Order of Bankruptcy Ct precluded E from proceeding further in matter]

Coalite, Inc. 278 NLRB No. 040
[dismissal of C not warranted, notwithstanding 102.9's mandate that C must be dismissed if charge on which it is based is withdrawn, where identical prior charge instead of charge underlying instant C was withdrawn, there was no showing that Bd sought withdrawal of the prior charge or that respondent was prejudiced by any Bd action]

Jaydon, Inc. 273 NLRB No. 199
(when C is issued administrative process necessitates appropriate administrative and judicial review which, under Bd's R/R, is not to be thwarted; and Bd decisions make it clear that summary dismissal of C over objection of GC or charging party are contrary to its rules)

3600 NOTICE OF HEARING

3601 GENERALLY

3601-5000 Requirement of reasonable notice

Evans Plumbing Co. 278 NLRB No. 009
[due process requirements prevent extension of individual liability to successor E's officers and primary shareholders where neither of them was named a party, and one was neither present nor represented individually at hearing]

4000 ANSWER TO COMPLAINT

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121
[appearance at opening of hearing by Respondent's attorney who asserted his client was not personally liable deemed to be appearance on behalf of Respondent and answer on his behalf]

4017 TIME FOR FILING

4017-6700 Effect of late filing

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[E's proposed exception to Bd's rule requiring timely filing of answer, made as defense for delay in filing answer, that filings in opposition to mtn for temporary inj were substitute for written, formal answer, rejected, since acceptance of E's exception would directly contradict Bd's rule that written answer *shall* be filed and would undermine rule's functions of providing notice to parties and of preventing sham answers]

4017-6750 *Good cause* standard

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[in light of Congress' authorization of Bd to make such rules as may be necessary to carry out provisions of Act, and Bd's power to construe its own rules free from judicial review unless its construction is so arbitrary as to defeat justice, ct held that Bd's determination of what constitutes *good cause* excusing failure to file timely answer must be upheld unless its construction of good cause standard is so arbitrary as to defeat justice]

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[E held not to have established good cause excusing failure to file timely answer assertedly because of inexperience of E's counsel, in view of E's familiarity with Bd proceedings and awareness of need to file answer, and fact that actual notice of requirement to file answer was given to E and its counsel by Regional Office]

4033 EFFECT OF FAILURE TO FILE

Michele Rena, and Its Alter Ego, Rite Style Merchandising, Inc., T/A Rite Style Fashions 280 NLRB No. 072
[fact Respondent had filed chapter 11 bankruptcy reorganization ptn did not constitute good cause for its failure to file timely answer to complaint, thus mtn for summary judgment granted since allegations of complaint deemed to be admitted]

Destiny Delivery Systems, Inc. 273 NLRB No. 176
(mtn for default judgment granted where respondent failed to file answer to C and under Bd R/R Sec. 101.20, allegations of C shall be admitted if answer is not filed w/i 10 days from service of C, unless good cause is shown)

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[E held not to have established good cause excusing failure to file timely answer assertedly because of inexperience of E's counsel, in view of E's familiarity with Bd proceedings and awareness of need to file answer, and fact that actual notice of requirement to file answer was given to E and its counsel by Regional Office]

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[affiliated companies held alter ego of E, notwithstanding contention that enterprises involved were separate and distinct entities having no connection with each other, where respondents failed to present evidence rebutting GC's deposition and documentary evidence either with their mtn in opposition to summary judgment or with their mtn to reconsider; and allegations of alter ego status in C were deemed to be admitted as true by respondents' failure to file timely answer]

4042 EFFECT OF WITHDRAWAL OF ANSWER

Ofalco Properties, Inc.; The Nautilus Development Corp.; and The Nautilus Management Co., alter egos and/or single employer 281 NLRB No. 016
[E failed to file answer to C issued on day informal settlement agreement was vacated, notwithstanding that E did file answer to earlier C, which was informally settled by agreement that stated that approval of agreement constituted withdrawal of C and answer, since RD's vacating settlement agreement did not revive original C or answer]

Maislin Transport of Delaware, Inc. and Maislin Transport of Delaware, Inc. Debtor-in-Possession 274 NLRB No. 074
(GC's mtn for summary judgment granted where E withdrew its answer, which had same effect as failure to file answer)

4067 SUFFICIENCY OF FORM AND CONTENT

4067—Cont.

Consolidation Coal Company, Burning Star No. 4 & No. 5 **277 NLRB No. 060**

(E allowed to assert Sec. 10(b) defense to ULP charges, notwithstanding such defense was neither affirmatively pleaded in E's answer to C nor expressly asserted as defense at hearing but first set forth in E's brief, since it was litigated *sub silentio* where C anticipated it by referring to lack of notice to charging party, there was no objection to E's cross examination of GC's witnesses in effort to establish such defense, and GC's brief showed that such defense was viable by stating that E was expected to argue it and making legal argument thereon)

Herbert Rogers, Esquire, Trustee In Bankruptcy To Bristol Clothing Manufacturing Co., Inc. **276 NLRB No. 111**

(GC's mtn to strike answer of trustee in bankruptcy to second amended C and mtn for summary judgment based on E's failure, as debtor-in-possession, to answer such C, and on trustee's answer's failure to meet Bd's R/R requirements, denied, where, although trustee, rather than E, filed ans to second amended C, E's answer to first amended C answered allegations in second amended C containing substantially same allegations as those in first, and E's ans thus raised litigable issues; and denial was appropriate in view of special role of trustee)

4067-5000 Sufficiency of statement of defense

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**

[where E's ans to C denied knowledge sufficient to form belief as to truth or falsity of allegation regarding appropriateness of unit, ALJ held unit description in C was correct and appropriate, consistent with that described in contract between E and U]

United Technologies Corporation **274 NLRB No. 072**

(E properly raised deferral defense at appropriate stage in case where, unlike cases concerning requested deferral for the first time in posthearing brief to ALJ or in exceptions to the Bd, E affirmatively pled deferral in its ans and in its supplemental posthearing brief to ALJ)

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-90-86**

[contention that, because E did not affirmatively plead its defense to alleged violation of its obligation under contract on ground that it signed contract as result of mistake or material representation by U, E could not be permitted to present evidence to that effect, rejected, where E's answer, denying allegation that it entered into contract with U, was sufficient to allow E to present evidence regarding circumstances under which contract was signed]

4075 STRIKING ANSWER OR PORTIONS THEREOF

4075 STRIKING ANSWER OR PORTIONS THEREOF

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**

[where ALJ found, despite GC's failure to file mtn to strike E's ans, that ans, denying knowledge concerning truth or falsity of C allegation that U was labor organization, was patently false in denying allegation which E and counsel knew or could easily have ascertained, Bd agreed with ALJ that E's counsel acted contrary to strictures of R/R Sec. 102.21, subjecting attorney to disciplinary action, where he willfully violated rule that statement must be made in go

Mattie C. Hall Health Care Center **280 NLRB No. 129**

[GC's mtn to strike E's denial of C allegations as a *sham and frivilous* answer, denied, since, although answer did not present meritorious defense, the plesdings could be viewed as an endeavor by E to preserve a position, albeit an erroneous one]

Local 1136, Laborers (Southern Illinois Builders Association) **JD-179-86**

[U's defense to backpay specification held frivolous and stricken from ans where U claimed it owed no money to pension and health and welfare funds on discriminatee's account because he was not U's Ee and U was prohibited by Sec. 302 from making such contributions on discriminatee's behalf; U's assertions were unsupported by any facts or argument, and amounts due reflected money which, absent U's discrimination, would have been paid by Es, and there was no indication such payments would have violated Act]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**

[GC's mtn to strike portions in E's ans which denied knowledge as to matters which assertedly were w/i E's *obvious direct* knowledge, granted, where matters in question were reasonably w/i E's knowledge as indicated by general experience and common sense, and ans, in certain respects, was not genuine and amounted to sham-like device concealing the truth]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**

[in granting GC's mtn to strike portions in E's ans which denied knowledge as to matters which were w/i E's *obvious direct knowledge* and which, in certain respects, constituted sham-like device concealing the truth, ALJ held that while E possibly had no knowledge concerning entire paragraph's allegations which included co-respondent E, it behooved E to divide its ans thereto admitting or denying portion of allegations pertaining to E as to which E obviously had knowledge, rather than entering blanket denial concerning entire allegation]

4079 STRIKING OF PORTIONS OF ANSWER

Western Temporary Services, Inc. and The Classic Company, Inc. **278 NLRB No. 073**

[ALJ's granting GC's mtn to strike certain of Es' denials from their individual answers, granting mtn for summary judgment, and deciding certain issues were res judicata because previously determined by Bd in underlying R proceeding, proper, notwithstanding Es' contention that they were denied due process in R proceedings for lack of adequate notice of amendment to ptn naming them as joint Es, where GC issued C alleging them as joint Es over two weeks before R ptn amendment and hearing, one E admitted joint E status in its answer, and other E presented evidence of their relationship at R hearing]

4091 ADMISSION BY ANSWER

Advertiser's Manufacturing Company **280 NLRB No. 128**

[exception to ALJ's finding individual a supervisor, overruled where answer admitted his supervisory and agency status and issue was raised for fist time in exception]

4400 CONSOLIDATION AND SEVERANCE OF PROCEEDING

4401 GENERALLY

4401-2500 Authority of General Counsel

Fruehauf Corporation **274 NLRB No. 067**

(consolidation of *C* and *R* case by RD was proper where E suffered no prejudice from counsel for GC's dual role of adversary in *C* case and that of nonadversary in case; GC has discretion under 3(d) of the Act to proceed as litigant in consolidated case rather than as neutral third party)

4401-5000 Authority of Regional Director

Dubose Masonry, Inc. **279 NLRB No. 128**

[notwithstanding charge filed against E and U for latter demanding and former discharging Ee for not being member of U in right to work state and RD issued C against E only, independent resolution of instant C against E proper and appropriate, since there is no showing, in instant case that RD has improperly failed to issue C in pending charge against U or that it has improperly failed to seek consolidation of these matters for hearing]

4425 PROCEEDINGS CONSOLIDATED

4425-3300 Consolidation of CA and CB proceedings proper

Dubose Masonry, Inc. **279 NLRB No. 128**

[notwithstanding charge filed against E and U for latter demanding and former discharging Ee for not being member of U in right to work state and RD issued C against E only, independent resolution of instant C against E proper and appropriate, since there is no showing, in instant case that RD has improperly failed to issue C in pending charge against U or that it has improperly failed to seek consolidation of these matters for hearing]

4425-6700 Consolidation of CA and election objections proceedings proper

Fruehauf Corporation **274 NLRB No. 067**

(consolidation of *C* and *R* case by RD was proper where E suffered no prejudice from counsel for GC's dual role of adversary in *C* case and that of nonadversary in case; GC has discretion under 3(d) of the Act to proceed as litigant in consolidated case rather than as neutral third party)

4450 CONSOLIDATION CRITERIA

4450-3300 Appropriate where

4450-3325 Same issues

Dubose Masonry, Inc. **279 NLRB No. 128**

[notwithstanding charge filed against E and U for latter demanding and former discharging Ee for not being member of U in right to work state and RD issued C against E only, independent resolution of instant C against E proper and appropriate, since there is no showing, in instant case that RD has improperly failed to issue C in pending charge against U or that it has improperly failed to seek consolidation of these matters for hearing]

4450-3350 Same respondent

Raytheon Missile System Division, Raytheon Company **279 NLRB No. 035**

[E's contention that consolidation of two charges for hearing, and ALJ's denial of severance mtn comprised violations of its due process rights, rejected where issues and parties were related and consolidation of instant

4450-3350—Cont.

charge effected legitimate purposes of protecting E from litigation harassment and minimized costs and delay]

4450-6700 **Inappropriate where**

4450-6721 Issuance of decision would be delayed

Yuba Natural Resources, Inc. 279 NLRB No. 001

[in summary judgment proceeding, E's mtn to consolidate instant case with another case involving pending charge in which E intended to litigate status of individual found in underlying R case herein not to be supervisor, denied, since supervisor status issue was fully litigated and resolved in underlying R case; and merely because evidence will be presented regarding individual's supervisory status in another proceeding does not justify further delay in resolving instant case]

4450-6725 Decision in one case already issued

Yuba Natural Resources, Inc. 279 NLRB No. 001

[in summary judgment proceeding, E's mtn to consolidate instant case with another case involving pending charge in which E intended to litigate status of individual found in underlying R case herein not to be supervisor, denied, since supervisor status issue was fully litigated and resolved in underlying R case; and merely because evidence will be presented regarding individual's supervisory status in another proceeding does not justify further delay in resolving instant case]

4800 INTERVENTION

5200 DISCOVERY

George Frost Company 279 NLRB No. 124

[upon granting GC's mtn for summary judgment and ordering E to bargain with U, Bd denied GC's request for what appeared to be *visitorial clause*, authorizing Bd, for compliance purposes, to obtain discovery from E under FRCP subject to supervision of ct of appeals enforcing order; under circumstances of case, Bd found it unnecessary to include such clause, citing *Furniture Store of Hazleton*, 278 NLRB No. 34]

5250 NOT PROVIDED FOR BY ACT

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[lack of pre-trial discovery is not denial of due process as Act does not require or even specifically authorize Bd to adopt discovery procedures]

5600 DEPOSITIONS

6000 SUBPOENAS

6001 GENERALLY

6001-5000 **Nature and Scope**

6001-5067 *Production of any evidence*

N.L.R.B. v. Brown Transport Corporation 620 F.Supp. 648 (DC N.D. IL, Oct. 1985)

6001-5083 Applicability to compel testimony of Bd agents

G. W. Galloway Company 281 NLRB No. 038

[ALJ properly revoked subpoena duces tecum served by E on Bd agent, seeking all records and documents obtained in investigating charge, in order to adduce evidence that agent improperly expanded investigation from original charge to what was finally alleged in C; limited evidentiary privilege protects Bd's informal investigatorial and trial preparatory processes; and subpoena seeking material directly related to investigatory process would likely have enmeshed Bd agent in proceeding as material witness; moreover, underlying charge on its face sufficed to raise allegation set forth in C]

6040 ISSUANCE OF SUBPOENAS

Vokas Provision Co., d/b/a The Rich Plan of Western v. N.L.R.B. 796 F.2d 864 (C.A. 6, July 1986)

[Bd has recognized that obligation to honor subpoena arises immediately when subpoena is duly issued and served]

Vokas Provision Co., d/b/a The Rich Plan of Western v. N.L.R.B. 796 F.2d 864 (C.A. 6, July 1986)

[person's reasonable belief that he or she is under duty to obey issued but unserved subpoena simply cannot be treated as equivalent of actual service; nor is lack of such service mere *technicality*]

6040-4000 **Showing of relevancy and adequacy of identification of documents requested not prerequisite**

6040-4050 Determinable on motion to revoke

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[revoked where no showing of relevancy made]

6040-8000 **Costs incurred in complying need not be advanced by Board**

O.K. Machine & Tool Corp. And Gyrotronics, Inc. 279 NLRB No. 069

[E's mtn to dismiss C on grounds that witness who had been issued subpoena on E's behalf did not appear denied where service of subpoena was defective inasmuch as there was no tender by E of appropriate mileage and witness fee as requested by witness]

6060 REVOCATION

6060-0100 **Generally**

N.L.R.B. v. Brown Transport Corporation 620 F.Supp. 648 (DC N.D. IL, Oct. 1985)

[rejection by ALJ of parts of subpoena did not operate to revoke entire subpoena and require Bd to issue new subpoena]

6060-3300 **Time for filing petition to revoke**

6060-3350 Within 5 days of service of subpoena

N.L.R.B. v. Brown Transport Corporation 620 F.Supp. 648 (DC N.D. IL, Oct. 1985)

6060-6700 **Grounds for revocation**

6060-6725 Rule 102.118

G. W. Galloway Company 281 NLRB No. 038

[ALJ properly revoked subpoena duces tecum served by E on Bd agent, seeking all records and documents obtained in investigating charge, in order to adduce evidence that agent improperly expanded investigation from original charge to what was finally alleged in C; limited evidentiary privilege protects Bd's informal investigatorial and trial preparatory processes; and subpoena seeking material directly related to investigatory process would likely have enmeshed Bd agent in proceeding as material witness; moreover, underlying charge on its face sufficed to raise allegation set forth in C]

6060-6730 Improper service

M. J. Santulli Mail Services, Inc. 281 NLRB No. 170

[E's claim that subpoenas sent to it by certified mail and returned to Bd marked *refused* were improperly addressed, rejected, where infirmities in address were corrected prior to delivery; subpoenas were delivered and refused by E who was determined to refuse any certified mail from Bd or U; E produced no record evidence denying that it refused delivery of subpoenas, and willful refusal to receive certified or registered mail cannot defeat purposes of Act]

6060-6735 Immaterial to case

Hoschton Garment Company, A Subsidiary of Spencer Industries, Inc. 279 NLRB No. 081

[ALJ's refusal to enforce E's subpoena duces tecum to Ee to produce records to show that child whom she was granted leave to take care of was under doctor's care and subpoena ad testificandum of Ee's husband regarding his ability to stay home with child, proper where evidence was immaterial to issue of whether Ee was suspended for violatin leave of absence or for U activities]

N.L.R.B. v. Brown Transport Corporation 620 F.Supp. 648 (DC N.D. IL, Oct. 1985)

6060-6750 Claim of privilege

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[revocation of subpoena served on State of Hawaii requesting custodian of records for Unemployment Insurance Office to produce certain records regarding discriminatees, granted on basis of State's statutory priviledge and failure of E to state with specificity any reason State's claim of confidentiality and priviledge should not be honored under circumstances of this case]

6080 ENFORCEMENT

6080-0100 **Generally**

Allied Lettercraft Company, Inc. 280 NLRB No. 113

[as a rule, Bd quashes subpoenas served on other governmental agencies where disclosure is prohibited under applicable state law]

6400 STIPULATION AND TRANSFER TO BOARD

6401 GENERALLY

AAL, Inc., d/b/a River Oaks Nursing Home 275 NLRB No. 012

(GC's mtn to strike E's brief because it sets forth *facts* not included in parties' stipulation, denied, since Bd relied solely on stipulated facts)

6800 SUMMARY JUDGMENT

Seth Thomas Division, General Time Corporation 274 NLRB No. 039

(in finding that E's exceptions to RD's report on objections raised substantial and material issues of fact and law warranting remand for hearing, Bd did not rely on affidavits attached to E's exceptions and excluded from R proceeding record by Bd; and Bd found it unnecessary to decide whether examination of affidavits was required herein because they were attached to GC's mtn for summary judgment)

6801 GENERALLY

6801-5000 Board authority to use summary procedure

Institute of Technical Careers, Inc.; Arthur J. Schuh, Trustee in Bankruptcy 279 NLRB No. 105

[GC's mtn for Summary Judgment granted where response of Trustee in Bankruptcy to amended C was untimely and insufficient to constitute an answer w/i requirements of Section 102.20 of Bd's R/R. Response did not specifically admit, deny or explain each allegation in C and no good cause shown for such course of action by Trustee in Bankruptcy]

Institute of Technical Careers, Inc.; Arthur J. Schuh, Trustee in Bankruptcy 279 NLRB No. 105

[summary judgment on backpay specification denied, since no prior Bd order or ct decree awarding backpay has issued in instant case]

6867 CIRCUMSTANCES OF USE

6867-1500 Where complaint allegations inadequate

Handy Dan's Convenience Store, Dan Dickhaut, d/b/a Handy Dan, a/k/a Crostown Food & Liquors, Inc. d/b/a Handy Dan's Convenience Store No. 2 275 NLRB No. 061

(allegations inadequate to sustain finding of 8(a)(5) violation or request for bargaining order)

6867-3000 Where answer inadequate

Heck's, Inc. 282 NLRB No. 043

[mtn for partial summary judgment granted where respondent's amended answer asserted that certain allegations of backpay specification were incorrect but failed to offer alternative backpay formula or furnish supporting figures for computing amounts; nor did E explain in what respect duties of comparison Ees differed from those of discriminatee or provide other information indisputably w/i its knowledge]

Harold F. Kidd d/b/a Value Line Company 281 NLRB No. 031

[E's letter which apparently was response to GC's mtn for summary judgment held inadequate as answer and untimely filed, where it did not specifically admit, deny, or explain each allegation of amended C, and GC did not receive letter until after extended deadline date had passed, and after GC had filed for summary judgment]

Mid-State Distributing Co., Inc. 279 NLRB No. 175

[E answer to *technical* 8(a)(5) C raises no litigable issues, where certain matters were litigated in representation proceeding and other assertedly *previously unavailable* evidence of post-election turnover and addition of new Ees to unit through acquisition of another distributorship did not constitute *unusual circumstances* sufficient to relieve E of duty to bargain]

G. T., Inc. 279 NLRB No. 162

[granted where E's filed letter in response (to C) which discussed economic condition of E but failed to answer C allegations]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt 279 NLRB No. 129

[mtn granted where answer to backpay specification inadequate in view of defense based on issues already litigated and failure to specifically dispute GC calculations]

Institute of Technical Careers, Inc.; Arthur J. Schuh, Trustee in Bankruptcy 279 NLRB No. 105

[GC's mtn for Summary Judgment granted where response of Trustee in Bankruptcy to amended C was untimely and insufficient to constitute an answer w/i requirements of Section 102.20 of Bd's R/R. Response did not specifically admit, deny or explain each allegation in C and no good cause shown for such course of action by Trustee in Bankruptcy]

Herbert Rogers, Esquire, Trustee In Bankruptcy To Bristol Clothing Manufacturing Co., Inc. 276 NLRB No. 111

(GC's mtn to strike answer of trustee in bankruptcy to second amended C and mtn for summary judgment based on E's failure, as debtor-in-possession, to answer such C, and on trustee's answer's failure to meet Bd's R/R requirements, denied, where, although trustee, rather than E, filed ans to second amended C, E's answer to first amended C answered allegations in second amended C containing substantially same allegations as those in first, and E's ans thus raised litigable issues; and denial was appropriate in view of special role of trustee)

6867-3300 In absence of answer

Digum Coal, Inc. 282 NLRB No. 080

Transportation By La Mar, Inc., Ready Transportation Co., Inc., La Mar Gouger and Jerome Butler 281 NLRB No. 079

[summary judgment granted against Respondent who failed to file answer to backpay specification, however, insofar as answers filed by other Respondents in case raised issue of discriminatees' interim earnings, final amount of backpay liability will be determined at hearing, in which non-answering Respondent will not be permitted to participate]

J&M Construction, Inc. 281 NLRB No. 081

[granted where service by certified mail was twice refused and no answer was filed despite personal service by Bd attorney]

Ofalco Properties, Inc.; The Nautilus Development Corp.; and The Nautilus Management Co., alter egos and/or single employer 281 NLRB No. 016

[E failed to file answer to C issued on day informal settlement agreement was vacated, notwithstanding that E did file answer to earlier C, which was informally settled by agreement that stated that approval of agreement constituted withdrawal of C and answer, since RD's vacating settlement agreement did not revive original C or answer]

Antoine's Inc., A California Corporation, d/b/a Antoine's of Beverly Hills 280 NLRB No. 142

[mtn for summary judgment granted where respondent's answer to Notice to Show Cause stated it had filed bankruptcy ptn but failed to deny committing ULP or explain failure to contact Regional Office about answer or extension of time to file answer, and instituting bankruptcy proceedings does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; Bd proceedings fall w/i 11 USC Sec. 362(b)(4) and (5) exception to automatic stay provision for governmental unit proceedings to enforce its police or regulatory powers]

Michele Rena, and Its Alter Ego, Rite Style Merchandising, Inc., T/A Rite Style Fashions 280 NLRB No. 072

[fact Respondent had filed chapter 11 bankruptcy reorganization ptn did not constitute good cause for its failure to file timely answer to complaint, thus mtn for summary judgment granted since allegations of complaint deemed to be admitted]

California Cigarette Concessions, Inc.; And California Cigarette Concessions, Inc., In Its Capacity As Debtor In Procession 280 NLRB No. 020

[mtn for summary judgment granted absent answer to notice to show cause or prior 8(a)(5)C, notwithstanding Es' ptn for backruptcy, where Es entered into contract after filing ptn and filed but withdrew application to have contract set aside]

Can-Do, Inc. 279 NLRB No. 111

[in absence of any response to mtn for default summary judgment, Bd granted mtn but made no finding what effect E's alleged filing of intervening bankruptcy ptn would have on 8(a)(5) remedy herein since, unlike in companion case, there was no allegation herein of bankruptcy and charging parties were not same; consequently, Bd left matter to compliance proceedings, noting that, if bankruptcy ptn had been filed, remedy shall be limited in same manner as in companion case; cf. *Can-Do, Inc.*, 279 NLRB No. 108]

Can-Do, Inc. 279 NLRB No. 108

[in absence of answer to C and of response to mtn to show cause why mtn for default summary judgment should not be granted against E who filed bankruptcy ptn after C issued, Bd granted summary judgment and extended 8(a)(5) remedy only to date E filed bankruptcy ptn, which was consistent with S.Ct's *Bildisco* opn that E does not violate 8(a)(5) by changing terms and conditions of agreement during period between filing of bankruptcy ptn and bankruptcy ct's determination whether agreement may be rejected; cf. *Can-Do, Inc.*, 279 NLRB No. 111]

CCA Heating & Air Conditioning, Inc. 279 NLRB No. 054

[contrary to dissenting member who would have dismissed C on ground case involved dispute solely over compliance with contract breach of which is not necessarily an ULP absent repudiation of bargaining obligation, panel majority granted mtn for summary judgment, since, in absence of E's answer to C or Bd's mtn to show cause, allegations that E violated Act were deemed admitted and any other matters were not in issue]

Rapid Fur Dressing, Inc. and Rapid Fur Dressing, Inc., Debtor-In-Possession 278 NLRB No. 126

[summary judgment granted where *petitioner in bankruptcy* did not file response to (Bd) Notice to Show Cause]

Monroe Transport, Inc. 278 NLRB No. 015 01

[condonation is factual matter which GC must prove by preponderance of evidence]

Wayne Drapery Service, Inc., Mary Rinio, d/b/a Madison Cleaners, and John Rinio, d/b/a Wayne Design 277 NLRB No. 057

LDM Roofing, Inc. d/b/a Acme Roofing Company 277 NLRB No. 063

SECO Electric Company 274 NLRB No. 186

(GC's mtn for summary judgment, based upon E's failure to file ans to amended C which alleged essentially identical cause of action as original C (with the addition of one 8(a)(1) allegation), denied, where E's ans to original C, which raised affirmative defense to the substantive allegation of C, raised substantial and material issues of fact)

6867-3300—Cont.

Maislin Transport of Delaware, Inc. and Maislin Transport of Delaware, Inc. Debtor-in-Possession **274 NLRB No. 074**
(GC's mtn for summary judgment granted where E withdrew its answer, which had same effect as failure to file answer)

La Boucherie Bernard, Ltd., d/b/a Goldstein Co. **274 NLRB No. 095**
(mtn for summary judgment granted, since E's untimely filed Notice of Reorganization (Automatic Stay) contending that E's filing of ptn for reorganization in bankruptcy acted as automatic stay did not constitute an answer under Sec. 102.20 as it did not specifically admit, explain, or deny each allegation of complaint; and E's response to Notice to Show Cause contending that only bankruptcy ct could lift the automatic stay did not show good cause for failure to file timely answer, since it did not deny commission of ULPs or explain why E did not contact Bd concerning an answer or extension of time to file an answer)

R. L. Broker & Company, Inc. **274 NLRB No. 101**
(GC's mtn for summary judgment denied, notwithstanding absence of *good cause* for E's failure to file ans, since C alleging violations of 8(a)(5) and 8(d) was defective where it was internally inconsistent and failed to establish information necessary to determine whether E violated Act and absent from C were allegations or facts demonstrating contract was in effect when E subcontracted work, whether contract prohibited subcontracting or facts which would enable Bd to determine whether decision to subcontract in fact required bargaining)

John Mahoney Construction Company, Inc. **274 NLRB No. 024**
(granted notwithstanding late retention of counsel and Respondent's claim that if summary judgment granted it would jeopardize pending settlement discussions)

6867-3310 Within discretion of General Counsel

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking **274 NLRB No. 045**
(where Respondent made 2 tardy responses to C amended and consolidated Cs, GC could have moved for summary judgment under Sec. 102.20 of BD's R/R, which provides that in event no ans filed on any allegation in C or not specifically denied shall be deemed to be admitted unless good cause to contrary be shown; however, w/i GC's discretion not to invoke Sec. 102.20 and here instead chose to present fully developed case inasmuch as GC might have had knowledge of what he considered good cause for inadequacies of answers)

6867-3325 Where answer untimely filed

Harold F. Kidd d/b/a Value Line Company **281 NLRB No. 031**
[E's letter which apparently was response to GC's mtn for summary judgment held inadequate as answer and untimely filed, where it did not specifically admit, deny, or explain each allegation of amended C, and GC did not receive letter until after extended deadline date had passed, and after GC had filed for summary judgment]

N & G Coal Co., Inc., etc. d/b/a Hagerman Trucking **274 NLRB No. 045**
(where Respondent made 2 tardy responses to C amended and consolidated Cs, GC could have moved for summary judgment under Sec. 102.20 of BD's R/R, which provides that in event no ans filed on any allegation in C or not specifically denied shall be deemed to be admitted unless good cause to contrary be shown; however, w/i GC's discretion not to invoke Sec. 102.20 and here instead chose to present fully developed case inasmuch as GC might have had knowledge of what he considered good cause for inadequacies of answers)

R. M. Eyre & Associates, Inc. **JD-(SF)-79-86**
[E's refusal to pay fringe benefit contributions, on behalf of its Ees who were represented by U, to various contractually established fringe benefits trust funds after expiration of its bargaining agreement with U, violative where not only did E's duty to bargain with U survive expiration of agreement but its obligation to continue making payments to fringe benefit funds continued]

6867-6700 Where issue has or could have been previously resolved

Bryan Memorial Hospital **282 NLRB No. 032**
[mtn for summary judgment granted and E held to have violated Section 8(a)(5) by failing to bargain before making changes in benefits and working conditions, where issue of whether E had properly withdrawn recognition from U was raised in previous case, is res judicata, and may not herein be raised or litigated, nor does pendency of appeal of prior proceeding in federal ct necessitate dismissal of C. Since E is not entitled to refuse to bargain with certified U while it litigates validity of certification in ct of appeals]

Mid-State Distributing Co., Inc. **279 NLRB No. 175**
[E answer to *technical* 8(a)(5) C raises no litigable issues, where certain matters were litigated in representation proceeding and other assertedly *previously unavailable* evidence of post-election turnover and addition of new Ees to unit through acquisition of another distributorship did not constitute *unusual circumstances* sufficient to relieve E of duty to bargain]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt **279 NLRB No. 129**
[mtn granted where answer to backpay specification inadequate in view of defense based on issues already litigated and failure to specifically dispute GC calculations]

Western Temporary Services, Inc. and The Classic Company, Inc. **278 NLRB No. 073**
[ALJ's granting GC's mtn to strike certain of Es' denials from their individual answers, granting mtn for summary judgment, and deciding certain issues were res judicata because previously determined by Bd in underlying R proceeding, proper, notwithstanding Es' contention that they were denied due process in R proceedings for lack of adequate notice of amendment to ptn naming them as joint Es, where GC issued C alleging them as joint Es over two weeks before R ptn amendment and hearing, one E admitted joint E status in its answer, and other E presented evidence of their relationship at R hearing]

6867-6705 Jurisdiction

Butchers' Union Local 120, Food & Commercial Workers (Wever Quality Meats, Inc.) **275 NLRB No. 187**

6867-6725 Unit determination

Heuer International Trucks, Inc. **279 NLRB No. 018**
[upon GC's mtn for summary judgment, Bd held its earlier order denying such mtn and granting E's mtn for reconsideration on unit question was improvidently granted and consequently vacated earlier order, where defense was same argument consistently raised by E in underlying R proceeding and, under rule against relitigation, it was not valid basis for staying Bd's certification]

Heuer International Trucks, Inc. **279 NLRB No. 018**
[GC's mtn for summary judgment granted where all issues raised by E were or could have been litigated in prior R proceeding; E did not offer to adduce at hearing any newly discovered and previously unavailable evidence nor allege any special circumstances that would require Bd to reexamine decision made in R proceeding; consequently, E has not raised any issue properly litigable in instant ULP proceeding]

Beacon Light, Inc. d/b/a Beacon Light Christian Nursing Home **277 NLRB No. 109**
(summary judgment appropriate where E sought to litigate supervisory status of LPN's)

6867-6750 Failure to hold hearing on objections to election

Van Leer Containers, Inc. **279 NLRB No. 079**
[E's contention that it was denied due process because Bd allegedly failed to articulate its reasons for adopting RD's recommendation in prior *R* case, rejected, since Bd's Decision and Certification of Representative stated that Bd had considered E's objections, and that adoption of findings and recommendations of RD was based on review of the record, exceptions and briefs; further, RD properly denied E hearing on objections where RD assumed the truth of E's evidence and thus, an ex parte investigation was proper]

Brinks, Incorporated of Florida **276 NLRB No. 001**
(mtn for summary judgment denied, and 8(a)(3) case remanded to RD for evidentiary hearing on issue raised by E's contention that U of police and protection Ees was improperly certified where it was affiliated with organization that admitted nonguards to membership; contention that certification was also improper because of certain officers' criminal background, however, did not warrant a hearing, since that was not basis for denying certification)

6867-6766 Objection to conduct affecting election

National Brands of Ft. Lauderdale, Inc. **277 NLRB No. 089**
(mtn for summary judgment in ULP proceeding granted, notwithstanding E's argument that Bd's Associate Executive Secretary had no standing, in underlying R case, to deny mtn to reopen record on alleged misrepresentations in pre-election letter, since Associate Executive Secretary, who signed denial of mtn, did so *by direction of the Board*

California Teamsters, Local Union 911 (General Felt Industries, Inc.) **275 NLRB No. 136**
(mtn for summary 8(b)(7)(B) judgment granted where, although U claimed it belatedly learned that Ees did not vote for it in election won by rival U because they feared E retaliation and w/held information for same reason, which fear they based on Ee discharge found unlawful by Bd in prior case, there was no evidence U attempted to secure such *newly discovered* evidence before or during ULP hearing and was unsuccessful in doing so; and U being unaware of newly discovered evidence at time of its 8(b)(7)(B) activity, may not justify such conduct based on information not known to it at time of its actions)

6867-6766—Cont.

General Felt Industries, Inc. 275 NLRB No. 134
(notwithstanding E's refusal to bargain with U certified following election on ground losing incumbent U had reasonable possibility of prevailing on issue of validity of election in pending 8(b)(7)(B) case, motion for summary judgment granted where in 8(b)(7)(B) case, claiming it belatedly learned Ees did not vote for it because they feared E retaliation and withheld such information for same reason failed to show that such evidence was newly discovered and previously unavailable during prior Bd hearing at which Bd found Ee's unlawful discharge had minimal impact on subsequent election)

General Felt Industries, Inc. 275 NLRB No. 134
(mtn for summary judgment granted, notwithstanding E's refusal to bargain with U certified following election on ground that E had been informed by several Ees that they would have voted for losing incumbent U had they not been afraid of possible discharge, which fear they based on unlawful discharge of Ee as found by Bd in prior case, where E failed to show that evidence was unavailable at time of ULP hearing or otherwise demonstrated that Ee statements constituted newly discovered or previously unavailable evidence)

Island Film Processing Co., Inc. d/b/a Kahala Kai Photo Service 274 NLRB No. 175
(although Gc's mtn for summary judgment was granted where E admitted refusing to bargain and to supply U with requested information Ge's mtn to strike E's affirmative defense that certification was erroneous because of U's objectionable conduct was denied although it was no defense to C since it could be viewed as attempt by E to preserve its position)

Davey Compressor Company 274 NLRB No. 107
(E's contention that it had been denied due process by denial of a hearing before an ALJ when it refused to bargain with U on grounds of preelection misconduct, rejected, since in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior R proceeding)

Seth Thomas Division, General Time Corporation 274 NLRB No. 039
(where Bd had rejected E's affidavits included with documents submitted with its exceptions to RD's report on objections because they had not been served on U, which E had not done in order to preserve affidavits' confidentiality, but GC provided them to U by appending them to its mtn for summary judgment, Bd denied GC's mtn and remanded case to RD for hearing, since E's exceptions raised substantial and material issues of fact and law and established prima facie showing that U's and third parties' conduct created general atmosphere of fear and coercion)

N.L.R.B. v. Island Film Processing Co., Inc., d/b/a Kahala Kai Photo Service 784 F.2d 1446 (C.A. 9, Mar. 1986)
[E's objection to Bd's finding that individual was not supervisor, adequately preserved for ct review of ULP case, notwithstanding Bd's grant of summary judgment therein because E had simply *reiterated* objections, where Bd had discussed issue of individual's supervisory status in underlying R case in response to E's objection to supervisory involvement in election]

6867-6790 ULP violation by agreed set of actions

SDC Investment, Inc. 278 NLRB No. 097
[summary judgment for consolidated cases--objections to election and ULP allegations that tracked objections to elections--denied, and hearing before ALJ directed, notwithstanding E's attorney filed charge of its own in which he admitted that objections in pending RC case were identical to ULP charge he was filing. Bd held that it did not consider charge filed by E's attorney as admission that ULPs were actually committed and therefore could serve as basis for mtn for summary judgment, but rather was questionable procedural folderol to test hearing officer's authority to rule on matters in objections case which, if proven, would constitute ULP violation]

6867-6793 Defenses raised in prior 10(k) determination proceeding

Iron Workers, Local No. 118 (Franklin D. Chiado, A Sole Proprietorship d/b/a Valley Industrial Machine Erectors 274 NLRB No. 062

6867-6800 Failure to litigate present allegations in prior proceeding

Universal Blanchers, Inc. 275 NLRB No. 218
(mtn for summary judgment granted E in 8(a)(3) case where RD issued C after approving agreement settling E's alleged independent 8(a)(1) violations, since settlement agreement barred litigation of 8(a)(3) violations which predated settlement agreement and were known to RD when he approved it; RD's withdrawal of approval and issuance of 8(a)(3) C because he had not been notified of appeals on the 8(a)(3) allegations was improper, since he was GC's agent, and GC, through Office of Appeals, had such knowledge, and E had neither breached settlement agreement nor committed postsettlement violations)

Butchers' Union Local 120, Food & Commercial Workers (Wever Quality Meats, Inc.) 275 NLRB No. 187

6867-8000 Where factual dispute

Eastern Connecticut Health Services, Inc. d/b/a New London Convalescent Home 274 NLRB No. 204
(E's defense to refusal to bargain that it was not obligated to do so because of fact that, after certification, U disaffiliated with one national U and reaffiliated with another w/o notifying unit members of, or giving them an opportunity to vote on, reaffiliation raised material issues of fact and law such that Bd ordered hearing limited to issue of whether U's reaffiliation comported with *Amoco Production Co.* due process standards and whether E was obligated to bargain with reaffiliated U)

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[party seeking to avoid summary judgment may not rely on mere denial of allegations contained in C but must present specific facts that demonstrate that there are material factual issues requiring hearing]

6867-8400 Where no factual dispute

Herbert Halperin distributing Corporation 281 NLRB No. 001
[mtn for summary judgment granted, notwithstanding E's contention that it is entitled to a hearing to determine if U still retains majority support due to lapse of time and alleged high turnover rate among unit Ees, since U's continued majority status is presumed to exist for one-year certification period, and neither Ee turnover lapse of time justifies E's refusal to bargain]

Pittsburgh Testing Laboratory 279 NLRB No. 173
[mtn for summary judgment granted since no material issues of fact existed where E refused to provide U with requested Ees' wage and employment information which was presumptively relevant for bargaining purposes and must be furnished on request, and E failed to rebut relevance of such information]

SDC Investment, Inc. 278 NLRB No. 097
[summary judgment for consolidated cases--objections to election and ULP allegations that tracked objections to elections--denied, and hearing before ALJ directed, notwithstanding E's attorney filed charge of its own in which he admitted that objections in pending RC case were identical to ULP charge he was filing. Bd held that it did not consider charge filed by E's attorney as admission that ULPs were actually committed and therefore could serve as basis for mtn for summary judgment, but rather was questionable procedural folderol to test hearing officer's authority to rule on matters in objections case which, if proven, would constitute ULP violation]

Universal Blanchers, Inc. 275 NLRB No. 218
(mtn for summary judgment granted E in 8(a)(3) case where RD issued C after approving agreement settling E's alleged independent 8(a)(1) violations, since settlement agreement barred litigation of 8(a)(3) violations which predated settlement agreement and were known to RD when he approved it; RD's withdrawal of approval and issuance of 8(a)(3) C because he had not been notified of appeals on the 8(a)(3) allegations was improper, since he was GC's agent, and GC, through Office of Appeals, had such knowledge, and E had neither breached settlement agreement nor committed postsettlement violations)

Butchers' Union Local 120, Food & Commercial Workers (Wever Quality Meats, Inc.) 275 NLRB No. 187
(appropriate where U admitted threatening to picket E to force E to bargain with U less than 12 months after U lost valid election in order to challenge election's validity)

Machinists, Local 289, and District Lodge 160 (Tacoma and Seattle Trailer Repair, Inc.) 275 NLRB No. 081
(mtn for summary judgment granted where there were no material facts in dispute and no cause to the contrary shown, since U admitted all factual allegations that it brought charges and fined Ees for their postresignation work for E behind U's picket line, and U did so pursuant to its constitutional restriction maintained and enforced against its members' right to resign from U, which was in violation of 8(b)(1)(A))

Conoco Chemicals Company, Division of Conoco, Inc. 275 NLRB No. 009
(motions and cross motions for summary judgment denied; case remanded to RD for further appropriate action involving U's request for information concerning names of witnesses who gave statements relating to Ee grievance. Necessity and relevance of requested information require further inquiry)

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[Bd may grant summary judgment in ULP proceeding if no material issue of fact exists]

6867-9300 In cases involving deferral to parties' grievance-arbitration machinery

6867-9300—Cont.

United States Postal Service (Venice, CA) 275 NLRB No. 065

6867-9300 Backpay proceeding

Heck's, Inc. 282 NLRB No. 043
[mtn for partial summary judgment granted where respondent's amended answer asserted that certain allegations of backpay specification were incorrect but failed to offer alternative backpay formula or furnish supporting figures for computing amounts; nor did E explain in what respect duties of comparison Ees differed from those of discriminatee or provide other information indisputably w/i its knowledge]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt 279 NLRB No. 129
[mtn granted where answer to backpay specification inadequate in view of defense based on issues already litigated and failure to specifically dispute GC calculations]

Midwest Motel Management Corp. of Birmingham 278 NLRB No. 060
[while finding, contrary to ALJ, that E's general denial of backpay specification concerning amount of interim earnings was sufficient to raise such issue, Bd nevertheless adopted ALJ's findings with respect to interim earnings, since there was no prejudice from ALJ's rulings at hearing or discussion of such issue in his decision, where discriminatee denied ALJ's and E's counsel's inquiries whether there were any other interim earnings, and E did not attempt to present any additional evidence on issue]

Midtown Service Center, Inc. 278 NLRB No. 067
[Bd in ruling on GC's mtn for summary judgment on backpay specification ordered hearing limited to determination of discriminatee's interim earnings where, although respondent's failure to specifically deny gross backpay allegations resulted in their being deemed admitted as true, its general denial of interim earnings allegations was sufficient under Sec. 102.54 to raise issues warranting a hearing]

Transportation Management Corporation; et al. 277 NLRB No. 046
(GC's mtn for summary judgment in backpay proceeding granted where E's answers to three backpay specifications did not conform to R/R Sec. 102.54 as to those matters w/i E's knowledge, did not specifically dispute accuracy of gross backpay figures or provide any specific alternative formula for computing gross backpay due, but merely denied allegations of backpay specifications or stated that E lacked sufficient knowledge to admit or deny specifications)

Barry S. Sol'of, M.D., d/b/a The Victoria Medical Group, et al. 274 NLRB No. 155
(GC's contention that E's response to specification was not ans w/i meaning of Bd's R/R 102.54(b) and (c) because it was not sworn to, did not include E's address and did not explicitly admit, deny or explain specification's allegations, rejected and summary judgment denied, where, although ans was technically deficient, it was characterized by E as *response* and there was implicit denial of allegations in E's demand for supporting documentation; further, E's filing second ans in response to Notice to Show Cause, cured defects in initial ans; Bd's R/R's are to be liberally construed)

Barry S. Sol[illegible], M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 274 NLRB No. 155
(E's claim, raised in ans to specification, that discriminatees would have been laid off for legitimate business reasons soon after unlawful conduct and claim that E ceased business operations prior to termination of alleged backpay period, held valid matters for compliance stage and summary judgment denied, since both contentions go to issue of discriminatees' job availability during backpay period)

Troy Haney and Hugh Haney, A Partnership, d/b/a Troy's Restaurant 274 NLRB No. 009
(failure to file answer)

6867-9700 Bankruptcy proceedings

Rector Engineering and Development Corporation, Rector Engineering and Development Corporation, Debtor-in-Possession 281 NLRB No. 146
[E's contention in ULP proceeding on GC's mtn for summary judgment, that bankruptcy ptn excused its failure to file ans and nevertheless, Bd was obligated to file claim with bankruptcy ct rather than litigate ULP, rejected; E's uncertain financial condition does not constitute *good cause* for failure to file ans and it is well established that ULP proceedings are exempt from automatic stay provisions of bankruptcy law]

Antoine's Inc., A California Corporation, d/b/a Antoine's of Beverly Hills 280 NLRB No. 142
[mtn for summary judgment granted where respondent's answer to Notice to Show Cause stated it had filed bankruptcy ptn but failed to deny committing ULP or explain failure to contact Regional Office about answer or extension of time to file answer, and instituting bankruptcy proceedings does not deprive Bd of jurisdiction or authority to process ULP case to final disposition; Bd proceedings fall w/i 11 USC Sec. 362(b)(4) and (5) exception to automatic stay provision for governmental unit proceedings to enforce its police or regulatory powers]

California Cigarette Concessions, Inc.,; And California Cigarette Concessions, Inc., In Its Capacity As Debtor In Procession 280 NLRB No. 020
[mtn for summary judgment granted absent answer to notice to show cause or prior 8(a)(5)C, notwithstanding Es' ptn for backruptcy, where Es entered into contract after filing ptn and filed but withdrew application to have contract set aside]

GMW, Inc. 279 NLRB No. 101
[mtn for Summary Judgment granted against bankrupt E, since Company failed to answer C, or respond to notice to show cause and all allegations in C remain undisputed and because all ULPs occurred prior to bankruptcy ptn]

Can-Do, Inc. 279 NLRB No. 111
[in absence of any response to mtn for default summary judgment, Bd granted mtn but made no finding what effect E's alleged filing of intervening bankruptcy ptn would have on 8(a)(5) remedy herein since, unlike in companion case, there was no allegation herein of bankruptcy and charging parties were not same; consequently, Bd left matter to compliance proceedings, noting that, if bankruptcy ptn had been filed, remedy shall be limited in same manner as in companion case; cf. *Can-Do, Inc.*, 279 NLRB No. 108]

Can-Do, Inc. 279 NLRB No. 108
[in absence of answer to C and of response to mtn to show cause why mtn for default summary judgment should not be granted against E who filed bankruptcy ptn after C issued, Bd granted summary judgment and extended 8(a)(5) remedy only to date E filed bankruptcy ptn, which was consistent with S.Ct's *Bildisco* opn that E does not violate 8(a)(5) by changing terms and conditions of agreement during period between filing of bankruptcy ptn and bankruptcy ct's determination whether agreement may be rejected; cf. *Can-Do, Inc.*, 279 NLRB No. 111]

Can-Do, Inc. 279 NLRB No. 108
[while mindful that recently enacted bankruptcy statute modified S.Ct's *Bildisco* decision, Bd held statute did not apply to cases such as that herein where intervening bankruptcy ptn was filed in summary judgment proceeding prior to its enactment]

Rapid Fur Dressing, Inc. and Rapid Fur Dressing, Inc., Debtor-In-Possession 278 NLRB No. 126
[summary judgment granted where *petitioner in bankruptcy* did not file response to (Bd) Notice to Show Cause]

GMW, Inc. 274 NLRB No. 214
(summary judgment was inappropriate in C proceeding alleging E violated 8(a)(1), (5) and 8(d) of Act, notwithstanding E failed to file ans but rather informed GC it had filed for bankruptcy under Chapter 7, where nothing in record showed when E filed for bankruptcy, whether alleged violations occurred before or after filing date, whether trustee formally assumed or rejected contract and whether Bankruptcy Court permitted rejection of contract; such information is critical in deciding whether E violated Act)

Edwin Odum d/b/a The Phoenix Company 274 NLRB No. 146
(institution of bankruptcy proceedings does not deprive Bd of jurisdiction or authority to entertain and process ULP case to its final disposition. Bd proceedings fall w/i exception to automatic stay provision for proceedings by governmental unit to enforce its police or regulatory powers)

Edwin Odum d/b/a The Phoenix Company 274 NLRB No. 146
(Congress nullified *Bildisco*, 104 S.Ct 1188, which held that filing Chapter 11 ptn renders collective-bargaining agreement unenforceable by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, July 10, 1984)

La Boucherie Bernard, Ltd., d/b/a Goldstein Co. 274 NLRB No. 095
(mtn for summary judgment granted, since E's untimely filed Notice of Reorganization (Automatic Stay) contending that E's filing of ptn for reorganization in bankruptcy acted as automatic stay did not constitute an answer under Sec. 102.20 as it did not specifically admit, explain, or deny each allegation of complaint; and E's response to Notice to Show Cause contending that only bankruptcy ct could lift the automatic stay did not show good cause for failure to file timely answer, since it did not deny commission of ULPs or explain why E did not contact Bd concerning an answer or extension of time to file an answer)

Lake Castings, Inc. 274 NLRB No. 040
(mtn for summary judgment granted, in view of E's trustee in bankruptcy failure to file answer, insofar as complaint alleged violation of Sections 8(a)(5) and (1) by failing to make premium payments for medical insurance for unit Ees prior to filing of bankruptcy ptn; however, mtn denied and that portion of complaint remanded to RD which alleged violation by failure to make insurance premium payments on or after date of filing bankruptcy ptn in view of *Bildisco* 104 S.Ct 1188, which held debtor-in-possession does not committ ULP when it unilaterally rejects or modifies bargaining agreement before bankruptcy ct approves formal rejection)

6867-9700—Cont.

Maraldo Asphalt Paving, Inc. 274 NLRB No. 018
(mtn for default judgment denied, notwithstanding E's failure to answer backpay specification which alleged E's liability for fringe benefit contributions for second half of 1982 and third quarter of 1983 and which stated that E had filed for bankruptcy August 3, 1983, and case remanded for investigation into circumstances surrounding bankruptcy ptn filing, since E's liability for contributions for third quarter of 1983 could not be determined in absence of indication that E had formally accepted contract after filing the ptn and that Bankruptcy Ct had permitted E's rejection of the contract)

6884 DISMISSAL OF COMPLAINT OR ALLEGATIONS CONTAINED THEREIN

Pioneer Hotel and Gambling Hall, Inc. 276 NLRB No. 072
(where GC's mtn to amend C containing 8(a)(1) allegation to include 8(a)(3) allegation was denied, E's mtn to strike 8(a)(1) allegation on ground it was also time-barred by 10(b) as was the case with the 8(a)(3) allegation, denied, since 8(a)(1) allegation was closely related to outstanding timely filed charges)

6892 GRANTING OF LIMITED SUMMARY JUDGMENT

Abdul Samad Ra'Oof Shabazz and Jacqueline Craig, A Co-Partnership d/b/a Michigan Expediting Service; et al. 282 NLRB No. 030
[where C did not allege sufficient facts to enable Bd to evaluate pervasiveness of violations and to determine whether bargaining order was warranted, Bd granted limited summary judgment as to violations and remanded case for hearing before ALJ only on issue of whether bargaining order was appropriate under circumstances herein]

Noah Robinson; Master Food Services, Inc.; et al. 276 NLRB No. 123
(GC's mtn to strike portion of multiple Es' answers to backpay specification, and for partial summary judgment against them, granted with respect to specification's allegations pertaining to number of hours Ees worked and gross backpay during relevant period, where Es' answers to such allegations constituted insufficient general denials; however, Es granted 20 days from date of order herein to file mtn enabling them to answer allegations with appropriate specificity)

7000 JUDGMENT ON THE PLEADINGS

Western Temporary Services, Inc. and The Classic Company, Inc. 278 NLRB No. 073
[mtn for judgment on pleadings granted where briefs were waived and oral argument heard, jurisdiction and rejection of bargaining demand admitted, issues of joint employment, unit description and lack of due process determined in R case, fact and rate of temporary Ee turnover subsequent to that determination found immaterial to bargaining duty, and pleadings raise no other factual issue]

Universal Iron Co., Inc. JD-42-85

7100 DEFAULT JUDGMENT

Maraldo Asphalt Paving, Inc. 274 NLRB No. 018
(mtn for default judgment denied, notwithstanding E's failure to answer backpay specification which alleged E's liability for fringe benefit contributions for second half of 1982 and third quarter of 1983 and which stated that E had filed for bankruptcy August 3, 1983, and case remanded for investigation into circumstances surrounding bankruptcy ptn filing, since E's liability for contributions for third quarter of 1983 could not be determined in absence of indication that E had formally accepted contract after filing the ptn and that Bankruptcy Ct had permitted E's rejection of the contract)

Destiny Delivery Systems, Inc. 273 NLRB No. 176
(mtn for default judgment granted where respondent failed to file answer to C and under Bd R/R Sec. 101.20, allegations of C shall be admitted if answer is not filed w/i 10 days from service of C, unless good cause is shown)

7200 ALJ's QUALIFICATION AND AUTHORITY

7250 QUALIFICATION REQUIREMENTS

7250-4500 Motions to disqualify

District No. 1, Pacific Coast District Engineers Beneficial Association, AFL-CIO (Crest Tankers, Inc.) 274 NLRB No. 215
(Bd granted request by Charging Party to appeal ALJ's order excluding its counsel from ULP hearing because in ALJ's opinion counsel had misrepresented and distorted ALJ's evidentiary ruling excluding certain evidence in its request to appeal that ruling; Bd also granted Charging Party's and GC's mtns to recuse ALJ and remanded matter for hearing de novo before new ALJ, since while appeal did not clearly reflect ALJ's ruling, evidence insufficient to establish Charging Party's filing of appeal and refusal to obey ALJ's directive to correct appeal was attempt to obstruct hearing

7250-4533 Adequacy of facts alleged

Alamo Cement Company 277 NLRB No. 034
(mtn that ALJ disqualify himself, denied; fact that ALJ formerly served as counsel for GC in cases in which counsel for respondent and members of his firm were opposing counsel, did not, in absence of evidence of personal bias, disqualify him from presiding over this case, nor did the fact that he supervised the hearing officer in an R case involving respondent and the U, since he was not familiar with the challenges and objections in that case, because hearing officers function independently of their supervisors and report directly to the Bd)

7250-4567 Timeliness

R. Waldo, Inc. 280 NLRB No. 138
[R/R Sec. 102.37 requires that party requesting judge to disqualify himself do so before judge files his decision]

7250-5000 Disqualification for bias and prejudice

Reading Anthracite Company 273 NLRB No. 187
(when ALJ's conduct is considered as a whole, both his on-the-record conduct and his issuing reports on misconduct of E's attorney, there are sufficient grounds for finding that ALJ, at very least, gave appearance of partiality and prejudgment sufficient to warrant his disqualification from case. Case remanded for hearing de novo before different ALJ)

The Lawson Company v. N.L.R.B. 753 F.2d (C.A. 6, Jan. 1985)
(ALJ's statement, during hearing as to E witness's discussion of nature of E's Sales Assistant Committee that *I know what a negotiating committee is and so does Bd law,* not objectionable as predisposition to find ULP, since given context of ULPs during hearing, ALJ's statement merely acknowledged what was to him, and is to ct, obvious, and statement made after several witnesses had testified on subject and documents about operation had been introduced)

7250-5040 Intemperate language

Baddour, Inc. 281 NLRB No. 084
[ALJ's allegedly *excessive* questioning of E's witnesses, allegedly unprofessional conduct, and evidentiary rulings not evidence of bias, notwithstanding that certain of ALJ's remarks were unwise, where rulings did not prejudice E's presentation of evidence, and conduct of hearing was consistent with obligation to develop full record]

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. ——F.2d——
(C.A. 4, Feb. 1986)
[E's contention Bd's order should not be enforced because ALJ was biased in that he made intemperate and derisive remarks by using the term *scab* during questioning of a U witness, rejected, where prior to using the term, ALJ made it clear he was only using the term because the witness knew what it meant and he used the term only after the witness had used it several times]

The Lawson Company v. N.L.R.B. 753 F.2d (C.A. 6, Jan. 1985)
(harsh language (of ALJ) of itself does not establish prejudice. Ct does not, in instant case, approve such statements; ct took evidence adduced at open public hearing where both sides were given equal opportunity to present whatever evidence they felt appropriate; given above facts, there is substantial evidence to uphold decision of Bd)

7250-5050 Improper conduct of hearing, credibility resolution or inferences

Baddour, Inc. 281 NLRB No. 084
[ALJ's allegedly *excessive* questioning of E's witnesses, allegedly unprofessional conduct, and evidentiary rulings not evidence of bias, notwithstanding that certain of ALJ's remarks were unwise, where rulings did not prejudice E's presentation of evidence, and conduct of hearing was consistent with obligation to develop full record]

Advertisers Manufacturing Company 275 NLRB No. 019
(a decision, as public document, is competent for official notice where it otherwise is to be shown properly material to issue in subsequent proceeding; and even contrarily, e.g., where decision is determined not one to be relied upon, initial review of decision for contended purpose served involves neither prejudial error, nor, in law, renders reviewing judge biased)

Advertisers Manufacturing Company 275 NLRB No. 019
(assessment of a witness' credibility in a subsequent proceeding is not to be deemed governed by those made in an earlier one, and it is generally inappropriate for ALJ to rely on credibility findings made in another case)

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. ——F.2d——
(C.A. 4, Feb. 1986)
[E's contention Bd's order should not be enforced because ALJ was biased in that he stated off the record in pretrial conference that E's defense to 8(a)(5) allegation had never been *applied or sustained* in context of which E was raising it, rejected, since remarks reflected nothing more than familiarity

7250-5050—Cont.

with governing caselaw; a judge's remarks that constitute mere expressions on a point of law are not sufficient to show personal bias or prejudice]

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. ———F.2d——— (C.A. 4, Feb. 1986)

[E's contention Bd's order should not be enforced because ALJ was biased in that he assumed role of advocate by examining witnesses at the hearing, rejected, where questioning complained of was nothing more than ALJ's attempt to obtain more specific statements from witnesses' broad testimony to determine the weight to be given thereto and ALJ was doing no more than clarifying the record, all actions which ALJ is expressly authorized to do under Bd's R/R 102.35(k)]

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. ———F.2d——— (C.A. 4, Feb. 1986)

[E's contention Bd's order should not be enforced because ALJ was biased in that he refused to credit uncontradicted testimony of E's witnesses, rejected, where ALJ in fact credited some of E's witnesses and where ALJ discredited uncontradicted testimony, he did so, by pointing out specifically, on basis of logical and factual inconsistencies, lack of corroboration and overall demeanor; further, alleged bias must stem from an extrajudicial source and there was no evidence ALJ's credibility determinations were based on anything other than his participation in the case]

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. ———F.2d——— (C.A. 4, Feb. 1986)

[E's contention Bd's order should not be enforced because ALJ was biased in that he refused E to elicit testimony in support of its defense, rejected, where actions complained of were merely evidentiary rulings and even if incorrect, they may not establish a sufficient case of bias; rather, E must make showing of bias stemming from sources outside the decisional process]

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. ———F.2d——— (C.A. 4, Feb. 1986)

[E's contention Bd's order should not be enforced because ALJ was biased in that he disregarded and discounted incriminating conduct on behalf of U, which, if credited, would have established E's defense, rejected, where ALJ did not disregard evidence but only concluded that such evidence did not rise to the level to support E's defense; disagreement alone does not establish bias or suggest ALJ was fatally marred by prejudice]

7250-5080 Crediting all witnesses for one party and/or discrediting all witnesses for another

McLean Roofing Company 276 NLRB No. 093

(E's assertion that ALJ's decision was result of bias and prejudice, rejected since there is no basis for finding that bias and partiality existed merely because ALJ resolved important factual conflicts in favor of GC's witnesses)

7250-8000 **Conduct of hearing (See also 596-7662)**

7250-8050 Full and expeditious hearing

7250-8050-2500 **Rule 102.35**

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[U was not denied right to effective cross-examination of witness assertedly because of constant interruptions from ALJ and opposing counsel, giving witness unwarranted time and information w/i which to formulate contrived answers; Bd's R/R Sec. 102.35 authorizes ALJ to regulate hearing and to request parties to state their respective positions concerning any issue; accordingly, ALJ properly engaged in listening to objections from opposing counsel and in discussing objections]

7600 HEARING

7601 GENERALLY

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B. ——— F.Supp.———(DC N.D. IL, Mar. 1985)

[developing a factual record in a labor dispute is a task peculiarly w/i the competence of the Bd]

7601-5000 **Procedural due process required**

7601-5025 Hearing not required in absence of issues to hear

Davey Compressor Company 274 NLRB No. 107

(E's contention that it had been denied due process by denial of a hearing before an ALJ when it refused to bargain with U on grounds of preelection misconduct, rejected, since in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior R proceeding)

7612 CONTINUANCE OF HEARING

7612-3300 **Discretionary with ALJ**

Electronic Data Systems International Corporation 278 NLRB No. 014 to for postponement of start of hearing due to fact it had to obtain new counsel after resignation of counsel, and of mtn for continuance after opening of hearing, absent evidence of reason for counsel's resignation, and of whether Respondent's position was of its own making, since there must be reasonable basis for ALJ exercising authority to adjourn hearing; further, hearing was continued to accommodate schedules of both counsel, thus giving Respondent's new counsel 5 weeks between end of GC's case and start of presentation of Respondent's case to prepare]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86

7612-6700 **Grounds for continuance**

7612-6767 Insufficient

7612-6767-3700 **Preparation for trial of newly raised issue**

Ace Electric Construction Corporation, et al. 281 NLRB No. 094

[ALJ properly denied Respondent's mtn to continue backpay hearings so that substantial discrepancy as to gross backpay could be corrected, where Respondent did not contend evidence was newly discovered or explain why evidence not presented at hearing; further, mtn actually sought to correct discriminatee's gross backpay specification rather than testimony, and Respondent had withdrawn relevant part of its answer to backpay specification in stipulation entered into with GC]

7612-6767-6000 **Change in counsel**

Electronic Data Systems International Corporation 278 NLRB No. 014

[Respondent not denied due process by denial of its mtn for postponement of start of hearing due to fact it had to obtain new counsel after resignation of counsel, and of mtn for continuance after opening of hearing, absent evidence of reason for counsel's resignation, and of whether Respondent's position was of its own making, since there must be reasonable basis for ALJ exercising authority to adjourn hearing; further, hearing was continued to accommodate schedules of both counsel, thus giving Respondent's new counsel 5 weeks between end of GC's case and start of presentation of Respondent's case to prepare]

7612-6767-8700 **Grounds created by party's own action**

Electronic Data Systems International Corporation 278 NLRB No. 014

[Respondent not denied due process by denial of its mtn for postponement of start of hearing due to fact it had to obtain new counsel after resignation of counsel, and of mtn for continuance after opening of hearing, absent evidence of reason for counsel's resignation, and of whether Respondent's position was of its own making, since there must be reasonable basis for ALJ exercising authority to adjourn hearing; further, hearing was continued to accommodate schedules of both counsel, thus giving Respondent's new counsel 5 weeks between end of GC's case and start of presentation of Respondent's case to prepare]

7625 SEPARATION OF WITNESSES

7625-8700 **Failure to abide by sequestration order**

Baldemann Chocolate Company, Inc. a wholly-owned subsidiary of Blommer Chocolate Company, Inc. JD-(SF)-89-86

[GC's mtn to strike testimony of one of E's witnesses who violated sequestration rule by discussing testimony of other witnesses who had already testified, denied and less severe remedy of scrutinizing testimony with great care held appropriate where there was no evidence that counsel had participated in violation of the sequestration order]

7637 EXAMINATION OF WITNESSES

7637-6700 **Cross-examination**

7637-6700—Cont.

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[U was not denied right to effective cross-examination of witness assertedly because of constant interruptions from ALJ and opposing counsel, giving witness unwarranted time and information w/i which to formulate contrived answers; Bd's R/R Sec. 102.35 authorizes ALJ to regulate hearing and to request parties to state their respective positions concerning any issue; accordingly, ALJ properly engaged in listening to objections from opposing counsel and in discussing objections]

7637-6725 Exclusion of questions on relevant matters within scope of direct examination improper

Walter N. Yoder & Sons, Inc. 754 F.2d 531 (C.A. 4, Feb. 1985)

(U need only make formal request based on reasonable belief that information is necessary and show that it is relevant in order to trigger E's obligation to give information; U need not be satisfied with E's assurances that there is no violation once duty to provide information has been triggered; reasonableness of U's belief in making request may not be called into question in light of post hoc information provided by E outside confines of formal response to request; therefore ALJ properly excluded cross examination of U president of what he knew about relationship between 2 entities (alter ego) or could easily have determined)

7650 PRODUCTION OF STATEMENTS OF WITNESSES

7650-0100 Generally

7650-0150 Rule 102.118

Local 259, Auto Workers (Atherton Cadillac, Inc.) 276 NLRB No. 030

(on remand Respondent U's mtn to dismiss C and vacate Bd's order, based on contention that at original hearing GC knowingly introduced forged document, purportedly letter from E to Charging Party stating Respondent had coerced E into discharging Charging Party, into record and suppressed information in Regional Office files concerning doubts regarding letter's authenticity, denied, since Respondent did not meet burden of showing letter was forgery or had been altered by Charging Party)

Local 259, Auto Workers (Atherton Cadillac, Inc.) 276 NLRB No. 030

(on remand Respondent U's mtn to dismiss C and vacate Bd's order based on contention that it was denied due process at original hearing where GC failed to disclose exculpatory material from investagatory files i.e. that letter purportedly from E to Charging Party stating Respondent U had coerced E into discharging Charging Party was alleged by E to be forgery, and that counsel for GC had doubts about authenticity of letter, rejected, since Regional Office had good faith belief in authenticity at time and in view of Bd's R/R 102.118 prohibiting disclosure of investigatory files)

7650-4000 Producible only after witness has testified

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital 274 NLRB No. 124

(Bd *excludes from record investigatory affidavits of witnesses who have not testified at a hearing* in order to protect their *confidentiality* But see Bd's R/R Section 102.69(g)(3) concerning parties' opportunity to supplement record before Bd with documents including affidavits, previously submitted to RD which have not been forwarded to Bd)

7650-6000 Unable only for purposes of cross- examination

Knott Hotel Corporation, d/b/a Viscount Hotel at Lax JD-(SF)-92-85

7662 CONDUCT OF HEARING BY ALJ

7662-1400 Rulings on motion

Plumbers Local No. 305 (Stone & Webster Engineering Corp. et al.) 282 NLRB No. 012

[GC's mtn to strike granted, pursuant to Sec. 102.46 of R/R, where affidavits were not made part of formal record]

Sahara Datsun, Inc. 278 NLRB No. 148

[GC's mtn to strike portion of E's brief pertaining to post-hearing misconduct of U organizer and officer by entering E's premises and injuring E's officers, for which he was arrested, granted and E's mtn to reopen hearing to take additional evidence on issue, denied, since conduct was immaterial where ALJ had concluded that U organizer was not entitled to reinstatement or to deal with E as U representative]

Bakery Workers, Local 42 (Gold Kist, Inc.) JD-(ATL)-42-85

(ALJ reopened record to receive respondent's answer to amendment made by GC at hearing)

7662-4300 Exclusion or admission of evidence

Canterbury Villa of Waterford, Inc. 282 NLRB No. 072

[contention that ALJ erred in denying E leave to present evidence of effect of disaffiliation on U's financial status, and that ALJ also erred in rejecting, on grounds of lack of evidence, E's contention that disaffiliation produced financial instability that would affect unit Ees' representational interests, rejected where E failed to make sufficient proffer to establish that the evidence would tend to show that disaffiliation rendered U financially unstable]

Communications Workers, Local 1101 (New York Telephone Company) 281 NLRB No. 066

[ALJ admitted E's exhibit into evidence, notwithstanding GC's contention that it should not be admitted because document was not made available to GC pursuant to subpoena duces tecum; determination as to whether evidence, which party failed to produce pursuant to subpoena, should be excluded is matter of discretion; and exhibit had previously been made available to GC]

Southwire Company 277 NLRB No. 043

(portion of omitted allegations of second amended C which contained fewer allegations than (first) amended C appear in record in instant proceeding only where necessary to indicate relevant background information)

Cosmano Brothers, Inc. d/b/a Ethnic Produce 275 NLRB No. 038

(ALJ's ruling precluding E's inquiry into legal presence in this country of discriminatees who were ordered to reinstated found not prejudicial, since E may present any evidence bearing on the issue at compliance stage of proceeding pursuant to S.Ct's *Sure-Tan* decision, issued after ALJ's decision, which conditions implementation of Bd's traditional remedies at compliance stage on discriminatee's legal presence in this country)

Advertisers Manufacturing Company 275 NLRB No. 019

(a decision, as public document, is competent for official notice where it otherwise is to be shown properly material to issue in subsequent proceeding; and even contrarily, e.g., where decision is determined not one to be relied upon, initial review of decision for contended purpose served involves neither prejudial error, nor, in law, renders reviewing judge biased)

Arizona Public Company 273 NLRB No. 210

(rejection of affidavit of Ee who did not testify submitted by E after hearing before ALJ, proper, since E's posthearing document was neither newly discovered nor was it unavailable at time of hearing)

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[ALJ properly refused to hear evidence on U's defense that, if allowed, U would have shown that individual, disciplined assertedly for operating non-U E as alter ego of U-E, was not entitled to 8(b)(1)(B) protection from U discipline, where individual never had any ownership interest in non-U E nor could he be classified under alter ego theory or otherwise; and non-U E was itself E on whose behalf individual possessed bargaining and grievance adjustment authority]

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 789 F.2d 5 (C.A. D.C., Apr. 1986)

[Bd may consider evidence relating to continuing violation. Bd not precluded from dealing with ULPs that occur after filing initial ULP charge *if* new ULPs are *related to* initial charge and *grow out of them while the proceeding is pending before the Bd*]

7662-4900 Effect of stipulation

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) 279 NLRB No. 096

[fact that there may have been no picketing on Sundays, or 24 hours a day, does not alter stipulated nature of picketing —that it took place on virtually every working day during 45 days of picketing]

Alpine Vending, Inc. JD-(SF)-89-85

(where E stipulated that U is exclusive representative of unit, it could not in post submission brief argue that E's failure to bargain is justified by U's lack of majority status)

7662-8600 Correction of record

Wilco Business Forms, Inc. 280 NLRB No. 154

[attempt by ALJ through issuance of errata on oral request of GC to add 2 Ees to list of Ees found discriminatorily discharged, improper, as postdecisional errata only for correction of typographical errors, but not to change matters of substance. Further, R/R does not permit ex parte communications between parties and ALJ concerning substantive, although inadvertent, errors in judge's decision. However, Bd considered GC's request to issue errata as mtn for correction to Bd to which Respondent had adequate opportunity to respond through its brief to Bd in support of its exceptions]

7662-7000 Examination of witnesses

Southwire Company 277 NLRB No. 043

(mtn to disqualify ALJ because he cross-examined 70% of Respondent's witnesses but less than 7% of GC's witnesses, denied, because under Sec.

7662-7000—Cont.

102.35 of Bd's rules it is *the duty of the ALJ to inquire fully into the facts as to whether Respondent has engaged or is engaging in an ULP)*

7662-7700 Ex parte contacts

Wilco Business Forms, Inc. **280 NLRB No. 154**

[attempt by ALJ through issuance of errata on oral request of GC to add 2 Ees to list of Ees found discriminatorily discharged, improper, as postdecisional errata only for correction of typographical errors, but not to change matters of substance. Further, R/R does not permit ex parte communications between parties and ALJ concerning substantive, although inadvertent, errors in judge's decision. However, Bd considered GC's request to issue errata as mtn for correction to Bd to which Respondent had adequate opportunity to respond through its brief to Bd in support of its exceptions]

7662-8460 Control of conduct of counsel

Buddour, Inc. **281 NLRB No. 084**

[ALJ'slimitation of E's cocounsel's participation at hearing to assisting at counsel's table not abuse of discretion and authority under Sec. 102.35 and 102.44 of Bd's rules and furthered orderly development of issues and evidence where, notwithstanding ALJ's warnings about arguing over evidentiary ruling, objecting to questions ruled proper, interrupting testimony of witnesses, and making unnecessary statements on record, cocounsel persisted in arguing point in issue despite ALJ's instruction to cease]

District No. 1, Pacific Coast District Engineers Beneficial Association, AFL-CIO (Crest Tankers, Inc.) **274 NLRB No. 215**

(Bd granted request by Charging Party to appeal ALJ's order excluding its counsel from ULP hearing because in ALJ's opinion counsel had misrepresented and distorted ALJ's evidentiary ruling excluding certain evidence in its request to appeal that ruling; Bd also granted Charging Party's and GC's mtns to recuse ALJ and remanded matter for hearing de novo before new ALJ, since while appeal did not clearly reflect ALJ's ruling, evidence insufficient to establish Charging Party's filing of appeal and refusal to obey ALJ's directive to correct appeal was attempt to obstruct hearing

7662-9200 Misconduct or error by Administrative Law Judge

Wilco Business Forms, Inc. **280 NLRB No. 154**

[attempt by ALJ through issuance of errata on oral request of GC to add 2 Ees to list of Ees found discriminatorily discharged, improper, as postdecisional errata only for correction of typographical errors, but not to change matters of substance. Further, R/R does not permit ex parte communications between parties and ALJ concerning substantive, although inadvertent, errors in judge's decision. However, Bd considered GC's request to issue errata as mtn for correction to Bd to which Respondent had adequate opportunity to respond through its brief to Bd in support of its exceptions]

District No. 1, Pacific Coast District Engineers Beneficial Association, AFL-CIO (Crest Tankers, Inc.) **274 NLRB No. 215**

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The Lawson Company v. N.L.R.B. **753 F.2d (C.A. 6, Jan. 1985)**

(ALJ's statement, during hearing as to E witness's discussion of nature of E's Sales Assistant Committee that *I know what a negotiating committee is and so does Bd, law,* not objectionable as predisposition to find ULP, since given context of ULPs during hearing, ALJ's statement merely acknowledged what was to him, and is to ct, obvious, and statement made after several witnesses had testified on subject and documents about operation had been introduced)

The Lawson Company v. N.L.R.B. **753 F.2d (C.A. 6, Jan. 1985)**

(harsh language (of ALJ) of itself does not establish prejudice. Ct does not, in instant case, approve such statements; ct too.: evidence adduced at open public hearing where both sides were given equal opportunity to present whatever evidence they felt appropriate; given above facts, there is substantial evidence to uphold decision of Bd)

7682 PROCEDURAL DUE PROCESS AT HEARING

7682-3300 Due process not denied by

7682-3301 Generally

N.L.R.B. v. IDAB, Inc. **770 F.2d 991 (C.A. 11, Sep. 1985)**

(ALJ's finding of *proclivity* on part of E to attempt to influence testimony of witnesses which was introduced as collateral charge in refusal to bargain proceeding, which E claimed made up core of ALJ's credibility findings, held not denial of due process to E, since *proclivity* finding was not essential element of ALJ's findings, where ALJ was merely discounting E's explanation for witness' hesitancy in testifying and was referring to allegation of threat of violence by pro-U Ee which was refuted by implausible and inconsistent testimony)

7682-3314 Admission of incompetent evidence

Local 259, Auto Workers (Atherton Cadillac, Inc.) **276 NLRB No. 030**

(on remand Respondent U's mtn to dismiss C and vacate Bd's order, based on contention that at original hearing GC knowingly introduced forged document, purportedly letter from E to Charging Party stating Respondent had coerced E into discharging Charging Party, into record and suppressed information in Regional Office files concerning doubts regarding letter's authenticity, denied, since Respondent did not meet burden of showing letter was forgery or had been altered by Charging Party)

Local 259, Auto Workers (Atherton Cadillac, Inc.) **276 NLRB No. 030**

(on remand Respondent U's mtn to dismiss C and vacate Bd's order based on contention that a original hearing it was denied due process where GC authenticated letter allegedly from E to Charging Party stating Respondent had coerced E into discharging Charging Party, was introduced into evidence, and authenticated by Charging Party rather than by writer of letter, and that Charging Party had perjured himself by testifying falsely as to letter's authenticity, rejected)

Local 259, Auto Workers (Atherton Cadillac, Inc.) **276 NLRB No. 030**

(on remand Respondent U's mtn to dismiss C and vacate Bd's order based on contention that it was denied due process at original hearing where GC failed to disclose exculpatory material from investagatory files i.e. that letter purportedly from E to Charging Party stating Respondent U had coerced E into discharging Charging Party was alleged by E to be forgery, and that counsel for GC had doubts about authenticity of letter, rejected, since Regional Office had good faith belief in authenticity at time and in view of Bd's R/R 102.118 prohibiting disclosure of investigatory files)

Advertisers Manufacturing Company **275 NLRB No. 019**

(a decision, as public document, is competent for official notice where it otherwise is to be shown properly material to issue in subsequent proceeding; and even contrarily, e.g., where decision is determined not one to be relied upon, initial review of decision for contended purpose served involves neither prejudial error, nor, in law, renders reviewing judge biased)

7682-3318 Failure of General Counsel to obtain documents

Abramo Fish Co. Ltd. **JD-222-85**

(where no documentary evidence was proffered regarding E's unchallenged testimony that he paid Ees' wages and payroll taxes, and since credibility attack on E's testimony was launched by GC, it was GC's burden to produce documentary evidence; under the circumstances, attack was considered based upon surmise and speculation)

7682-3320 Failure to comply with subpoena

Communications Workers, Local 1101 (New York Telephone Company) **281 NLRB No. 064**

[ALJ admitted E's exhibit into evidence, notwithstanding GC's contention that it should not be admitted because document was not made available to GC pursuant to subpoena duces tecum; determination as to whether evidence, which party failed to produce pursuant to subpoena, should be excluded is matter of discretion; and exhibit had previously been made available to GC]

7682-3349 Absence of party's counsel at hearing

Plumbers Local No. 305 (Stone & Webster Engineering Corp. et al.) **282 NLRB No. 012**

[due process not denied by proceeding with hearing dispite absence of respondent's counsel where ALJ had already permitted five postponements, and respondent was represented by member of counsel's firm who was assisted by member of another firm who was familiar with issues, and respondent has not shown prejudice]

7682-3356 Denial of motion to file reply brief

Fruehauf Corporation **274 NLRB No. 067**

(GC's mtn to strike E's post-hearing reply brief denied, notwithstanding improper not to accompany reply with mtn for leave to file reply brief, since filing of such matter is w/i ALJ's discretion; brief was only 2 pages long and would not delay ALJ's decision)

7682-3363 Board rules and procedures

Wilco Business Forms, Inc. **280 NLRB No. 154**

[attempt by ALJ through issuance of errata on oral request of GC to add 2 Ees to list of Ees found discriminatorily discharged, improper, as postdecisional errata only for correction of typographical errors, but not to change matters of substance. Further, R/R does not permit ex parte communications between parties and ALJ concerning substantive, although inadvertent, errors in judge's decision. However, Bd considered GC's request to issue errata as mtn for correction to Bd to which Respondent had adequate opportunity to respond through its brief to Bd in support of its exceptions]

7682-3370 Limitation of examination of witnesses

Canterbury Villa of Waterford, Inc. **282 NLRB No. 072**

[E's contention that it was denied due process by ALJ's refusal to allow it to adduce evidence of the organizational and financial impact of disaffiliation on national U, rejected, notwithstanding argument that qcr may arise not only when U disaffiliates from another U but also when U with which it is affiliated looses membership elsewhere, since that argument lacks supporting authority]

Walter N. Yoder & Sons, Inc. **754 F.2d 531 (C.A. 4, Feb. 1985)**

(U need only make formal request based on reasonable belief that information is necessary and show that it is relevant in order to trigger E's obligation to give information; U need not be satisfied with E's assurances that there is no violation once duty to provide information has been triggered; reasonableness of U's belief in making request may not be called into question in light of post hoc information provided by E outside confines of formal response to request; therefore ALJ properly excluded cross examination of U president of what he knew about relationship between 2 entities (alter ego) or could easily have determined)

7682-3375 Conduct of Counsel

Mack Trucks, Inc. **277 NLRB No. 084**

(U's mtn to disqualify law firm from serving as E's counsel because of Bd's Regional attorney's prospective affiliation with that firm, denied, since no sufficient warrant had been shown for determination that there should be a substitution of GC's representative, no deficiencies in case record with respect to GC's prosecution of present matter have been shown. A merely conceivable *apperance of impropriety* must be considered too slender a reed upon which to rest a disqualification order)

7682-3384 Revocation of subpoena

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**

[revocation of subpoena served on State of Hawaii requesting custodian of records for Unemployment Insurance Office to produce certain records regarding discriminatees, granted on basis of State's statutory priviledge and failure of E to state with specificity any reason State's claim of confidentiality and priviledge should not be honored under circumstances of this case]

7682-3391 Absence of specific allegations or notice where adequate notice exists

Central Broadcast Company **280 NLRB No. 056**

[E's failure to object to introduction of its letter and copy of its president's speech, which it had supplied to GC, found to constitute waiver of formal notice in C where letter and speech were not alleged as violative in C but were fully litigated]

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers **794 F.2d 1474 (C.A. 9, July 1986)**

[contrary to U's claim that C alleged only breach of duty of fair representation and that U lacked notice of independent violation of 8(b)(1)(A), ct held that, although C specifically alleged breach of fiduciary duty owed to Ees, it more generally alleged commission of ULPs sufficient to put U on notice that Bd might proceed under both legal theories]

7682-3394 Introduction of collateral unfair labor practice charge

N.L.R.B. v. IDAB, Inc. **770 F.2d 991 (C.A. 11, Sep. 1985)**

(notwithstanding E's contention that it was denied due process because it was not notified of new collateral ULP charge in refusal to bargain proceeding nor given opportunity to fully and fairly litigate such charge at hearing, ct held there was no denial of due process to E, where ALJ used testimony regarding collateral ULP charge alleging E had attempted to influence testimony of potential witnesses at hearing, solely to evaluate credibility of witnesses and did not decide collateral ULP change)

7682-3398 Dual role of GC representative in consolidated complaint and representation proceedings

Freuhauf Corporation **274 NLRB No. 067**

(consolidation of *C* and *R* case by RD was proper where E suffered no prejudice from counsel for GC's dual role of adversary in *C* case and that of nonadversary in case; GC has discretion under 3(d) of the Act to proceed as litigant in consolidated case rather than as neutral third party)

Freuhauf Corporation **274 NLRB No. 067**

(E's contention that it was prejudiced by having to operate in the context of consolidated *C* and *R* case when what was really involved was hearing on its objections and GC's attorney improperly became an advocate during *R* case portion of trial, rejected; in instant case, GC offered the pleadings only and then rested in the *C* case and fact that GC used a *handful* of leading questions during the *R case was insufficient to establish that GC was carrying the ball* for the U or was so partisan as to destroy fairness of the hearing)

7682-6700 Due process denied by

7682-6701 Generally

Hydro Conduit Corporation **278 NLRB No. 144**

[RD's decision in *RM* case, finding that qcr exists and election should be held, cannot control whether E also had objective considerations for refusing to bargain with U in subsequent ULP case, notwithstanding U did not appeal RD's decision, since to hold otherwise would result in a denial of due process; while administrative determination of objective considerations is proper in *R* case since no violation of law is at issue, it is not proper in ULP case since parties must be afforded opportunity to fully litigate all relevant issues]

Evans Plumbing Co. **278 NLRB No. 089**

[due process requirements prevent extension of individual liability to successor E's officers and primary shareholders where neither of them was named a party, and one was neither present nor represented individually at hearing]

7682-6750 Raising issue previously conceded by General Counsel to respondent

Baker Mine Services, Inc., d/b/a Coppinger Machinery Service, Inc. **279 NLRB No. 088**

[Bd held no unlawful E domination in formation of and administration of Es committee, or unlawful execution of bargaining agreement with committee, since those allegations not properly before Bd where (1) not raised in complaint (2) not put in issue at hearing and (3) GC and ALJ effectively assured Respondent that establishment of committee was not to be litigated]

7690 MISCONDUCT OF PARTIES

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**

[where E's ans denied knowledge concerning truth or falsity of C allegation that U was labor organization, and GC adduced evidence clearly establishing U's labor organization status, but E's counsel litigated issue by attempting to elicit testimony regarding matters wholly unrelated to labor organization status, asked purely argumentative questions, and requested production of documents which could have been subpoenaed months before hearing, Bd, finding such conduct contrary to strictures of R/R Sec. 102.21, expressed strong disapproval thereof and cautioned E's counsel against such conduct in future appearances before Bd]

Castello Packing Co., Inc. and Castello Foods, Inc., d/b/a Holiday Pack Foods **281 NLRB No. 011**

[alleged holding of office in NLRB Ee association by Bd attorney assigned to instant ULP and underlying R proceedings held not to cause attorney to be biased and prejudiced]

District No. 1, Pacific Coast District Engineers Beneficial Association, AFL-CIO (Crest Tankers, Inc.) **274 NLRB No. 213**

(Bd granted request by Charging Party to appeal ALJ's order excluding its counsel from ULP hearing because in ALJ's opinion counsel had misrepresented and distorted ALJ's evidentiary ruling excluding certain evidence in its request to appeal that ruling; Bd also granted Charging Party's and GC's mtns to recuse ALJ and remanded matter for hearing de novo before new ALJ, since while appeal did not clearly reflect ALJ's ruling, evidence insufficient to establish Charging Party's filing of appeal and refusal to obey ALJ's directive to correct appeal was attempt to obstruct hearing

Bertolucci's Fender and Body Shop, Inc. **JD-(SF)-143-86**

(E's mtn to dismiss the case because of GC's alleged *serious breach of ethics* by describing in a footnote of brief an offer of proof concerning relevance of evidence GC sought to adduce, denied, since E was not prejudiced by inappropriate inclusion of material)

7695 REOPEN HEARING

Sahara Datsun, Inc. **278 NLRB No. 148**

[GC's mtn to strike portion of E's brief pertaining to post-hearing misconduct of U organizer and officer by entering E's premises and injuring E's officers, for which he was arrested, granted and E's mtn to reopen hearing to take additional evidence on issue, denied, since conduct was immaterial where ALJ had concluded that U organizer was not entitled to reinstatement or to deal with E as U representative]

8000 ALJ DECISION AND PROPOSED FINDINGS

8001 GENERALLY

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. **281 NLRB No. 117**

[issue of U successorship, which arose subsequent to occurrence of E's ULPs herein and which Bd deferred to compliance stage in earlier proceeding involving E and U as parties held not to warrant abatement of Bd review of ALJ's decision in instant case]

Superior Container, Inc. **276 NLRB No. 056**

(GC's request that ALJ take judicial notice of ALJ's decision in prior case involving same E, for purpose of considering ALJ's findings and conclusions in prior case as dispositive of some elements of proof herein, denied, since seeking to attach finality to earlier findings of ALJ is result that can appro-

8001—Cont.

priately be accorded only to Bd decisions or those of ct; however, ALJ officially noticed existence of prior ULP proceeding and ALJ's decision to extent legitimately possible)

8001-2500 Recommended decision under APA section 8(a), 5 USC Sec. 557(b)

Governor's Foods Corporation d/b/a Food Park 277 NLRB No. 041
(Bd remanded case to ALJ for supplemental decision where ALJ failed to make any specific factual findings or credibility resolutions regarding alleged unlawful refusal to hire specific named discriminatees, and absent unlawful motivation, that alleged discriminatees would have been hired. Judge summarily found, w/o specific reference to individuals, that E's evidence was not generally credible. Such decision inconsistent with R/R 102.45 and Sec. 557 of APA which requires decision to contain findings of fact, conclusions, and reasons therefor)

8001-4000 Decision must be based on record only

Consolidation Coal Company, Burning Star No. 4 & No. 5 277 NLRB No. 060
(E allowed to assert Sec. 10(b) defense to ULP charges, notwithstanding such defense was neither affirmatively pleaded in E's answer to C nor expressly asserted as defense at hearing but first set forth in E's brief, since it was litigated *sub silentio* where C anticipated it by referring to lack of notice to charging party, there was no objection to E's cross examination of GC's witnesses in effort to establish such defense, and GC's brief showed that such defense was viable by stating that E was expected to argue it and making legal argument thereon)

8001-4400 ALJ's failure to detail conflicts in evidence not indication that such evidence not considered

Grunco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(while ALJ did not explicitly state that he was making credibility resolutions where conflict in testimony occurred, Bd held ALJ implicitly credited witnesses whose versions he accepted, since in those instances he found events took place in a way consistent with only one of the versions of conflicting testimony)

Iron Workers, Local 681 (Pepco, Inc.) 276 NLRB No. 142

Regency Electronics, Inc. 276 NLRB No. 002

8001-4700 ALJ's resolution of important factual conflicts against party not bias

Grunco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(ALJ's uniformly crediting GC's witnesses over those of respondent, assertedly demonstrating inadequacy of his credibility resolutions, held not improper, since total rejection of one point of view does not, of itself, constitute basis for overturning ALJ's credibility resolutions)

The Lawson Company v. N.L.R.B. 753 F.2d (C.A. 6, Jan. 1985)
[total rejection of an opposed view cannot impugn the integrity or competence of a trier of fact. Each factual finding must be considered on its own merits. Bd's findings (grounded in ALJ's findings) not disturbed (by ct) where E did not develop support for its claim that it did not discriminatorily enforce its no-solicitation policy)

8001-5000 ALJ bound by Board precedent and dispositions

Local 441, International Union of Electrical, Radio & Machine Workers, AFL-CIO (Phelps Dodge Copper Products Company, a Division of Phelps Dodge Industries, Inc.) 281 NLRB No. 137
[regardless of failure of GC to use correct litigation theory and follow Bd law at time of hearing, ALJ should have applied the existing Bd law in his decision]

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) 281 NLRB No. 065
[where conflict exists between Bd's and ct decision, ALJ must follow Bd]

ACL Corporation d/b/a Atlanta Hilton & Towers 278 NLRB No. 076
[ALJ is bound by Bd's initial certification of U as to appropriateness of unit until modified or reserved by Bd itself or Supreme Court]

Jaydan, Inc. 273 NLRB No. 199
(where, after hearing but before filing of briefs, Bd reversed prior decision thereby changing law applicable herein and resulting in peculiar procedural process in which GC and E moved to dismiss C over objections of charging party, ALJ held that, in light of charging party's objections to dismissal or withdrawal of C, charging party becomes *de facto* prosecutor of C and, as a result, regular decision must be prepared and issued by ALJ pursuant to Bd's R/R Sec. 102.45, just as if no motions had been filed; however, it must perforce be governed by Bd's revised doctrine)

Electrical Workers Local 76 (Ryan Wright, an Individual) JD-(SF)-36-85
(U's argument that ALJ should follow law of the circuit in determining whether it lawfully fined member who had not followed U's procedure for resigning from U, rejected, since ALJ is bound by Bd law until that law is overridden by the Supreme Court even if there is contrary authority in courts of appeals)

8025 FORM AND CONTENT

8025-3300 Specificity of findings and conclusions

Pacific Coast Metal Trades District Council 282 NLRB No. 041
[assertion that ALJ erred in failing to find that trades council had authority under contract to bind constituent locals to terms of subsequent mid-term contract modification agreement held not determinative since, whether or not council had *authority* to reach agreement binding locals, it did not *intend* to do so w/o locals' consent and, consequently, ALJ did not have to decide whether council had binding authority]

Baddour, Inc. 281 NLRB No. 004
[Bd found unlawfully coercive only that pre-election speech statement by E's president that was alleged to be unlawful in C where ALJ found several of E's president's pre-election speech statements unlawful but failed to specify which ones]

Governor's Foods Corporation d/b/a Food Park 277 NLRB No. 041
(Bd remanded case to ALJ for supplemental decision where ALJ failed to make any specific factual findings or credibility resolutions regarding alleged unlawful refusal to hire specific named discriminatees, and absent unlawful motivation, that alleged discriminatees would have been hired. Judge summarily found, w/o specific reference to individuals, that E's evidence was not generally credible. Such decision inconsistent with R/R 102.45 and Sec. 557 of APA which requires decision to contain findings of fact, conclusions, and reasons therefor)

Pottsville Bleaching and Dyeing Company 275 NLRB No. 175
(ALJ's failure to include certain testimony not prejudicial where testimony failed to contradict ALJ's conclusion and was thus irrelevant)

8025-6700 Recommendation of order, sanction and relief

Sentry Armored Courier Corporation 275 NLRB No. 014
(notwithstanding specification included backpay for 8(a)(4) violation that ALJ who heard underlying ULP case held in abeyance pending decision of Ee's other E (worked 2 jobs) as to whether he violated that E's rules by abusing sick leave, which abuse brought to E's attention by Respondent in retaliation for Ee filing charges, and which later resulted in suspension for which backpay alleged in specification; no outstanding order finding this 8(a)(4) violation and ALJ at backpay hearing precluded from making findings of fact and conclusions of law, issuing order and awarding backpay for alleged violation. Case remanded to original ALJ for this)

8050 PREPARATION BY ALJ WHO DID NOT PRESIDE AT TRIAL

Sentry Armored Courier Corporation 275 NLRB No. 014
(notwithstanding specification included backpay for 8(a)(4) violation that ALJ who heard underlying ULP case held in abeyance pending decision of Ee's other E (worked 2 jobs) as to whether he violated that E's rules by abusing sick leave, which abuse brought to E's attention by Respondent in retaliation for Ee filing charges, and which later resulted in suspension for which backpay alleged in specification; no outstanding order finding this 8(a)(4) violation and ALJ at backpay hearing precluded from making findings of fact and conclusions of law, issuing order and awarding backpay for alleged violation. Case remanded to original ALJ for this)

8075 VARIANCE BETWEEN FINDINGS AND COMPLAINT

Luther Manor Nursing Home 277 NLRB No. 007
(where ALJ found E violated 8(a)(3), as well as 8(a)(5), by refusing to execute written contract, Bd amended conclusions of law and recommended order by deleting reference to 8(a)(3) where GC had not alleged that E committed 8(a)(3) violation by such conduct)

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)
[Bd improperly expanded U's backpay liability for unlawfully causing E to refuse to hire sister local's members by including in backpay remedy another E whose responsibility for failure to hire was not charged, and neither C nor course of hearing put U on notice that such issue would be raised]

8075-5000 Findings on issues fully litigated

Richmond Recording Corporation d/b/a PRC Recording Company 280 NLRB No. 077
[ALJ refused to rule on issue of overall bad faith bargaining since GC declined to amend C notwithstanding possibility that evidence may appear in record to support allegation]

Service Merchandise Company, Inc. 278 NLRB No. 023
[while complaint only alleged E's discharge of drivers as violation of Section 8(a)(3) contemporaneous subcontracting of its driving operations also held

8075-5000—Cont.

unlawful where issue fully litigated and ALJ held subcontracting was also unlawfully motivated]

American Stores Packing Company, A Division of Acme Markets, Inc. 277 NLRB No. 190

[contrary to ALJ who found subcontracting theory had never been alleged, and therefore struck any reference to it in parties' briefs, Bd considered parties' subcontracting arguments where, although C may have been poorly drafted, pleadings raised such issue and it was fully litigated]

Consolidation Coal Company, Burning Star No. 4 & No. 5 277 NLRB No. 060

(E allowed to assert Sec. 10(b) defense to ULP charges, notwithstanding such defense was neither affirmatively pleaded in E's answer to C nor expressly asserted as defense at hearing but first set forth in E's brief, since it was litigated *sub silentio* where C anticipated it by referring to lack of notice to charging party, there was no objection to E's cross examination of GC's witnesses in effort to establish such defense, and GC's brief showed that such defense was viable by stating that E was expected to argue it and making legal argument thereon)

Spring Valley Farms, Inc. JD-(ATL)-54-86

[ALJ not precluded from finding that agreement reached by parties, prior to date alleged in C, or by fact Counsel for GC argued no other date prior to final argument, since facts surrounding U's earlier acceptance were fully litigated, and were argued by parties in briefs; further, Respondent made no mtn to reopen its defense when GC argued alternative date agreement reached]

Medallion Kitchens, Inc. v. N.L.R.B. 806 F.2d 185 (C.A. 8, Nov. 1986)

[mtn to strike GC's brief and to reopen record on basis that Respondent E not given notice that permanent status of strike replacements in issue, denied, where violation alleged was that E failed to reinstate economic strikers, since status of Ees who replaced economic strikers need not be pleaded by GC inasmuch as permanent status of replacements affirmative defense to be raised by E]

George C. Foss Company v. N.L.R.B. 752 F.2d 1407 (C.A. 9, Jan. 1985)

(where C charged that Ees were discharged because they were members of one U and ALJ found they were discharged before end of grace period because they were *not* members of second U, E was not guilty of ULP that was not charged in C because differences largely semantical, charge need not be technically precise as long as it generally informs party charged nature of alleged violations, and moreover, issue fully and fairly litigated)

8075-7500 Findings on issues not fully litigated

Waldon, Incorporated 282 NLRB No. 082

[C did not allege preimpasse unilateral change violation and impasse issue not raised at hearing; therefore, no violation can be found on issue that E unilaterally implemented new wage scale before reaching impasse. Allegation flows from GC's theory that wage reduction resulted from E's refusal to honor contract which Bd found invalid]

Middletown Hospital Association 282 NLRB No. 079

[finding supervisor's statements to Ees unawful held not warranted where there were no allegations that such unlawful statements were made; evidence that statements were made came about incidentally in testimony of Ees, and E lacked notice of any contention that statements were unlawful; consequently, issues were not litigated; moreover, allegations of other unlawful conduct were not so closely related to statements in question that they did not need to be separately alleged]

Wayside Realty Group, Inc. and Georgetown Hotel 281 NLRB No. 045

[whether Ee was unlawfully interrogated as found by ALJ held not fully and fairly litigated at hearing, where ALJ denied GC's mtn to amend C to include such allegation, E did not examine Ee or any other Ee on issue, neither GC nor E briefed issue to ALJ, and GC, in its brief in opposition to E's exceptions, did not dispute E's contention that issue was not fully litigated]

Best Western Motor Inn 281 NLRB No. 026

[question of E's unlawfully asking supervisors to interrogate Ees about their U activities not fully and fairly tried where C only alleged unlawful request that they surveil and gather information about Ees' U activities]

Woodline Motor Freight, Inc. 278 NLRB No. 152

[discriminatee entitled to R/O notwithstanding GC did not seek reinstatement of discriminatee in C or at hearing, where consolidated C alleges that respondent *closed facility and terminated its Ees working there.* This allegation broad enought to encompass discriminatee since where there is discrimination against class of Ees, GC is not required to name every discriminatee at this stage of the proceeding. Respondent's contention may be addressed at compliance stage]

Texas Bus Lines, Inc. 277 NLRB No. 075

(issue that was neither alleged in C nor w/i scope of charges but raised first time in GC's brief not considered by ALJ)

United Artists Theatre Circuit, Inc. 277 NLRB No. 093

(GC's mtn to amend Cs denied where issues and evidence relevant to proposed amendments were not fully litigated, mtn was late, and issues were raised for first time in GC's post hearing brief to which E was not entitled to reply)

McLean Roofing Company 276 NLRB No. 093

(E's challenge to ballot of Ee not employed on eligibility date upheld where there was no C allegation that Ee was unlawfully denied employment, nor was issue litigated as ULP at hearing)

8075-8700 Findings on theory of case not advanced by General Counsel

Waldon, Incorporated 282 NLRB No. 082

[C did not allege preimpasse unilateral change violation and impasse issue not raised at hearing; therefore, no violation can be found on issue that E unilaterally implemented new wage scale before reaching impasse. Allegation flows from GC's theory that wage reduction resulted from E's refusal to honor contract which Bd found invalid]

Chelsea Laboratories, Inc. 282 NLRB No. 074

[complaint allegation that Ee was discharged for protesting E's grant of wage increase while election objection was pending found sufficient to encompass Ee's protest over E's apparent decision to renege on promise to engage in dialogue before deciding whether to recognize U, where C put E on notice that case focussed on announcement of wage increase and subsequent conversation, E would not have altered its conduct of case, and its brief addressed law and sufficiency of facts about protesting breach of promise]

Local 441, International Union of Electrical, Radio & Machine Workers, AFL-CIO (Phelps Dodge Copper Products Company, a Division of Phelps Dodge Industries, Inc.) 281 NLRB No. 137

[regardless of failure of GC to use correct litigation theory and follow Bd law at time of hearing, ALJ should have applied the existing Bd law in his decision]

Government Employees (Office Employees, Local No. 2) 278 NLRB No. 088

[Bd overruled ALJ finding that E unlawfully withheld annual leave from all striking Ees, and instead found violation in withholding of *scheduled* leave, where RD had dismissed charge as to unscheduled leave and complaint had alleged discriminatory denial of scheduled leave only]

Greg Construction Co. 277 NLRB No. 163

(Bd refused to find that Ee discharges were violative of Sec. 8(a)(5) based on E's refusal to pay contractual wage rates, notwithstanding that was found to be real reason for discharges, where C alleged discharges were due to U's demand that E discharge Ees because they were not U members, and E might have changed its answer if C had alleged different reasons for discharges)

Workroom For Designers, Inc. and Sidney H. Simoiman, an Individual 274 NLRB No. 115

(GC's exceptions to ALJ's failure to find that respondents had unlawfully denied work opportunities to reinstated strikers by subcontracting work that they could perform after they were reinstated, overruled, since complaint stating that at various times E had failed to offer work to various Ees and had laid them off did not allege subcontracting)

8400 EXCEPTIONS AND BRIEFS

8433 EXCEPTIONS

8433-3300 Time for filing

E G & G Florida, Inc. 279 NLRB No. 065

[Bd did not consider as exceptions cognizable under R/R 102.46(a) and (b) E's conclusionary statements in its answering brief to effect that it did not violate Act in any way and its attempt to support such statements with arguments set forth in its attached brief to ALJ; R/R 102.46 (d)(2) limits answering brief to questions and cross-exceptions]

Upholstery Division of The United Steelworkers of America, AFL-CIO, Local Union 406-U (Judy Becker, An Individual) JD-139-86

[exceptions and brief mailed on due date and received one day later, untimely and therefore not forwarded to Bd]

8433-5000 Effect of failure to file or late filing

8433-5033 Adoption as Board order under section 10(c)

15th Avenue Iron Works, Inc., and Ahlist Builders and Management Corp. 279 NLRB No. 091

[exceptions not timely filed, and deemed waived, where not mailed until day after date set for filing exceptions with no certificate of service included; Respondent's bare assertion after Bd had issued notice to show cause and time had passed for answering notice to show cause, that affidavit of service indicated exceptions filed on or before due date, insufficient to justify se-

8433-5033—Cont.

ceptance of exceptions especially where no certificate of service was included]

8433-5050 Does not preserve defenses for court review

N.L.R.B. v. L & B Cooling, Inc. **757 F.2d 236 (C.A. 10, Mar. 1985)**

(ct cannot consider contention of E not properly before it for review, since any contentions advanced before ALJ which are not preserved for review in exceptions or cross-exceptions are deemed waived in absence of extraordinary circumstances; *(n)o matter not included in exceptions or cross-exceptions may thereafter be argued before Bd, or in any further proceeding* 29 C.F.R. Section 102.46(h) (1978))

8433-6700 Form and specificity required

Nassau Insurance Company **280 NLRB No. 103**

[Respondent E's mtn to strike U's exceptions and brief and GC's brief for failing to comply with provisions of Sec. 102.46(b)(c) and (i) of Bd's R/R, denied, notwithstanding did not comply in all particulars, absent any prejudice to E]

Hansen Brothers Enterprises **279 NLRB No. 098**

[E's mtn to strike charging party's exceptions under Bd's R/R Sec. 102.46 denied where, although exceptions were in nature of brief and did not contain alphabetical listing of authorities relied on, they set forth questions of fact and law to which exceptions were taken, identified that part of ALJ's decision to which objection was made, designated by precise citation of page portions of record relied on, and stated grounds for exceptions]

La Reina, Inc. **279 NLRB No. 103**

[GC's mtn to strike exceptions for failure to comply with Bd's R/R in that they do not set forth specifically the portions of ALJ's decision to which exceptions are taken and do not designate by precise citation of page the portions of the record relied on, denied, where exceptions were not so deficient as to warrant striking, and charging party did not show prejudice resulting from deficiency]

Fashion Furniture Mfg., Inc. **279 NLRB No. 095**

[E's mtn to strike charging party's exceptions denied where exceptions adequately identified those portions of ALJ's decision to which exception was made and portions of record on which they relied]

E G & G Florida, Inc. **279 NLRB No. 065**

[Bd did not consider as exceptions cognizable under R/R 102.46(a) and (b) E's conclusionary statements in its answering brief to effect that it did not violate Act in any way and its attempt to support such statements with arguments set forth in its attached brief to ALJ; R/R 102.46 (d)(2) limits answering brief to questions and cross-exceptions]

Studio S.I.T., Limited **277 NLRB No. 126**

(GC's mtn to strike E's submission on grounds that it did not constitute exceptions w/i meaning of R/R Sec. 102.46, denied where exceptions and briefs together sufficiently designated E's points of disagreement with judge's decision even thought not fully in compliance with literal requirements of Sec. 102.46)

Redok Enterprises, Inc. **277 NLRB No. 101**

(mtn to strike references in Respondent's brief and exceptions to matters not in record, granted)

Bechtel Power Corporation **277 NLRB No. 088**

(GC's mtn to strike E's exceptions for failure to meet specificity requirements of Sec. 102.46(b) of Bd's R/R's, denied, where, although exceptions did not conform in all particulars with 102.46, they were not so deficient as to warrant striking and GC had not shown prejudice as a result of any deficiency)

Barkman Contracting, Inc. **276 NLRB No. 112**

(although E, in its exceptions to Bd, did not explicate any alleged errors made by ALJ nor assert any grounds on which his findings should be reversed and, as alleged by GC, did not conform in all respects to Section 102.46(b) and (c) of R/R, E's exceptions were not so deficient as to warrant striking them)

Bonanza Sirloin Pit **275 NLRB No. 54**

(Bd rejected E's exceptions where E failed to submit supporting brief or any other document alleging with particularity what error, mistake, or oversight ALJ committed or on what grounds findings should be overturned; Bd has consistently refused to engage in its own attempts to determine what if any problems, errors, or irregularities are presented by ALJ's decision)

8433-6780 To be read in conjunction with briefs

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**

(although GC's exceptions did not fully comply with Bd's R/R by failing to designate precise page citation of portions of record relied on and grounds for exceptions, Bd accepted exceptions since GC's brief sufficiently made such designations and grounds)

8433-9900 Cross exceptions

National Metalcrafters, Inc. and National Lock Corp. and Keystone Consolidated Industries, Inc. **276 NLRB No. 014**

(respondent's brief filed in response to exceptions to ALJ's decision contained in GC's brief in support of ALJ's decision stricken by Bd since R/R do not authorize response to brief in support of ALJ's decision)

N.L.R.B. v. L & B Cooling, Inc. **757 F.2d 236 (C.A. 10, Mar. 1985)**

(ct cannot consider contention of E not properly before it for review, since any contentions advanced before ALJ which are not preserved for review in exceptions or cross-exceptions are deemed waived in absence of extraordinary circumstances; *(n)o matter not included in exceptions or cross-exceptions may thereafter be argued before Bd, or in any further proceeding* 29 C.F.R. Section 102.46(h) (1978))

8467 BRIEFS

8467-0100 Generally

The Nielsen Lithographing Co. **279 NLRB No. 118**

[mtn to strike references to affidavits in U's brief granted, since they were not part of record. See Sec. 102.45(b) of Bd's R/R]

8467-3000 Late filing

Bronx Metal Polishing Co., Inc. **276 NLRB No. 031**

(GC's mtn to strike respondent's letter responding to GC's request that ALJ take *judicial notice* of prior Bd decision involving same parties and similar issues, granted where respondent used its response to argue question of credibility and, in a sense, merits of its position in instant case, thus transforming its response into a brief, which it had failed to timely file beforehand, in violation of BD's R/R concerning filing of briefs)

Regency Electronics, Inc. **276 NLRB No. 002**

(although GC's brief was received by E day after filing date set by ALJ, Bd found no error in ALJ accepting GC's brief, since timing of service of posthearing brief did not prejudice E's case)

Arizona Public Company **273 NLRB No. 210**

(GC's mtn to strike Respondent's brief denied, since both parties' briefs were filed, technically, late and no party suffered any prejudice because of the late filings by both parties)

Jim Miller, A Sole Proprietor, d/b/a Action Drywall **JD-(SF)-136-86**

[GC's mtn to strike Respondent's brief where brief was not timely received and relied on GC's brief, denied, since case involved unusual jurisdictional issue and GC suffered no prejudice due to lateness]

General Motors Corporation, Truck and Coach Division **JD-108-85**

(GC mtn to strike Respondent's brief because it was received by GC 4 days late, denied, where ALJ timely received his copy of brief by Respondent but GC's brief received one working day late by ALJ, since neither counsel prejudiced by delay in receiving briefs nor did either have advantage of other's brief for preparation of its own brief)

Embossing Printers, Inc. **JD-19-85**

(GC's brief rejected as mailed 10 days after extended due date and received 21 days after such date)

8467-4000 Form and content

Nassau Insurance Company **280 NLRB No. 103**

[Respondent E's mtn to strike U's exceptions and brief and GC's brief for failing to comply with provisions of Sec. 102.46(b)(c) and (i) of Bd's R/R, denied, notwithstanding did not comply in all particulars, absent any prejudice to E]

Baker Mine Services, Inc., d/b/a Coppinger Machinery Service, Inc. **279 NLRB No. 085**

[GC's mtn to strike appendices to Respondent's brief, granted, since appendices not admitted into evidence at hearing and therefore not part of record. Consideration of these documents would deny parties opportunity for voir dire and cross-examination and violate Bd's R/R]

E G & G Florida, Inc. **279 NLRB No. 065**

[Bd did not consider as exceptions cognizable under R/R 102.46(a) and (b) E's conclusionary statements in its answering brief to effect that it did not violate Act in any way and its attempt to support such statements with arguments set forth in its attached brief to ALJ; R/R 102.46 (d)(2) limits answering brief to questions and cross-exceptions]

Redok Enterprises, Inc. **277 NLRB No. 101**

(mtn to strike references in Respondent's brief and exceptions to matters not in record, granted)

Hedaya Brothers, Inc. **277 NLRB No. 093**

(GC's mtn to strike E's brief because it was too lengthy and did not contain a subject index with page references and alphabetical table of cases, denied, since brief was not so deficient as to warrant striking)

8467-4000—Cont.

United Technologies Corporation 277 NLRB No. 070
(GC's mtn to strike portions of E's brief, in particular, copy of newspaper article and any reference thereto, granted, where article was not presented as evidence at hearing and therefore was not part of record herein; R/R Sec. 102.45(b))

United Technologies Corporation 274 NLRB No. 163
(E's mtn to strike GC's brief in response to its exceptions, on grounds that it was identical to GC's post-hearing brief to ALJ, and thus did not constitute an *answering brief* or *cross-exceptions*, denied)

8467-5000 Issue raised for first time

Advertiser's Manufacturing Company 280 NLRB No. 128
[exception to ALJ's finding individual a supervisor, overruled where answer admitted his supervisory and agency status and issue was raised for fist time in exception]

Southern Lumber Company, Inc. 279 NLRB No. 027
[E held estopped to deny representative status of U agents, or to assert that it was being asked to negotiate with any labor organization other than certified U where E's prior actions demonstrated that it had no doubt about representative status of U agents or chartered subordinate of international U; E's asserted doubts first surfaced in its post-hearing brief]

8467-6000 Reply

Taylor Hospital 279 NLRB No. 006
[GC's mtn to strike E's reply brief, denied as moot, where Bd's Executive Secretary refused to accept E's reply brief when filed based on Bd's long-standing policy not to allow such filings]

National Metalcrafters, Inc. and National Lock Corp. and Keystone Consolidated Industries, Inc. 276 NLRB No. 014
(respondent's brief filed in response to exceptions to ALJ's decision contained in GC's brief in support of ALJ's decision stricken by Bd since R/R do not authorize response to brief in support of ALJ's decision)

Rainey Security Agency, Inc. 274 NLRB No. 041
(GC's mtn to strike E's *Brief in reply to brief of GC*, granted, since Bd's R/R make no provision for filing reply briefs, E had not sought authority to file its brief, and matters briefed by GC were plainly raised by C and litigated)

8500 RECORD IN UNFAIR LABOR PRACTICE PROCEEDING

8525 AMENDED PLEADINGS

Southwire Company 277 NLRB No. 043
(portion of omitted allegations of second amended C which contained fewer allegations than (first) amended C appear in record in instant proceeding only where necessary to indicate relevant background information)

8600 ORAL ARGUMENT

8800 BOARD DECISION

8801 GENERALLY

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 281 NLRB No. 117
[issue of U successorship, which arose subsequent to occurrence of E's ULPs herein and which Bd deferred to compliance stage in earlier proceeding involving E and U as parties held not to warrant abatement of Bd review of ALJ's decision in instant case]

8801-7800 Retroactive application

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 776 F.2d 745 (C.A. 7, Nov. 1985)
[ct upheld Bd's retroactive application of new rule since the balancing test: the desirable effects of the new rule against possible unfairness by litigants, comes out in *favor* of upholding retroactive application of Bd's new rule on superseniority]

8840 FORM AND CONTENT

8840-3700 Decision only on issues raised by facts, pleadings and exceptions in case

Baker Mine Services, Inc., d/b/a Coppinger Machinery Service, Inc. 279 NLRB No. 085
[GC's mtn to strike appendices to Respondent's brief, granted, since appendices not admitted into evidence at hearing and therefore not part of record. Consideration of these documents would deny parties opportunity for voir dire and cross-examination and violate Bd's R/R]

Weldment Corporation and/or R. C. White Co., and/or Ralph C. White Jr., d/b/a Yankee Roller Guide 275 NLRB No. 208
(mtn to strike representations in Respondent's brief granted, where representations not presented as evidence at hearing or subjected to cross-examination and, therefore, not part of record)

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)
[U waived defense that discriminatees failed to exhaust internal U remedies where U failed to raise issue before ALJ and addressed issue for first time in its post-hearing briefs to ALJ]

8860 FINDINGS

8860-0100 Generally

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)
(findings of agencies made in course of proceedings which are judicial in nature should be given same preclusive effect as findings made by courts)

8860-1200 Board may make de novo findings on basis of record

Garrison Valley Center, Inc. 277 NLRB No. 144
(state agency's decision (Maryland Dept. of Employment and Training Board of Appeals) which found Ee guilty of gross misconduct, not controlling (on Bd), since determination rendered under statute with different definitions, policies, and purpose from NLRA; Bd decision, as well as that of ALJ *must be based upon independent consideration and evaluation of the evidence received in this ULP proceeding*)

8860-2500 Adequate if ultimate facts on which order is based appear in record

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 782 F.2d 7 (C.A. 1, Jan. 1986)
[E's contention that Bd's statement that its conclusion based on *settled law* failed to adequately state basis for its decision, rejected]

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)
(Bd need not make independent findings or conduct separate analysis of factors prompting order if it specifically adopts findings and reasoning of ALJ)

8860-2550 Board can draw permissable inferences from credible testimony

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)
(NLRB is empowered to draw permissable inferences from credible testimony)

8860-3500 Board not bound by its previous reasoning or decisions

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)
(however ct might have decided superseniority matter at issue herein, Bd's formulation of new superseniority rule in its *Gulton* decision, after reconsidering *Limpco* line of cases was reasonable in allowing superseniority for layoff purposes only if U officials needed to be present at workplace; Bd is entitled to change its mind, so long as new general standard is applicable to all litigants)

Westvaco, Virginia, Folding Box Division v. N.L.R.B. 795 F.2d 1171 (C.A. 4, July 1986)
[Bd abused its discretion when it held Ees to be accretion to existing unit, and departed from its existing standard for accretion of *overwhelming community of interests* w/o stating its reasons for change. Record revealed no similarity of working conditions, working area, status of Ees, methods of compensation, or fringe benefits]

8860-4500 Will not overrule ALJ's credibility resolutions unless contrary to clear preponderance of all relevant evidence

Pullman Power Products Corporation 275 NLRB No. 113
(Bd reversed ALJ, notwithstanding assertion that reversal turned on ALJ's demeanor credibility findings, since Bd, to same extent as ALJ, is free to draw its own inferences from record so long as demeanor is not involved)

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)
(unless such determination (concerning credibility of witness) was unreasonable, we (reviewing ct) should defer to his (ALJ's) credibility judgments)

8860-5000 Specificity required

8860-5000—Cont.

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 782 F.2d 7 (C.A. 1, Jan. 1986)

[E's contention that Bd's statement that its conclusion based on *settled law* failed to adequately state basis for its decision, rejected]

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(Bd need not make independent findings or conduct separate analysis of factors prompting order if it specifically adopts findings and reasoning of ALJ)

8860-6300 Decision limited to facts of case

8860-6350 Issue raised for first time before Board

Brookhurst Professional Building, Inc., Number Three d/b/a Browning Manor Convalescent Hospital 279 NLRB No. 172

[GC's post hearing contention that Respondent falsely advised striking Ees of their permanent replacement, not encompassed by amended C alleging that E discharged striking Ees, and issue not properly before Bd, since issue not fully litigated where no contention made at hearing that E discharged strikers by informing them of their permanent replacement, nor was evidence that E falsely informed strikers of their permanent replacement introduced]

Lorimar Productions, Inc. 279 NLRB No. 036

[E's request for hearing to determine U's qualification to represent Ees, in case remanded by ct to Bd, denied, since issue was not raised in underlying *R* proceeding and was not w/i scope of ct's remand]

Kou Fu, Inc. d/b/a Peng Teng 278 NLRB No. 050

[Sec. 10(b) defense rejected where raised for first time before Bd, since 10(b) provision is statute of limitations, not jurisdictional, thus it is affirmative defense and if not timely raised, waived]

San Antonio Portland Cement Company 277 NLRB No. 036

(Bd refused to make finding that E's employment policies were unlawful where they were not alleged as violation in C or urged at hearing and, therefore, not fully litigated)

N.L.R.B. v. General Tire and Rubber Company 795 F.2d 585 (C.A. 6, July 1986)

[E's unilateral discontinuance of benefits, unlawful, notwithstanding E's contention that U waived its right to bargain over benefits by failing to demand bargaining on issue following E's announcement of its intent to terminate benefits, where E did not raise waiver issue until it moved for reconsideration by Bd, which Bd properly denied since E improperly attempted to rely on new theory and on asserted facts not in stipulation entered into by parties]

8860-8700 Findings of cumulative violations not necessary where order on those found would provide adequate remedy for others alleged

Yashan of California, Inc. 280 NLRB No. 032

[Bd found it unnecessary to pass on allegation of unlawful interrogation because finding of additional interrogation stemming from same incident would be cumulative, since ALJ found other unlawful interrogations, and any additional finding would not affect remedy]

Radio Electric Service Company 278 NLRB No. 078

[in finding that E's unilateral discontinuance of Christmas bonus violated 8(a)(5), Bd deemed it unnecessary to determine whether failure to pay bonus also violated 8(a)(3) because such finding would not affect remedy herein]

Gentzler Tool & Die Corp. 275 NLRB No. 124

(notwithstanding Bd has pending ptn for enforcement of its Order requiring execution of contract, retroactive application of contract and that E c/d from dealing directly with Ees, Bd issued another D/O arising from subsequent C finding E violations for refusal to bargain and withdrawal of recognition which are different violations than those found in first decision, and therefore, Order in first decision would not remedy those violations found in second decision; hence, need for another Order)

8860-9100 Variance between findings and complaint

8860-9101 Generally

Lone Star Industries, Inc. 279 NLRB No. 078

[no universal theory that E *must* follow seniority in recall of economic strikers. GC must establish existence of seniority recall rights by reference to collective-bargaining agreement or binding established past practice. However, even assuming either of above conditions proved, there must be alleged Sec. 8(a)(5) charge; otherwise, E free to devise new recall procedure as long as it is applied consistently. Here, all 8(a)(5) charges (unilateral changes) withdrawn; therefore, E did not violate Sec. 8(a)(3) by failing to recall strikers by seniority]

8860-9150 Findings on issues fully litigated

Central Broadcast Company 280 NLRB No. 056

[E's failure to object to introduction of its letter and copy of its president's speech, which it had supplied to GC, found to constitute waiver of formal notice in C where letter and speech were not alleged as violative in C but were fully litigated]

Brookhurst Professional Building, Inc., Number Three d/b/a Browning Manor Convalescent Hospital 279 NLRB No. 172

[GC's post hearing contention that Respondent falsely advised striking Ees of their permanent replacement, not encompassed by amended C alleging that E discharged striking Ees, and issue not properly before Bd, since issue not fully litigated where no contention made at hearing that E discharged strikers by informing them of their permanent replacement, nor was evidence that E falsely informed strikers of their permanent replacement introduced]

American Stores Packing Company, A Division of Acme Markets, Inc. 277 NLRB No. 190

[contrary to ALJ who found subcontracting theory had never been alleged, and therefore struck any reference to it in parties' briefs, Bd considered parties' subcontracting arguments where, although C may have been poorly drafted, pleadings raised such issue and it was fully litigated]

Maintenance Service Corporation 275 NLRB No. 198

(Bd may not make findings or order remedies on violations not charged in GC's C or litigated in subsequent hearing. Bd may, however, decide material issue fairly tried by parties regardless of whether it was specifically pleaded)

8860-9175 Findings on issues not fully litigated

Union Boiler Company 281 NLRB No. 148

[Bd did not adopt ALJ's implied finding that E's unlawful lockout of Ees also violated 8(a)(3) since C involved solely allegations of 8(a)(1) and (5) and GC did not allege such violation]

Baker Mine Services, Inc., d/b/a Coppinger Machinery Service, Inc. 279 NLRB No. 085

[Bd held no unlawful E domination in formation of and administration of Ee committee, or unlawful execution of bargaining agreement with committee, since those allegations not properly before Bd where (1) not raised in complaint (2) not put in issue at hearing and (3) GC and ALJ effectively assured Respondent that establishment of committee was not to be litigated]

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. 277 NLRB No. 078

(Es to make whole economic strikers only for losses resulting from E's unlawfully conditioning reinstatement on their resigning from U where such conditioning was only issue involving strikers' backpay that was alleged in C and litigated)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010

(U's filing of internal charges against Ees for violating U's job referral policy, not unlawful, in view of C allegations referring to named Ee other than Ees herein; absence of amendment to C incorporating alleged violation as to them; failure to allege in general way that U unlawfully filed charges against individuals other than named Ee; absence of statement by GC at hearing that charges against Ees herein violated Act; and GC's objection to introduction of evidence that such charges had been filed)

Maintenance Service Corporation 275 NLRB No. 198

(Bd may not make findings or order remedies on violations not charged in GC's C or litigated in subsequent hearing. Bd may, however, decide material issue fairly tried by parties regardless of whether it was specifically pleaded)

Laidlaw Waste Systems of Michigan, Inc. 275 NLRB No. 150

(GC's exceptions to ALJ's failure to find that U-security clause was invalid, unlawfully enforced and could not be relied on to deny laid off Ee his right to recall because the contract was not then in effect as to him, denied where complaint did not contain these allegations, and they were not fully litigated as violations; the first two allegations were merely asserted in GC's opening statement w/o any indication that finding of violations based on the U-security clause itself was sought, and the third allegation was first raised in GC's post-hearing brief)

Local 594, Auto Workers v. N.L.R.B. 776 F.2d 1310 (C.A. 6, Nov. 1985)

[U waived defense that discriminatees failed to exhaust internal U remedies where U failed to raise issue before ALJ and addressed issue for first time in its post-hearing briefs to ALJ]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)

[ct declined to consider allegation of unlawful refusal by E to sign contract where not alleged as violation in complaint and raised for first time on appeal. Complaint only alleged E failed to abide by contract]

8860-9175—Cont.

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)

[Bd improperly found that U's *indirect coercion* of E through pressure on travelers to quit work so that U's members could replace them violated 8(b)(2), since such separate violation was neither included in C nor litigated by parties; while C specified with great precision conduct alleged to violate 8(b)(2), it made no mention of U's behavior toward travelers or of indirect effect of such behavior on E]

8880 ORDERS (See also 600 REMEDIAL ORDERS)

8890-5000 Consistency between order and decision required

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. 277 NLRB No. 078

(Es to make whole economic strikers only for losses resulting from E's unlawfully coaditioning reinstatement on their resigning from U where such conditioning was only issue involving strikers' backpay that was alleged in C and litigated)

8890-8700 Effect of change of policy

Consumers Distributing Company, Limited d/b/a Consumers Distributing 276 NLRB No. 050

(Bd upheld ALJ's granting of GC's posthearing mtn for permission to withdraw C, since mtn was legitimate exercise of GC's prosecutorial authority under Sec. 3(d) to determine, even after close of hearing, that *legal underpinnings* of C no longer existed as result of recent Bd decisions; therefore, treating charging party's request for review and exception as interim appeal of ruling of ALJ under R/R Sec. 102.26, Bd denied appeal because it found that ALJ did not act arbitrarily or capriciously or otherwise abuse his discretion in granting GC's mtn)

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego 273 NLRB No. 224

(Bankruptcy amendments and Federal Judgeship Act of 1984, enacted by Congress on 10 July 1984, does not apply to cases in which bankruptcy ptn was filed prior to its enactment)

8890-8733 Decision effective only to future cases

National Council of Young Israel d/b/a Shalom Nursing Home 276 NLRB No. 118

(under *Telautograph*, 199 NLRB 892, the law at time Judge's decision issued (since overruled by *Dresser Industries*, 264 NLRB 1088 but Bd refrained from giving its new rule retroactive effect) E did not unlawfully refuse to bargain or unlawfully withdraw recognition when it ceased negotiating with U after decertification ptn filed)

9000 COSTS AND FEES

Electrical Workers, Local 453 (Sachs Electric Co.) 277 NLRB No. 122

(charging party's mtn for allowance of legal fees to be paid to himself as an attorney, from funds created for discriminatees which included himself, denied, since Bd's clients are the discriminatees and it is not w/i Bd's province to enforce an agreement to pay backpay which also relates to the payment of legal fees for discriminatees)

9100 AWARDS OF ATTORNEY FEES AND OTHER EXPENSES UNDER EQUAL ACCESS TO JUSTICE ACT

Bardcor Corp. 276 NLRB No. 127

(Bd deemed that Congress, in revising EAJA, did not alter but merely clarified the definition of *substantially justified* which means more than *mere reasonableness*, citing legislative history)

9101 GENERALLY

Thomas Steel Company 281 NLRB No. 060

[E's request for award of attorney's fees and costs *in responding to the General Counsel's bad faith exceptions* in ULP case, denied, since such claim can only be filed under EAJA]

9106 LEGISLATIVE HISTORY

Shrewsbury Motors, Inc. 281 NLRB No. 081

[applicant held prevailing party to refusal to bargain allegation in C when RD issued amended C withdrawing that allegation, and was prevailing party to allegations in amended C when RD withdrew amended C *as legislative history of EAJA makes clear, Congress did not intend to limit its application to those cases in which applicant receives favorable decision after hearing*]

Shrewsbury Motors, Inc. 281 NLRB No. 081

[legislative history reveals that in ULP cases which did not make it to hearing to determine whether government's position substantially justified, ct or adjudicative officer will look at record which will consist of pleadings, affidavits and supporting documents filed by parties in both for producing and case on merits. Thus substantial justification determination will not involve additional evidentiary proceedings or discovery of agency files, solely for EAJA purposes]

Shrewsbury Motors, Inc. 281 NLRB No. 081

[while Congress intended to bar discovery in EAJA proceedings, it did not intend that agency be permitted to shield entirely facts or basis for its action. Agency must produce sufficient material from its files to meet burden of showing substantial justification. If GC decides to file nothing or little, Bd may decide GC's burden has not been met]

Allied Lettercraft Co., Inc. 280 NLRB No. 092

[Congress in revising EAJA did not alter, but merely clarified, definition of *substantially justified* as meaning more than *mere reasonableness*]

University of New Haven 279 NLRB No. 043

[*substantially justified*, means more than *mere reasonableness*, but does not require showing that decision to litigate was based on a *substantial probability of prevailing*, and GC's failure to win does not raise presumption that position not substantially justified.]

Bennington Iron Works, Inc. 278 NLRB No. 159

[since legislative history, discussing defense of substantial justification, stated that *where Government can show that its case had a reasonable basis in law and fact, no award will be made*, Bd did not adopt ALJ's statement that *where there is a showing that the government's case had a reasonable basis in law or* fact, no award will be made]

Bennington Iron Works, Inc. 278 NLRB No. 159

[Bd deemed that definition of *substantially justified* was not altered, but merely clarified, when Congress amended EAJA; as stated in conference report accompanying amendments *substantially justified* means *more than mere reasonableness*]

R & K Caterers, Inc. 277 NLRB No. 082

(Congress, in amending EAJA, did not alter, but merely clarified, definition of *substantially justified* which means more than *mere reasonableness* H.R. Rep. 99--120 at 9)

Best Bread Company, Inc. 276 NLRB No. 145

(in 1985 amendments to EAJA Congress did not alter, but merely clarified definition of *substantially justified*, which means more than *mere reasonableness*)

Sheet Metal Workers, Local Union No. 162 (Enterprise Mechanical, Inc.) JD-(SF)-024-86

[local U applicant, not required to aggregate assets or Ees with those of International U, where local U filed separate LMRDA report with Department of Labor and House Report of EAJA Amendments states clearly it is Committee's intent that local U be considered separate entity for EAJA if it is separate entity under LMRDA; thus, local U was eligible for fees under EAJA]

9112 COVERED PROCEEDINGS

9112-4000 Unfair labor practice proceeding in which complaint issues

Shrewsbury Motors, Inc. 281 NLRB No. 081

[applicant held prevailing party to refusal to bargain allegation in C when RD issued amended C withdrawing that allegation, and was prevailing party to allegations in amended C when RD withdrew amended C *as legislative history of EAJA makes clear, Congress did not intend to limit its application to those cases in which applicant receives favorable decision after hearing*]

9112-4050 Underlying representation proceeding

Sonicraft, Inc. 281 NLRB No. 090

[ptn involving 8(a)(5) C not dismissed, notwithstanding GC's contention that fees and costs are not recoverable in R case proceeding, which is not adversary proceeding and thus not covered by EAJA, since action of Bd in issuing certification provided basis for GC's presecution of refusal to bargain C]

Sonicraft, Inc. 281 NLRB No. 090

[Bd's overruling of objections w/o hearing and certification of U substantially justified, notwithstanding U's use of releaser w/o notice to or agreement by E and imbalance of U observers at the polls in violation of stipulation for certification where E offered no specific evidence of U's use of releaser, and Bd's overruling objection to imbalance in observors was based on existing precedent]

K and I Transfer & Storage Inc. and City Cartage and Moving, Inc. 277 NLRB No. 113

(fees and expenses incurred in representation cares are not covered by EAJA or under Section 102.143 of Bd's R/R)

9118 ELIGIBILITY FOR AN AWARD

9118-2500 Prevailing party

Shrewsbury Motors, Inc. 281 NLRB No. 081

[applicant held prevailing party to refusal to bargain allegation in C when RD issued amended C withdrawing that allegation, and was prevailing party to allegations in amended C when RD withdrew amended C *as legislative history of EAJA makes clear, Congress did not intend to limit its application to those cases in which applicant receives favorable decision after hearing*]

9118-2500—Cont.

Grandon Health Care Center, Inc. 280 NLRB No. 028
[respondent was prevailing party where GC withdrew complaint subsequent to hearing and before any briefs were filed]

R. C. Siebert, Inc. 277 NLRB No. 072
(applicant was not prevailing party where, in settlement agreement, GC agreed to withdraw C and applicant agreed to post a notice consistent with withdrawn allegations of C)

Ronnie McCoy, d/b/a Metro East Cab Company JD-84-85
(GC *substantially justified* in issuing C against cab company alleging drivers were Ees rather than independent contractors and thus E had duty to bargain, where state of law at time C issued supported GC's finding, during investigation, that cab drivers did not possess indicia of independent contractor status; further, applicant was not *prevailing party* since U withdrew charge after E began some collective bargaining with it which was the substance of the charge in the first instance)

Eldridge Truck Line, Inc. JD-400-83
(application dismissed where applicant failed to set forth in application the number of Ees employed by applicant and did not set forth any particulars or assertion that applicant was *prevailing party* or that GC was not *substantially justified* in issuing C)

9118-2550 Significant discrete substantive portion of covered proceeding

Local Union No. 277, Painters (Polis Wallcovering Co., etc.) 281 NLRB No. 119
[applicant did not prevail in *significant and discrete substantive portion* of ULP proceeding involving allegations of 8(b)(1)(A) and 8(b)(2) where applicant succeeded in having 8(b)(2) portion dismissed; GC was successful in alleging U violated 8(b)(1)(A) by operating hiring hall on non-objective basis and 8(b)(2) allegation was simply derivative basis of violation]

R. C. Siebert, Inc. 277 NLRB No. 072
(applicant did not prevail on discrete substantive portion of proceeding by GC withdrawing 1 allegation of C where withdrawn allegation was *closely related* to other allegations and applicant, in its statement of services, made no entries related specifically to allegation which was withdrawn)

Continental Web Press, Inc. v. N.L.R.B. 767 F.2d 321 (C.A. 7, July 1985)
(E is prevailing party notwithstanding ct remanded case back to Bd because ct said that another bargaining order could not be entered so that even if Bd on remand entered c/d order or ordered another election. E would have won substantial part of what he sought; namely, no bargaining order)

Stanley Spencer, et al. v. N.L.R.B. 548 F.Supp. 256 (DC D.C., July 1985)
(where position of U.S. was *substantially justified* no award for attorney fees will be made under EAJA. Test of whether Government action is substantially justified is one of reasonableness both in law and fact. Burden of proof is on Government to show *substantial justification* but does not raise presumption that Government position was not substantially justified simply because it lost the case)

9118-7500 Financial eligibility

9118-7501 Generally

Amer-Cal Industries, Inc. JD-(SF)-166-85
(application dismissed where applicant failed to comply with ALJ's order to submit net worth statements of its subsidiaries)

9118-7548 Sole owner of unincorporated business whose personal and business interest does not exceed $7 million, and no more than 500 employees

Continental Web Press, Inc. v. N.L.R.B. 767 F.2d 321 (C.A. 7, July 1985)
(while Congress did not define term *net worth* ct applied generally accepted accounting principles and used *depreciated* net assets as basis for figuring net worth and not cost of assets)

9118-7596 Any other partnership, corporation, association, or public or private organization with net worth exceeding $7 million and no more than 500 employees

Evergreen Lumber Company, Inc. 278 NLRB No. 099
[EAJA and Bd's R/R fail to define term net worth for determining eligibility for award and legislative history provides virtually no clues to congressional intent. Congressional committee reports define net worth as total assets less total liabilities. But there are numerous ways of measuring assets and liabilities. Only guidance provided by legislative history as to appropriate accounting method to measure net worth is on subject of valuation of assets. Committee reports state that in determining value of assets, cost of acquisition rather than fair market value should be used]

Evergreen Lumber Company, Inc. 278 NLRB No. 099
[applicant met EAJA's net worth eligibility requirement where, under peculiar circumstances of case, Bd treated preferred stock issued by applicant to finance purchase of operating assets of predecessor as liability, and not as stockholders' equity]

Sheet Metal Workers, Local Union No. 162 (Enterprise Mechanical, Inc.) JD-(SF)-024-86
[local U applicant, not required to aggregate assets or Ees with those of International U, where local U filed separate LMRDA report with Department of Labor and House Report of EAJA Amendments states clearly it is Committee's intent that local U be considered separate entity for EAJA if it is separate entity under LMRDA; thus, local U was eligible for fees under EAJA]

Northwest Area Agency On Aging, Inc. JD-(NY)-53-85
(application dismissed since applicant was state governmental agency and thus was not w/i class of parties entitled to reimbursement for fees and expenses under EAJA)

Harry Sann, Jr., and Winton R. Wagner, Partners, d/b/a Briarcliff Pavilion For Specialized Care JD-490-84
(application dismissed, where applicant, a partnership of two individuals, failed to state the personal financial interests of both partners, the nature and net worth of its affiliate and did not verify its application for fees and expenses)

9130 APPLICATION FOR AWARD

9130-0100 Generally

Lord Jim's v. N.L.R.B. 772 F.2d 1446 (C.A. 9, Oct. 1985)
[E's contention that an application should be deemed *submitted* when mailed rather than when received, as required by Bd's R/R's, rejected]

9130-2000 Timeliness

R. C. Siebert, Inc. 277 NLRB No. 072
(application held timely filed from date ALJ issued final order closing the hearing and dismissing C rather than earlier date ALJ adjourned hearing *sine die* pending compliance with settlement agreement)

9130-2001 Generally

Lord Jim's v. N.L.R.B. 772 F.2d 1446 (C.A. 9, Oct. 1985)
[the 30-day period in which to file an application is jurisdictional and the NLRB has no authority to act on applications filed beyond this period]

9130-2050 Extension of time for filing

Lord Jim's v. N.L.R.B. 772 F.2d 1446 (C.A. 9, Oct. 1985)
[E's contention that Bd's failure to notify it more promptly of final disposition denied it due process and that 30-day filing period should not begin to run until an applicant has *actual notice* of the disposition, rejected, since to do so would expand 30-day filing requirement, held herein to be jurisdictional, and failure of Bd to notify parties of disposition on date of entry does not *per se* violate due process]

9130-4000 Place for filing

Lord Jim's v. N.L.R.B. 772 F.2d 1446 (C.A. 9, Oct. 1985)
[E's contention that Bd's requirement that EAJA application be received in Washington, D.C. rather than in regional offices violates due process by preventing equal access to statutory rights, rejected, since Congress permitted each Agency to establish procedures consistent with its organization and Bd's R/R's are consistent with existing Bd procedures]

9130-6000 Net worth exhibit, statement of charges and other supporting documents

Evergreen Lumber Company, Inc. 278 NLRB No. 099
[application held not deficient because financial statements submitted do not show net worth of Applicant as of date C issued, as Applicant furnished only audited financial statements which were available at time it was required to file its application, and thereafter supplemented these records with unaudited financial records for period immediately proceeding issuance of C]

Amer-Cal Industries, Inc. JD-(SF)-166-85
(application dismissed where applicant failed to comply with ALJ's order to submit net worth statements of its subsidiaries)

Eldridge Truck Line, Inc. JD-400-83
(application dismissed where applicant failed to set forth in application the number of Ees employed by applicant and did not set forth any particulars or assertion that applicant was *prevailing party* or that GC was not *substantially justified* in issuing C)

9130-6000—Cont.

Harry Sann, Jr., and Winton R. Wagner, Partners, d/b/a Briarcliff Pavilion For Specialized Care **JD-490-84**
(application dismissed, where applicant, a partnership of two individuals, failed to state the personal financial interests of both partners, the nature and net worth of its affiliate and did not verify its application for fees and expenses)

9136 ANSWER

9136-2000 Timeliness

Forest Grove Lumber Company **277 NLRB No. 167**
[date on letter enclosing EAJA application is not proof of service to start 30 day limitation for filing answer by GC]

9136-2580 Motion to dismiss

Central Motor Express, Inc. **276 NLRB No. 135**
(filing of mtn to dismiss application shall stay time for filing answer to date 30 days after issuance of any order denying mtn)

9136-7500 Specificity of facts

Shrewsbury Motors, Inc. **281 NLRB No. 081**
[GC failed to meet burden of showing position substantially justified where contended issue should be decided solely on pleadings in underlying case, and failed to submit any affidavits or supporting documents from underlying case; nor did GC's answer to application for fees and expenses reveal basis of GC's position as to issuance of C alleging successor E's failure to bargain with 1 of 2 units or with applicant's arguments regarding successor's obligations, but was bald summary of contentions accompanied by overly broad citations, nor was question of why C issued when few months later RD considered further proceedings unwarranted answered]

9154 DEFENSES

9154-0100 Generally

Bardcor Corp. **276 NLRB No. 127**
(Bd deemed that Congress, in revising EAJA, did not alter but merely clarified the definition of *substantially justified* which means more than *mere reasonableness*, citing legislative history)

9154-3300 General Counsel's position substantially justified

Local Union No. 277, Painters (Polis Wallcovering Co., etc.) **281 NLRB No. 119**
[GC *substantially justified* is issuing C alleging U violated 8(b)(1)(A) and 8(b)(2) by operating hiring hall on non-objective basis and failing to refer Ee where GC made strong prima facie case by showing animus and discriminatory treatment and ALJ in fact found U violated Act in regard to referral of another Ee]

Local Union No. 277, Painters (Polis Wallcovering Co., etc.) **281 NLRB No. 119**
[presence or absence of a prima facie case is not determinative of whether or not an applicant is entitled to an EAJA award]

National Fire Protection, Inc. and Mutual Sprinkler Contractors and Engineers, Inc. **281 NLRB No. 100**
[C alleging that E violated 8(a)(5) by abrogating alter ego E's contract with U substantially justified, notwithstanding that C was dismissed as time-barred, where determination of whether 10(b) applies in such cases is difficult, hazy, and turns on analysis of many facts and was based here on analysis of Bd's position in like cases and many facts adduced at hearing]

Sonicraft, Inc. **281 NLRB No. 090**
[Bd's overruling of objections w/o hearing and certification of U substantially justified, notwithstanding U's use of releaser w/o notice to or agreement by E and imbalance of U observers at the polls in violation of stipulation for certification where E offered no specific evidence of U's use of releaser, and Bd's overruling objection to imbalance in observors was based on existing precedent]

Shrewsbury Motors, Inc. **281 NLRB No. 081**
[legislative history reveals that in ULP cases which did not make it to hearing to determine whether government's position substantially justified, ct or adjudicative officer will look at record which will consist of pleadings, affidavits and supporting documents filed by parties in both fee producing and case on merits. Thus substantial justification determination will not involve additional evidentiary proceedings or discovery of agency files, solely for EAJA purposes]

Shrewsbury Motors, Inc. **281 NLRB No. 081**
[while Congress intended to bar discovery in EAJA proceedings, it did not intend that agency be permitted to shield entirely facts or basis for its action. Agency must produce sufficient material from its files to meet burden of showing substantial justification. If GC decides to file nothing or little, Bd may decide GC's burden has not been met]

Shrewsbury Motors, Inc. **281 NLRB No. 081**
[GC failed to meet burden of showing position substantially justified where contended issue should be decided solely on pleadings in underlying case, and failed to submit any affidavits or supporting documents from underlying case; nor did GC's answer to application for fees and expenses reveal basis of GC's position as to issuance of C alleging successor E's failure to bargain with 1 of 2 units or with applicant's arguments regarding successor's obligations, but was bald summary of contentions accompanied by overly broad citations, nor was question of why C issued when few months later RD considered further proceedings unwarranted answered]

Shrewsbury Motors, Inc. **281 NLRB No. 081**
[which Congress precluded discovery in EAJA cases, it left to GC to decide whether and how much to provide from investigative files by way of affidavits and supporting documents in support of claim of substantial justification. It may be in appropriate case rather than furnishing investigatory affidavits, GC may furnish affidavits of agents prepared for EAJA proceedings describing facts developed during investigation w/o disclosing identity of witnesses or revealing other information deemed sensitive or confidential]

Supershade Corporation **280 NLRB No. 131**
[GC's position substantially justified and award of fees denied, when GC presented evidence, which if credited, established prima facie case, notwithstanding applicant's contention that GC should have made own credibility resolution adverse to Charging Party and dismissed charge, particularly where she was not fluent in English, and unemployment compensation commission decision held she had quit rather than was discharged, since *credibility issues presented were not of such patent clarity as to be readily susceptible of resolution w/o resort to crucible of evidentiary hearing*]

Allied Lettercraft Co., Inc. **280 NLRB No. 092**
[GC substantially justified in issuing C alleging unlawful discharge, where GC had prepared to proceed on alternate theory of disparate treatment of Ee for such misconduct and withdrew C not only because Ee's testimony was found incredible but also because witness on whose testimony alternate theory was based had not been located and was not available to testify]

Allied Lettercraft Co., Inc. **280 NLRB No. 092**
[GC substantially justified in issuing C for E's refusal to recognize and bargain with U designated representative of majority of unit Ees and engaging in ULPs precluding fair election, notwithstanding inability to show majority designation at hearing, where she withdrew C on finding at hearing that dischargee's card should not be counted, because discharge was for cause, and cards of four of five Ees she had reasonably believed in fact and law should be excluded from unit were not excluded due to testimony at hearing and incredibility and unavailability of witnesses on whose testimony GC had relied]

Grandon Health Care Center, Inc. **280 NLRB No. 028**
[GC not reasonably justified in issuing complaint alleging failure to bargain in good faith on basis of long, repetitive and fruitless collective bargaining sessions]

Country Epicure, Inc. **279 NLRB No. 104**
[award of fees denied since GC substantially justified in believing circumstantial evidence could justify inference that applicant knew about discriminatee's U activities in view of timing 3 weeks after E became aware of U organizing drive, and disparate treatment of discriminatee]

University of New Haven **279 NLRB No. 043**
[*substantially justified*, means more than *mere reasonableness*, but does not require showing that decision to litigate was based on a *substantial probability of prevailing*, and GC's failure to win does not raise presumption that position not substantially justified.]

University of New Haven **279 NLRB No. 043**
[C alleging unlawful withdrawal of recognition from certified representative of fulltime university faculty *substantially justified* in fact and law, notwithstanding Bd finding that they were not Ees based on authority to effectively recommend management policy as to promotion, sabbatical leave, and hiring, where there were areas they did not effectively control, nonmanagerial factors such as hierarchical decision-making network and collective bargaining history, and credibility determinations which, if decided otherwise, might have affected outcome of case; moreover, GC was faced with unsettled case law and few guidelines]

Ponco, Inc. **278 NLRB No. 158**
[application for EAJA award dismissed where GC was *substantially justified* in deciding to litigate Ee's discharge, since whether GC's circumstantial evidence would warrant inference that Applicant knew of Ee's U activity when Ee was discharged is *close question* for trier of fact (ALJ) who dismissed application of E who terminated Ee for Ee's first misfabrication error]

Bunnington Iron Works, Inc. **278 NLRB No. 159**
[since legislative history, discussing defense of substantial justification, stated that *where Government can show that its case had a reasonable basis in law and fact, no award will be made*, Bd did not adopt ALJ's statement that *where there is a showing that the government's case had a reasonable basis in law or* fact, no award will be made]

Bunnington Iron Works, Inc. **278 NLRB No. 159**
[Bd deemed that definition of *substantially justified* was not altered, but merely clarified, when Congress amended EAJA; as stated in conference

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report accompanying amendments *substantially justified* means *more than mere reasonableness*]

Bennington Iron Works, Inc. **278 NLRB No. 159**
[test for *substantially justified* under EAJA Sec. 504(a)(1) is one of reasonableness, and where there is a showing that government's case had reasonable basis in law and fact, no award will be made; moreover, no adverse inferences are to be drawn from fact that government did not prevail, nor is fact that Bd and ALJ disagreed sufficient to negate substantial justification]

Bennington Iron Works, Inc. **278 NLRB No. 159**
[application for award dismissed since GC's position was substantially justified, where GC's theory of case was clear, consistent, and based on long established and clear governing law, which GC expeditiously pursued during brief 2-day trial, which was not complex]

Bennington Iron Works, Inc. **278 NLRB No. 159**
[application for award dismissed since GC's position was substantially justified, where GC was not in position to resolve credibility issues, as was ALJ who heard and observed witnesses; and where credibility issues are important to determination of whether to proceed to litigation, GC has little choice but to issue C and, absent settlement, advance to trial; likewise where, as here, more than one set of inferences may be drawn from circumstances, GC has no sure method of evaluating what trier of fact may find or what appellate tribunal may conclude]

Bennington Iron Works, Inc. **278 NLRB No. 159**
[application for award dismissed, since GC's position was substantially justified, where GC's case in ULP proceeding was based on well established precedent and on reasonable and logically arguable legal theory]

Landmark Industries, Inc. **278 NLRB No. 129**
[*Burden of establishing substantial justification is on government, and test of whether or not governmental action justified is one of reasonableness. Government to defeat award, must establish that its position had reasonable basis in fact and law*]

Landmark Industries, Inc. **278 NLRB No. 129**
[attorney fees and expenses denied since GC was substantially justified in issuing and prosecuting complaint where she adduced evidence, which, if credited, inferences adverse to Respondent would have reasonably been drawn, which would have adequately supported GC's position]

Evergreen Lumber Company, Inc. **278 NLRB No. 099**
[applicant awarded fees and expenses, since GC's position not substantially justified, where in prosecuting C alleging that applicant as successor E unlawfully refused to recognize and bargain with U that had represented Ees of predecessor, GC cited no authority for theory on which it relied on that successor E obligated to bargain so long as majority of its complement of unit Ees comprised of Ees of predecessor, regardless of whether in unit at predecessor E at time it ceased business, and since evidence measured against legal theory did not have reasonable basis in fact]

Tajon, Inc. **277 NLRB No. 184**
[*It is immaterial that GC may not establish prima facia case of violation. But where GC presents evidence which if credited by fact finder, would constitute prima facia case of unlawful conduct, GC's position has been deemed to be substantially justified w/i meaning of Section 102.144(a) of Bd's R&R*]

Tajon, Inc. **277 NLRB No. 184**
[Section 102.144(a) of Bd's R&R puts burden on GC to show substantially justified in issuing complaint]

Tajon, Inc. **277 NLRB No. 184**
[where GC advanced in good faith close question of law and fact of whether reasonable time has elapsed after voluntary recognition during which U would enjoy irrebutable presumption of majority status and E was obligated to bargain had expired, pre-complaint investigation indicated reasonable time had not elapsed, ALJ and 1 Bd member agreed, GC deemed substantially justified in issuing complaint and litigating]

Tajon, Inc. **277 NLRB No. 184**
[GC substantially justified in litigating E's refusal to sign bargaining agreement in view of charging party's applicant's pre-trial statements that all terms of contract had been agreed upon, notwithstanding GC did not pursue allegation after Charging Party conceeded at hearing that all terms of contract had not been agreed upon]

Tajon, Inc. **277 NLRB No. 184**
[congress has indicated no adverse inferences were to be drawn or that government position was not substantially justified from fact it did not prevail. Standard does require government to establish that its decision to litigate was based on substantialy probability of prevailing]

Bronaugh Motor Express, Inc. **277 NLRB No. 169**
[alter ego]

East Tennessee Packing Company/Selecto Meats, Inc. **277 NLRB No. 168**
[alter ego]

Forest Grove Lumber Company **277 NLRB No. 167**
[causal connection between prolongation of strike and ULPs]

Rapid Rental, Inc., d/b/a Budget Rent-A-Car **277 NLRB No. 129**
(GC *substantially justified* in issuing C alleging E violated 8(a)(3) by discharging active U supporter where E gave shifting reasons during Regional Office investigation and E had shown U animus in prior ULP case by unlawfully discharging U leader, thus providing reasonable factual basis for C; further, no adverse inference is to be drawn from fact RD originally dismissed charge and C issued only upon direction from GC's Office of Appeals)

Carmel Furniture Corp. **277 NLRB No. 119**
(legislative history of EAJA characterizes test of whether government action substantially justified as essentially one of reasonableness. Where government can show its case had reasonable basis, both in law and fact, no award will be made. Burden of establishing substantial justification rests with government. Standard should not be read to raise presumption that government's position was not substantially justified simply because it lost case)

Carmel Furniture Corp. **277 NLRB No. 119**
(no award of fees and expenses, notwithstanding Respondent's contentions no substantial justification to issue C; where no exceptions from ALJ's decision filed, RD canceled trial date with 2 days notice, both E and U requested charges be dismissed, Region had been advised by E and U that E had invited U to organize Ees, thus rendering improbable allegations of C that E had discharged Ees for U reasons, and only credibility conflict was between U representatives, and if investigation had been thorough, it would have been ascertained that charges were filed w/o sufficient knowledge, since there existed credibility issue requiring hearing)

Carmel Furniture Corp. **277 NLRB No. 119**
(no award of fees and expenses, since GC's position substantially justified where there existed credibility issue requiring hearing in that question of E's motivation depended on credibility resolution of whether supervisor who discharged Ees knew E wanted to be represented by U)

Advance Development and Manufacturing Corporation **277 NLRB No. 115**
(no award of fees and expenses since GC's position as to propriety of amendment of C to include allegation which was dismissed, and as to merits of amendment; substantially justified, notwithstanding Respondent's contention amendment barred by Sec. 10(b) since it was unrelated to subject matter of charge or original C, that evidence in support of amendment was insufficient, and GC's failure to depose or produce material witness showed lack of good faith, inasmuch as such failure did not mean pursuit of allegation was in bad faith, and there existed credibility issues which GC was justified in bringing before ALJ for resolution)

K and I Transfer & Storage Inc. and City Cartage and Moving, Inc. **277 NLRB No. 113**
(no award of fees and expenses to prevailing Respondents since GC substantially justified in prosecuting case where findings of no violations of Sections 8(a)(1) and (3), and consequent refusal to issue bargaining order, were based on credibility resolutions)

K and I Transfer & Storage Inc. and City Cartage and Moving, Inc. **277 NLRB No. 113**
]*substantially justified in EAJA, 5 U.S.C. Section 504, means more than mere reasonableness*)

Patrick & Company **277 NLRB No. 051**
(test for substantial justification is not whether an agency strictly adhered to its case handling manual, but rather, whether or not its position was substantially justified)

R & K Caterers, Inc. **277 NLRB No. 002**
(Congress, in amending EAJA, did not alter, but merely clarified, definition of *substantially justified* which means more than *mere reasonableness* H.R. Rep. 99–120 at 9)

R & K Caterers, Inc. **277 NLRB No. 002**
(application for attorney fees and expenses under EAJA dismissed in view of fact that, whether proposed (labor) contract is unlawful is *substantial* question in that article I of proposed contract read in its entirety does not appear to present matter of law susceptible to resolution by GC w/o hearing to resolve credibility issues regarding whether in fact there was consciously arrived at understanding)

Western Newspaper Publishing Co., Inc. **276 NLRB No. 173**
(GC substantially justified in issuing complaint alleging 8(a)(5) violation where decision in case turned on factual inferences which ALJ was only able to draw after hearing lengthy trial testimony subject to cross-examination; moreover, there was also credibility dispute as to crucial issue)

Bardcor Corp. **276 NLRB No. 127**
(in order to be substantially justified in prosecuting case GC must be able to make out prima facie case but he is not insurer that ALJ will agree with him; credibility resolutions are for ALJ to make and, if made contrary to GC, as here, it does not mean that GC was not substantially justified; consequently, E's EAJA application for award denied since decision herein to dismiss C was based on credibility findings)

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Phil Smidt & Son, Inc. **276 NLRB No. 122**
(as ultimate burden of proving interim earnings is on E, and not GC, EAJA application dismissed, notwithstanding E made offer of settlement that exceeded eventual backpay award though less than backpay specification, since finding of ULP is presumptive proof that some backpay is owed)

John Keller d/b/a Union Carbide Building Co. and Schmelzer-Wysong Management Co., et al. **276 NLRB No. 160**
(position of GC substantially justified where, if witness' initial testimony had been credited as presented by GC, it would have supported GC's theory but Bd in considering witness' testimony as a whole, including his cross-examination, agreed with ALJ that evidence failed to establish conclusively finding necessary to GC's theory)

Best Broad Company, Inc. **276 NLRB No. 145**
(position of GC substantially justified where GC issued C and prepared for trial based on witnesses' sworn statements and she acted with due dilligence to withdraw C when witnesses recanted two days before hearing)

Graig & Hamilton Meat Company, Inc. **276 NLRB No. 103**
(GC *substantially justified* in issuing C alleging E violated 8(a)(5) by refusing to furnish U financial information where GC's argument that E advanced inability to pay was not unreasonable in law or fact in that line between inability to pay and resolve not to pay is difficult to draw and case was a *close* case)

United Parcel Service, Inc. **273 NLRB No. 205**
(GC *substantially justified* in issuing C alleging E violated 8(a)(5) by refusing to bargain with U where GC could have made case of refusal to bargain had his key U witness been credited in relating events surrounding U's initial request to bargain; further, although GC's key witness was discredited in some respects by ALJ, he was credited in other respects and thus, GC cannot be found to have acted unreasonably in relying on witness is deciding to issue C)

United Parcel Service, Inc. **273 NLRB No. 205**
(GC *substantially justified* in issuing C alleging E violated 8(a)(3) by transferring Ees from day shift to night shift where timing of action raised inference of anti-U considerations and had E not presented credited evidence of nondiscriminatory reasons for the transfers, GC would have made *prima facie* case of discrimination)

Alabama Metal Products, Inc., and its alter ego Delta Laminating, Inc. **JD-(ATL)-69-86**
[attorney fees and expenses denied, since GC substantially justified in issuing C and filing exceptions, where initially threshold issue of whether Es were alter egos or single integrated enterprise involved credibility issues requiring hearing and GC's exceptions to holding that application of alter ego concept not appropriate inasmuch as motivation not necessary element reasonably based in law, as evidenced by different approaches of members of Bd panel in case herein and in other cases]

Shipbuilders (Bethlehem Steel Corporation) **JD-131-86**
[applicant not entitled to award of attorney fees and expenses since GC's position substantially justified, notwithstanding applicant's contention that testimony of U agent adverse to U was incredible and that if regional office had done better job of investigation it would have dismissed charges, since GC's evidence if credited constituted prima facie case and even if regional office interviewed all witnesses suggested by applicant in application there would remain credibility issues which GC had no authority to resolve, thus requiring hearing]

Maintenance Service Corporation **JD-90-86**
[GC not *substantially justified* in issuing C alleging E violated 8(a)(5) by refusing to execute contract where facts were clear U and E had no meeting of the minds on date GC alleged there was a contract]

Professional Maintenance of Long Island, Inc. **JD-(NY)-16-86**
[GC *substantially justified* in issuing C alleging E refused to hire Ees based on U membership, where, had ALJ credited GC's witnesses, inference of discrimination proposed by GC would have been quite reasonable]

Sheet Metal Workers, Local Union No. 162 (Enterprise Mechanical, Inc.) **JD-(SF)-024-86**
[GC *substantially justified* in issuing 8(b)(1)(B) complaint against local U alleging it coerced E in selection of its representative where, had GC's witnesses been credited, ALJ would have found violation; further, GC's case was buttressed by fact Respondent failed to make available sworn testimony or documentary evidence during pre-complaint investigation]

Central Motor Express, Inc. **JD-356-85**
[Region substantially justified in issuing complaint where credibility resolutions played large part in deciding issues in case and absent evidence GC knew or should have known prior to issuance of complaint that sufficient evidence would be adduced to support dismissal of charges]

Pete Crouch Plumbing & Heating Co. **JD-299-85**
(GC substantially justified in issuing C that E failed to supply U with requested information and thereafter dismissing it only after E offered to make available to GC tape recording of meeting where information was offered where, although the E informed GC that it had tape recorded the meeting, it did not make a transcript of it available until two and a half months later, whereupon the GC expeditiously dismissed C w/i six days)

Ronnie McCoy, d/b/a Metro East Cab Company **JD-84-85**
(GC *substantially justified* in issuing C against cab company alleging drivers were Ees rather than independent contractors and thus E had duty to bargain, where state of law at time C issued supported GC's finding, during investigation, that cab drivers did not possess indicia of independent contractor status; further, applicant was not *prevailing party* since U withdrew charge after E began some collective bargaining with it which was the substance of the charge in the first instance)

Hillsamer Painting Contractors, Inc. **JD-73-85**
(GC *substantially justified* in issuing 8(a)(5) C alleging two companies were single E or *alter egos* where companies were owned individually by father and son and a myriad of facts developed at hearing tended to show single E or *alter ego* relationship; further, case was a close case and fact that E and GC cited the same case as controlling further establishes that GC was justified in issuing C)

Inductive Components, Inc. **JD-(NY)-20-85**
(GC *substantially justified* in issuing C alleging E engaged in numerous acts of harrassment against its Ees because of their U activity, notwithstanding some allegations were ultimately dismissed by the Bd, where all allegations of C involved issues of credibility which are the exclusive province of ALJ; further, E's argument that Region conducted *perfunctory* investigation and disregarded its evidence, rejected, since Region still was presented with credibility issues which could not be resolved absent trial)

Millmen, Cabinetmakers and Industrial Carpenters Union, Local No. 42, AFL-CIO (Robert L. Hamilton, an Individual) **JD-(SF)-35-85**
(GC *substantially justified* in issuing C -withdrawn after hearing closed- alleging U violated 8(a)(1)(A) by imposing ct collectible fine on member for post-resignation activity where, based on evidence presented during investigation and proffered at hearing, GC made presumptively *prima facie* case; U's contention that had GC conducted a more thorough investigation she would not have issued C on the merits and because of 10(b) bar, rejected, where U refused to state its position and rejected invitations to proffer exculpatory evidence during investigation)

Stephens College **JD-15-85**
(Respondent college awarded attorney fees and expenses since GC knew or should have known further litigation in underlying ULP proceeding alleging unlawful withdrawal of recognition from U was not substantially justified, after he had all necessary facts and Bd had issued clear decisional standard of factual analysis for determining whether faculty members deemed to be managerial in *Ithaca College*, 261 NLRB 577, and *Duquesne Univeristy*, 261 NLRB 587)

Valu Warehouse Foods, Inc. **JD-(NY)-13-85**
(GC *substantially justified* in issuing C alleging E violated 8(a)(5) by refusing to bargain with U where GC could have made case of refusal to bargain had his key U witness been credited in relating events surrounding U's initial request to bargain; further, although GC's key witness was discredited in some respects by ALJ, he was credited in other respects and thus, GC cannot be found to have acted unreasonably in relying on witness in deciding to issue C)

Tectonic Industries, Inc. **JD-(NY)-3-85**
(GC *substantially justified* in issuing C alleging E violated 8(a)(5) by engaging in surface bargaining and application dismissed, where evidence indicated that E easily could have been found to have engaged in deliberate stalling of negotiations and direct dealing with Ees, showing GC had strong *prima facie* case, and ALJ's credibility resolutions at trial were important factors in his determination of case on the merits)

Westerman, Inc. v. N.L.R.B. **749 F.2d 14 (C.A. 6, Dec. 1984)**
(Bd's denial of attorney's fees and expenses not abuse of discretion, since GC position was substantially justified in alleging unlawful layoffs for U activity in view of proven U activity, E's knowledge thereof, and supervisor's hostility thereto; GC could not have forecast that he would not prevail as to timing of E's knowledge and attribution of supervisor's anti-U hostility to E)

Westerman, Inc. v. N.L.R.B. **749 F.2d 14 (C.A. 6, Dec. 1984)**
(failure to establish *prima facie* case does not render position substantially unjustified where it had reasonable basis in fact and law)

Westerman, Inc. v. N.L.R.B. **749 F.2d 14 (C.A. 6, Dec. 1984)**
(GC not required to establish that decision to litigate based upon substantial probability of winning)

K & I Transfer & Storage, Inc. and City Cartage and Moving, Inc. v. N.L.R.B. **805 F.2d 749 (C.A. 7, Nov. 1986)**
[EAJA 1985 amendments made clear that inquiry whether GC was substantially justified must encompass not only evaluation of GC's legal position in proceedings before Bd, but also actions that led to the litigation]

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K & I Transfer & Storage, Inc. and City Cartage and Moving, Inc. v. N.L.R.B. 805 F.2d 749 (C.A. 7, Nov. 1986)

[Bd correctly denied E's request for further proceedings to address evidence in support of its contention that GC's position was not substantially justified; nothing in EAJA or its legislative history requires that independent or separate evidence, distinct from record of proceedings on merits, is required in order to satisfy government's burden of proof; whether or not position of agency was substantially justified shall be determined on basis of administrative record, as a whole, which is made in adversary adjudication for which fees and expenses are sought]

Temp Tech Industries, Inc. 756 F.2d 586 (C.A. 7, Mar. 1985)

(if decision to litigate had reasonable basis in law and fact, GC does not have to justify decision to reject settlement offer which, by its terms, could not have provided full relief GC would have achieved had he prevailed, and would have lacked the enforceability of Bd order)

Temp Tech Industries, Inc. 756 F.2d 586 (C.A. 7, Mar. 1985)

(GC substantially justified in litigating issue of striker's discharge for picket line misconduct because discharge in such case only warranted where misconduct *sufficiently egregious*, and GC could not know whether misconduct rose to such level)

Temp Tech Industries, Inc. 756 F.2d 586 (C.A. 7, Mar. 1985)

(GC's decision to litigate issue that turns on credibility is not unreasonable; fact ALJ might make adverse finding on credibility issue does not, in and of itself, deprive GC's position of basis in fact)

9154-3350 Cooperation by respondent in investigation

Patrick & Company 277 NLRB No. 051

(GC was *substantially justified* in issuing C alleging E violated 8(a)(3) by discharging Ee, notwithstanding E submitted evidence during investigation that Ee was 2(11) supervisor and was found at hearing to be 2(11) supervisor, where charging party's affidavit and other evidence produced prior to hearing was in direct conflict with E's evidence on issue of Ee's 2(11) status, thus GC needed to proceed to hearing in order to resolve credibility issues central to Ee's employment status)

Local 702, Electrical Workers (Rayford T. Blankenship, Blankenship and Associates, Inc.) JD-71-85

(GC *substantially justified* in issuing C alleging U violated 8(b)(4)(ii)(B) where GC was presented with evidence at investigatory stage, that U agent had threatened secondary E that it would shut down jobsite to force it to cease doing business with primary E and it was only after ALJ resolved genuine credibility issues, that C was dismissed; further, fact that GC disregarded U's exculpatory evidence during investigation was irrelevant since C was justified in any circumstance)

Millmen, Cabinetmakers and Industrial Carpenters Union, Local No. 42, AFL-CIO (Robert L. Hamilton, an Individual) JD-(SF)-35-85

(GC *substantially justified* in issuing C -withdrawn after hearing closed- alleging U violated 8(a)(1)(A) by imposing ot collectible fine on member for post-resignation activity where, based on evidence presented during investigation and proffered at hearing, GC made presumptively *prima facie* case; U's contention that had GC conducted a more thorough investigation she would not have issued C on the merits and because of 10(b) bar, rejected, where U refused to state its position and rejected invitations to proffer exculpatory evidence during investigation)

9160 COMPENSATED FEES AND EXPENSES

9160-3000 Fees and expenses incurred in pursuing EAJA award

Reliable Tile Co., Inc. 280 NLRB No. 045

[fees and expenses awarded applicant including those attributable to 2 earlier applications that were dismissed as premature, since those claims are also recoverable as the hours, spent in preparing earlier applications were utilized in preparation of application and amendment now before Bd]

Grandon Health Care Center, Inc. 280 NLRB No. 028

[application for fees and expenses associated with ongoing processing of supplemental application, rejected, since not time raised where matter raised for first time in exceptions to ALJ's supplemental decision, and where application had requested sum certain and did not indicate applicant sought ongoing expenses to be incurred after application filed]

Evergreen Lumber Company, Inc. 278 NLRB No. 099

[fees and expenses for time spent pursuing recovery of attorney fees under EAJA are recoverable]

9160-4000 Pre-complaint fees and expenses

Grandon Health Care Center, Inc. 280 NLRB No. 028

[Respondent not entitled to recover expenses incurred before issuance of complaint]

Evergreen Lumber Company, Inc. 278 NLRB No. 099

[applicant's fees and expenses incurred during investigatory stage of ULP proceeding prior to issuance of complaint not compensable under Bd R/R 102.143 which states eligible applicant may receive award of fees and expenses incurred in connection with ULP proceeding *pending before Bd on complaint*]

R. C. Siebert, Inc. 277 NLRB No. 072

(applicant's claim for pre-C fees and expenses are non-compensable)

Phil Smidt & Son, Inc. 276 NLRB No. 122

(until issuance of C in ULP proceeding, no previously incurred expenses may be awarded in EAJA application. Similarly, until issuance of backpay specification, no fees and expenses may be awarded)

Maintenance Service Corporation JD-90-86

[pre-compliant fees and expenses not recoverable]

9160-5000 Compensated fees

9160-5020 Prevailing market rates in community for services rendered

Evergreen Lumber Company, Inc. 278 NLRB No. 099

[recovery of attorney fees limited to $75 per hour pursuant to 5 U.S.C. 504(b)(1)(A) and Section 102.145 of Bd's R/R, absent compelling reasons or special circumstances, notwithstanding rates charged by applicant's attorney ranged from $90-$100 per hour, which applicant contended were reasonable and within prevailing rate for area]

9160-5040 Rates charged to applicant

9160-5040-3300 At or above statutory maximum

Shrewsbury Motors, Inc. 281 NLRB No. 081

[reimbursement for legal fees at hourly rates which exceeded $75 per hour permitted by Bd's R/R 102.145(b) and under 5 U.S.C. 504(b)(1)(A) unless agency regulation makes exception, denied]

Evergreen Lumber Company, Inc. 278 NLRB No. 099

[recovery of attorney fees limited to $75 per hour pursuant to 5 U.S.C. 504(b)(1)(A) and Section 102.145 of Bd's R/R, absent compelling reasons or special circumstances, notwithstanding rates charged by applicant's attorney ranged from $90-$100 per hour, which applicant contended were reasonable and within prevailing rate for area]

Landmark Industries, Inc. 276 NLRB No. 166

(ptn requesting Bd to increase maximum rate for attorneys fees because of increase in cost of living and limited availability of qualified attorneys, denied where, under EAJA and existing Bd rules, no larger fee was warranted and rulemaking to increase agent and attorney fees was unwarranted at time)

9160-5700 Noncompensated expenses

Stephens College JD-15-86

(imposition of interest on award of fees and expenses is not mandated by EAJA or Bd's Rules and Regulations)

9172 FORM OF PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGE

9172-1400 Rulings on motions and objections

Shrewsbury Motors, Inc. 281 NLRB No. 081

[applicant's mtn for sanctions under rule 11 of Federal Rules of Civil Procedure, based on contention that GC's position in EAJA proceeding misrepresented position of memorandum issued by GC's Division of Advice on which withdrawal of complaint based in underlying case, which memorandum was previously unavailable to applicant and that GC's position unsupported by law or fact, rejected, since rule not applicable to Bd proceedings]

Shrewsbury Motors, Inc. 281 NLRB No. 081

[both GC and applicant mtns for relief under *Tidee Products Inc.*, 194 NLRB 1234, on basis that actions of other party *patently frivolous*, rejected, notwithstanding GC did not carry burden to establish that position was substantially justified]

Paintsville Hospital Company, Inc. 278 NLRB No. 107

[in hearing on challenged ballots consolidated with ULP case, ALJ properly denied E mtn to file objections to election, where E had filed no other timely objections to election, since objections must be filed with RD w/i 5 days of ballot tally]

9172-5600 Further proceedings as necessary

K & I Transfer & Storage, Inc. and City Cartage and Moving, Inc. v. N.L.R.B. 805 F.2d 749 (C.A. 7, Nov. 1986)

[Bd correctly denied E's request for further proceedings to address evidence in support of its contention that GC's position was not substantially justified; nothing in EAJA or its legislative history requires that independent or separate evidence, distinct from record of proceedings on merits, is required

9172-5600—Cont.

in order to satisfy government's burden of proof; whether or not position of agency was substantially justified shall be determined on basis of administrative record, as a whole, which is made in adversary adjudication for which fees and expenses are sought]

9178 BOARD DECISION

9178-3300 Decision only on issues raised by facts, pleadings and exceptions in case

Grandon Health Care Center, Inc. 280 NLRB No. 028
[application for fees and expenses associated with ongoing processing of supplemental application, rejected, since not time raised where matter raised for first time in exceptions to ALJ's supplemental decision, and where application had requested sum certain and did not indicate applicant sought ongoing expenses to be incurred after application filed]

9178-6700 Remand to Administrative Law Judge

Woodcliff Lake Manor Nursing Home, Inc. 276 NLRB No. 084
(remand to determine if 2 Ees were in unit on date E allegedly extended recognition to minority U, since that fact determinative of whether U had majority where 28 Ees out of unit which ALJ found to contain 57 Ees testified that they never signed U authorization cards, but GC contended 2 of those 57 Ees not in unit, since designated on E's records with departmental codes outside unit)

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046
(Us' request for remand to ALJ, who had found no alter ego or successorship status presented as 8(b)(7)(C) defenses by U, on ground ALJ had failed to consider Us' further defense that Es involved were single E or joint Es, denied; indicia for finding single E are same as those on which ALJ based determination regarding alter ego status; and, in order to establish that Es were joint Es, it must be shown that they codetermined matters concerning essential terms and conditions of employment which Us failed to do)

Dependable Building Maintenance Company; et al. 274 NLRB No. 037
(case remanded to ALJ to consider issue of alleged impasse and propriety of Es' reimplementations of contract offers for decision now rather than at compliance stage, as this issue may affect judge's order for return to status quo ante; ALJ ordered to prepare supplemental decision and judge may, in his discretion, order further hearing on issue if he deems it necessary to receive more evidence)

9200 REOPENING OF RECORD AND REMAND

9233 CIRCUMSTANCES WARRANTING REOPENING OF RECORD

9233-0100 Generally

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors 279 NLRB No. 068
[in case remanded to ALJ for further findings, Bd did not believe it necessary to reopen record but left determination to ALJ]

Long-Airdox Company, A Division of Marmon Group, Inc. 277 NLRB No. 134
(mtn to reopen record to admit evidence concerning post-hearing changes in managerial personnel and functions at E's facility denied, since evidence sought to be adduced would not require different result; see R/R Sec. 102.48(d)(1))

Bakery Workers, Local 42 (Gold Kist, Inc.) JD-(ATL)-42-85
(ALJ reopened record to receive respondent's answer to amendment made by GC at hearing)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 789 F.2d 9 (C.A. D.C., Apr. 1986)
[decision to reopen record is w/i Bd's discretion]

9233-1600 Consideration of offer of proof

Electrical Workers Local Union 946 (PAC, Inc.) 273 NLRB No. 167
(U's request for remand to consider alter ego status of 2 Es denied where ALJ excluded evidence of such relationship at hearing of alleged violation of Sec. 8(b)(1)(B) and U failed to make offer of proof that charging party held financial interest in 1 E which would make him E at other E rather than E representative)

9233-3300 Previously unavailable evidence

D.H. Martin Petroleum Co. 280 NLRB No. 030
[mtn by E to reopen record to receive in evidence decision of State Employment Security Board of Review concerning Ee's departure from work and his eligibility to receive unemployment benefits, granted, since Board of Review's decision constituted previously unavailable evidence. Decision of State Board of Review, *not controlling* because State agency's determinative rendered under statute with different definitions, policies, and purposes from NLRA

California Teamsters, Local Union 911 (General Felt Industries, Inc.) 275 NLRB No. 136
(in order for evidence to be newly discovered and previously unavoidable party must have made some effort to obtain it at time of hearing)

Superior Fast Freight 275 NLRB No. 83
(Bd remanded case to ALJ for limited purpose of holding hearing to receive additional testimony to resolve credibility issues raised by witness's post hearing affidavit; affidavit raised substantial questions of whether this credited witness testified falsely about material issues in case)

Raygle Corporation d/b/a The Dirt Digger, Inc. 274 NLRB No. 157
(E's mtn to reopen record to allow officers of E to testify concerning E's notices denied since E did not state that this was newly discovered or previously unavailable evidence)

Inland Container Corporation 273 NLRB No. 226
(in case where Bd reopened record and remanded case involving allegations that successor-E employed discriminatory hiring practices, U was precluded from introducing E's training manual to prove U animus since manual was in existence at time of original ULP hearing and there was no showing it was concealed from U)

Arizona Public Company 273 NLRB No. 210
(rejection of affidavit of Ee who did not testify submitted by E after hearing before ALJ, proper, since E's posthearing document was neither newly discovered nor was it unavailable at time of hearing)

N.L.R.B. v. National Broadcasting Company, Inc. (Directors Guild of America, Inc.) 798 F.2d 75 (C.A. 2, Aug. 1986)
[Bd's denial of E's mtn to reopen record to receive testimony of U director's testifying in arbitration proceeding involving claim against E similar to that herein found not to warrant remand to Bd where, notwithstanding evidence's availability three weeks after hearing and a month before U submitted brief, E let two years elapse before moving to remand and did not explain delay, as required by Bd rules, and it was doubtful that admitting evidence would have changed result]

9233-6700 Newly discovered evidence

A. N. Electric Corp. 276 NLRB No. 092
(E's mtn to reopen record for receipt of additional evidence denied where evidence could hardly be construed as newly discovered evidence w/i Federal Rules of Civil Procedure, or RR Sec. 102.48(d)(1))

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046
(mtn to reopen record to admit assertedly newly discovered evidence, denied, since evidence, not in existence at time of hearing, did not meet test of being newly discovered evidence which requires that such evidence *must be in existence of which a party was excusably ignorant, discovered after trial*)

Tamaha Local No. 1329, Mine Workers; District 21, etc. (Alpine Construction Corp.) 276 NLRB No. 046
(where U in 8(b)(7)(C) proceeding sought to establish defense that picketed E was alter ego of E whose Ees U had represented before former E purchased latter E's operations, ALJ denied U's mtn to reopen hearing in order to develop newly discovered evidence involving purchaser's damage suit brought against seller since closing of hearing; to admit pleadings of damage suit would needlessly burden record herein; also, to reopen hearing would cause unwarranted prolongation of already lengthy case)

Raygle Corporation d/b/a The Dirt Digger, Inc. 274 NLRB No. 157
(E's mtn to reopen record to allow officers of E to testify concerning E's notices denied since E did not state that this was newly discovered or previously unavailable evidence)

Pittsburgh Coal Works 274 NLRB No. 011
(E's mtn to reopen record on ground that posthearing civil action filed in state ct by five Ees, who were found to have been unlawfully laid off in instant proceeding, was *newly discovered evidence* which assertedly impinged on Ees' credibility, denied; civil suit did not affect credibility findings since statements in civil C by Ees in asserting that they were discharged because they made safety complaints to state and federal agencies were conclusionary and self-serving for purposes of seeking award in state ct proceeding)

9233-6750 Must be such as to probably change outcome

Inland Container Corporation 273 NLRB No. 226
(record reopened and case remanded to ALJ where U presented evidence in form of an E-ens to interrogatory in a federal district ct proceeding under ADEA, which constituted newly discovered evidence concerning material fact raised at prior ULP hearing, raised a substantial question whether key E witness had committed perjury and Bd's original D/O, which dismissed C, was issued in reliance on testimony of key E witness)

N.L.R.B. v. National Broadcasting Company, Inc. (Directors Guild of America, Inc.) 798 F.2d 75 (C.A. 2, Aug. 1986)
[Bd's denial of E's mtn to reopen record to receive testimony of U director's testifying in arbitration proceeding involving claim against E similar to that herein found not to warrant remand to Bd where, notwithstanding evi-

9233-6750—Cont.

dence's availability three weeks after hearing and a month before U submitted brief, E let two years elapse before moving to remand and did not explain delay, as required by Bd rules, and it was doubtful that admitting evidence would have changed result]

9250 CIRCUMSTANCES NOT WARRANTING REOPENING OF RECORD

Concun of Missouri **282 NLRB No. 037**
[E's mtn to reopen record to show that its operations had changed since ALJ's decision finding it to be successor E, denied where changes outlined in E's mtn occured well after time relevant to determination of successorship status]

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**
[E's mtn to reopen hearing to introduce evidence unavailable at time of hearing, denied, where, although evidence proffered was unavailable w/i meaning of R/R 102.48(d)(1), it was evidence of events occurring year after alleged ULPs took place and was irrelevant to determination of whether Act was violated at time E engaged in challenged conduct; however, proffered evidence may appropriately be introduced at compliance stage]

Northwind Maintenance and Painting Co., Inc. **281 NLRB No. 048**
[mtn to reopen record to receive testimony of E's officer concerning factual matters relevant to ULP found by ALJ, denied as untimely where rationale that officer was unavailable to testify at time of hearing was first asserted 5 months after hearing and following issuance of ALJ's decision]

Local 3036, New York City Taxi Drivers Union, SEIU, AFL–CIO (Linden Maintenance Corp.) **280 NLRB No. 115**
[mtn to remand case to ALJ to reopen record to receive additional documentary evidence, denied where proffered evidence would not affect result]

Central Broadcast Company **280 NLRB No. 056**
[E's mtn to take judicial notice of, or reopen record to consider, decisions of EEOC and Oklahoma Human Rights Commission finding of no reasonable cause to believe E had discriminated against Ee, denied, since decisions were rendered under statutes with different definitions, policies, and purposes from those of NLRA, and E did not show that either agency considered or could have considered E's allegedly unlawful layoff of Ee; additionally, E did not explain its delaying until September the filing of decisions issued in June by the above governmental bodies]

Hilton Inn North **279 NLRB No. 009**
[mtn to reopen record in case alleging E's unlawful refusal to bargain, denied as untimely, since evidence purporting to show U's loss of majority, i.e., decertification ptn and affidavit of evidence known to E 9 months prior to hearing in case, thus not newly discovered; further, at no time during negotiations did E raise U's purported loss of majority status as basis for refusal to bargain]

L & J Equipment Company, Inc. **278 NLRB No. 074**
[U's mtn to reopen record in 8(a)(5) proceeding on remand from ct regarding destruction of one of E's trucks shortly before ptn was filed in underlying R case, on ground U had newly discovered evidence, denied, where there was no showing that evidence, which related to event that occurred nearly 4 years before filing of U's mtn could not have been discovered earlier to reopen record; in view of denial of U's mtn, Bd also denied E's mtn to strike pleadings, in which it moved to strike U's mtn to reopen record]

Caulin, Inc. **278 NLRB No. 040**
[mtn to reopen record to introduce evidence of E's post-hearing letters to U requesting resumption of contract negotiations, offering to provide information to U, and making various contract proposals, denied where, even if evidence established E's assertions, it would not require reversing ALJ's finding of 8(a)(5) violations]

Staff Officers Association of America (Delta Steamship Lines) **277 NLRB No. 125**
(mtn to reopen record denied where GC did not show that evidence sought to be adduced would require different result)

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) **275 NLRB No. 127**
(U's mtn to reopen record to receive additional evidence concerning whether instant cases should be deferred to arbitration, denied, since question was untimely raised. U *first* raised issue in its posthearing brief. Issue not litigated at hearing. Evidence concerning deferral immaterial to issues under consideration in present ULP hearing)

John H. Cooney, Inc. **275 NLRB No. 088**
(no contention that additional evidence (sought to be introduced) is newly discovered or previously unavailable)

Superior Fast Freight **275 NLRB No. 53**
(E's mtn to reopen record to introduce certain evidence assertedly because it could not have realized significance of evidence at time of hearing, denied where E was not denied sufficient time to evaluate significance of evidence presented (had 4 days) and there is no dispute that evidence E now seeks to introduce available during hearing)

Stanley Trucking Co., Inc. **275 NLRB No. 010**
(E's mtn requesting admission of additional testimony solely concerning discretionary standard of jurisdiction where statutory jurisdiction was considered denied where contention was not timely raised and issue may not now be relitigated)

Bartels & Shores Chemical Company **274 NLRB No. 159**
(E's mtn to reopen record to adduce evidence concerning allegation that charging party engaged in certain posthearing misconduct denied, since alleged misconduct only bears on remedial aspects of order and not on issue of commission of ULPs or credibility of charging party or any other witness; issue is more appropriately presented at compliance stage)

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital **274 NLRB No. 124**
(E's failure to timely raise issue of inadequacy of record transmitted to Bd in either R proceeding or in ULP case (in answer to C or in response to *Notice to Show Cause*) constitutes *waiver* precluding E from raising issues in instant case)

Penn Yan Express, Inc. **274 NLRB No. 037**
(E's mtn to reopen record to receive supervisor's affidavit denied, where E failed to state reason for not offering the evidence at the hearing)

N.L.R.B. v. National Broadcasting Company, Inc. (Directors Guild of America, Inc.) **798 F.2d 75 (C.A. 2, Aug. 1986)**
[Bd's denial of E's mtn to reopen record to receive testimony of U director's testifying in arbitration proceeding involving claim against E similar to that herein found not to warrant remand to Bd where, notwithstanding evidence's availability three weeks after hearing and a month before U submitted brief, E let two years elapse before moving to remand and did not explain delay, as required by Bd rules, and it was doubtful that admitting evidence would have changed result]

9258 REMAND FOR DE NOVO HEARING

Superior Fast Freight **275 NLRB No. 53**
(E's mtn for hearing de novo before new ALJ denied, but case remanded to ALJ for credibility determination, since it would be redundant; record contained substantial evidence, unrelated to pertinent witness's testimony, that need not be developed second time at new hearing; moreover, mere fact that ALJ relied on witness's testimony at hearing did not demonstrate that ALJ would not be objective at second hearing)

District No. 1, Pacific Coast District Engineers Beneficial Association, AFL-CIO (Crest Tankers, Inc.) **274 NLRB No. 215**
(Bd granted request by Charging Party to appeal ALJ's order excluding its counsel from ULP hearing because in ALJ's opinion counsel had misrepresented and distorted ALJ's evidentiary ruling excluding certain evidence in its request to appeal that ruling; Bd also granted Charging Party's and GC's mtns to recuse ALJ and remanded matter for hearing de novo before new ALJ, since while appeal did not clearly reflect ALJ's ruling, evidence insufficient to establish Charging Party's filing of appeal and refusal to obey ALJ's directive to correct appeal was attempt to obstruct hearing

9267 CIRCUMSTANCES WARRANTING REMAND

9267-0900 Perjured testimony

Superior Fast Freight **275 NLRB No. 53**
(Bd remanded case to ALJ for limited purpose of holding hearing to receive additional testimony to resolve credibility issues raised by witness's post hearing affidavit; affidavit raised substantial questions of whether this credited witness testified falsely about material issues in case)

Inland Container Corporation **273 NLRB No. 226**
(record reopened and case remanded to ALJ where U presented evidence in form of an E-ans to interrogatory in a federal district ct proceeding under ADEA, which constituted newly discovered evidence concerning material fact raised at prior ULP hearing, raised a substantial question whether key E witness had committed perjury and Bd's original D/O, which dismissed C, was issued in reliance on testimony of key E witness)

9267-3300 To receive additional evidence

Martin Arsham Sewing Co., a/k/a Marsco, Inc. **280 NLRB No. 081**
[backpay proceeding remanded for hearing on GC's supplemental mtn for determination of personal liability alleging E official wrongfully converted company assets to his personal use with intention to frustrate Bd's backpay order by rendering E bankrupt and insolvent; although GC's original personal liability mtn failed to demonstrate that official committed any act justifying *piercing of corporate veil*, GC's supplemental mtn provided Bd with additional information regarding official's actions with respect to bankruptcy proceeding and thereby raised issues of fact and law requiring further findings by ALJ]

9267-3300—Cont.

Local 3036, New York City Taxi Drivers Union, SEIU, AFL–CIO (Linden Maintenance Corp.) **280 NLRB No. 115**
[mtn to remand case to ALJ to reopen record to receive additional documentary evidence, denied where proffered evidence would not affect result]

Noah Robinson; Master Food Services, Inc.; et al. **276 NLRB No. 123**
(backpay specification proceeding against multiple Es remanded to RD for hearing limited to taking evidence on single E/alter ego issue and on discriminatees' interim earnings and offsets, where Es contended one E filed in bankruptcy and others were not in business during relevant period; to find Es responsible during such period would require finding Es jointly and severally liable with E who was not party to underlying ULP proceeding herein, and consequently there was nothing in record to support such finding; and GC did not seek summary judgment herein on Es' joint and several liability)

Fairfield Publishing Company d/b/a Fairfield Daily Republic **275 NLRB No. 002**
(no summary judgment where mtn relates to U requests for nonunit Ees' data and discrimination complaints, since such information is *not presumptively relevant* and, on state of record before Bd, GC has not established requisite relevancy to entitle U to such information. Portion of instant case relating to U's request for nonunit Ees data and discrimination remanded for further processing of C, including evidentiary hearing before ALJ concerning exact scope of information request and relevancy issues with regard to nonunit Ees' data and discrimination C's, if GC wishes to further proceed on these matters)

Maraldo Asphalt Paving, Inc. **274 NLRB No. 018**
(mtn for default judgment denied, notwithstanding E's failure to answer backpay specification which alleged E's liability for fringe benefit contributions for second half of 1982 and third quarter of 1983 and which stated that E had filed for bankruptcy August 3, 1983, and case remanded for investigation into circumstances surrounding bankruptcy ptn filing, since E's liability for contributions for third quarter of 1983 could not be determined in absence of indication that E had formally accepted contract after filing the ptn and that Bankruptcy Ct had permitted E's rejection of the contract)

9267-3500 Complaint allegations not susceptible to conclusive findings

Abdul Samad Ra'Oof Shabazz and Jacqueline Craig, A Co-Partnership d/b/a Michigan Expediting Service; et al. **282 NLRB No. 030**
[where C did not allege sufficient facts to enable Bd to evaluate pervasiveness of violations and to determine whether bargaining order was warranted, Bd granted limited summary judgment as to violations and remanded case for hearing before ALJ only on issue of whether bargaining order was appropriate under circumstances herein]

9267-5000 Misconduct of Administrative Law Judge in conduct of hearing

Reading Anthracite Company **273 NLRB No. 187**
(when ALJ's conduct is considered as a whole, both his on-the-record conduct and his issuing reports on misconduct of E's attorney, there are sufficient grounds for finding that ALJ, at very least, gave appearance of partiality and prejudgment sufficient to warrant his disqualification from case. Case remanded for hearing de novo before different ALJ)

9267-6700 For additional findings

Abdul Samad Ra'Oof Shabazz and Jacqueline Craig, A Co-Partnership d/b/a Michigan Expediting Service; et al. **282 NLRB No. 030**
[where C did not allege sufficient facts to enable Bd to evaluate pervasiveness of violations and to determine whether bargaining order was warranted, Bd granted limited summary judgment as to violations and remanded case for hearing before ALJ only on issue of whether bargaining order was appropriate under circumstances herein]

Nador Corporation **281 NLRB No. 126**
[remand to ALJ for consideration of postsettlement C's 8(a)(3) and (4) allegations, which had caused RD to reinstate orginally-settled 8(a)(3) and (1)C, where ALJ had held original C's 8(a)(3) charge was unfounded, the 8(a)(1) allegations had been remedied by notice posting pursuant to settlement agreement, and that resolution of postsettlement allegations was unnecessary; ALJ also directed to determine whether settlement agreement should be reinstated or set aside, and, if the latter, what disposition should be made of original C's 8(a)(1) allegations]

Martin Arsham Sewing Co., a/k/a Marsco, Inc. **280 NLRB No. 081**
[backpay proceeding remanded for hearing on GC's supplemental mtn for determination of personal liability alleging E official wrongfully converted company assets to his personal use with intention to frustrate Bd's backpay order by rendering E bankrupt and insolvent; although GC's original personal liability mtn failed to demonstrate that official committed any act justifying *piercing of corporate veil*, GC's supplemental mtn provided Bd with additional information regarding official's actions with respect to bankruptcy proceeding and thereby raised issues of fact and law requiring further findings by ALJ]

Morrison-Knudsen Company, Inc., et al., A Joint Venture Known as Tenn-Tom Constructors **279 NLRB No. 068**
[E's discipline of Ee for his participation in unlawful internal U disciplinary proceeding against one of E's supervisors, would be unlawful and case remanded to ALJ for further findings, since Ee was engaged in protected activity of assisting U, Ee was legitimately relying on U's recommendation that proceedings were proper and Ee was not a *perpetrator* of unlawful proceeding; E's proper remedy is to file charge against U and not take action against Ees which has *chilling* effect on Sec. 7 rights or E may lawfully require its supervisors resign U membership]

Federated Answering Service, A Division of Sherwood Diversified Services, Inc. **278 NLRB No. 075**
[case remanded to ALJ to make credibility resolutions as to two Ees' disputed testimony that E told them that decertification movement leader wanted to see them and that she approached them about decertification ptn, and, based on these findings and previous findings that E told third Ee that she would be asked to sign decertification ptn and that decertification movement leader would speak to her, to determine whether decertification movement leader was E's agent, and to make findings about her allegedly illegal conduct]

Sentry Armored Courier Corporation **275 NLRB No. 014**
(notwithstanding specification included backpay for 8(a)(4) violation that ALJ who heard underlying ULP case held in abeyance pending decision of Ee's other E (worked 2 jobs) as to whether he violated that E's rules by abusing sick leave, which abuse brought to E's attention by Respondent in retaliation for Ee filing charges, and which later resulted in suspension for which backpay alleged in specification; no outstanding order finding this 8(a)(4) violation and ALJ at backpay hearing precluded from making findings of fact and conclusions of law, issuing order and awarding backpay for alleged violation. Case remanded to original ALJ for this)

Fairfield Publishing Company d/b/a Fairfield Daily Republic **275 NLRB No. 002**
(no summary judgment where mtn relates to U requests for nonunit Ees' data and discrimination complaints, since such information is *not presumptively relevant* and, on state of record before Bd, GC has not established requisite relevancy to entitle U to such information. Portion of instant case relating to U's request for nonunit Ees data and discrimination remanded for further processing of C, including evidentiary hearing before ALJ concerning exact scope of information request and relevancy issues with regard to nonunit Ees' data and discrimination C's, if GC wishes to further proceed on these matters)

9267-7100 For credibility determinations

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**
[Bd remanded case to ALJ where credibility determinations remained to be made concerning interim earnings of claimants who, contrary to ALJ, Bd found were entitled to backpay for specified period of time]

Federated Answering Service, A Division of Sherwood Diversified Services, Inc. **278 NLRB No. 075**
[case remanded to ALJ to make credibility resolutions as to two Ees' disputed testimony that E told them that decertification movement leader wanted to see them and that she approached them about decertification ptn, and, based on these findings and previous findings that E told third Ee that she would be asked to sign decertification ptn and that decertification movement leader would speak to her, to determine whether decertification movement leader was E's agent, and to make findings about her allegedly illegal conduct]

Arrow Sash and Door Company **276 NLRB No. 126**

Superior Fast Freight **275 NLRB No. 53**
(Bd remanded case to ALJ for limited purpose of holding hearing to receive additional testimony to resolve credibility issues raised by witness's post hearing affidavit; affidavit raised substantial questions of whether this credited witness testified falsely about material issues in case)

9267-7300 For appropriate action by Regional Director

Mario Saikhon, Inc. **278 NLRB No. 166**
[—for further appropriate proceedings consistent with instant decision]

Conoco Chemicals Company, Division of Conoco, Inc. **275 NLRB No. 009**
(motions and cross motions for summary judgment denied; case remanded to RD for further appropriate action involving U's request for information concerning names of witnesses who gave statements relating to Ee grievance. Necessity and relevance of requested information require further inquiry)

9267-7900 Pursuant to direction of court

9267-7575 To conduct hearing on objections to election

Brinks, Incorporated of Florida 276 NLRB No. 001
(mtn for summary judgment denied, and 8(a)(5) case remanded to RD for evidentiary hearing on issue raised by E's contention that U of police and protection Ees was improperly certified where it was affiliated with organization that admitted nonguards to membership; contention that certification was also improper because of certain officers' criminal background, however, did not warrant a hearing, since that was not basis for denying certification)

9287 CIRCUMSTANCES NOT WARRANTING REMAND

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. 753 F.2d 313 (C.A. 3, Jan. 1985)
(E's mtn for remand to Bd, concerning issue of E moving its facility and Ee turnover, denied, since ct found that there were no reasonable grounds for E's failure to apprise Bd of its *additional evidence* as required for remand. E offered no excuse for waiting almost 5 months, after all briefs were filed, to move for remand when E knew it was moving even before Bd issued its bargaining order. Delay in filing briefs was abuse of ct's and Bd's processes)

9600 FURTHER CONSIDERATION, RECONSIDERATION OR MODIFICATION OF ORDER

9637 ISSUE NOT RESOLVED AT ARBITRATION

C-E Natco/C-E Invalco 282 NLRB No. 047
[where Bd initially found lockout not unlawful but held E's bargaining with Ees and offering them terms for returning to work different from those offered U, omitting reinstatement and make-whole remedy provisions, Bd, on mtn for reconsideration, held make-whole remedy warranted, because who accepted E's unlawful individual offers returned to work and were paid, but Ees who insisted on right to U representation on issue of resuming work suffered loss of pay; reinstatement not ordered because apparently all locked out Ees were reinstated]

Combustion Engineering Inc. 274 NLRB No. 172
(as Bd decision deferring to arbitration award that found E liable for unilateral changes to absenteeism and tardiness system only involved two Ees, GC's mtn for reconsideration contending that Bd's order was not adequate because it did not provide remedy to numerous other Ees adversely affected by E's conduct, granted and jusisdiction retained to review, upon mtn, grievance proceedings or awards arising from E's unlawful action, where arbitrator had no authority to remedy violation he found)

9650 CIRCUMSTANCES WARRANTING RECONSIDERATION

Onan, A Division of Ona Corporation 277 NLRB No. 146
(mtn to reconsider and dismiss portions of prior decision and order, 270 NLRB 373, in which Bd found unlawful E's refusal to bargain concerning Ee discharge and grievances, granted, since ct of appeals had, in prior proceeding, denied enforcement of Bd's bargaining order against E)

Centre Property Management 274 NLRB No. 029
(remand to ALJ to review record and determine whether Ee, who was allegedly unlawfully discharged for reporting E's plumbing violations to authorities and for U activities, was engaged in concerted activity when he reported violations in view of Bd's holding in *Myers Industries*, 268 NLRB 498, that only activities engaged in with or on authority of other Ees are concerted, and should reporting of violations be deemed not concerted, reanalyze case under *Wright Line* mixed motive test; Bd deferred ruling on additional Sec. 8(a)(1) allegations since one factor relied on by ALJ in finding 8(a)(1) violations was timing viz a viz discharge)

9650-8000 **Denied where all matters raised in motion had been previously considered**

KCW Furniture Company, Inc. 276 NLRB No. 100
(in backpay specification proceeding, E's mtn for reconsideration of Bd's original D/O denied as one which Bd may not properly consider since it concerned matters previously ruled on by ct in enforcing Bd's order)

Carpenters 46 Northern California Counties Conference Board (Arrez Contracting Co., et al.) 274 NLRB No. 181
(U's mtn for reconsideration denied where, in rendering its initial decision to reject proposed unilateral settlement stipulation and memorandum of understanding, Bd considered most of matters Us now raise in mtn for reconsideration; no new matter was added which warranted reversal of original; Bd considered relevant the nature and history of previous settlement agreements, their breaches, and alleged ULPs encompassed by proposed settlement)

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital 274 NLRB No. 124
(mtn for reconsideration asserting that Bd did not have entire record compiled by RD before it when it overruled E's exceptions to RD's Supplemental Report on Objections and Certification of Representatives, denied where E proffered no evidence to show RD's finding was erroneous; there was no evidence that alleged discrepancies (between units described in *Norris-Thermador* list and notices of elections) caused disenfranchisement of any Ee, let alone voter confusion)

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital 274 NLRB No. 124
(E's failure to timely raise issue of inadequacy of record transmitted to Bd in either R proceeding or in ULP case (in answer to C or in response to *Notice to Show Cause*) constitutes *waiver* precluding E from raising issues in instant case)

9675 CIRCUMSTANCES WARRANTING MODIFICATION OF ORDER

Iron Workers (Walker Construction Company) 279 NLRB No. 123
[Bd order modified to vacate any election held to elect new U president and to reinstate ousted U president to office of presidency for period equal to time left in his term of office before unlawfully removed and he has had sufficient time to conduct campaign for reelection, if he so desires]

9800 COURT REMAND

Lorimar Productions, Inc. 279 NLRB No. 036
[second election directed pursuant to ct remand where ct found that procedure followed by Bd in holding election while request for review was pending on scope of bargaining unit, significantly impaired conduct of election by misleading voters as to scope of unit, an issue essential to voters ability to cast an intelligent, voluntary vote]

Lorimar Productions, Inc. 279 NLRB No. 036
[E's request for hearing to determine U's qualification to represent Ees, in case remanded by ct to Bd, denied, since issue was not raised in underlying *R* proceeding and was not w/i scope of ct's remand]

Baker Manufacturing Company 277 NLRB No. 022
(Bd held, on remand from ct, fact that discriminatees had declined offers of reinstatement and that their jobs no longer existed based on economic reasons, rendered issue of propriety of Bd's order to reestablish those positions moot)

Monark Boat Company 276 NLRB No. 121
(ALJ properly refused to expand scope of hearing where circuit ct specifically remanded certain objections for further hearing and consideration by Bd; and such objections, therefore, were only matters before Bd)

Illinois Bell Telephone Company 275 NLRB No. 27
(where Bd had ordered Ee who had been unlawfully denied representation during investigatory interview and been discharged for misconduct discussed during that interview reinstated with backpay, and E, on remand from ct to determine whether it had independent evidence of Ee's misconduct, showed no such evidence, Bd modified its make-whole remedy to a cease-and-desist order)

E. I. Dupont De Numours 274 NLRB No. 209
(on reconsideration after requested remand from ct, Bd reversed prior decision that E violated 8(a)(1) by refusing unrepresented Ee's request for assistance of coworker at investigatory interview in view of recent Bd decision that only unionized Ees had right to representation at investigatory interviews)

9900 OTHER PROCEDURAL MATTERS

SDC Investment, Inc. 278 NLRB No. 097
[summary judgment for consolidated cases--objections to election and ULP allegations that tracked objections to elections--denied, and hearing before ALJ directed, notwithstanding E's attorney filed charge of its own in which he admitted that objections in pending RC case were identical to ULP charge he was filing. Bd held that it did not consider charge filed by E's attorney as admission that ULPs were actually committed and therefore could serve as basis for mtn for summary judgment, but rather was questionable procedural folderol to test hearing officer's authority to rule on matters in objections case which, if proven, would constitute ULP violation]

Mack Trucks, Inc. 277 NLRB No. 084
(U's mtn to disqualify law firm from serving as E's counsel because of Bd's Regional attorney's prospective affiliation with that firm, denied, since no sufficient warrant had been shown for determination that there should be a substitution of GC's representative, no deficiencies in case record with respect to GC's prosecution of present matter have been shown. A merely conceivable *apperance of impropriety* must be considered too slender a reed upon which to rest a disqualification order)

600 REMEDIAL ORDER PROVISIONS

601 GENERALLY

2500 NATURE AND PURPOSE

2514 EFFECTUATION OF POLICIES OF ACT (10(c))

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.———
(US S.CT, June 1984)

[circuit ct's decision ordering Bd to provide minimum backpay for constructively discharged illegal alien Ees w/o regard to their actual losses or legal availability for work after they had left the country rather than be deported reversed, since ct order imposing minimum back pay award which was speculative in absence of evidence of Ees' individual circumstances exceeded unit ct's reviewing authority and compelled Bd to take action not w/i Bd's powers; case remanded to circuit ct with instructions to remand it to Bd for formulation of remedial order consistent with this opn]

Starlite Cutting, Inc. and Its Alter Ego Petal Pink Novelty, Inc.; and Joseph Fornaro, an Individual 280 NLRB No. 120

[backpay to be paid RD to be held in escrow for period not exceeding 1 year from supplemental D/O to afford GC opportunity to locate and examine unavailable discriminatee's interim earnings; if GC fails to do so w/i 1-year period, award to lapse and backpay to be returned to respondent; rule of limitation will effectuate policies of Act by facilitating swift and orderly resolution of backpay proceedings, affording finality and stability to judgments and freeing Bd's time and resources for other cases; *Duncan Foundry & Machine Works*, 222 NLRB 768 (1976) overruled]

Asociacion Hospital Del Maestro, Inc. 279 NLRB No. 062

[E's raising at arbitration affirmative defense that it had no duty to arbitrate grievances filed after expiration of contract, not refusal to arbitrate or violation, where E submitted grievances to arbitration, participated in hearings, and did not indicate that it would not comply with an adverse arbitrator's decision; a Bd order prohibiting party from raising arbitrability issue before arbitrator would contravene Bd's policy to favor and defer to voluntary arbitration]

Sahara Datsun, Inc. 278 NLRB No. 148

[concerted activity loses protection of Act where it involves malicious attack on E's product or reputation, and subsequent discharge is for cause w/i meaning of Sec. 10(c)]

Martin J. Barry Company 278 NLRB No. 056

[order directing E, who was admitted *Burns* successor, to execute and implement contract agreed to by predecessor and make Ees whole for failure to so implement, contravened 10(c) of the Act and Bd was w/o remedial autority to so order, since, under principles of *H.K. Porter*, 397 U.S. 99 (1970), Bd lacks remedial authority to impose contractual terms involuntarily on either party to a collective bargaining agreement]

Midwest Motel Management Corp. of Birmingham 278 NLRB No. 060

[backpay order should stand unless it can be shown that it is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of Act]

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(E associations' contention that contract deleting their right to call foremen by name be rescinded so as to preserve their E-members' statutory right to select their supervisors and grievance adjustment representatives, rejected, since right involved herein is statutory, and recission remedy, in circumstances of this case, would have no practical effect and would not effectuate purposes and policies of the Act)

N.L.R.B. v. DMR Corp. and Harrill Electric Contractors, Inc. 795 F.2d 472 (C.A. 5, July 1986)

[Es' claim that Bd erred in ordering make-whole relief held w/o merit where Es failed to show that order was patent attempt to achieve ends other than those which can fairly be said to effectuate policies of Act; Bd may properly prevent Es from gaining advantage by their unlawful conduct; order requiring that Ees be made whole for unlawful repudiation of bargaining agreement served this end]

2528 PROTECTION OF PUBLIC, NOT PRIVATE, RIGHTS

Starlite Cutting, Inc. and Its Alter Ego Petal Pink Novelty, Inc.; and Joseph Fornaro, an Individual 280 NLRB No. 120

[although rule that backpay held in escrow for unavailable discriminatee be returned to respondent if discriminatee not located w/i 1 year may result in forfeiture, discriminatee has no entitlement to backpay, since it is a remedy that is public, not private right, and discriminatee has no property right in award pending his receipt of it; also on his showing by preponderance of evidence compelling reasons for not coming forward timely, Bd would find exception and let him claim award, so that rule is flexible and consistent with federal practice in class actions]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047

(fact Ee received pay for time of unlawful layoff and signed release did not constitute waiver of public remedies of backpay, reinstatement, and notice posting, where record insufficient to determine whether payment constituted full payment of backpay under Bd law, release executed when other discriminatory acts against Ee had not been remedied, nor was charging U involved in execution)

2556 REMOVAL, DISSIPATION, OR AVOIDANCE OF CONSEQUENCES OF ULPS

Ironworkers Local 433, a/w Ironworkers (United Steel) 280 NLRB No. 151

[pattern of conduct that evinces proclivity to violate secondary boycott provisions of Act calls for *Broad Order* in remedy]

O.L. Willis, Inc. 277 NLRB No. 029

[bargaining order accompanied with limited backpay remedy found appropriate where E failed to notify U of its intention to close and thereby deprived U of opportunity to bargain concerning effects of closing on Ees; E ordered to bargain with U concerning effects on unit Ees from closing of E's facility and to pay Ees backpay in manner required by *Transmarine Navigation Corp.*, 170 NLRB 389]

2570 RESTORATION OF STATUS QUO ANTE

United States Postal Service 281 NLRB No. 033

[although Bd customarily directs E to restore status quo ante if it has taken unilateral action to Ee's detriment, Bd held c/d order was insufficient where it was unclear whether E's unilateral grievance adjustment was detrimental or beneficial and, consequently, Bd ordered status quo ante restoration conditioned on Ee's desire expressed through U; accordingly, if U elects with Ee's concurrence to have previous conditions restored, E required to set aside unilaterally adjusted grievance, reactivate grievance, and process it in good faith with all due diligence]

B & P Trucking, Inc. 279 NLRB No. 092

[E to restore status quo ante by resuming trucking portion of its operations absent evidence that doing so would endanger its economic viability where operation was approaching profitability, E had achieved objective of increasing control over timing of deliveries, resumption would require little cash investment, and E's financial position was not precarious]

2570—Cont.

Woodline Motor Freight, Inc. 278 NLRB No. 153
[trucking company ordered to redomicile tractors to terminal from which tractors relocated to remedy unlawful relocation of tractors, layoff of Ees and reduction of some Ees' hours at that terminal, since such remedy will be ordered to restore status quo ante unless it would be so burdensome as not to effectuate Act]

Woodline Motor Freight, Inc. 278 NLRB No. 152
[order to redomicile tractors at original terminal, appropriate, where necessary to restore status quo ante and action would not be unduly burdensome; i.e., require capital investment disproportionate to E's resources, or impose substantial, continuing losses. Here, terminal was profitable before discriminatory relocation, and E has continued to operate terminal]

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048
(contention that restoration to current contract of foreman-call provision that was included in prior contract was necessary to restore status quo ante, rejected, since it was inappropriate where it would compel E to agree to substantive term of contract concerning which parties had failed to reach consensus during contract negotiations)

Dependable Building Maintenance Company; et al. 276 NLRB No. 007
(where, after Es had unlawfully implemented their final offer in absence of impasse, impasse occurred, and Es lawfully implemented their final offer, status quo ante order requiring E's return to conditions before unlawful implementation of their final offer limited to the periods ending with their respective lawful implementation of final offer)

Rikal West, Inc. 274 NLRB No. 170
(offer of reinstatement to discriminatee *not unconditional* where by terms of reinstatement discriminatee would admit his or her guilt of E's violative rules and accept discipline eminating therefrom since, such admission and its consequences would not have placed discriminatee in status quo ante)

Samuel M. Kaynard, RD (NLRB) v. MMIC, Inc. 734 F.2d 950 (C.A. 2, May 1984)
[interim bargaining order rather than c/d order proper relief in instant case under Section 10(j) of Act, c/d order would have effect only of freezing post-election situation; bargaining order restores status quo of conditions as they existed before E's unlawful campaign; namely, E must bargain with majority representative]

Samuel M. Kaynard, RD (NLRB) v. MMIC, Inc. 734 F.2d 950 (C.A. 2, May 1984)
[bargaining order just and proper in 10(j) proceeding where election process has been rendered so meaningless by E's coercive ULPs that authorization cards are clearly superior gauge of Ee sentiment]

Baker Manufacturing Company v. N.L.R.B. 759 F.2d 1219 (C.A. 5, May 1985)
(basic purpose of reinstatement order is to restore economic status quo that would have existed but for E's illegal activities, not to lock E into maintaining status quo w/o due consideration of economic realities at time remedy is effectuated)

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)
[ct held Bd abused its discretion by ordering E to comply with bargaining agreement rectroactively to date E unlawfully refused to sign agreement, rather than from date agreement became effective, since Bd has traditionally granted relief in similar cases retroactive to inception of contract, and absent explanation for doing so Bd cannot impose different remedies; further, if make whole relief for whole period of contract not ordered then status quo not restored]

2584 REMEDIAL, NOT PUNITIVE

O.L. Willis, Inc. 277 NLRB No. 029
[bargaining order accompanied with limited backpay remedy found appropriate where E failed to notify U of its intention to close and thereby deprived U of opportunity to bargain concerning effects of closing on Ees; E ordered to bargain with U concerning effects on unit Ees from closing of E's facility and to pay Ees backpay in manner required by *Transmarine Navigation Corp.*, 170 NLRB 389]

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)
(although U claimed that Bd's remedy was unduly harsh and might weaken or destroy it, ct enforced Bd's order allowing determination of unnamed discriminatees at compliance stage, but w/o prejudice to the U's right to challenge the awards or procedures and with requirement that Bd articulate reasons for its decision; ct stated that Bd should consider its procedures' capability to determine whether remedy became penal in nature, and thus not permitted under the Act, and the extent of actual damages, which conventional common law or equitable doctrines would require of a ct, but not of the Bd)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)
(backpay awards for Ees, who had been wrongfully discharged over year before plant shutdown about which E failed to bargain, cannot continue past shutdown; since any backpay awarded to remedy E's failure to bargain should be awarded equally to all Ees affected by plant shutdown, since all were equally injured by E's failure to bargain, and backpay awards for discharged Ees, insofar as they extend past plant shutdown, appear punitive rather than remedial)

3700 AUTHORITY OF BOARD

3701 GENERALLY

Davis Coal Company Debtor-In-Possession 275 NLRB No. 102
(bonuses excluded from gross backpay where E paid no bonuses to any Ees during backpay period and that decision was attributable to E's poor financial condition that eventually resulted in cessation of business and filing of bankruptcy ptn; further, to order payment of bonuses would put discriminatees in better position than they would have been absent ULP and thus, would exceed Bd's remedial authority)

3750 WHERE NO VIOLATION OF ACT

N.L.R.B. v. Americana Healthcare Center 782 F.2d 941 (C.A. 11, Feb. 1986)
[customary Bd notice requiring E to confess its past ULPs and promise future reform, inappropriate in instant case where equitable reformation of contract language is required. E has not agreed to sick leave benefits in manner to obligate it, and will do so only when it amends contract as ordered]

3750-5000 Retention of jurisdiction

Combustion Engineering Inc. 274 NLRB No. 172
(as Bd decision deferring to arbitration award that found E liable for unilateral changes to absenteeism and tardiness system only involved two Ees, GC's mtn for reconsideration contending that Bd's order was not adequate because it did not provide remedy to numerous other Ees adversely affected by E's conduct, granted and jusisdiction retained to review, upon mtn, grievance proceedings or awards arising from E's unlawful action, where arbitrator had no authority to remedy violation he found)

3775 FRIVOLOUS LITIGATION

Shrewsbury Motors, Inc. 281 NLRB No. 081
[both GC and applicant mtns for relief under *Tidee Products Inc.*, 194 NLRB 1234, on basis that actions of other party *patently frivolous*, rejected, notwithstanding GC did not carry burden to establish that position was substantially justified]

Hydrotherm, Inc. 280 NLRB No. 167
[application for award of attorney's fees based on alleged frivolity of E's defenses, denied where, although E was unaware of local U's merger at time it rejected U's request to bargain and only learned of it on receiving 8(a)(5) C, in absence of pretrial discovery, E was not in position to determine whether U's merger involved more than name change until evidence was presented at hearing; also, there is no record of *clearly aggravated and pervasive misconduct* by E]

5000 SCOPE OF ORDERS

5025 BREADTH IN RELATION TO SPECIFIC VIOLATION

Springfield Transit Management, Inc. 281 NLRB No. 124
[Bd declined to issue broad c/d order, recommended by ALJ, where E was found to have unlawfully refused to sign contract, such refusal occurred after impasse was reached, state ct had ordered arbitration, and arbitration award setting out terms of contract had issued]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066
[appropriate in view of extensive and egregious nature of ULPs]

5025-3300 Broad orders

5025-3301 Generally

Smyth Manufacturing Co., Inc.; Beacon Industries 277 NLRB No. 066
(although no exception was taken to ALJ's recommended ban on unilateral subcontracting by E to prevent E from transferring to other shops jobs from which Ees were unlawfully discharged, Bd concluded that words *and forever discontinue* were overly broad; as amended by Bd, Order proscribed such subcontracting for indefinite future but left open possibility of modification of proscription should future events prove that warranted)

5025-3309 Repetition of ULPs likely due to proclivity to violate Act

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**
[pattern of conduct that evinces proclivity to violate secondary boycott provisions of Act calls for *Broad Order* in remedy]

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(broad order unwarranted absent showing of proclivity to violate the Act or general disregard for Ees' fundamental statutory rights)

5025-3332 Violation of fundamental employee rights

Mode O'Day Company, Division of Wickes Companies, Inc. **280 NLRB No. 029**
[narrow, rather than broad, c/d order issued where E's unlawful conduct in requiring Ee to sign dues check off authorization at time of her hire, and in deducting monies for U initiation fees from her wages pursuant to such authorization did not show proclivity to violate Act nor constituted such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights]

Harold Weine; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. **280 NLRB No. 013**

5025-3343 Union has uniform policy or pattern of conduct

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**
[pattern of conduct that evinces proclivity to violate secondary boycott provisions of Act calls for *Broad Order* in remedy]

5025-3379 Discriminatory conduct of a serious nature

Horizon Foods, Inc. **280 NLRB No. 127**
[broad order appropriate since E's ULPs were egregious involving unlawful interrogatons, threats, solicitation of grievances, promise of benefits, surveillance and discharges]

T & T Machine Company, Inc. **278 NLRB No. 139**
[Bd order warranted in view of numerous and overall egregious nature of violations which included unlawful layoffs, threats, warnings, promise of benefits, interrogations, promulgation of no solicitation/no distribution rule, and soliciting Ees to engage in surveillance]

5025-6700 Narrow orders

5025-6760 Isolated ULPs

Trans Tech Electric, Inc. **274 NLRB No. 009**
(narrow order sufficient for single ULP)

5025-6775 No proclivity to violate Act shown

Mode O'Day Company, Division of Wickes Companies, Inc. **280 NLRB No. 029**
[narrow, rather than broad, c/d order issued where E's unlawful conduct in requiring Ee to sign dues check off authorization at time of her hire, and in deducting monies for U initiation fees from her wages pursuant to such authorization did not show proclivity to violate Act nor constituted such egregious or widespread misconduct as to demonstrate general disregard for Ees' fundamental statutory rights]

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. **277 NLRB No. 053**
(broad order unwarranted absent showing of proclivity to violate the Act or general disregard for Ees' fundamental statutory rights)

Teamsters Local 115 (Gross Metal Products, Inc.) **275 NLRB No. 220**
(prior ALJ decision in which Respondent held to have violated Act may be used to show proclivity to violate Act and justify broad order notwithstanding no exceptions taken to decision)

5050 PERSONS BOUND BY ORDER

5050-0100 Generally

Ana Moya De Gaudier; etc. **JD-362-84**
(parties are appropriately added in compliance proceeding even when they are not parties to underlying ULP proceeding, if they are *sufficiently closely related* to original party as in situation where corporation has violated Act and derivative liability is sought against individual)

5050-1200 Foreign nationals

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. **280 NLRB No. 146**
[former owners of Respondent-E, Canadian citizens now living in Canada, were properly served with backpay specification and notice of hearing, notwithstanding no express statutory provision for Bd service outside U.S., since backpay specification supplemental step in proceeding to which E had been party from outset, and where copies of documents were sent by registered mail to their Canadian address and to their U.S. Attorney who represented E in underlying case and had not withdrawn, and E admitted actual notice through letter of their Canadian attorney]

5050-1500 Successor employers

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. **280 NLRB No. 146**
[successor E had no obligation to reinstate or pay discriminatees backpay since it had no knowledge of ULP litigation before Bd involving discriminatees when it purchased and took over predecessor's business]

Croley Coal Corporation and South Harlan Coal Co., Inc. **280 NLRB No. 104**
[successor E liable to remedy predecessor's unfair labor practices, where successor did not prove lack of knowledge of ULPs and such knowledge was inferred from fact that local newspaper carried front page articles about Ees' picketing of and filing charges against predecessor, location of two of successor's business in close proximity to site of picketing, and successor's admission that he had heard talk about the strike]

Beck Corporation, d/b/a Jessie Beck's Riverside Hotel and Casino **279 NLRB No. 061**
[purchaser held successor-E to seller and obligated to bargain with U to remedy seller's refusal, which was held unlawful in prior case, to bargain with U as representative of unit as certified where majority of Ees in unit at time U demanded bargaining with successor were Ees of predecessor, notwithstanding constituted majority for only short period after take over due to departure of Ees caused by situation in labor market and industry at time. Successor-E's contention it had insufficient knowledge of predecessor's ULPs, rejected]

Woodline Motor Freight, Inc. **278 NLRB No. 181**
[*remedial order in certain circumstances including successor E's awareness of ULP committed may specifically extend requirements or remedy to bona fide purchaser as responsible successor, though in a given circumstance it may also be determined more appropriate that remedial order as to successor not be made as extensive as that placed on perpetrating predecessor*]

Martin J. Barry Company **278 NLRB No. 086**
[order directing E, who was admitted *Burns* successor, to execute and implement contract agreed to by predecessor and make Ees whole for failure to so implement, contravened 10(c) of the Act and Bd was w/o remedial autority to so order, since, under principles of *H.K. Porter*, 397 U.S. 99 (1970), Bd lacks remedial authority to impose contractual terms involuntarily on either party to a collective bargaining agreement]

Martin J. Barry Company **278 NLRB No. 086**
[proper remedial obligations for *Golden State* successor involving predecessor's unlawful refusal to execute and implement contract with U was to make Ees whole for predecessor's ULP up to time predecessor ceased business and then, bargain in good faith with U for contract, since such remedy is sufficient to convince unit Ees that employing enterprise intends to comply with the Act and strikes a balance between interests of successor, the public and the affected Ees]

5050-5700 Partnership or proprietorship

Ana Moya De Gaudier; etc. **JD-362-84**
(in supplemental backpay specification proceeding, individuals operating enterprise as proprietorship, which was named as the only respondent in original specification, held properly added individually as parties responsible for backpay due herein; parties are appropriately added in compliance proceeding even when they are not parties to underlying ULP proceeding if they are *sufficiently closely related* to original party as in situation where corporation has violated Act and derivative liability is sought against individual)

Ana Moya De Gaudier; etc. **JD-362-84**
(in supplemental backpay specification proceeding, individuals operating enterprise as proprietorship, which was named as the only respondent in original specification, held properly added individually as parties responsible for backpay due herein; to refuse to add them would permit wrongdoers to escape their own individual responsibilities for violations of Act, and by finding liability it would ensure that any remedies ordered can be effectuated and avert frustration of policies of Act)

5050-6200 Receiver or trustee in bankruptcy

Ohio Container Service, Inc.; Myron E. Waxerman, Trustee in Bankruptcy **277 NLRB No. 025**
(trustee in bankruptcy of Respondent E ordered to remedy stipulated violations of Sections 8(a)(1) and (3) by Respondent; nothing in *Bildisco* 104 S.Ct 1188 which would preclude ordering this remedy, since *Bildisco* was concerned with alleged Section 8(a)(5) contractual violations)

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego **273 NLRB No. 236**
(Respondent Corporation required to enforce terms and conditions of applicable (labor) contract only until date on which Respondent Corporation filed its ptn for bankruptcy. See *NLRB v. Bildisco & Bildisco*, 104 S.Ct. 1188 (1984). Contractual backpay remedy, awarded by Bd, fully restores status quo prior to filing of bankruptcy ptn)

5050-6200—Cont.

Wolverine Porcelain Enameling Company and Gregory Crumpton, Its Trustee in Bankruptcy Under Chapter 7 of The Bankruptcy Act JD-299-85
(Bd has authority to adjudicate acts alleged to be ULPs that occurred prior to petition for bankruptcy)

5050-6700 **International union**

Pennsylvania Telephone Guild and The Philadelphia Division of The Pennsylvania Telephone Guild (Bell Telephone Company of Pennsylvania) 277 NLRB No. 055
(R/O directed to guild rather than division of guild as responsible party in proceeding where individual members were not members of divisions, there was only one constitution for guild and its divisions, parties to bargaining agreement were E and guild, and, while division representatives handled grievance matters, guild determined whether grievances would proceed to arbitration)

5050-7200 **Local union**

Pennsylvania Telephone Guild and The Philadelphia Division of The Pennsylvania Telephone Guild (Bell Telephone Company of Pennsylvania) 277 NLRB No. 055
(R/O directed to guild rather than division of guild as responsible party in proceeding where individual members were not members of divisions, there was only one constitution for guild and its divisions, parties to bargaining agreement were E and guild, and, while division representatives handled grievance matters, guild determined whether grievances would proceed to arbitration)

Laborers Local Union No. 380 (Moutz & Oren, Inc.) 275 NLRB No. 147
(if E has paid U steward for overtime performed on particular Saturday, pursuant to unlawful superseniority clause, Respondents will be responsible for seeing to it that such payment is returned to E)

5050-7600 **Joint employers**

M. L. Witcher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers JD-74-86
[joint Es jointly and severally responsible for continuing fringe benefits where both (Es) violated Section 8(a)(5) for unilaterally ceasing such payments]

5050-7800 **Alter ego**

Haug-N-Action, Inc. & J. L. Excavating, Inc. 281 NLRB No. 013
[C alleging 8(a)(5) violations during pendency of bankruptcyy proceedings of E which continued to do business until proceedings were converted to Chapter 7 liquidation, dismissed as to that E, since, for that relevant period Bd had no jurisdiction over its obligations under executory contract absent evidence it did not agree to assume the contract in Chapter 11 proceedings; however, absent evidence that E's alter ego was brought w/i bankruptcy proceedings' jurisdiction, Bd adopted that part of ALJ's recommended order that alter ego recognize and bargain with U]

Woodline Motor Freight, Inc. 278 NLRB No. 152
[remedial order in certain circumstances including successor E's awareness of ULP committed may specifically extend requirements or remedy to bona fide purchaser as responsible successor, though in a given circumstance it may also be determined more appropriate that remedial order as to successor not be made as extensive as that placed on perpetrating predecessor]

Woodline Motor Freight, Inc. 278 NLRB No. 152
[remedy of redomicle of tractors extended to lease agent operating trucking terminal where alter ego of trucker which formerly operated terminal]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, as alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[ct enforced Bd's order against partnership as alter ego of corporation where all aspects of corporation were carried over to partnership which began operations before corporation filed for bankruptcy, and only differences between corporation and partnership were that partnership did not hire U Ees, and one individual had ownership interest in partnership while another individual was sole owner of corporation]

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[alter ego company may be held derivatively liable for backpay obligation of company committing ULP; similarly, personal liability has been imposed where owner and chief operating officer of one E closed it and commenced doing business in name of new entity to avoid effects of Act or of labor contract]

5050-8100 **Employers jointly engaging in ULPs**

Leon Arie Edrich and Ignatius Elefant, Co-Partners d/b/a Sanford Home For Adults, Successor, et al. (Local 6, International Federation of Health Professionals, Longshoremen) 280 NLRB No. 140
[joint and several liability for predecessor and successor Es for all backpay and other monies due to discriminatees, since predecessor and successor E, collectively called Respondent E were guilty of various ULPs]

Harold Weisz; et al., A Co-Partnership d/b/a Sands Motel and AMM, Inc. 280 NLRB No. 013

5062 INDIVIDUAL LIABILITY OF OFFICERS, AGENTS, AND REPRESENTATIVES

Martin Arsham Sewing Co., a/k/a Marsco, Inc. 280 NLRB No. 081
[backpay proceeding remanded for hearing on GC's supplemental mtn for determination of personal liability alleging E official wrongfully converted company assets to his personal use with intention to frustrate Bd's backpay order by rendering E bankrupt and insolvent; although GC's original personal liability mtn failed to demonstrate that official committed any act justifying *piercing of corporate veil*, GC's supplemental mtn provided Bd with additional information regarding official's actions with respect to bankruptcy proceeding and thereby raised issues of fact and law requiring further findings by ALJ]

Martin Arsham Sewing Co., a/k/a Marsco, Inc. 280 NLRB No. 081
[in backpay proceeding, E's mtn to strike GC's supplemental mtn for determination of personal liability of official of E involved in bankruptcy proceeding, denied, since GC's supplemental mtn was timely filed where it constituted *re-filing* of original mtn w/i meaning of Bd's order denying mtn but stating that GC was not thereby precluded from re-filing mtn with appropriate evidential support]

Martin Arsham Sewing Co., a/k/a Marsco, Inc. 280 NLRB No. 081
[in directing hearing in backpay proceeding on GC's supplemental mtn for determination of personal liability of official of E involved in bankruptcy proceeding, Bd held that, although GC failed to submit information herein on all items detailed in Bd's original order denying mtn, material submitted was adequate to raise issues appropriately resolved through hearing; however, additional information on items not addressed in GC's supplemental mtn, or lack thereof, may be considered in context of further proceedings]

G.M. Trimming, Inc., et al., Debtor-In-Possession, and George Marks 279 NLRB No. 121
[debtor in possession and individual in whom ownership of companies ultimately vested and who was in control of their labor relations and day to day operations held alter ego of companies, which were deemed to be single integrated enterprise, and individual held personally liable, where there was attempted concealment of integrated nature and control of corporations under control of individual]

Martin Arsham Sewing Co., a/k/a Marsco, Inc. 275 NLRB No. 090
(mtn for Determination of Personal Liability, by award or hearing under Bd's backpay order, denied where E filed ptn for voluntary bankruptcy identifying owner of E as sole secured creditor and Bd as unsecured creditor (via its backpay order), since GC made no factual assertion which could warrant finding sole secured creditor perpetrated fraud, dissipated or diverted corporate assets, intermingled personal and corporate assets or otherwise attempted to thwart E's backpay liability)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual 274 NLRB No. 113
(ALJ's grant of GC's mtn to name E's sole shareholder and officer as respondent, correct, despite lack of evidence that he had disregarded corporate form, where he supervised Ees, managed E's factory, committed most of E's egregious and numerous ULPs, disregarded ct's inj to cease committing ULPs and reinstate strikers and most important, admitted that he planned to arrange his affairs to avoid any liability for backpay; Bd concluded that circumstances of case militated against waiting until backpay proceeding to see if he had acted on his stated intention to avoid backpay obligation to determine his liability)

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)
[alter ego company may be held derivatively liable for backpay obligation of company committing ULP; similarly, personal liability has been imposed where owner and chief operating officer of one E closed it and commenced doing business in name of new entity to avoid effects of Act or of labor contract]

5075 TERRITORIAL SCOPE OF ORDERS

5075-1100 **Limited to plant or plants where ULPs occurred**

Meleolunity, Inc., and Melvin Collings and Ed Collins, a partnership t/a Collins & Collins Associates JD-(NY)-111-83
(violation for refusing to furnish U with information and to remit dues and fringe benefits payable under contract signed by E in construction industry and who, with consent of U, signed in name of defunct entity and not name

5075-1100—Cont.

of entity U certified at, thereby, giving rise to inference that contract applied to members working at specific jobsite and no other)

The Lawson Company v. N.L.R.B. 753 F.2d (C.A. 6, Jan. 1985)
(Bd's disestablishment order enforced only with respect to stores of E which U has sought to organize and in which GC has challenged validity of E's Sales Assistant Committee)

5075-1500 Limited to location of bargaining unit

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)
(*----bargaining rights conferred upon U are limited to its representation of production unit at Center,* since Bd order identifies L & B (the E) as *L & B Cooling, Inc.*, Center, Colorado and directs posting of remedial notice only at E's cooling facility in Colorado)

6700 CONDITIONAL ORDERS

7500 AFFIRMATIVE DEFENSES

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(E-local's contention that, as labor organization representing large number of Ees, it should be treated more gently than enterprises for profit and should be sheltered by Bd from impact of backpay liability involved herein, rejected; whether financial distress of local entails greater risk of adverse consequences for individuals and community than would similar financial distress of other types is irrelevant, and there is no legal basis in Act or Bd precedents for treating respondent E-U differently than any other type of E)

7515 LACHES

Armour and Company 280 NLRB No. 096
[dismissal of complaint on basis of laches not required by Bd's extended processing matter over nearly 26 month period from filing of charge to hearing, where Respondent not substantially prejudiced]

7516 DELAY IN BOARD PROCEEDINGS

Armour and Company 280 NLRB No. 096
[dismissal of complaint on basis of laches not required by Bd's extended processing matter over nearly 26 month period from filing of charge to hearing, where Respondent not substantially prejudiced]

7518 TRIVIALITY OF VIOLATION

Timet, A Division of Titanium Metals Corporation of America 274 NLRB No. 100
(no remedial order warranted where unlawful threat in violation of 8(a)(1) was isolated event which took place 15 months prior to trial with no evidence of any other ULP)

7530 SETTLEMENT OR WITHDRAWAL OF CHARGES

Armon Company 279 NLRB No. 158
[reference to discriminatees deleted from remedy absent evidence that E failed to comply with part of strike settlement agreement requiring that they be reinstated with backpay]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047
(fact Ee received pay for time of unlawful layoff and signed release did not constitute waiver of public remedies of backpay, reinstatement, and notice posting, where record insufficient to determine whether payment constituted full payment of backpay under Bd law, release executed when other discriminatory acts against Ee had not been remedied, nor was charging U involved in execution)

Goodman Holding Company, Inc., and Its Wholly-Owned Subsidiaries, Goodman Manufacturing Corp., etc. 276 NLRB No. 098
(C allegations of unlawful surveillance were properly dismissed where E unilaterally posted notice for 60 days which fully remedied C allegations)

Texaco, Inc. 273 NLRB No. 164
(RD erred in refusing to permit withdrawal of charge alleging E unlawfully withheld accident and sick benefits from Ees who were receiving such benefits prior to economic strike, where parties had reached strike settlement agreement under which U agreed to end strike, withdraw charges, and each Ee was to receive at least $150 in settlement of outstanding contractual claims, since benefits withheld no more than contractual term subsequently negotiated away in good faith, no other ULPs extant and no Ee objected; primary interest served by continual rights of a few Ees rather than public rights)

7538 NO NEED FOR REMEDY AS INFORMATION WAS DISCLOSED AT HEARING

Sonat Marine, Inc. 279 NLRB No. 016
[ALJ's conclusion that remedial order was unwarranted for E's refusal to provide U with requested information, since much of what U sought was presented in evidence at ULP hearing over E's failure to provide information, rejected, since this in no way excuses E's unlawful conduct nor does it constitute an adequate substitute, in law or fact, for direct and prompt compliance with proper request for information]

7542 ECONOMIC OR OTHER HARDSHIP

Strawsine Manufacturing Co., Inc., et al. 280 NLRB No. 083
[even though E closed facility for unlawful reasons, E was not ordered to reopen facility where its fiscal situation had degenerated since time it closed plant and thus, such remedy would impose a severe financial burden]

Davis Coal Company Debtor-In-Possession 275 NLRB No. 103
(bonuses excluded from gross backpay where E paid no bonuses to any Ees during backpay period and that decision was attributable to E's poor financial condition that eventually resulted in cessation of business and filing of bankruptcy ptn; further, to order payment of bonuses would put discriminatees in better position than they would have been absent ULP and thus, would exceed Bd's remedial authority)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. 273 NLRB No. 197
(E which had unlawfully subcontracted its delivery operation and discharged drivers, not ordered to reestablish operation where E sufficiently proved reestablishment of operation would endanger E's viability; furthermore, ULPs would be sufficiently remedied by make whole order covering Ees of discontinued business)

7548 DURESS OR FRAUD

Hotel Holiday Inn De Isla Verde 278 NLRB No. 147
[in deferring, pursuant to ct remand, to strike settlement agreement restricting conditions of reemployment of economic strikers allegedly discharged for misconduct, and vacating its order requiring reinstatement, Bd, in addition to its stated reasons for so holding, based deferral on absence of evidence or allegation that settlement was entered into fraudulently or under duress]

7554 FEDERAL, STATE OR LOCAL LAWS

Local 1136, Laborers (Southern Illinois Builders Association) JD-179-86
[U's defense to backpay specification held frivolous and stricken from ans where U claimed it owed no money to pension and health and welfare funds on discriminatee's account because he was not U's Ee and U was prohibited by Sec. 302 from making such contributions on discriminatee's behalf; U's assertions were unsupported by any facts or argument, and amounts due reflected money which, absent U's discrimination, would have been paid by Ea, and there was no indication such payments would have violated Act]

7555 PENDENCY OF STATE COURT PROCEEDINGS

Medic-Bus Service, Inc. d/b/a A-Medic Ambulance Service 274 NLRB No. 139
(Bd declined to withhold bargaining order against E until final disposition by state ct of derivative shareholder's action against E; obligations imposed by Act are paramount to any conflicting obligation which state ct might impose upon a party; in any event, E offered no evidence that any such order has or would issue from state ct which has issued no restraining order at all, much less order specifically excusing E from its obligations under Act; and E offered no explanation how its compliance with Act might ultimately subject it to liability in state action)

7563 GENERAL COUNSEL'S FAILURE TO ALLEGE VIOLATION OR TAKE EXCEPTION

Woodline Motor Freight, Inc. 278 NLRB No. 152
[discriminatee entitled to R/O notwithstanding GC did not seek reinstatement of discriminatee in C or at hearing, where consolidated C alleges that respondent *closed facility and terminated its Ees working there.* This allegation broad enought to encompass discriminatee since where there is discrimination against class of Ees, GC is not required to name every discriminatee at this stage of the proceeding. Respondent's contention may be addressed at compliance stage]

7575 RESPONDENT'S SUBSEQUENT COMPLIANCE WITH ACT

George Frost Company 279 NLRB No. 124
[upon granting GC's mtn for summary judgment and ordering E to bargain with U, Bd denied GC's request for what appeared to be *visitorial clause,* authorizing Bd, for compliance purposes, to obtain discovery from E under FRCP subject to supervision of ct of appeals enforcing order; under circumstances of case, Bd found it unnecessary to include such clause, citing *Furniture Store of Hazleton,* 278 NLRB No. 34]

7575—Cont.

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(fact that U was willing to meet with E following its unlawful refusal to do so or that contract may have been negotiated and signed subsequently held not to dissipate ULPs found nor make remedial order unnecessary)

7584 RESPONDENT'S LIMITED FINANCIAL RESOURCES

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. 273 NLRB No. 197

(E which had unlawfully subcontracted its delivery operation and discharged drivers, not ordered to reestablish operation where E sufficiently proved reestablishment of operation would endanger E's viability; furthermore, ULPs would be sufficiently remedied by make whole order covering Ees of discontinued business)

Bonanza Hills, Inc., d/b/a Sav-Time Markets #1 and #3 JD-SF)-70-85

[Bd has ruled E's alleged inability to pay is irrelevant in proceedings to determine amounts due discriminatorily discharged Ees)

7585 NO LOSS SUFFERED

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157

[E ordered, if requested by U, to rescind unlawful unilateral changes in regard to rotating work place assignments, wage increases, and method of determining compensation for certain Ees. Absent such request, however, E shall not rescind changes unilaterally made until it has met its bargaining obligations; further, since change affecting wages was not to detriment of Ees, no restitution or make whole remedy required]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047

(fact Ee received pay for time of unlawful layoff and signed release did not constitute waiver of public remedies of backpay, reinstatement, and notice posting, where record insufficient to determine whether payment constituted full payment of backpay under Bd law, release executed when other discriminatory acts against Ee had not been remedied, nor was charging U involved in execution)

7587 RESPONDENT'S OPERATIONS ADVERSELY AFFECTED

Woodline Motor Freight, Inc. 278 NLRB No. 152

[trucking company ordered to redomicile tractors to terminal from which tractors relocated to remedy unlawful relocation of tractors, layoff of Ees and reduction of some Ees' hours at that terminal, since such remedy will be ordered to restore status quo ante unless it would be so burdensome as not to effectuate Act]

7590 MOOTNESS

7590-0900 Compliance with ALJ's decision or settlement agreement

Armco Company 279 NLRB No. 158

[reference to discriminatees deleted from remedy absent evidence that E failed to comply with part of strike settlement agreement requiring that they be reinstated with backpay]

7590-1000 Compliance with Board decision

N.L.R.B. v. Gentzler Tool and Die Company 778 F.2d 1211 (C.A. 6, Dec. 1985)

[Bd's order that E sign bargaining agreement and give retroactive effect to its terms, enforced; E's contention that it is in compliance with Bd's order since it had compensated Ees for any losses and restored benefits, and that U had failed to comply with order by declining to correct contract, rejected]

7590-1400 Revision or rescission of invalid rule

Auburn Foundry, Inc. 274 NLRB No. 192

(where rule in E's handbook prohibiting solicitation and distribution w/o permission was found unlawfully broad, and ALJ accepted representation in E's counsel's brief that E had amended handbooks and posted notice to Ees to inform them that rule had been modified to prohibit solicitation on working time, i.e., time when either Ee was working and found no remedial action required, Bd ordered appropriate remedy and left determination of whether rule had been properly modified to compliance stage of proceeding)

7590-2700 Discontinuance of business

Local 3, Electrical Workers (Telecom Plus of Downstate New York, Inc.) 280 NLRB No. 031

[where C alleged that U had unlawfully insisted on tape recording parties' contract negotiations and generally refused to bargain, issuance of RO was inappropriate, even assuming that U's conduct was unlawful, inasmuch as E, after hearing, ceased its operations and terminated all Ees in unit and there was little likelihood that E would resume operations and that U would resume its representative status; notwithstanding issues were moot, C dismissed w/o prejudice to E's filing new charge if it resumed operations and U resumed its representative status]

Vitek Electronics, Inc. v. N.L.R.B. 763 F.2d 561 (C.A. 3, June 1985)

(fact that E closed down plant and bargaining unit no longer exists did not render bargaining order moot or futile even through bargaining order did not order *effects* bargaining since it did order E to bargain concerning rates of pay, wages, hours and other terms and conditions of employment and S.Ct held in *First National Maintenance*, 452 U.S. 666, that this language mandates bargaining over effects of plant closing)

7590-5900 Execution of contract after bargaining

Teamsters Local 959, State of Alaska, a/w Teamsters (Kodiak Oilfield Haulers, Inc.) JD-(NY)-10-85

(fact that U was willing to meet with E following its unlawful refusal to do so or that contract may have been negotiated and signed subsequently held not to dissipate ULPs found nor make remedial order unnecessary)

7590-8100 Repudiation of conduct

Goodman Holding Company, Inc., and Its Wholly-Owned Subsidiaries, Goodman Manufacturing Corp., etc. 276 NLRB No. 098

(C allegations of unlawful surveillance were properly dismissed where E unilaterally posted notice for 60 days which fully remedied C allegations)

7590-9000 Employees affected by unfair labor practices or those having grievances for processing no longer employed

Baker Manufacturing Company 277 NLRB No. 022

(Bd held, on remand from ct, fact that discriminatees had declined offers of reinstatement and that their jobs no longer existed based on economic reasons, rendered issue of propriety of Bd's order to reestablish those positions moot)

7596 CHANGED CIRCUMSTANCES

7596-0800 Change in Board policy

N.L.R.B. v. Ensign Electric Division of Harvey Hubble, Inc., and Steelworkers, Local 5925 (Center on National Labor Policy, Inc.) 767 F.2d 1100 (C.A. 4, July 1985)

(retroactive application of change in Bd law making application of supersenionity in layoff of recording secretary and treasurer unlawful, found not unjust, since law was not settled and change therein not suprising as shown by number of cases with vocal dissents in which question was debated)

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[in reviewing Bd's orders cts customarily defer to Bd's exercise of its *special function of applying the general principles of industrial life*, and such deference is not withheld simply because Bd has departed from a prior policy]

7596-2400 Bankruptcy

Hawg-N-Action, Inc. & J. L. Excavating, Inc. 281 NLRB No. 013

[C alleging 8(a)(5) violations during pendency of bankruptcyy proceedings of E which continued to do business until proceedings were converted to Chapter 7 liquidation, dismissed as to that E, since, for that relevant period Bd had no jurisdiction over its obligations under executory contract absent evidence it did not agree to assume the contract in Chapter 11 proceedings; however, absent evidence that E's alter ego was brought w/i bankruptcy proceedings' jurisdiction, Bd adopted that part of ALJ's recommended order that alter ego recognize and bargain with U]

J & B Smith Company, Inc. 280 NLRB No. 057

[contention made first time in exception to ALJ's decision that ptn in bankruptcy triggered automatic stay and that Bd's enforcement of ALJ's D/O would be *in derogation* of Bankruptcy Code's protection of respondent, rejected since Bd proceedings fall w/i exceptions to automatic stay provisions]

Can-Do, Inc. 279 NLRB No. 111

[in absence of any response to mtn for default summary judgment, Bd granted mtn but made no finding what effect E's alleged filing of intervening bankruptcy ptn would have on 8(a)(5) remedy herein since, unlike in companion case, there was no allegation herein of bankruptcy and charging parties were not same; consequently, Bd left matter to compliance proceedings, noting that, if bankruptcy ptn had been filed, remedy shall be limited in same manner as in companion case; cf. *Can-Do, Inc.*, 279 NLRB No. 108]

Can-Do, Inc. 279 NLRB No. 108

[in absence of answer to C and of response to mtn to show cause why mtn for default summary judgment should not be granted against E who filed bankruptcy ptn after C issued, Bd granted summary judgment and extended 8(a)(5) remedy only to date E filed bankruptcy ptn, which was consistent

7596-2400—Cont.

with S.Ct's *Bildisco* opn that E does not violate 8(a)(5) by changing terms and conditions of agreement during period between filing of bankruptcy ptn and bankruptcy ct's determination whether agreement may be rejected; cf. *Can-Do, Inc.*, 279 NLRB No. 111]

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos — 277 NLRB No. 39

(contention bargaining order violated automatic stay of Bankruptcy Code, 11 U.S.C. Sec. 362)

Wolverine Porcelain Enameling Company and Gregory Crampton, Its Trustee in Bankruptcy Under Chapter 7 of The Bankruptcy Act — JD-299-85

(Bd has authority to adjudicate acts alleged to be ULPs that occurred prior to petition for bankruptcy)

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego — 804 F.2d 934 (C.A. 6, Nov. 1986)

[Bd's order against E in bankruptcy proceeding held not void because Bd failed to ptn bankruptcy ct for relief from automatic stay under Bankruptcy Act before proceeding against E; governmental unit which determines that its police powers or regulatory proceeding is excepted from automatic stay under 362(b)(4) of Bankruptcy Act is not required to ptn bankruptcy ct for relief from stay prior to continuing its proceeding, and legislative history of Bankruptcy Act evinces congressional intent to such effect]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego — 804 F.2d 934 (C.A. 6, Nov. 1986)

[Bd's determination that E in bankruptcy owed backpay to its former Ees held excepted from automatic stay by operation of 362(b)(4) of Bankruptcy Act; accordingly, *entry* of money judgment affirmed but not *enforced*, since governmental units are allowed to fix amount of penalties up to and including entry of money judgment, and only attempts to enforce money judgments are subject to automatic stay]

Wheeling-Pittsburgh Steel Corporation, et al. v. Pennsylvania Human Relations Commission, et al. — ——— F.2d ——— (BC W.D. PA, Aug. 1986)

[injunctive relief to stay proceedings of Bd and other government agencies against debtor in bankruptcy, denied, where proceedings were excepted from automatic stay provisions of Bankruptcy Act since, in investigating and prosecuting alleged violations, agencies acted pursuant to their police powers; and since agencies only wished to enter, but not execute on, money judgments, and to enforce non-monetary judgments, agencies were permitted under Bankruptcy Act to seek to obtain judgments for backpay and back benefits and to enforce back to work orders]

7596-3800 Death of discriminatee

Radio Electric Service Company — 278 NLRB No. 078

[Bd left to compliance stage determination of validity of E's claim that ULP striker was deceased and that, consequently, any reinstatement order regarding striker would be inappropriate, where Bd had no basis for determining validity of E's claim]

7596-4400 Discontinuance of business, department or operation

Local 3, Electrical Workers (Telecom Plus of Downstate New York, Inc.) — 280 NLRB No. 031

[where C alleged that U had unlawfully insisted on tape recording parties' contract negotiations and generally refused to bargain, issuance of RO was inappropriate, even assuming that U's conduct was unlawful, inasmuch as E, after hearing, ceased its operations and terminated all Ees in unit and there was little likelihood that E would resume operations and that U would resume its representative status; notwithstanding issues were moot, C dismissed w/o prejudice to E's filing new charge if it resumed operations and U resumed its representative status]

Woodline Motor Freight, Inc. — 278 NLRB No. 182

[order to redomicile tractors at original terminal, appropriate, where necessary to restore status quo ante and action would not be unduly burdensome; i.e., require capital investment disproportionate to E's resources, or impose substantial, continuing losses. Here, terminal was profitable before discriminatory relocation, and E has continued to operate terminal]

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. — 273 NLRB No. 197

(E which had unlawfully subcontracted its delivery operation and discharged drivers, not ordered to reestablish operation where E sufficiently proved reestablishment of operation would endanger E's viability; furthermore, ULPs would be sufficiently remedied by make whole order covering Ees of discontinued business)

7596-5200 Sale of business

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. — ———F.2d——— (C.A. 4, Feb. 1986)

[E was not released from bargaining order even though it sold business prior to Bd's order, where buyer of business did not admit it was successor E and E had not had chance to establish it no longer had any relationship to facility in question]

7596-5600 Lapse of time

Star Color Plate Service, Division of Einhorn Enterprises, Inc. — 282 NLRB No. 031

[notwithstanding election held 5 years before Bd issued its decision and Certification of Representative during which time E contends that because of substantial Ee turnover U may not represent majority of Ees, Bd granted summary judgment over E's failure to bargain with U in absence of newly discovered evidence]

625 ORDERS AGAINST EMPLOYERS

1100 CEASE-AND-DESIST ORDERS

1133 OMNIBUS CLAUSES

1133-2500 Broad orders (in any other manner)

Horizon Foods, Inc. **280 NLRB No. 127**
[broad order appropriate since E's ULPs were egregious involving unlawful interrogations, threats, solicitation of grievances, promise of benefits, surveillance and discharges]

T & T Machine Company, Inc. **278 NLRB No. 139**
[Bd order warranted in view of numerous and overall egregious nature of violations which included unlawful layoffs, threats, warnings, promise of benefits, interrogations, promulgation of no solicitation/no distribution rule, and soliciting Ees to engage in surveillance]

1167 CEASE-AND-DESIST ORDERS RELATING TO SPECIFIC VIOLATIONS

1167-5000 Unilateral and various other actions

United States Postal Service **281 NLRB No. 032**
[although Bd customarily directs E to restore status quo ante if it has taken unilateral action to Ee's detriment, Bd held c/d order was insufficient where it was unclear whether E's unilateral grievance adjustment was detrimental or beneficial and, consequently, Bd ordered status quo ante restoration conditioned on Ee's desire expressed through U; accordingly, if U elects with Ee's concurrence to have previous conditions restored, E required to set aside unilaterally adjusted grievance, reactivate grievance, and process it in good faith with all due eiligence]

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(although no exception was taken to ALJ's recommended ban on unilateral subcontracting by E to prevent E from transferring to other shops jobs from which Ees were unlawfully discharged, Bd concluded that words *and forever discontinue* were overly broad; as amended by Bd, Order proscribed such subcontracting for indefinite future but left open possibility of modification of proscription should future events prove that warranted)

1600 REPETITIVE ORDERS

Gentzler Tool & Die Corp. **275 NLRB No. 124**
(notwithstanding Bd has pending ptn for enforcement of its Order requiring execution of contract, retroactive application of contract and that E c/d from dealing directly with Ees, Bd issued another D/O arising from subsequent C finding E violations for refusal to bargain and withdrawal of recognition which are different violations than those found in first decision, and therefore, Order in first decision would not remedy those violations found in second decision; hence, need for another Order)

1900 ORDERS TO ALLEVIATE EFFECT OF FRIVOLOUS LITIGATION

1933 WHAT CONSTITUTES FRIVOLOUS LITIGATION

Shrewsbury Motors, Inc. **281 NLRB No. 081**
[both GC and applicant mtns for relief under *Tidee Products Inc.*, 194 NLRB 1234, on basis that actions of other party *patently frivolous*, rejected, notwithstanding GC did not carry burden to establish that position was substantially justified]

Hydrotherm, Inc. **280 NLRB No. 167**
[application for award of attorney's fees based on alleged frivolity of E's defenses, denied where, although E was unaware of local U's merger at time it rejected U's request to bargain and only learned of it on receiving 8(a)(5) C, in absence of pretrial discovery, E was not in position to determine whether U's merger involved more than name change until evidence was presented at hearing; also, there is no record of *clearly aggravated and pervasive misconduct* by E]

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(award to U of legal fees and expenses, inappropriate, notwithstanding E's numerous and outrageous ULPs, since respondents' defenses were debatable, rather than frivolous, where merits of several of complaint's allegations turned on credibility resolutions, and issues of individual liability of E's chief officer and shareholder and U's alleged misconduct raised unusual legal issues)

1967 TYPES OF ORDER PROVISIONS (SEE ALSO 625-5570)

1967-4000 Reimbursement to union for organizational and negotiation expenses

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(U's requested award of organizing expenses after date strike began denied, since Respondents' ULPs did not interfere with U's attempt to obtain support of majority of E's Ees where majority had signed valid authorization cards by that date, and Bd's bargaining order resulting from finding that E's rejection of U's bargaining demand two days later was sufficient remedy for respondents' ULPs to extent that they interfered with U's attempt to become E's Ees' representative)

1967-5000 Furnish Board documents and records necessary to police compliance

Horizon Foods, Inc. **280 NLRB No. 127**
[GC's request that Bd include *visatorial clause* in Order which would authorize Bd, for compliance purposes, to obtain discovery from E under FRCP under supervision of ct of Appeals, denied]

Hilton Inn North **279 NLRB No. 009**
[*visitorial clause* appropriate based on possible complexity of computing make-whole remedy and on all facts of this case]

United Cloth Company, Inc. **278 NLRB No. 088**
[GC's request for *visitorial clause* in order, authorizing Bd, for compliance purposes, to obtain discovery from Respondent pursuant to Federal Rules of Civil Procedure under supervision of U.S. Ct of Appeals enforcing this order, denied as unnecessary in circumstances herein]

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(E required to preserve and furnish to Bd agents, on request, for examination and copying, all documents and records related to *subcontracting or assigning to others the manufacture of parts for or on behalf of* E in order for Bd to police compliance with Bd's subcontracting remedy against E)

Quality Rolls, Inc. **JD-189-86**
[Bd has ruled out possibility that *visitorial* language authorizing Bd to engage in discovery to enable it to monitor compliance with Bd order will be incorporated as standard provision, routinely included in all remedial orders]

Sausage Makers' Union, Local 203, Food & Commerical Workers (Western Employer Associates) **JD-(SF)-47-86**
[GC's request for inclusion of *visitorial provision* in remedial order, denied, since Bd has not ordinarily provided for inclusion of such provision in RO's as remedy nor has it formulated any guidelines for inclusion of such provisions in RO's. Moreover, nothing in instant case appears to give rise to concerns that would warrant inclusion of such provision]

Borden Inc. **JD-(SF)-007-86**
[*visitorial clause* authorizing Bd to initiate discovery under Federal Rules of Civil Procedure in connection with compliance with Bd's order (concerning E's unlawful surveillance) as enforced by Ct of Appeals, not granted to GC, since it should not be difficult, on special facts of this case, for Bd or U to readily ascertain if *compliance* with (remedial) order has been accomplished w/o recourse to discovery]

1967-5600 Reimbursement of litigation expenses (See also 625-5570)

1967-5600—Cont.

Springfield Transit Management, Inc. **281 NLRB No. 124**
[Bd declined to order E to reimburse U for litigation fees and expenses related to trial of cases, where E was found to have unlawfully refused to sign contract, such refusal occurred after impasse was reached, state ct had ordered arbitration, and arbitration award setting out terms of contract had issued]

Leon Arie Edrich and Ignatius Elefant, Co-Partners d/b/a Sanford Home For Adults, Successor, et al. (Local 6, International Federation of Health Professionals, Longshoremen) **280 NLRB No. 140**
[respondent, E, is liable to GC for court costs in connection with an Order of Second Circuit Ct of Appeals enforcing Bd backpay and reimbursement Order]

Batavia Nursing and Convalescent Inn **275 NLRB No. 125**
(U's request that E be required to pay U its reasonable legal fees, denied, since E's defenses were not frivolous and turned partly on credibility resolutions)

Workroom For Designers, Inc. and Sidney H. Sitselman, an Individual **274 NLRB No. 115**
(award to U of legal fees and expenses, inappropriate, notwithstanding E's numerous and outrageous ULPs, since respondents' defenses were debatable, rather than frivolous, where merits of several of complaint's allegations turned on credibility resolutions, and issues of individual liability of E's chief officer and shareholdere and U's alleged misconduct raised unusual legal issues)

EPE, Inc. **273 NLRB No. 169**
(E ordered to reimburse U for costs and expenses incurred in preparation and conduct of contract negotiations and in investigation and preparation of instant proceeding, where E's conduct demonstrated a proclivity to violate the Act and E's litigation of instant proceeding was frivolous)

1967-8400 Reimbursement to employees for lost benefits

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[E, who unilaterally and unlawfully terminated group insurance payments to U's welfare fund, ordered to make payments to those Ees who shared in costs of group insurance only if (1) Ee or his beneficiaries incurred expenses or suffered losses because of E's unilateral action, and (2) such expenses or losses exceeded amount Ee would have paid for group insurance coverage; and payments to those meeting foregoing conditions to consist of difference between (i) expenses incurred and/or losses suffered, and (ii) amounts Ees would have paid for group insurance]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[E, who unilaterally and unlawfully terminated group insurance payments to U's welfare fund, ordered to make payments to those Ees for whom E paid entire costs of group insurance for any expenses incurred or losses suffered by Ees or beneficiaries as result of E's unilateral action until E reaches agreement with U concerning insurance with U concerning insurance coverage or until impasse is reached]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[two remedial periods provided for in making Ees whole for losses suffered or expenses incurred as result of E's unlawful discontinuance of group insurance payments to U's welfare fund, with first period ending at date of order herein and second ending at agreement or impasse since, if there was only one remedial period losting until agreement or impasse occurred, (1) E might thereby be encouraged to delay bargaining, and (2) Ees or beneficiaries now entitled to remedial payments might suffer considerable delay before receiving remedial payments]

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) **274 NLRB No. 134**
(where E permitted Ees to make personal long-distance telephone calls at E's expense in partial compensation for unpaid overtime, but paid discriminatee's replacement for overtime work with no compensation for overtime with telephone priveges, Bd, while finding it appropriate that discriminatee's backpay be calculated based on hours worked by her replacement, did not include value of telephone privileges in backpay since to do so would be duplicative)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) **274 NLRB No. 134**
(where Ees were permitted to fill their automobiles' gasoline tanks at E's expense in exchange for E's access to Ees' automobiles for use on business, such gasoline privileges excluded from discriminatee's backpay, since gasoline was quid pro quo for E's access to Ees' automobiles, rather than aspect of Ee benefits)

2200 ORDERS RELATING TO AGREEMENTS

2201 GENERALLY

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-23-86**
[where E unlawfully refused to execute extension agreement negotiated by multi-E association and filed ptn in bankruptcy but continued its business under guise of alter ego company, ALJ held that since ptn was filed after effective date of enactment of Bankruptcy Amendments and Federal Judgeship Act, extension agreement was enforceable against E; moreover, since E's alter ego company was not shown to have been brought into that proceeding; any remedy pertaining to it was unaffected]

2267 ORDERS CONCERNING CONTRACTUAL BENEFITS

2267-3300 Restoration of benefits

Wheeling-Pittsburgh Steel Corporation, et al. v. Pennsylvania Human Relations Commission, et al. **——— F.2d ——— (BC W.D. PA, Aug. 1986)**
[in denying injunctive relief to stay proceedings of Bd and other government agencies against debtor in bankruptcy, ct held that, as long as agencies are not attempting to enforce any money judgments against debtor, Bankruptcy Act permits agencies to seek to obtain judgments against debtor for backpay and back benefits and to enforce back to work orders]

2267-5000 Arbitration

Combustion Engineering Inc. **274 NLRB No. 172**
(as Bd decision deferring to arbitration award that found E liable for unilateral changes to absenteeism and tardiness system only involved two Ees, GC's mtn for reconsideration contending that Bd's order was not adequate because it did not provide remedy to numerous other Ees adversely affected by E's conduct, granted and jusisdiction retained to review, upon mtn, grievance proceedings or awards arising from E's unlawful action, where arbitrator had no authority to remedy violation he found)

2267-6700 Make employees whole for loss of benefits

Combustion Engineering Inc. **274 NLRB No. 172**
(as Bd decision deferring to arbitration award that found E liable for unilateral changes to absenteeism and tardiness system only involved two Ees, GC's mtn for reconsideration contending that Bd's order was not adequate because it did not provide remedy to numerous other Ees adversely affected by E's conduct, granted and jusisdiction retained to review, upon mtn, grievance proceedings or awards arising from E's unlawful action, where arbitrator had no authority to remedy violation he found)

2283 ORDERS CONCERNING BENEFITS UNLAWFULLY GRANTED

Americana Healthcare Center **273 NLRB No. 213**
(where E unlawfully terminated agreed-upon sick leave provision which, by mutual mistake of parties, was not incorporated into agreement, E ordered to make whole Ees who would have been entitled to sick leave benefits by providing them with sick leave credit since E's unlawful discontinuance thereof)

Americana Healthcare Center **273 NLRB No. 213**
(where E unlawfully terminated agreed-upon sick leave provision which, by mutual mistake of parties, was not incorporated into agreement, E ordered to compensate Ees for unused sick leave in accordance with established procedure; although Ees may not have *requested* compensation, such requests shall be presumed, since requests would have been futile in light of E's unlawful action in discontinuing sick leave benefits)

2291 ORDERS CONCERNING BENEFITS UNLAWFULLY WITHHELD

Government Employees (Office Employees, Local No. 2) **278 NLRB No. 055**
[E must compensate all Ees from whom scheduled annual leave was unlawfully withheld due to strike participation, including those Ees who had not submitted formal leave slips before strike, where E practice was to schedule leave by several methods other than formal slips]

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-86**
(Bd does not provide for interest at fixed rate on benefit fund payments due as part of make-whole remedy, since provisions of Ee benefit fund agreements are varable and complex; accordingly, question of amount of interest E must pay into benefit fund in order to satisfy make-whole remedy left to further proceedings)

3300 REINSTATEMENT ORDERS

3301 GENERALLY

Sure-Tan, Inc., et al. v. N.L.R.B. **———U.S.——— (US S.CT, June 1984)**
[circuit ct's modification of Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees, who had left the country rather

3301—Cont.

than be deported, be held open for four years, reversed, since circuit ct had no justifiable basis for displacing Bd's discretionary judgment about proper time period for acceptance of the reinstatement offers; instead, circuit ct was required to remand case to Bd to consider alternative grounds on which ct believed the offers to have been deficient and to decide upon new forms for the reinstatement offers]

3317 ENTITLEMENT OF EMPLOYEES TO REINSTATEMENT

3317-0100 Generally

General Teamsters Local No. 162 v. N.L.R.B. (Western Pacific Construction Materials Co.) 782 F.2d 839 (C.A. 9, Feb. 1986)

[although reinstatement and backpay are conventional remedies ordered to redress unlawful discharge, Bd may withhold such remedies where they would not effectuate purpose of Act]

3317-0600 Employees with substantially equivalent employment elsewhere

Lone Star Industries, Inc. 279 NLRB No. 078

[E's obvious failure to discharge its burden in establishing that Ee had obtained comparable employment as basis for excluding him from possible recall made E's action violative, since E disqualified for reinstatement those Ees it deemed on basis of *insufficient information* to have obtained comparable employment where basis was whether Ee was employed in *same type of job, with competitor,* but no further check as to wages, benefits, job assignments, etc.]

Daniel Construction Company, A Division of Daniel International Corporation 276 NLRB No. 115

(E's responsibility to offer to reinstate unlawfully discharged Ees and to make them whole for losses does not terminate in event Ees obtain substantially equivalent employment elsewhere; fact that E lost maintenance and construction contract at location where Ees were discharged does not terminate backpay liability upon Ees' obtaining equivalent employment where E demonstrated it could transfer Ees, not hired by replacement contractor, to other operations)

3317-0900 Discriminatees

Donald Dunn d/b/a D.C. Construction Company 276 NLRB No. 097

(order requiring E to offer reinstatement and backpay to Ee unlawfully denied reemployment after lawful layoff held not subject to alteration where E had originally hired Ee, even though all vacancies at that time had been filled by referrals; and it was fair to assume E would exhibit same flexibility in connection with recall of Ee as whown upon his initial hire, were it not possessed of intent to discriminate)

Quality Rolls, Inc. JD-189-86

[burden for substantiating facts rendering discriminatees unfit for reinstatement because of misconduct is on party seeking to block reinstatement; while Bd does not condone serious Ee misconduct, it requires actual proof of such misconduct before denying reinstatement to unlawfully discharged Ees]

Quality Rolls, Inc. JD-189-86

[traditional remedy for discriminatory discharge withheld from Ee involved in leaving work early prior to end of shift and from fellow Ee who punched out departing Ee's time card so he could leave early; such misconduct transcends ordinary breaches of work responsibility, raises questions of basic integrity, and presents risk which no E should bear]

3317-1200 ULP strikers

Dublin Town Ltd. 282 NLRB No. 046

[issues regarding reinstatement of ULP strikers, assertedly engaged in post discharge strike misconduct, left to compliance stage because of incomplete record regarding misconduct]

Ashe Brick Company 280 NLRB No. 162

[E ordered to reinstate all strikers who were permanently replaced after economic strike converted to ULP strike. As to strikers who were replaced prior to its conversion to ULP strike, those not permanently replaced are to be offered immediate reinstatement, and those strikers permanently replaced are to be placed on preferential hiring list]

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 782 F.2d 7 (C.A. 1, Jan. 1986)

[E ordered to place former strikers replaced during economic phase of strike which subsequently converted to ULP strike, on preferential hiring list; E's contention order punitive and abuse of Bd's discretion since more expansive than violation, rejected, where Bd found both precise violation of Sec. 8(a)(3) for refusing to reinstate strikers replaced after conversion of strike to ULP strike, and a general violation of Secs. 8(a)(3) and (1) in its general disregard of reinstatement rights of all ULP strikers; nor did fact no violation of Ees' preferential hiring rights had yet occured render order inappropriate]

3317-1700 Economic strikers

Aluminum Welding & Machine Works, Inc. 282 NLRB No. 062

[E's argument that economic striker was not entitled to reinstatement because he accepted regular and substantially equivalent employment elsewhere, rejected where E at no time sought to ascertain intention of economic striker concerning recall and striker's intention was shown by his unconditional offer to return to work and his appearance at E's facility when solicited regarding position in another department]

Ashe Brick Company 280 NLRB No. 162

[E ordered to reinstate all strikers who were permanently replaced after economic strike converted to ULP strike. As to strikers who were replaced prior to its conversion to ULP strike, those not permanently replaced are to be offered immediate reinstatement, and those strikers permanently replaced are to be placed on preferential hiring list]

Hotel Holiday Inn De Isla Verde 278 NLRB No. 147

[upon ct remand, Bd deferred to strike settlement agreement restricting conditions of reemployment of economic strikers allegedly discharged for misconduct, and vacated its order requiring reinstatement where at time of settlement, there was no finding strikers had been unlawfully discharged and, thus, they did not have legal right to remedy nor did E have legal obligation to provide remedy; here, in return for meeting on some middle ground, E voluntarily offered to reinstate strikers, and both E and U voluntarily offered to forgo any adjudication rights they might have had]

Hotel Holiday Inn De Isla Verde 278 NLRB No. 147

[in deferring, pursuant to ct remand, to strike settlement agreement restricting conditions of reemployment of economic strikers allegedly discharged for misconduct, and vacating its order requiring reinstatement, Bd, in addition to its stated reasons for so holding, based deferral on absence of evidence or allegation that settlement was entered into fraudulently or under duress]

U.S. Mineral Products Co. 276 NLRB No. 022

]*substantially equivalent* employment includes *same shift*; and had economic striker refused any but first shift (striker's prior work shift) she would not have lost her status on preferential hiring list)

Coastside Scavenger Company 273 NLRB No. 198

(existence of temporary job is not equivalent of vacancy to which striker should have been reinstated)

Coastside Scavenger Company 273 NLRB No. 198

(temporary notice of job *is* critical factor in determining whether it is *substantially equivalent* to what position a striker had held)

3317-1800 Discharged strikers

Auburn Foundry, Inc. 274 NLRB No. 192

(economic strike who began striking in April and was unlawfully discharged in August ordered to be reinstated and his replacement dismissed only if replacement had been hired after striker was discharged)

3317-2300 Supervisors

Advertiser's Manufacturing Company 280 NLRB No. 128

[E to reinstate with backpay supervisor discharged solely because of her son's U activities]

3317-2900 Laid-off employees

The Zack Company 278 NLRB No. 134

[Bd provided its usual reinstatement order where Ees were rehired after unlawful layoff but were again laid off; since issues of their reinstatement and subsequent layoff were not litigated, Bd left to compliance stage resolution of such issues]

3317-3000 Discharged employees

Radisson Muehlebach Hotel 273 NLRB No. 183

(cease and desist order, rather than reinstatement and backpay orders appropriate remedy for dischargee where, although his *Weingarten* rights were violated, he was not discharged as result of the violative interview or for asserting his *Weingarten* rights, but for his own misconduct)

3317-9200 Employees of debtor in bankruptcy

3317-9200 Employees of debtor in bankruptcy

Wheeling-Pittsburgh Steel Corporation, et al. v. Pennsylvania Human Relations Commission, et al. ——— F.2d ——— (BC W.D. PA, Aug. 1986)

[in denying injunctive relief to stay proceedings of Bd and other government agencies against debtor in bankruptcy, ct held that, as long as agencies are not attempting to enforce any money judgments against debtor, Bankruptcy Act permits agencies to seek to obtain judgments against debtor for backpay and back benefits and to enforce back to work orders]

3317-9200—Cont.

Wheeling-Pittsburgh Steel Corporation, et al. v. Pennsylvania Human Relations Commission, et al.
——— F.2d ——— (BC W.D. PA, Aug. 1984)
[in bankruptcy proceeding, ct held enforcement of back to work order was not tantamount to enforcement of money judgment, as in backpay and benefit orders, which is not enforceable in bankruptcy w/o ct order; back to work order is not intended to provide monetary compensation for past injuries but rather to redress future harm arising from continued unemployment as result of wrongful termination, and is not attempt to enforce money judgment; and payment of money to reinstated Ee is consideration for past-reinstatement work and not compensation for past harm]

3317-9400 Illegal alien

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023
(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd held that where Spanish-speaking discriminatees' last known locations were in Mexico it was, as stated by S.Ct, *trivial burden* to require E to draft reinstatement offers in Spanish and to verify their receipt; and that 4 years was reasonable period for holding job offers open given lengthy time required for Mexican nationals to acquire immigrant visas; *General Iron Corp.*, 218 NLRB 770 distg.)

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023
(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd held that E's offers of reinstatement were not valid since offers, which remained open for some 34 days, did not give discriminatees reasonable time to consider offer or to make arrangements for legally entering the United States)

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023
(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate order pertaining to deported ondocumented alien discriminatees of Mexican origin, Bd ordered that offers of reinstatement be written in Spanish, remain open for 4 years after receipt, and be delivered in manner allowing verification of receipt; and offers must advise discriminatees that E has no obligation to reinstate them unless they are legally present in the United States and are legally free to be employed when they offer themselves for reinstatement)

3333 MANNER OF REINSTATEMENT

3333-2000 Reinstatement to former or substantially equivalent position

3333-2025 Substantially equivalent position acceptable only if former position no longer exists

U.S. Mineral Products Co. 276 NLRB No. 022
]*substantially equivalent* employment includes *same shift*; and had economic striker refused any but first shift (striker's prior work shift) she would not have lost her status on preferential hiring list)

Professional Porter and Window Cleaning Co., A Division of Propoco, Inc.; Professional Services, A Division of Propoco, Inc. 275 NLRB No. 004
(in making offers to reinstate discriminatee to job at different location, E did not even attempt to show that her former job no longer existed)

3333-2037 Only within specified location or unit

Professional Porter and Window Cleaning Co., A Division of Propoco, Inc.; Professional Services, A Division of Propoco, Inc. 275 NLRB No. 004
(offers which were for job at different location, not substantially equivalent; commutation to that job would have cost discriminatee twice as much travel time and far greater expense, and she would have been represented by different U)

3333-2050 Position not substantially equivalent where

3333-2050-0800 Temporary position

Coastside Scavenger Company 273 NLRB No. 198
(temporary nature of job *is* critical factor in determining whether it is *substantially equivalent* to what position a striker had held)

3333-2050-3100 Different shift or hours

U.S. Mineral Products Co. 276 NLRB No. 022
]*substantially equivalent* employment includes *same shift*; and had economic striker refused any but first shift (striker's prior work shift) she would not have lost her status on preferential hiring list)

3333-2050-4700 Different location

Professional Porter and Window Cleaning Co., A Division of Propoco, Inc.; Professional Services, A Division of Propoco, Inc. 275 NLRB No. 004
(offers which were for job at different location, not substantially equivalent; commutation to that job would have cost discriminatee twice as much travel time and far greater expense, and she would have been represented by different U)

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)
[*conditional offer* of alternative employment, rather than unconditional offer of reinstatement, does not toll E's backpay obligation, since there was no showing nor finding that caretaker position at E's apartment complex some 30 to 50 miles distant from complex (from which 2 Ees were discharged) had been filled by time E communicated its conditional offer]

3333-6000 Discharge of replacements

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 281 NLRB No. 117
[contrary to ALJ's recommendation that E be ordered to offer former economic strikers, wrongfully denied opportunity to form machine operating crew, preferential consideration for transfer to such jobs if they so desire, Bd ordered E to offer each Ee immediate transfer to operating crew, displacing, if necessary, new Ees hired to form crew]

3333-8000 Validity of reinstatement offer

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096
(E's refusal to pay reinstated discriminatee pay rate which included general raises granted Ees during discriminatee's interim backpay period constituted failure to make valid reinstatement offer; and since, E's offer set discriminatee's wage rate at amount less than that to which she was entitled, her acceptance of offer did not toll E's backpay liability; accordingly, E required to pay discriminatee, in addition to interim backpay, difference between actual rate of pay following return to work and rate which she should have received)

3333-8001 Generally

3333-8001-8000 Must be offer of employment

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)
[offer of reinstatement phrased as a question such as *[f (E) offered you your job back with backpay, would you take it?* not invalid. However, offer must still indicate availability of former (job) or comparable position. E's offer, in instant case, did not convey that there was job immediately available. Question put to Ee as to whether he would return to work if offered reinstatement does not present specific, unequivocal offer of reinstatement]

John Cuneo, Inc. v. N.L.R.B. 792 F.2d 1181 (C.A. D.C., June 1986)
[E's offer of reinstatement ineffective since not sufficiently specific nor unequivocal and did not afford Ee adequate time (only 4 days) to consider his reply; further, Bd not precluded from asserting mailgram did not constitute valid offer of reinstatement by fact in earlier briefs Bd referred to mailgram as offer of reinstatement as this issue was neither litigated nor decided in the earlier proceeding]

3333-8033 Mechanics of offer

3333-8033-1200 Receipt of offer

A & T Manufacturing Company 280 NLRB No. 186
[E's letter offering discriminatee reinstatement by specified date held not valid offer where discriminatee, who was out of town, did not respond in timely fashion, but upon receipt of letter immediately called E who, having no intention of reinstating discriminatee, indicated to him that no work was available (Combs)]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. 279 NLRB No. 049
[E was under continuing obligation to reinstate Ee where Ee never received E's valid offer of reinstatement; backpay period ended on date E mailed Ee good-faith offer of reinstatement, but Ee did not recieve offer since he had moved leaving no forwarding address; while E's good faith offer tolled E's backpay liability, it did not relieve E of its obligation to reinstate Ee]

3333-8033-3700 Offer by ordinary mail or telephone

Niagara Falls Sightseeing By Sheridan, Inc. 279 NLRB No. 007
[no valid offer of reinstatement where E allegedly made two telephone calls to discriminatee's family offering reinstatement w/o attempting to communicate directly with discriminatee orally or in writing; moreover, compliance instructions direct that reinstatement offers be made in writing with copy served on Bd's compliance officer]

3333-8033-5600 Offer to foreign language speaking employees

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)
[circuit ct decision modifying Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees who had left the country rather than be deported be drafted in Spanish and their receipt be verified.

3333-8033-5600—Cont.

reversed, since modification requirement exceeded ct's limited authority of judicial review; appropriate course was to remand case for reconsideration to Bd with its broad powers to fashion remedies to effectuate national labor policy and superior expertise and long experience in doing so; case remanded to ct for remand to Bd for formulation of remedial order consistent with this opn]

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023

(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd held that where Spanish-speaking discriminatees' last known locations were in Mexico it was, as stated by S.Ct, *trivial burden* to require E to draft reinstatement offers in Spanish and to verify their receipt; and that 4 years was reasonable period for holding job offers open given lengthy time required for Mexican nationals to acquire immigrant visas; *General Iron Corp.*, 218 NLRB 770 distg.)

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023

(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd held that E's offers of reinstatement were not valid since offers, which remained open for some 34 days, did not give discriminatees reasonable time to consider offer or to make arrangements for legally entering the United States)

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023

(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate order pertaining to deported undocumented alien discriminatees of Mexican origin, Bd ordered that offers of reinstatement be written in Spanish, remain open for 4 years after receipt, and be delivered in manner allowing verification of receipt; and offers must advise discriminatees that E has no obligation to reinstate them unless they are legally present in the United States and are legally free to be employed when they offer themselves for reinstatement)

3333-8033-7500 Time limit must be reasonable

A & T Manufacturing Company 280 NLRB No. 106

[offer of reinstatement not valid where offer had expired before it was received by discriminatee and therefore it did not give discriminatee, having fundamental right to consider whether to return to work after receiving reinstatement offer, such reasonable time to consider offer (Adams)]

A & T Manufacturing Company 280 NLRB No. 106

[offer of reinstatement conditioned on discriminatee's returning to work in only 3 days from receipt of letter containing offer held invalid, since it did not give discriminatee reasonable time to consider offer, particularly since there was intervening weekend when discriminatee would have been unable to discuss situation with E (Combs)]

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023

(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate order pertaining to deported undocumented alien discriminatees of Mexican origin, Bd ordered that offers of reinstatement be written in Spanish, remain open for 4 years after receipt, and be delivered in manner allowing verification of receipt; and offers must advise discriminatees that E has no obligation to reinstate them unless they are legally present in the United States and are legally free to be employed when they offer themselves for reinstatement)

John Cuneo, Inc. v. N.L.R.B. 792 F.2d 1181 (C.A. D.C., June 1986)

[E's offer of reinstatement ineffective since not sufficiently specific nor unequivocal and did not afford Ee adequate time (only 4 days) to consider his reply; further, Bd not precluded from asserting mailgram did not constitute valid offer of reinstatement by fact in earlier briefs Bd referred to mailgram as offer of reinstatement as this issue was neither litigated nor decided in the earlier proceeding]

3333-8067 Circumstances of offer

3333-8067-1200 Must be in good faith

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096

(E failed to make valid bona fide reinstatement offer to discriminatee, where discriminatee's failure to report for work on particular day unilaterally set by E did not indicate waiver of reinstatement rights, particularly where she expressly and continuously indicated desire to return to work; E went through formalities of job offer but rebuffed discriminatee's efforts at every opportunity; E was not damaged by discriminatee's 2-week delay in reporting for work occasioned by trip outside state; and discriminatee's telephone inquiries, when E delayed making reinstatement offer, were routinely rebuffed)

Workroom For Designers, Inc. and Sidney H. Simelman, an Individual 274 NLRB No. 115

(respondents' frequent appeals to strikers to return to their jobs, not valid offers of reinstatement where they were preceded by threats that strikers would never return and followed by threats and verbal and physical abuse, and where respondents reacted to strikers' unconditional offer to return to work with conduct indicating no intention of reinstating substantial number of strikers)

3333-8067-3700 Reinstatement at new location valid if moving expenses are paid

Struwsine Manufacturing Co., Inc., et al. 280 NLRB No. 063

[in case involving E's unlawful removal of operations to another state, E ordered to offer Ees who were terminated substantially equivalent positions at new facility or any of E's other plants, with traveling and moving expenses and backpay; further, backpay period for Ees who are unable to accept offers of employment that require moving is from date of termination to date Ees secures substantially equivalent employment with another E]

3333-8067-4400 What constitutes unconditional offer

Daniel Construction Company, A Division of Daniel International Corporation 276 NLRB No. 115

(valid offer of reinstatement made where E's foreman phoned Ee and inquired into his interest in returning to work; moreover, Ee felt foreman was offering him reinstatement)

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[offer of reinstatement phrased as a question such as *If (E) offered you your job back with backpay, would you take it?* not invalid. However, offer must still indicate availability of former (job) or comparable position. E's offer, in instant case, did not convey that there was job immediately available. Question put to Ee as to whether he would return to work if offered reinstatement does not present specific, unequivocal offer of reinstatement]

3333-8067-5000 Must not be conditioned on

3333-8067-5025 Withdrawal of charges

Lord Jim's 277 NLRB No. 176

[offering Ee reinstatement on condition that she or the U drop NLRB charges, not valid offer of reinstatement]

3350 AFFIRMATIVE DEFENSES

3350 AFFIRMATIVE DEFENSES

3350-0700 Refusal of reinstatement offer

Pacific Mutual Door Company 278 NLRB No. 120

[E's offer of reinstatement to two economic strikers were neither invalid, conditional nor discriminatory, notwithstanding facts that offers were made seriatim, not by seniority, and directly to Ees; fact that reinstatement offers were made to less than all eligible former strikers at onetime did not render each offer invalid; thus, rejection of E's reinstatement offers to eligible strikers tolled their backpay and satisfied E's reinstatement obligation with respect to alleged ULPs]

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[*conditional offer* of alternative employment, rather than unconditional offer of reinstatement, does not toll E's backpay obligation, since there was no showing nor finding that caretaker position at E's apartment complex some 30 to 50 miles distant from complex (from which 2 Ees were discharged) had been filled by time E communicated its conditional offer]

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[offer of reinstatement phrased as a question such as *If (E) offered you your job back with backpay, would you take it?* not invalid. However, offer must still indicate availability of former (job) or comparable position. E's offer, in instant case, did not convey that there was job immediately available. Question put to Ee as to whether he would return to work if offered reinstatement does not present specific, unequivocal offer of reinstatement]

3350-1100 Misconduct during strike

3350-1133 Reinstatement not barred

3350-1133-5000 Minor acts of violence

Olympic Limousine Service, Inc. 278 NLRB No. 133

[Ee is entitled to reinstatement, notwithstanding he pled guilty to assault against supervisor at plant after he was unlawfully discharged, where assault was not pre-planned, action was provoked by supervisor screaming profanities at him and E had allowed other non-Ees to enter premises w/o questioning them and thus, conduct was not so egregious so as to deny him reinstatement]

3350-1133-7500 Other strikers' misconduct

Washington Materials, Inc., t/a Buffalo Concrete; et al. 276 NLRB No. 040
(E's refusal to reinstate striker, assertedly because he had participated in assault upon nonstriking Ee, violative, where striker was not actually involved in assault but rather simply told one of E's drivers who witnessed assault by another striker not to *get on the radio,* which was an ambiguous statement and could not show that striker acted in concert with striker engaged in serious misconduct)

3350-1167 Reinstatement barred

3350-1167-0400 Balancing of misconduct in light of ULPs

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. JD-(NY)-24-85
(Bd's traditional balancing test applied and E, while not required to reinstate discriminatorily discharged Ees, ordered to make them whole for back pay until they obtain substantially equivalent employment elsewhere, where U steward and son, immediately after their unlawful discharges which substantially provoked them, threatened company president with bodily harm; such reaction by Ees, instead of taking recourse to known legal remedies, was less justified as would be case with unsophisticated Ees; and any amicable relationship between parties, should Ees be reinstated, was improbable)

3350-1167-0900 Commission of crime

Olympic Limousine Service, Inc. 278 NLRB No. 133
[Ee is entitled to reinstatement, notwithstanding he pled guilty to assault against supervisor at plant after he was unlawfully discharged, where assault was not pre-planned, action was provoked by supervisor screaming profanities at him and E had allowed other non-Ees to enter premises w/o questioning them and thus, conduct was not so egregious so as to deny him reinstatement]

Pacific Mutual Door Company 278 NLRB No. 120
[economic striker's discharging weapon at plant entrance held to be serious strike misconduct which justified E's refusal to reinstate him]

3350-1167-3600 Damage to property or creating risk thereof

Pacific Mutual Door Company 278 NLRB No. 120
[economic striker's discharging weapon at plant entrance held to be serious strike misconduct which justified E's refusal to reinstate him]

Pacific Mutual Door Company 278 NLRB No. 120
[striker's attempting to slash tire on truck and attempting to slash at security guard until another guard pulled him away held serious strike misconduct which justified E's refusal to reinstate him]

3350-1167-6300 Picket line violence

Pacific Mutual Door Company 278 NLRB No. 120
[striker's attempting to slash tire on truck and attempting to slash at security guard until another guard pulled him away held serious strike misconduct which justified E's refusal to reinstate him]

General Teamsters Local No. 162 v. N.L.R.B. (Western Pacific Construction Materials Co.) 782 F.2d 839 (C.A. 9, Feb. 1986)
[Bd did not abuse its discretion in refusing to order reinstatement or award backpay to striker who was unlawfully discharged for alleged misconduct in which he did not in fact engage, but who later committed egregious acts of strike misconduct in forcing nonstriking Ee's car off road and twice physically assaulting and threatening non-striker]

3350-1167-8100 Threats of bodily harm and other threats

Fiber Glass Systems, Inc. 278 NLRB No. 154
[discriminatee's pointing pistol at Ee and threatening to kill him if he did not vote for U terminated entitlement to backpay and barred reinstatement]

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. JD-(NY)-24-85
(Bd's traditional balancing test applied and E, while not required to reinstate discriminatorily discharged Ees, ordered to make them whole for back pay until they obtain substantially equivalent employment elsewhere, where U steward and son, immediately after their unlawful discharges which substantially provoked them, threatened company president with bodily harm; such reaction by Ees, instead of taking recourse to known legal remedies, was less justified as would be case with unsophisticated Ees; and any amicable relationship between parties, should Ees be reinstated, was improbable)

3350-1500 Violations of other laws

Programming & Systems, Inc. 275 NLRB No. 157
(conventional reinstatement and backpay orders do not preclude respondent, in compliance stage of instant proceeding, from showing that it subsequently would have discharged Ees for lawful reasons of lack of qualifications under state law to hold position of teacher)

3350-1800 Commission of crime

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)
[undocumented aliens entitled to protection of Act and are entitled to backpay when remaining in U.S. and available for work during backpay period, notwithstanding illegal entry into U.S. and contention such illegal aliens suffered no harm since they were not legally entitled to work]

3350-2100 Falsification of employment application

Fiber Glass Systems, Inc. 278 NLRB No. 154
[discriminatee's lying about employment history on job applicatic.., which was brought out at hearing during cross-examination, not grounds for denying backpay and reinstatement, absent showing E would not have hired him but for reliance on false information]

John Cuneo, Inc. v. N.L.R.B. 792 F.2d 1181 (C.A. D.C., June 1986)
[remand to Bd to decide whether Ee forfeited permanent status with Respondent E, which status would effect his entitlement to backpay, when he deliberately misrepresented to Respondent on employment application that he was unemployed when in fact he was temporarily laid off at another E, and to determine what Respondent E must prove to show it would not have hired Ee had it known his true employment status]

3350-5300 Lack of vacancies

Coastside Scavenger Company 273 NLRB No. 198
(existence of temporary job is not equivalent of vacancy to which striker should have been reinstated)

Coastside Scavenger Company 273 NLRB No. 198
(temporary nature of job *is* critical factor in determining whether it is *substantially equivalent* to what position a striker had held)

3350-5900 Employee would have been discharged or laid off for nondiscriminatory reasons

Programming & Systems, Inc. 275 NLRB No. 157
(conventional reinstatement and backpay orders do not preclude respondent, in compliance stage of instant proceeding, from showing that it subsequently would have discharged Ees for lawful reasons of lack of qualifications under state law to hold position of teacher)

3350-6100 Misconduct constituting cause for discharge

Quality Rolls, Inc. JD-189-86
[burden for substantiating facts rendering discriminatees unfit for reinstatement because of misconduct is on party seeking to block reinstatement; while Bd does not condone serious Ee misconduct, it requires actual proof of such misconduct before denying reinstatement to unlawfully discharged Ees]

Quality Rolls, Inc. JD-189-86
[traditional remedy for discriminatory discharge withheld from Ee involved in leaving work early prior to end of shift and from fellow Ee who punched out departing Ee's time card so he could leave early; such misconduct transcends ordinary breaches of work responsibility, raises questions of basic integrity, and presents risk which no E should bear]

3350-7000 Unavailability of employee for work

3350-7025 Cannot be located

O.K. Machine & Tool Corp. And Gyrotronics, Inc. 279 NLRB No. 069
[E was under continuing obligation to reinstate Ee where Ee never received E's valid offer of reinstatement; backpay period ended on date E mailed Ee good-faith offer of reinstatement, but Ee did not recieve offer since he had moved leaving no forwarding address; while E's good faith offer tolled E's backpay liability, it did not relieve E of its obligation to reinstate Ee]

3350-8100 Employee has regular and substantially equivalent employment elsewhere

Aluminum Welding & Machine Works, Inc. 282 NLRB No. 062
[E's argument that economic striker was not entitled to reinstatement because he accepted regular and substantially equivalent employment elsewhere, rejected where E at no time sought to ascertain intention of economic striker concerning recall and striker's intention was shown by his unconditional offer to return to work and his appearance at E's facility when solicited regarding position in another department]

Lone Star Industries, Inc. 279 NLRB No. 078
[E's obvious failure to discharge its burden in establishing that Ee had obtained comparable employment as basis for excluding him from possible recall made E's action violative, since E disqualified for reinstatement those Ees it deemed on basis of *insufficient information* to have obtained comparable employment where basis was whether Ee was employed in *same type of job, with competitor,* but no further check as to wages, benefits, job assignments, etc.]

3350-9700 Waiver

3350-9700—Cont.

Woodline Motor Freight, Inc. 278 NLRB No. 152
[discriminatee did not waive right to reinstatement by his expressed intent to resign, but did not do so, where offer was invalid, inasmuch as descriminatee reasonably feared further discrimination should they return to E's employ, and were likely to change minds when presented with valid offer. Discriminatee does not waive reinstatement by his response to invalid offer]

3383 SPECIAL TYPES OF REINSTATEMENT ORDERS

3383-0900 Conditional orders

3383-0936 Conditioned on resumption of operations

Institute of Technical Careers, Inc.; Arthur J. Schuh, Trustee in Bankruptcy 279 NLRB No. 105
[since Respondent has ceased operations and filed ptn for bankruptcy under Chapter 7 of the Bankruptcy Code]

3383-0972 Conditioned on discriminatees' abandonment of competitive business

Power-Seal Corporation 276 NLRB No. 036
(E may condition reinstatement of one of discharged Ees on divestiture of his interest in competing business and may condition reinstatement of all Ees on divestitue by their father and husband, respectively, of his interest in competing business)

3383-1400 Reinstate economic strikers even though permanently replaced

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. 281 NLRB No. 117
[contrary to ALJ's recommendation that E be ordered to offer former economic strikers, wrongfully denied opportunity to form machine operating crew, preferential consideration for transfer to such jobs if they so desire, Bd ordered E to offer each Ee immediate transfer to opereting crew, displacing, if necessary, new Ees hired to form crew]

3383-2700 To plant or job other than discriminatee's former plant or job

3383-2709 At new plant where former plant closed

3383-2709-5000 With necessary traveling and moving expense

Strawsine Manufacturing Co., Inc., et al. 280 NLRB No. 063
[in case involving E's unlawful removal of operations to another state, E ordered to offer Ees who were terminated substantially equivalent positions at new facility or any of E's other plants, with traveling and moving expenses and backpay; further, backpay period for Ees who are unable to accept offers of employment that require moving is from date of termination to date Ees secures substantially equivalent employment with another E]

3383-2785 To steward's position

Orleans International, Inc. 274 NLRB No. 169
(E not required to recognize as steward upon his reinstatement, individual who had been U steward when he was unlawfully discharged, since E has no authority to designate steward; however, if U should select him as steward E obligated to recognize him as such)

3383-7700 Maintain offer for extended period of time

Sure-Tan, Inc., et al. v. N.L.R.B. ——U.S.——
(US S.CT, June 1984)
[circuit ct's modification of Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees, who had left the country rather than be deported, be held open for four years, reversed, since circuit ct had no justifiable basis for displacing Bd's discretionary judgment about proper time period for acceptance of the reinstatement offers; instead, circuit ct was required to remand case to Bd to consider alternative grounds on which ct believed the offers to have been deficient and to decide upon new forms for the reinstatement offers]

3900 PERSONS ENTITLED TO BACKPAY

3901 GENERALLY

N.L.R.B. v. Ironworkers, Local 480 ——U.S.——
(U.S. S.CT, May 1984)
[ct of appeals' decision modifying Bd's backpay order by limiting class of Ees to whom backpay may be awarded and prohibiting Bd from amending its backpay specification permitted by Bd regulations, reversed and remanded, since ct of appeals may not refuse to enforce backpay order merely because of Bd's delay subsequent to that order in formulating backpay specification; *Rutter-Rex* principles remain applicable, and by restricting beneficiaries of Bd's order for determining amount of backpay, ct of appeals' order punishes Ees for Bd's nonfeasance, which is forbidden by *Rutter-Rex*]

N.L.R.B. v. Ironworkers, Local 480 ——U.S.——
(U.S. S.CT, May 1984)
[in reversing and remanding ct of appeals' decision modifying Bd's backpay order by limiting class of Ees to whom backpay may be awarded and prohibiting Bd from amending its backpay specification, ct did not consider whether ct of appeals may modify its original order enforcing Bd's order on grounds that Bd's long delay in formulating backpay specification demonstrated futility of identifying discriminatees and in performing clacalations required by Bd's backpay formula, and that Bd's order was *punitive* and *confiscatory*; nor did ct foreclose challenges that might be raised in supplemental backpay proceedings]

Hacienda Hotel and Casino 279 NLRB No. 084
[backpay claimant should receive benefit of any doubt rather than E, the wrongdoer responsible for existence of any uncertainty and against whom any uncertainty must be resolved]

General Teamsters Local No. 162 v. N.L.R.B. (Western Pacific Construction Materials Co.) 782 F.2d 839 (C.A. 9, Feb. 1986)
[although reinstatement and backpay are conventional remedies ordered to redress unlawful discharge, Bd may withhold such remedies where they would not effectuate purpose of Act]

3908 EMPLOYEES TERMINATED PRIOR TO DATE OF EMPLOYER'S UNLAWFUL ACTION

Kimball's Motor Dispatch, Inc. and Henry A. Kimball, an Individual 274 NLRB No. 027
(Ee who was terminated prior to date E was held to have unlawfully failed to bargain with U over effects of its decision to close business held entitled to backpay, where Ee's termination was subject of court-enforced arbitration awarding him reinstatement and backpay and thus, he was an *employee* on date of E's discriminatory action)

3912 PROBATIONARY EMPLOYEE

A & T Manufacturing Company 280 NLRB No. 106
[unlawfully laid off probationary Ees held entitled to backpay for period from date of their layoff to date when all other probationary Ees were laid off, notwithstanding E's claimed rules permitting discharge of probationary Ees at any time w/o cause; whatever merit E's contention may have had during Bd and ct proceedings, it cannot be presently litigated since both Bd and ct held E unlawfully laid off Ees who, as probationary Ees, are protected under Act and under Bd order]

3925 UNSPECIFIED BUT SIMILARLY SITUATED DISCRIMINATEES

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 134
[recommendation that other unnamed U members whom U may have failed to refer due to intra-U political or protected activities be reimbursed for moneys lost, rejected, since Bd could not find that discriminatees constituted a class or that classwide discrimination occurred where intra-U political dissidents did not form a definite group identifiable by a single, quantifiable characteristic separating them from other Ees; referral system and policy were not shown to discriminate against dissidents]

Woodline Motor Freight, Inc. 278 NLRB No. 152
[discriminatee entitled to R/O notwithstanding GC did not seek reinstatement of discriminatee in C or at hearing, where consolidated C alleges that respondent *closed facility and terminated its Ees working there*. This allegation broad enought to encompass discriminatee since where there is discrimination against class of Ees, GC is not required to name every discriminatee at this stage of the proceeding. Respondent's contention may be addressed at compliance stage]

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)
(Bd's award of make-whole remedy to all nonmembers and traveler applicants injured by U's discriminatory operation of hiring hall as well as to named complainants found consistent with precedent for making such awards where specific evidence established a class of unnamed injured discriminatees; such class was established herein by introducing U's referral books, one for local U members and one for travelers and nonmembers, and testimony of U's assistant business agent and others supporting conclution of actual discrimination against such class)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)
(although GC's statistical evidence herein was not as sophisticated or revealing as that in case relied on as precedent for awarding make-whole remedy to a class injured by U's discriminatory operation of hiring hall, it was sufficient to justify Bd in finding that precedent controlling; U's use of two *out-of-work books*, one for local U members and one for travelers and non-

3925—Cont.

members, U's members-only sign outside hiring hall, its official's testimony about actual job assignments, and its award of emergency work to few travelers or nonmembers substantially supported finding of an injured class)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(U's contention that it was denied due process due to lack of reasonable notice of an identifiable or recognizable group of alleged discriminatees for whom redress was sought, rejected, where C alleged broad discrimination in hiring hall operations generally, not just as to named parties; also, Bd's relegating determination of discriminatees to compliance stage let U contest individual awards and compliance procedures, whereas, if finding of general discrimination were established but redress given only named individuals, collateral estoppel might bar U from relitigating discrimination issue as to unnamed members of the class)

3930 SUPERVISOR

Advertiser's Manufacturing Company 280 NLRB No. 128

[E to reinstate with backpay supervisor discharged solely because of her son's U activities]

3937 LIMITED TO EMPLOYEES WHOSE STATUS WAS LITIGATED AT HEARING

Local 426, Laborers (Joseph Brown, an Individual) 280 NLRB No. 074

[make-whole portion of remedy limited to charging party rather than extended to other nonmember applicants similarly discriminated against where record did not identify other nonmember applicants discriminated against in referral or otherwise]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124

[recommendation that other unnamed U members whom U may have failed to refer due to intra-U political or protected activities be reimbursed for moneys lost, rejected, since Bd could not find that discriminatees constituted a class or that classwide discrimination occurred where intra-U political dissidents did not form a definite group identifiable by a single, quantifiable characteristic separating them from other Ees; referral system and policy were not shown to discriminate against dissidents]

Woodline Motor Freight, Inc. 278 NLRB No. 152

[discriminatee entitled to R/O notwithstanding GC did not seek reinstatement of discriminatee in C or at hearing, where consolidated C alleges that respondent *closed facility and terminated its Ees working there.* This allegation broad enought to encompass discriminatee since where there is discrimination against class of Ees, GC is not required to name every discriminatee at this stage of the proceeding. Respondent's contention may be addressed at compliance stage]

3959 EMPLOYEES ON LEAVE STATUS

Hacienda Hotel and Casino 279 NLRB No. 084

[where E terminated discriminatee who had been reemployed pursuant to prior Bd order as enforced by ct, ALJ rejected E's contention that contract required it to terminate discriminatee because she accepted outside employment while on leave of absence, where E had not yet complied with original reinstatement order, and E's action was one more instance of E harassment of discriminatee]

3970 EMPLOYEES ORDERED REINSTATED

Greyhound Lines, Inc. 273 NLRB No. 180

(make-whole remedy precluded where Ee was disciplined for *just cause* (insubordination) notwithstanding Ee's *Weingarten* rights violated by E's policy of requiring U representative to remain silent during investigatory interview)

3979 EMPLOYEE DISCIPLINED FOLLOWING INVESTIGATORY INTERVIEW

Radisson Muehlebach Hotel 273 NLRB No. 183

(cease and desist order, rather than reinstatement and backpay orders appropriate remedy for dischargee where, although his *Weingarten* rights were violated, he was not discharged as result of the violative interview or for asserting his *Weingarten* rights, but for his own misconduct)

3982 LAID OFF EMPLOYEES

A & T Manufacturing Company 280 NLRB No. 106

[notwithstanding that department in which unlawfully laid off Ee worked had been eliminated and his former duties were being performed by shop leadman, Ee held entitled to back pay from date of layoff through first quarter of current year and, since Ee's backpay was continuing because E failed to offer him reinstatement to available labor job for which he was qualified, further amounts of backpay, beginning with second quarter of current year to date, to be determined in compliance proceeding]

A & T Manufacturing Company 280 NLRB No. 106

[claimant's backpay not tolled as of date of economic strike where at time of strike claimant was discriminatorily laid off Ee, making it impossible to ascertain whether he would have gone on strike absent E's prior discrimination, and such uncertainty must be resolved against E as wrongdoer]

Donald Dean d/b/a D.C. Construction Company 276 NLRB No. 087

(order requiring E to offer reinstatement and backpay to Ee unlawfully denied reemployment after lawful layoff held not subject to alteration where E had originally hired Ee, even though all vacancies at that time had been filled by referrals; and it was fair to assume E would exhibit same flexibility in connection with recall of Ee as whown upon his initial hire, were it not possessed of intent to discriminate)

3985 PERSONS DISCRIMINATORILY DENIED EMPLOYMENT

Electrical Workers, Local Union No. 2148 (Newberry Industrial, Inc.) 281 NLRB No. 111

[Ees found not entitled to backpay assertedly due to being unlawfully bypassed for referral from out-of-work list where, notwithstanding their equivocal or contrary testimony, evidence showed they would have rejected referrals due to job-related disadvantages they would have suffered by giving up their current employment to accept referrals]

J. D. Landscaping, Corp. 281 NLRB No. 004

[successor E to offer predecessor E's six most senior Ees, out of fifteen Ees not hired, employment and make them whole for discriminatorily refusing them employment due to U activities and to place rest of them on preferential hiring list for employment if work force expanded, and, if expansion occurred between events in case and compliance date, to offer predecessor's most senior Ee employment and make him whole, in all cases, discharging other Ees if necessary]

Local 426, Laborers (Joseph Brown, an Individual) 280 NLRB No. 074

[make-whole portion of remedy limited to charging party rather than extended to other nonmember applicants similarly discriminated against where record did not identify other nonmember applicants discriminated against in referral or otherwise]

Greyhound Taxi Co., Inc. 274 NLRB No. 060

(in determining whether unlawfully discharged Ee, who remained out of job market for over 5 years because of psychiatric condition claimed to be caused by E's ULPs, was entitled to backpay, Bd stated it did not know that it should be in business of making open-ended awards for disability in manner of ct in civil tort action)

3985-5000 Failure to use hiring hall

Southwestern Steel & Supply, Inc. 276 NLRB No. 174

(recommended backpay order clarified to cover specifically any Ee applicants who were denied opportunity to work for E because of E's unlawful refusal to continue using (U) hiring hall. Determination of whether or not such Ees exist left to compliance stage of proceeding)

3987 CASUAL EMPLOYEES

John Cuneo, Inc. 276 NLRB No. 012

(E's contentions that Ee was laid-off permanent Ee of another E at time of hire and was not entitled to backpay from date of recall by former E, and that Ee was on layoff status with that E and could only achieve temporary status with E, rejected; Ee's previous job history had no bearing on his entitlement to reinstatement and backpay)

3989 STRIKERS

Northwest Metal Products, Inc. 281 NLRB No. 156

[following remand of backpay case to ALJ to determine whether or not economic striker would have returned to work during strike, Bd affirmed ALJ's conclusion that E failed to establish that striker would have refused valid offer of reinstatement if it had been made during strike]

A & T Manufacturing Company 280 NLRB No. 106

[E may discipline or refuse to reinstate strikers by showing it had honest belief that they were guilty of strike misconduct of sever nature; and while nail strewing at E's facility is serious conduct justifying discharge of strikers who engaged in such conduct, fact that there are tacks on E's property with no evidence of responsibility on part of pickets does not constitute serious misconduct]

3995 FOREIGN NATIONALS OR RESIDENTS

Sure-Tan, Inc. and Sarak Leather Co. 277 NLRB No. 023

(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd, in accord with S.Ct's opn, held that it may not order minimum backpay award, as prescribed by ct of appeals, w/o specific regard to discriminatees' economic losses or legal availability for work; accordingly, Bd deleted provision in question from its supplemental order)

3995—Cont.

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023
(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate order pertaining to deported undocumented alien discriminatees, Bd made order subject to condition that before awarding backpay, Bd determine whether any of the discriminatees were lawfully available for employment during backpay period between date of their illegal discharges and date E mailed valid offers of reinstatement)

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023
(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd tolled e's backpay from date valid reinstatement offers are mailed to discriminatees, and provided that Bd will order hearing to determine backpay liability shortly after offers are made and that E will place in escrow money sufficient to satisfy its potential backpay liability for Ees who do not appear at hearing, but such money will be refunded if discriminatee has not been located w/i 1 year)

3999 OTHERS

Greyhound Taxi Co., Inc. 274 NLRB No. 060
(where Ee's pay consisted of contractual pay rate plus additional amount and E reduced latter amount, such amount included in backpay, notwithstanding E's contention that additional amount should be discontinued because Ee accepted reinstatement at contractual wage rate; aside from fact that Ee's reinstatement was previously found to have been to more onerous shift and was made after Ee rejected discriminatory reinstatement offer, there was no indication that Ee intended to waive his right to have his pay set on basis of nondiscriminatory criteria)

4400 BACKPAY ORDERS

4401 GENERALLY

N.L.R.B. v. Ironworkers, Local 480 ——U.S.—— (U.S. S.CT, May 1984)
[ct of appeals' decision modifying Bd's backpay order by limiting class of Ees to whom backpay may be awarded and prohibiting Bd from amending its backpay specification permitted by Bd regulations, reversed and remanded, since ct of appeals may not refuse to enforce backpay order merely because of Bd's delay subsequent to that order in formulating backpay specification; *Rutter-Rex* principles remain applicable, and by restricting beneficiaries of Bd's order for determining amount of backpay, ct of appeals' order punishes Ees for Bd's nonfeasance, which is forbidden by *Rutter-Rex*]

N.L.R.B. v. Ironworkers, Local 480 ——U.S—— (U.S. S.CT, May 1984)
[in reversing and remanding ct of appeals' decision modifying Bd's backpay order by limiting class of Ees to whom backpay may be awarded and prohibiting Bd from amending its backpay specification, ct did not consider whether ct of appeals may modify its original order enforcing Bd's order on grounds that Bd's long delay in formulating backpay specification demonstrated futility of identifying discriminatees and in performing claculations required by Bd's backpay formula, and that Bd's order was *punitive* and *confiscatory*; nor did ct foreclose challenges that might be raised in supplemental backpay proceedings]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[GC required only to demonstrate that backpay claimant was discharged pursuant to E's unlawful, unilaterally promulgated disciplinary work rules, and if that was shown, burden shifted to E to demonstrate that prior to rules promulgation its supervisors discharged or disciplined Ees for similar conduct, which GC may rebut by variety of means, including that E inconsistently implemented its disciplinary practices]

Midwest Motel Management Corp. of Birmingham 278 NLRB No. 060
[backpay order should stand unless it can be shown that it is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of Act]

Daniel Construction Company, A Division of Daniel International Corporation 276 NLRB No. 115
(E's responsibility to offer to reinstate unlawfully discharged Ees and to make them whole for losses does not terminate in event Ees obtain substantially equivalent employment elsewhere; fact that E lost maintenance and construction contract at location where Ees were discharged does not terminate backpay liability upon Ees' obtaining equivalent employment where E demonstrated it could transfer Ees, not hired by replacement contractor, to other operations)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(precision is not required in backpay computation; it is only essential that rational basis exist for the computation)

4410 LIMITED BACKPAY ORDER

Challenge-Cook Brothers of Ohio, Inc. 282 NLRB No. 002
[in requiring E to bargain with U over effects of its decision to relocate portion of its operation and to consolidate it with existing operation at another location, Bd accompanied such order with limited backpay requirement designed to make whole Ees for losses sustained and to recreate in some practicable manner situation in which parties' bargaining position was not entirely devoid of economic consequences for E; accordingly, backpay ordered in manner similar to that required in *Trans-Marine Navigation Corp.*, 170 NLRB 389]

Interdel, Inc. 281 NLRB No. 088
[where U requested and E failed and refused to negotiate regarding effects of E's closing of its facility on Ees in unit, Bd provided for payment of limited backpay as is customary in cases where Bd has found only an *effects-bargaining* violation]

Handy Spot, Inc. 279 NLRB No. 177
[in ordering E to bargain over effects of its decision to subcontract unit work, Bd accompanied order with limited backpay requirement designed to both make whole Ees for losses suffered as result of violation and to recreate in some practicable manner situation in which parties' bargaining position is not entirely devoid of economic consequences for E; accordingly, Bd required E to pay backpay to its Ees in manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 1968]

The Cross Company 274 NLRB No. 065
(limited backpay remedy for E's failure to bargain over effects of plant closing to assure meaningful bargaining inappropriate where all Ees had been laid off eleven months when E closed the plant and donated it to the city; U was already devoid of economic strength at time of closure and subsequent requests to bargain)

Everett Yacht Club JD-(SF)-115-85
(E ordered to bargain with U concerning effects of subcontracting on its Ees and to meet limited backpay requirement both to make whole Ees for losses suffered as result of E's ULP and to recreate in practicable manner situation in which parties' positions are not entirely devoid of economic consequences for E. Sum paid shall never exceed amount Ee would have earned from date on which E subcontracted work to time Ees secured equivalent employment elsewhere, or date E shall have offered to bargain, whichever occurs sooner, provided that sum will not be less than Ees would have earned for 2-week period at rate of their normal wages when last in E's employ)

4412 SUCCESSORS

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. 280 NLRB No. 146
[successor E had no obligation to reinstate or pay discriminatees backpay since it had no knowledge of ULP litigation before Bd involving discriminatees when it purchased and took over predecessor's business]

4415 TRUSTEE OR DEBTOR IN BANKRUPTCY

4415 TRUSTEE OR DEBTOR IN BANKRUPTCY

Institute of Technical Careers, Inc.; Arthur J. Schuh, Trustee in Bankruptcy 279 NLRB No. 105
[summary judgment on backpay specification denied, since no prior Bd order or ct decree awarding backpay has issued in instant case]

Edward Cooper Painting, and Cooper and Cooper Painting, An Alter Ego 273 NLRB No. 224
(Respondent Corporation required to enforce terms and conditions of applicable (labor) contract only until date on which Respondent Corporation filed its ptn for bankruptcy. See *NLRB v. Bildisco & Bildisco*, 104 S.Ct. 1188 (1984). Contractual backpay remedy, awarded by Bd, fully restores status quo prior to filing of bankruptcy ptn)

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)
[Bd's determination that E in bankruptcy owed backpay to its former Ees held excepted from automatic stay by operation of 362(b)(4) of Bankruptcy Act; accordingly, *entry* of money judgment affirmed but not *enforced*, since governmental units are allowed to fix amount of penalties up to and including entry of moeny judgment, and only attempts to enforce money judgments are subject to automatic stay]

Wheeling-Pittsburgh Steel Corporation, et al. v. Pennsylvania Human Relations Commission, et al. ——— F.2d ——— (BC W.D. PA, Aug. 1986)
[in denying injunctive relief to stay proceedings of Bd and other government agencies against debtor in bankruptcy, ct held that, as long as agencies are not attempting to enforce any money judgments against debtor, Bankruptcy Act permits agencies to seek to obtain judgments against debtor for backpay and back benefits and to enforce back to work orders]

4416 ASSIGNEE FOR BENEFIT OF CREDITORS

Hillcrest Packing Co., Inc. Larry Waslow, Assignee and Gold Star Meat Packers, Inc. JD-331-85
[Respondent's Assignee for benefit of creditors liable for backpay to same extent trustee in bankruptcy would be liable in same situation. But assignee

4416—Cont.

not held alter ego or successor E since not given full authority to operate business and exercise all powers necessary to administration of business]

4417 JOINT BACKPAY LIABILITY

4417-1400 Joint employers

Leeds Cablevision, Inc. and Cablevision Company, Inc. **277 NLRB No. 014**

(Respondent, (joint E) grant retroactive (wage) increases (to Ees of *Leeds*) that conform to increases given to similarly classified *cablevision* Ees who received comparable evaluations rather than ALJ's recommended remedy granting *Leeds* Ees retroactive increases not less than average wage increases granted to *Cablevision Ees, since remedy recommended was too broad)*

M. L. Witcher Communications Construction Company, Inc. and Manna Steel Corporation, Joint Employers **JD-74-86**

[joint Es jointly and severally responsible for continuing fringe benefits where both (Es) violated Section 8(a)(5) for unilaterally ceasing such payments]

Carrier Corporation v. N.L.R.B. **768 F.2d 778 (C.A. 6, July 1985)**

]*one of joint Es* not jointly liable with *other joint E* for latter's ULPs (removing terminal where leased drivers partook in U activity) since evidence did not demonstrate that former *knowingly participated* in effectuation of latter's ULPs)

4417-2500 Predecessor and/or successor employers

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center **281 NLRB No. 052**

[predecessor and successor jointly and severally liable for backpay and interest pursuant to consent decree approved by ct of appeals to abide by arbitration award]

Leon Arie Edrich and Ignatius Elefant, Co-Partners d/b/a Sanford Home For Adults, Successor, et al. (Local 6, International Federation of Health Professionals, Longshoremen) **280 NLRB No. 140**

[joint and several liability for predecessor and successor Es for all backpay and other monies due to discriminatees, since predecessor and successor E, collectively called Respondent E were guilty of various ULPs]

Mediterranean Diner, Inc., t/a Bay Diner, Inc., and New Bay Diner, Inc., t/a Mediterranean Lounge **279 NLRB No. 077**

[predecessor and successor Es held jointly and severally liable to discriminatees where successor, prior to purchase, had full knowledge of pending ULP proceedings and protected its economic interest with contractual escrow or indemnification clauses]

Howard R. Singer and Michael E. Davis, A Partnership and /or Howard R. Singer d/b/a Howard R, Singer Legal Services and/or David D. DeAngelis **JD-207-86**

[predecessor E and both successor Es jointly and severally liable where both consecutive successors admitted actual notice of pending ULP proceedings against predecesaor, and second successor failed to satisfy burden of demonstrating lack of knowledge, as he did not testify or call any witness to testify, put only one limited and unhelpful question to successor E preceding him, and must be charged with knowledge of finding of predecessor's violation during 5 months of employment with firm]

4417-2800 Successor employers

Trucking Water Air Corporation **276 NLRB No. 158**

(successor E jointly and severally liable for pension and health and welfare fund payments that predecessor E was previously ordered by the Bd to make)

4417-4900 Multi-employer association and individual employer members

N.L.R.B. v. Southern Florida Hotel and Motel Association, et al. **751 F.2d 1571 (C.A. 11, Feb. 1985)**

(Es' contention that E association should share responsibility for backpay of unlawfully discharged returning economic strikers, because, as Bd found, association's lawyer incorrectly told Es that they were entitled to lay off any Ee they regarded as unqualified -- thus including returning strikers -- rejected, since Es had made a promise to the U to the contrary to induce U to agree on contract and were more culpable than association since, Es, not association, had shown anti-U animus that underscored their selection of strikers as unqualified)

4417-5600 Employer and alter ego

Las Villas Produce, Inc. and Carmelo P. Caldero, Individually **279 NLRB No. 120**

[full backpay liability imposed on individual whose alter ego status was proven]

Hillcrest Packing Co., Inc. Larry Weslow, Assignee and Gold Star Meat Packers, Inc. **JD-331-86**

[E, engaged in meat packing and processing, which was incorporated to effect change of name, and minimize damage to Respondent's reputation after its suppliers were convicted of shipping diseased cancerous meat, held alter ego of Respondent and liable for backpay, where it engaged in same operations at same facility, provided essentially same services to same customers, with substantially same management, supervision, and where sole owner of Respondent owned 50% of purported alter ego, and made most decisions regarding business of purported alter ego]

N.L.R.B. v. Dane County Dairy, et al. **795 F.2d 1313 (C.A. 7, July 1986)**

[alter ego company may be held derivatively liable for backpay obligation of company committing ULP; similarly, personal liability has been imposed where owner and chief operating officer of one E closed it and commenced doing business in name of new entity to avoid effects of Act or of labor contract]

4417-8400 Employer and union

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) **794 F.2d 420 (C.A. 9, July 1986)**

[E and U are jointly and proportionately liable for backpay when E has caused damage by wrongfully discharging Ee and U has increased that damage by breaching its duty of fair representation. The E for backpay from date of wrongful termination to date Ee would have been reinstated had U not breached its duty, and U for backpay thereafter]

4417-8425 Jointly and severally liable

James Naderlander d/b/a Nad West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 080**

(E held jointly and severally liable with U for reimbursing Ees for U dues, fees and assessments paid to U, notwithstanding that E had sent money it had withheld from Ees' paychecks to U, where E had unlawfully entered into and maintained U security contract with U, told Ee he would be terminated if he did not permit E to withhold U assessments from his wages, as provided in contract with U; and withheld U assessments from Ees' paychecks pursuant to contract w/o any authorization from them)

M. W. Kellogg Constructors, Inc. **273 NLRB No. 134**

(U jointly and severally liable with E for loss of earnings and benefits travelers suffered as result of E's discrimination against them in assignment of unscheduled overtime and selection for layoff caused by U)

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 **776 F.2d 745 (C.A. 7, Nov. 1985)**

[ct upheld Bd's retroactive application of new rule since the balancing test: the desirable effects of the new rule against possible unfairness by litigants, comes out in *favor* of upholding retroactive application of Bd's new rule on superseniority]

4433 COMPUTATION OF AMOUNT OF BACKPAY

Mid-State Distributing Co., Inc. **276 NLRB No. 172**

(discriminatorily terminated driver's helper held entitled to backpay based on wage rate received by helper preferentially rehired as relief driver at hourly wage rate plus commission, since backpay claimant, by virtue of being at top of seniority list, should have been rehired as relief driver instead of preferentially rehired helper; however, such rate not applicable to remaining terminated helpers who are entitled to backpay at rate they would have received had they not been terminated)

4433-0100 Generally

Searle Auto Glass, Inc. d/b/a Best Glass Company **280 NLRB No. 159**

[finding of ULP presumptive proof that some backpay is owed]

A & T Manufacturing Company **280 NLRB No. 106**

[in backpay proceeding, GC's sole burden is to show gross amounts of backpay due, with burden of proving any mitigation of damages being on E; and any uncertainty is resolved against wrongdoer who made certainty impossible]

Hacienda Hotel and Casino **279 NLRB No. 084**

[any backpay formula which approximates what discriminatees would have earned had they not been discriminated against is acceptable if it is not unreasonable or arbitrary in the circumstances; formula should be representative of discriminatee's employment history and take into account intermittency of employment; and where awards may be only close approximations,

4433-0100—Cont.

Bd may adopt formulas reasonably designed to produce such approximations]

Hacienda Hotel and Casino 279 NLRB No. 084
[in backpay proceeding ALJ has job of considering whether GC's backpay formula is proper one in view of all facts adduced by parties, and of making recommendations to Bd as to most accurate method of determining backpay]

Hacienda Hotel and Casino 279 NLRB No. 084
[overall objective in selecting backpay formula is to restore discriminatee, as accurately as possible, to economic position enjoyed, absent discrimination, during entire backpay period, and time period preceding discrimination is the one ordinarily utilized by Bd]

Midwest Motel Management Corp. of Birmingham 278 NLRB No. 060
[with regard to computation of amount of backpay due, Congress made relation of remedy to policy an administrative matter, subject to limited judicial review, and chose Bd as its agent for the purpose]

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(E-local's contention that backpay specification amounts were so excessive as to force local into bankruptcy, rejected; although substantial, amounts were computed on reasonable and appropriate basis and were not discriminatees' private claims but result of calculations made under RD's direction; they reflected discriminatees' losses resulting from ULPs and many advantages of employment with local, loss of which increased impact of discrimination; and local as perpetrator of ULPs must bear risk of delay resulting from its postponement of compliance pending further litigation)

Iron Workers Local 118 (Waldo F. Kusterns) v. N.L.R.B. 804 F.2d 1100 (C.A. 9, Nov. 1986)
[where Bd has established ULP and amount of back pay due Ee, burden is on respondent to produce evidence to mitigate its liability; this burden may be satisfied by establishing that Ee has received other earnings or that Ee has willfully incurred losses by, e.g., taking himself out of labor market]

4433-1400 Method of determining what employee would have earned

4433-1410 Employee's earnings prior to discrimination

Hacienda Hotel and Casino 279 NLRB No. 084
[ALJ properly computed backpay on basis of 5-day, rather than 4-day, week claimed by E where, although Ee normally signed out early and worked only 5 hours one day a week, it was not shown that discriminatee was not paid 8-hour daily rate called for by contract, and such rate was also alleged in backpay specification which was admitted by E against whom all doubts must be resolved as wrongdoer for existence of any uncertainty]

Hacienda Hotel and Casino 279 NLRB No. 084
[where discriminatee was regularly scheduled to work 80 hour shifts on 4 days and normally signed out early on 1 day a week after working 5 hours, Bd held discriminatee's daily rate of pay and amount owed to discriminatee's pension account were properly based on 37-hour, rather than 40-hour, week, since discriminatee was paid only for hours worked, and contract provided that Ees voluntarily leaving work early were to be paid only for time worked]

Hacienda Hotel and Casino 279 NLRB No. 084
[year in which discriminatee was found by Bd in earlier decision to have been first discriminated against held not *normal* period and therefore not used as basis in computing backpay; similarly, year in which earlier decision disclosed discriminatee was terminated and later reinstated on 2 occasions was not *normal* period]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. 279 NLRB No. 069
[average monthly earnings of discriminatees during year prior to their termination held proper formula]

Howard R. Singer and Michael E. Davis, A Partnership and /or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis JD-207-86
[Ee's backpay rate and insurance benefits based on secretaries' remuneration, rather than on remuneration in her prior position, where her job was phased out and she had been transferred to secretarial work prior to discharge for U activities]

Mashkin Freight Lines, Inc. and Bari Leasing, Inc. JD-(NY)-22-86
[where E had destroyed all records that could have been used to accurately determine amount of backpay owed, GC's formula using last known representative year as basis for all Ees' earnings and applying yearly contractual raises in wages and benefits Ees would have earned, was proper]

St. Mary's Home, Inc. t/a St. Mary's Infant Home JD-285-85
(E's argument for less backpay than shown in backpay specification rejected where E chose as model period an extraordinary one in which claimants were often absent due to illness and did not submit computation of their or other Ees' work experience over a significant number of years)

Sims-Luse Olds, Buick, Pontiac, GMC Trucks, Inc. JD-247-85
(basis for determining gross backpay was period of approximately three quarters duration, rather than shorter periods as urged by GC and E, where former period was more appropriate for judging hours Ee would normally have worked had he not been discharged)

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeland Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)
[Bd's use of hours individual discriminatees had worked in past years, rather than hours worked by hypothetical average worker, appropriate where latter figure would be distorted due to fact that many workers on hiring hall rolls worked for few hours on annual basis; Bd's choice of different base years for computing backpay of each of the individual discriminiatnes appropriate also, since Bd had rational basis for doing so]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeline Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)
(Bd's use of hours individual discriminatees had worked in past years, rather than hours worked by hypothetical average worker, appropriate where latter figure would be distorted due to fact that many workers on hiring hall rolls worked for few hours on annual basis; Bd's choice of different base years for computing backpay of each of the individual discriminatees appropriate also, since Bd had rational basis for doing so)

Food & Commercial Workers, Local No. 304A v. N.L.R.B. 772 F.2d 421 (C.A. 8, Aug. 1985)
(in making whole Ees who were unlawfully denied wage increases, Bd did not order E to restore wage differential to ensure that Ees would earn same percent more than their fellow Ees, since Bd's order places Ees in same position they would have been but for E's unlawful conduct)

4433-1420 Earnings of comparable employee during backpay period

Sourie Auto Glass, Inc. d/b/a Best Glass Company 280 NLRB No. 199
[*representative employee* formula rather than formula computing discriminatee's pretermination work hours as percentage of total work hours available, appropriate where representative Ees relied on by GC were in fact representative of hours discriminatee worked and earnings he would probably have made absent termination; and use of successive representative Ees was appropriate in view of termination and replacement of first representative Ee by second representative Ee and termination and replacement of second representative Ee by third one]

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096
(E's pay raises granted Ees during discriminatee's backpay period held properly computed for inclusion in discriminatee's backpay by use of comparable Ee where latter received no preferential treatment on basis of unique skill and efficiency, and E failed to select any of its Ees as being more comparable to discriminatee)

Overseas Motors, Inc. 277 NLRB No. 061
(use of *master* mechanic as representative Ee for discriminatee who was only *specialty* mechanic and considered lower rated than master mechanic, proper, where E considered discriminatee good mechanic who made equal or more money than master mechanic, other specialty mechanics not considered good mechanics by E and master mechanic was employed throughout base period and backpay period)

C-F Air Freight, Inc. 276 NLRB No. 062
(backpay specification which included comparable increases in wages that other Ees, similarly situated, received, found reasonable)

Hinz Store Fixtures & Construction Co., Inc. JD-(SF)-97-86
[gross backpay formula of product of highest number of hours worked by any Ee less senior than discriminatee and applicable contractual hourly wage rate, reasonable where employment with E was based on plant-wide seniority subject to Ee's ability to perform, and Ee had achieved seniority and concededly possessed requisite skills; contention that formula should be limited to inside work, because discriminatee was incapable of performing outside work and of getting along with Ees performing it, rejected absent evidence of incapacity or of reprimand or counseling for latter]

Howard R. Singer and Michael E. Davis, A Partnership and /or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis JD-207-86
[Ee's backpay rate and insurance benefits based on secretaries' remuneration, rather than on remuneration in her prior position, where her job was phased out and she had been transferred to secretarial work prior to discharge for U activities]

4433-1420—Cont.

Local 1134, Laborers (Southern Illinois Builders Association) **JD-179-86**
[backpay for discriminatee, unlawfully refused referal by U, properly computed on basis of U's weekly referral lists used for determining when Ee, lower on referral list than discriminatee, was referred and computing amounts discriminatee would have earned had he been referred in nondiscriminatory manner]

4433-1430 Earnings of replacement during backpay period

Chem Fab Corporation **275 NLRB No. 6**
(Bd agent's use of layoff and recall dates of Ee who had succeeded discriminatee in second position as to seniority in his job classification accepted as rational basis for approximating discriminatee's backpay period where E had selected lowest paid Ees in job classification in department for layoff first, discriminatee's replacement was in approximately same labor grade as he, and discriminatee had less plant seniority, but more departmental seniority, than replacement)

Allied Riggers, Inc. **JD-41-85**
(computation of discriminatee's backpay based on earnings replacement during backpay period and which included replacement's earnings not only at completed project at which discriminatee worked but replacement's earnings at later jobs)

4433-1435 Earnings of representative employee group

Local Union No. 277, Painters (Polis Wallcovering Co. et al.) **282 NLRB No. 060**
[in determining backpay of Ees engaged in wallcovering work, Bd applied construction industry standard rather than production industry standard, and eliminated artificial increase in Ees' estimated hours caused by exclusion of paperhangers with referrals below 60 percent of total average; average number of hours for backpay period should be calculated by dividing total hours worked by all paperhangers having at least one referral by total number of those paperhangers]

Searle Auto Glass, Inc. d/b/a Best Glass Company **280 NLRB No. 159**
[*representative employee* formula rather than formula computing discriminatee's pretermination work hours as percentage of total work hours available, appropriate where representative Ees relied on by GC were in fact representative of hours discriminatee worked and earnings he would probably have made absent termination; and use of successive representative Ees was appropriate in view of termination and replacement of first representative Ee by second representative Ee and termination and replacement of second representative Ee by third one]

4433-1440 Employee's rate of absenteeism prior to discrimination to be considered

Hacienda Hotel and Casino **279 NLRB No. 084**
[in adopting ALJ's ruling in backpay proceeding that E had not shown that backpay calculations should be adjusted to account for discriminatee's absence rate, Bd did not rely on ALJ's finding that specified years, preceding Bd's earlier decision finding unlawful termination of discriminatee, were too remote in time to consider in determining discriminatee's absence rate]

4433-1440-8000 Except when due to specific illness

Greyhound Taxi Co., Inc. **274 NLRB No. 060**
(GC's, rather than E's, backpay formula held most nearly to approximate discriminatee's lost earnings; although GC's formula inaccurately determined that discriminatee was in fact available for employment during entire period of unemployment, such assumption did not render GC's formula invalid since unavailability for employment could be ascertained and would result in reduction of backpay amount; by contrast, E's formula, based on projection of discriminatee's past attendance record through periods of unemployment, could unduly penalize either E or discriminatee)

4433-1470 Terms and conditions of employment in unlawfully terminated or expired contract

Mashkin Freight Lines, Inc. and Bari Leasing, Inc. **JD-(NY)-22-86**
[where E had destroyed all records that could have been used to accurately determine amount of backpay owed, GC's formula using last known representative year as basis for all Ees' earnings and applying yearly contractual raises in wages and benefits Ees would have earned, was proper]

4433-1480 Pay raise which employee would have received absent discrimination

AVI Graphics, Inc. d/b/a Manhattan Graphic Productions **282 NLRB No. 051**
[no valid offer of reinstatement where discriminatee reinstated at predischarge salary rather than salary that would have incorporated general wage increase given to all Ees during backpay period and which Ee would have received but for discriminatory discharge, and such pay raise included in backpay determination]

Kawasaki Motors Corporation, U.S.A. **282 NLRB No. 028**
[discriminatee entitled to higher rate of pay where he would have obtained promotion based on seniority and experience]

IMCO/International Measurement & Control Company, Inc. **277 NLRB No. 096**
(discriminatee held entitled to pay raises she would have received during her interim period between her layoff and reinstatement)

IMCO/International Measurement & Control Company, Inc. **277 NLRB No. 096**
(E's refusal to pay reinstated discriminatee pay rate which included general raises granted Ees during discriminatee's interim backpay period constituted failure to make valid reinstatement offer; and since, E's offer set discriminatee's wage rate at amount less than that to which she was entitled, her acceptance of offer did not toll E's backpay liability; accordingly, E required to pay discriminatee, in addition to interim backpay, difference between actual rate of pay following return to work and rate which she should have received)

IMCO/International Measurement & Control Company, Inc. **277 NLRB No. 096**
(E's pay raises granted Ees during discriminatee's backpay period held properly computed for inclusion in discriminatee's backpay by use of comparable Ee where latter received no preferential treatment on basis of unique skill and efficiency, and E failed to select any of its Ees as being more comparable to discriminatee)

IMCO/International Measurement & Control Company, Inc. **277 NLRB No. 096**
(E's pay raises granted Ees during discriminatee's interim backpay period held properly included in discriminatees' backpay, notwithstanding Ee's contention that pay raises were justified for its present Ees because they were more skilled, efficient, and valuable than discriminatees, since latter may have developed same skill and efficiency if they had remained employed, and present Ees received no training outside plant and only about half of them was employed at time of discriminatees' layoff)

4433-1485 Overtime pay which employee would have received absent discrimination

AVI Graphics, Inc. d/b/a Manhattan Graphic Productions **282 NLRB No. 051**
[overtime worked during predischarge period not used as criteria for figuring amount of overtime Ee would have worked during backpay period because new equipment sharply reduced available overtime]

Daniel Construction Company, A Division of Daniel International Corporation **276 NLRB No. 113**
(E required to pay discriminatee amount reflecting what he would have earned had he been employed by contractor who took over after E's contract expired and worked same number of overtime hours as average Ee in his class)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) **274 NLRB No. 130**
(where discriminatee worked overtime but was not specifically paid for it, ovetime compensation allowed where replacement Ee was paid for overtime, and there was no evidence that discriminatee would not similarly have performed and been paid for overtime work if she had not been unlawfully discharged)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) **274 NLRB No. 130**
(discriminatee's overtime compensation computed by multiplying applicable overtime hourly rate by average of overtime worked by discriminatee's replacement; where data for overtime actually worked is not available, overtime compensation is estimated by projecting average from preceding quarter)

4433-1490 Determination of which employees would have been terminated or laid off for nondiscriminatory reasons

4433-1490-3300 Based on employer's past practice

Hinz Store Fixtures & Construction Co., Inc. **JD-(SF)-97-86**
[gross backpay formula of product of highest number of hours worked by any Ee less senior than discriminatee and applicable contractual hourly wage rate, reasonable where employment with E was based on plant-wide seniority subject to Ee's ability to perform, and Ee had achieved seniority and concededly possessed requisite skills; contention that formula should be limited to inside work, because discriminatee was incapable of performing outside work and of getting along with Ees performing it, rejected absent evidence of incapacity or of reprimand or counseling for latter]

4433-1495 Proportional; based on relationship that existed between employees' wages and average hourly earnings of employees working for manufacturers (BLS)

Overseas Motors, Inc. **277 NLRB No. 061**
(use of one week as base period for determining ratio of wages between discriminatee who was *specialty* mechanic and representative Ee who was

4433-1495—Cont.

master mechanic, proper, as week selected was both proximate and prior to E's unlawful conduct and was week E equated their wages for purely business reasons)

4433-2800 Gross backpay

Midwest Motel Management Corp. of Birmingham **278 NLRB No. 060**
[while GC has burden to establish reasonableness and accuracy of its calculation of gross backpay amount, burden of proof with respect to E's affirmative defense rests upon it as original wrongdoer to demonstrate affirmatively that discriminatee has failed to make reasonable effort to find interim employment; and discriminatee is held only to reasonable exertion in such regard and not to standard of highest diligence]

4433-2833 Items included

4433-2833-1800 Free or reduced rental on company housing

Mario Milevoi and Lucia Milevoi, Joint Owners **JD-(NY)-39-86**
[rental value of discriminatees' use of rent-free or reduced rent apartment from E must be figured in as part of Ee's wages]

Washington Beef Producers **JD-(SF)-86**
[where backpay claimant, who had been receiving rent-free use of home supplied by E, but following claimant's job transfer before his discharge, a $200.00 rent for home having market value of $300.00 was assessed against him for which $100.00 a month was deducted from his pay check, ALJ held that the only benefit which should be included in backpay award was $100.00 per month which represented excess of market value of home over rental fee E charged claimant]

4433-2833-2700 Bonuses

Sahara Datsun, Inc. **278 NLRB No. 148**
[Ees to be reimbursed with interest for earnings lost as result of discontinuation of various weekly bonuses]

Davis Coal Company Debtor-In-Possession **275 NLRB No. 102**
(bonuses excluded from gross backpay where E paid no bonuses to any Ees during backpay period and that decision was attributable to E's poor financial condition that eventually resulted in cessation of business and filing of bankruptcy ptn; further, to order payment of bonuses would put discriminatees in better position than they would have been absent ULP and thus, would exceed Bd's remedial authority)

4433-2833-3200 Tips

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[discriminatees' records of prior tips appropriate basis for projecting tip income during backpay period, notwithstanding discrepancy with smaller amounts reported on income tax returns, in view of discriminatees' demeanor, existence of tip entries at time of GC's contact, and adherence to testimony about tips despite possible prosecution for perjury or income tax evasion; also E's failure to produce gross sales receipts prevented checking tip estimates against percentage of sales, and E's production of records of food, w/o non-food, sales and tips reports prepared by its payroll service were insufficient to disturb ALJ's conclusions

Hacienda Hotel and Casino **279 NLRB No. 084**
[ALJ's formula for calculating tip income of unlawfully discharged waitress held neither unreasonable nor arbitrary, where ALJ based claculation on credited testimony of discriminatee and of similarly situated waitresses in E's employ, and found amount alleged in specification reasonable approximation of amount of tips received by discriminatee, notwithstanding E's contention that amount should be limited to understated amount of tips declared on her income tax return and that highest amount should not exceed average tip income received by other waitresses]

Hacienda Hotel and Casino **279 NLRB No. 084**
[tip income not limited to understated amount reported on discriminatee's Federal income tax return, and ALJ's computation based on other considerations held proper; while not condoning discriminatee's action and not unmindful of other considerations, Bd held its responsibility was to restore discriminatee as accurately as possible to former economic position in absence of discrimination; matter was now of public record and best left to IRS which was being furnished copy of decision herein; and to base computation on reported income would allow E as wrongdoer to benefit from inaccurate reporting to IRS]

Niagara Falls Sightseeing By Sheridan, Inc. **279 NLRB No. 007**
[discriminatee's record of tips received while employed as summer tour guide proper basis for estimating portion of backpay ascribed to tips where he had kept daily record of activities and tips, and E's claim that tips were exaggerated was based solely on knowledge of the business and social conversations with Ees before hearing w/o direct observation of tips earned or attempt to discredit Ee's record]

4433-2833-3800 Pension benefits

Searle Auto Glass, Inc. d/b/a Best Glass Company **280 NLRB No. 159**
[E to pay U pension trust fund contribution for discriminatee until date when its relationship with U ended, since that was prior to termination of discriminatee]

4433-2833-4500 Retirement fund payments

December 12, Inc.; December 12, Inc. of Nevada **282 NLRB No. 077**
[E liable for U's pension trust fund payments notwithstanding it had not signed any agreement with U, since Ees enter into contracts with radio and TV producers, rather than E and TV and/or videotape performances and the reuse and residual payments related thereto were incident to backpay claimants' employ and trust fund contributions were benefit related to his employment, E obligated to pay such amounts]

4433-2833-5000 Overtime premiums

Barkman Contracting, Inc. **276 NLRB No. 112**
(backpay not awarded to two discriminatees for particular quarter, since specification did not claim such. GC's mtn at hearing, to amend pleadings to conform to proof was insufficient to affect an amendment to specification. Moreover, (backpay) matter for these Ees was *not fully litigated* at hearing)

4433-2833-5500 Wage increase or decrease

IMCO/International Measurement & Control Company, Inc. **277 NLRB No. 096**
(E's refusal to pay reinstated discriminatee pay rate which included general raises granted Ees during discriminatee's interim backpay period constituted failure to make valid reinstatement offer; and since, E's offer set discriminatee's wage rate at amount less than that to which she was entitled, her acceptance of offer did not toll E's backpay liability; accordingly, E required to pay discriminatee, in addition to interim backpay, difference between actual rate of pay following return to work and rate which she should have received)

IMCO/International Measurement & Control Company, Inc. **277 NLRB No. 096**
(E's pay raises granted Ees during discriminatee's interim backpay period held properly included in discriminatees' backpay, notwithstanding Ee's contention that pay raises were justified for its present Ees because they were more skilled, efficient, and valuable than discriminatees, since latter may have developed same skill and efficiency if they had remained employed; and present Ees received no training outside plant and ouly about half of them was employed at time of discriminatees' layoff)

Chem Fab Corporation **275 NLRB No. 6**
(inclusion of 25 cents wage increase in gross backpay justified where it was found to be medium figure received by Ees in similar classifications and E's officer admitted to grant of pay increases of that amount in certain years;)

Greyhound Taxi Co., Inc. **274 NLRB No. 060**
(amount of weekly reduction in wage rate included in discriminatee's backpay, where E, in instant supplemental proceeding sought to establish that reduction was due to nondiscriminatory reasons; such issue was barred by principle of *res judicata* since E was attempting to relitigate matter which had previously been decided in original ULP proceeding)

4433-2833-6300 Medical expenses

O.K. Machine & Tool Corp. And Gyrotronics, Inc. **279 NLRB No. 069**
[hospital expenses of discriminatee's stepdaughter chargeable to E where, head Ee been employed by E at time of hospitalization, claim would have been covered under E's contract with insurer]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeland Local Union No. 38 **748 F.2d 1001 (C.A. 5, Dec. 1984)**
[Bd's order to reimburse discriminatees for medical expenses incurred during backpay period modified to comply with parties' stipulation that only those medical expenses normally covered by the Health and Welfare Fund should be imbursed]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeline Local Union No. 38 **748 F.2d 1001 (C.A. 5, Dec. 1984)**
(Bd's order to reimburse discriminatees for medical expenses incurred during backpay period modified to comply with parties' stipulation that only those medical expenses normally covered by the Health and Welfare Fund should be imbursed)

4433-2833-6350 Of family

Electrical Workers, Local 453 (Sachs Electric Co.) **277 NLRB No. 122**
(deceased discriminatee's wife entitled to medical expenses for daughter's emergency appendectomy where, but for U's discrimination, Ee would have been eligible for health insurance)

4433-2833-6800 Paid holidays and other absences

4433-2833-6800 Paid holidays and other absences

Arthur Briggs, Inc. **281 NLRB No. 114**
[since it is GC's sole burden to establish gross backpay, it is therefore GC's burden to establish that Ees were paid for holidays, absences and snow day closures]

4433-2833-9100 Vacation benefits

Government Employees (Office Employees, Local No. 2) 278 NLRB No. 055
[E must compensate all Ees from whom scheduled annual leave was unlawfully withheld due to strike participation, including those Ees who had not submitted formal leave slips before strike, where E practice was to schedule leave by several methods other than formal slips]

4433-2833-9600 Contributions to pension plan

Hacienda Hotel and Casino 279 NLRB No. 084
[where discriminatee was regularly scheduled to work 80 hour shifts on 4 days and normally signed out early on 1 day a week after working 5 hours, Bd held discriminatee's daily rate of pay and amount owed to discriminatee's pension account were properly based on 37-hour, rather than 40-hour, week, since discriminatee was paid only for hours worked, and contract provided that Ees voluntarily leaving work early were to be paid only for time worked]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. 279 NLRB No. 069
[E must pay pension fund contributions to multi-E pension plan on behalf of discriminatees notwithstanding they voluntarily chose not to be in E's employ by refusing E's valid offers of reinstatement since proper allocation of owed contributions should not rest on whether or not discriminatees chose to accept valid offers of reinstatement,no question of Ees' rights in plan might not be adequately restored, and there were no other circumstances in case that warranted departure from Bd's customary procedure of ordering that contributions be paid to pension fund]

American Model & Pattern, Inc. 277 NLRB No. 018
(in computing interest owed Ees on unlawfully discontinued IRA contributions, tax benefits lost by Ees should *not* be taken into account)

4433-2867 Items excluded

Arthur Briggs, Inc. 281 NLRB No. 114
[where ALJ, in calculating gross backpay, correctly credited claimant for 9-hour workdays but improperly used 8-hour basis in making deductions for nonremunerated holidays, estimated absences, and snow closures, Bd recalculated gross and net backpay, since calculations for nonworkdays should be on same basis as workdays]

Davis Coal Company Debtor-In-Possession 275 NLRB No. 102
(bonuses excluded from gross backpay where E paid no bonuses to any Ees during backpay period and that decision was attributable to E's poor financial condition that eventually resulted in cessation of business and filing of bankruptcy ptn; further, to order payment of bonuses would put discriminatees in better position than they would have been absent ULP and thus, would exceed Bd's remedial authority)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(where E permitted Ees to make personal long-distance telephone calls at E's expense in partial compensation for unpaid overtime, but paid discriminatee's replacement for overtime work with no compensation for overtime with telephone privileges, Bd, while finding it appropriate that discriminatee's backpay be calculated based on hours worked by her replacement, did not include value of telephone privileges in backpay since to do so would be duplicative)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(where Ees were permitted to fill their automobiles' gasoline tanks at E's expense in exchange for E's access to Ees' automobiles for use on business, such gasoline privileges excluded from discriminatee's backpay, since gasoline was quid pro quo for E's access to Ees' automobiles, rather than aspect of Ee benefits)

4433-4200 Deductions from gross backpay

4433-4217 Interim earnings

4433-4217-0100 Generally

Arthur Briggs, Inc. 281 NLRB No. 114
[E failed to meet its burden of establishing that backpay claimant received higher interim earnings for specified period than was alleged where ground for claiming excess in earnings was based merely on conversation E's private investigator had with claimant]

Midwest Motel Management Corp. of Birmingham 278 NLRB No. 060
[while GC has burden to establish reasonableness and accuracy of its calculation of gross backpay amount, burden of proof with respect to E's affirmative defense rests upon it as original wrongdoer to demonstrate affirmatively that discriminatee has failed to make reasonable effort to find interim employment; and discriminatee is held only to reasonable exertion in such regard and not to standard of highest diligence]

City-Wide Invalid Service, Inc., a/w/a City-Wide Ambulette, Inc. JD-(NY)-123-85
[backpay claimant held entitled to backpay amount set forth in amended specification, where E had burden to establish interim earnings it contended claimant had accumulated during backpay period]

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Dec. 1985)
(wrongfully discharged Ee is only required to make reasonable effort to mitigate damages, and is not held to highest standard of diligence; burden is not onerous, and does not mandate that Ee be successful in mitigating damage)

4433-4217-2500 Items included

4433-4217-2510 Earnings from self-employment

Electrical Workers, Local Union No. 2148 (Newberry Industrial, Inc.) 281 NLRB No. 113
[no interim earnings from alleged self-employment or employment by unknown E where E was Ee's wife, Ee's only employment with her business was so that he would have *something to do*, he received no remuneration, and business itself lost money]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86
[Ee's interim employment consisting of self employment, painting apartments, or driving taxi held adequate attempt by Ee to mitigate his damages; fact that amounts earned therefrom did not result in what E deemed to be sufficient earnings was not significant; and principle of mitigation of damages does not require that Ee's self employment be successful; it only requires good faith effort]

4433-4217-2580 Earnings from work done for friends and relatives

Louton, Inc., t/a/ The Original Oyster House 281 NLRB No. 156
[E's request that discriminatee be made to forfeit backpay for two quarters due to concealment of interim earnings, rejected where Ee testified to filling in for a friend at a restaurant and disclosed her receipt of groceries and cash to GC on direct examination, and the money and groceries were in the nature of a gift in return for a favor, rather than wages]

Electrical Workers, Local Union No. 2148 (Newberry Industrial, Inc.) 281 NLRB No. 113
[no interim earnings from alleged self-employment or employment by unknown E where E was Ee's wife, Ee's only employment with her business was so that he would have *something to do*, he received no remuneration, and business itself lost money]

4433-4217-2590 Workmen's compensation award included to extent it is payment for lost wages

Washington Beef Producers JD-(SF)-86
[no part of state disability award to backpay claimant permitted as offset against claimant's backpay where E failed to meet burden of establishing what, if any, part of award was for time lost and hence, unlike payments representing reparations or indemnification for physical damage suffered while employed, was eligible as offset against backpay]

4433-4217-5000 Items excluded

4433-4217-5025 Loans from union or employer

Greyhound Taxi Co., Inc. 274 NLRB No. 060
(offset of E's personal loan to discriminatee against amount of vacation pay due to him not permitted)

4433-4217-5045 Overtime earnings

Washington Beef Producers JD-(SF)-86
[backpay claimant's overtime hours worked for interim E in excess of hours he would have worked for respondent E not included in interim earnings on ground that greater efforts of Ee should accrue to his own benefit rather than to benefit of wrongdoing E; however, fact that claimant voluntarily left interim job paying $5.00 an hour for interim job paying $4.50 an hour but with excessive overtime would be unfair to E; accordingly, backpay specification formula modified by assuming that claimant's base hours accrued at $5.00 per hour rather than $4.50]

4433-4217-5050 Collateral benefits

December 12, Inc.; December 12, Inc. of Nevada 282 NLRB No. 077
[mother of discriminatee making medical insurance premium payments on behalf of discriminatee while he was unemployed, absent evidence mother would be repaid, not offset to claims for loss of benefits. They constituted a *collateral benefit* not as an offset to claim for loss of benefits]

Daniel Construction Company, A Division of Daniel International Corporation 276 NLRB No. 113
(vacation and holiday time, and insurance benefits received by discriminatee while working for interim E, considered collateral matters and did not constitute interim earnings or otherwise offsets against gross backpay)

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeland Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)
[no deduction from backpay award of personal expenses for transportation, lodging, and food saved on jobsite by backpay claimants because of nonemployment due to discrimination, since consideration need not be given in awarding backpay to any collateral benefits received or any personal or domestic economies realized by claimants during period covered by award]

4433-4217-5050—Cont.

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeline Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)

(no deduction from backpay award of personal expenses for transportation, lodging, and food saved on jobsite by backpay claimants because of nonemployment due to discrimination, since consideration need not be given in awarding backpay to any collateral benefits received or any personal or domestic economies realized by claimants during period covered by award)

4433-4217-5055 Unemployment compensation

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center 281 NLRB No. 052

[not deductible as interim earnings]

Howard R. Singer and Michael E. Davis, a Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis 278 NLRB No. 123

[unemployment compensation not deductible from backpay award as these benefits are collateral, and not direct, benefits from E because these payments are not made to Ees by E but by state out of state funds derived from taxation notwithstanding taxes paid by E help create the fund from which unemployment compensation paid]

Overseas Motors, Inc. 277 NLRB No. 061

Davis Coal Company Debtor-In-Possession 275 NLRB No. 102

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 276 NLRB No. 134

(sum of money received by discriminatee in settlement of workers compensation claim not included as interim earnings, there being no showing that they are compensation for pay lost during backpay period for which backpay is claimed)

Greyhound Taxi Co., Inc. 274 NLRB No. 060

(offset of unemployment compensation collected by discriminatee during periods when he was not employed not permitted and not subtracted from gross backpay as interim earnings)

Hutchens Trucking Company, Inc. JD-164-85

4433-4217-5075 Earnings during hours when discriminatee would not have worked for employer

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center 281 NLRB No. 052

[backpay not reduced by earnings from second job where discriminatee continued at job at same time of day after unlawful discharge]

Evans Plumbing Co. 278 NLRB No. 009

[earnings from weekend work, excluded]

4433-4217-5081 Supplemental earnings from outside work

AVI Graphics, Inc. d/b/a Manhattan Graphic Productions 282 NLRB No. 051

[where discriminatee found part-time employment at an E and then found full-time employment at another E but continued working part-time on the other job, his earnings on part-time job where it was his sole source of earnings treated as interim earnings to be deducted from gross backpay, but earnings from part-time job after he secured full-time position treated as supplemental job and those earnings not deducted]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[receiving free housing for house-sitting does not constitute earnings that are deductible from gross backpay]

Daniel Construction Company, A Division of Daniel International Corporation 276 NLRB No. 115

(unlawfully discharged Ee's supplemental earnings not added to interim earnings where Ee would not have been required to forego supplementary employment before his illegal termination)

4433-4217-5087 Income which discriminatee would have earned absent discrimination

Local 1136, Laborers (Southern Illinois Builders Association) JD-179-86

[interim earnings of discriminatee, unlawfully refused referral by U, properly computed by offsetting interim earnings actually earned on days discriminatee would have been referred by U in non-discriminatory manner, even though discriminatee did work steadily during portion of backpay period and those earnings, if used as offsetting earnings, would have amounted to more than backpay]

4433-4217-7500 Deductions

4433-4217-7510 Travel or other expenses incurred in seeking interim employment

Searle Auto Glass, Inc. d/b/a Best Glass Company 280 NLRB No. 159

[contention that failure to provide receipts impeached claim for travel and moving expenses, rejected where discriminatee lost receipts in moving several times before finding permanent residence in city where now employed, since fact expense computations were based on estimates did not preclude their acceptance, failure to keep records would not in and of itself defeat a claim, and amounts claimed were reasonable; contention that discriminatee had traveled primarily to visit relatives and secondarily to job hunt not supported by record]

Hacienda Hotel and Casino 279 NLRB No. 084

[discriminatee reimbursed for air fares between destinations in cities to which she traveled seeking interim employment, where discriminatee remained in labor market since, being unable to find work in home city, it was proper for her to seek employment elsewhere and to be reimbursed for doing so]

Rikal West, Inc. 274 NLRB No. 170

4433-4217-7520 Travel expenses incurred in going to and from interim job

Ace Electric Construction Corporation, et al. 281 NLRB No. 094

[travel expenses during discriminatee's interim employment deducted from his interim earnings, where during employment with Respondent E he incurred no travel expenses, as he lived over E's facility]

Maple Tree, Inc. 281 NLRB No. 097

[interim earnings reduced by increase in commuting expenses attributable to increased distance between discriminatees' homes and work places of interim employment as compared to distance between their homes and E's facilities]

Evans Plumbing Co. 278 NLRB No. 009

[travel expenses at mileage rate allowed federal Ees, deducted]

4433-4217-7530 Moving expenses for interim employment out of town

Searle Auto Glass, Inc. d/b/a Best Glass Company 280 NLRB No. 159

[contention that failure to provide receipts impeached claim for travel and moving expenses, rejected where discriminatee lost receipts in moving several times before finding permanent residence in city where now employed, since fact expense computations were based on estimates did not preclude their acceptance, failure to keep records would not in and of itself defeat a claim, and amounts claimed were reasonable; contention that discriminatee had traveled primarily to visit relatives and secondarily to job hunt not supported by record]

4433-4217-7555 Union dues to be paid to union

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center 281 NLRB No. 052

[no deduction for U dues where they were not paid to U by E during backpay period, and E had agreed in district ct judgment, incorporated by reference in ct of appeals consent decree, not to seek reimbursement from its Ees for dues during backpay period]

4433-4233 Willful loss of earnings

4433-4233-0100 Generally

Evans Plumbing Co. 278 NLRB No. 009

[Bd has traditionally held that Ees who seek work through U hiring hall have engaged in reasonable search for employment]

Holiday Radio, Inc., d/b/a KSLM--AM and KSD--FM 275 NLRB No. 184

(it is not E's evidentiary burden to explain and clarify Ee's personal reasons for leaving geographical area of interim employment and then quitting, where there was no evidence that Ee's resignation was attributable to anything other than Ee's personal desires unique to himself)

Washington Beef Producers JD-(SF)-86

[E may limit its backpay liability by establishing that backpay claimant *willfully incurred* losses by a *clearly unjustifiable refusal to take desirable new employment;* to establish such mitigation, E's burden is to show that claimant *neglected to make reasonable efforts to find interim work*]

Washington Beef Producers JD-(SF)-86

[success in efforts to find interim work is not measure of sufficiency when discriminatees seek to achieve interim earnings; law *only requires an honest good-faith effort;* while evidence may leave question whether backpay claimant could have been more diligent in seeking other employment, *the highest stand of diligence is not required and doubt must be resolved against respondent E.*]

Washington Beef Producers JD-(SF)-86

[fact that backpay claimant did not seek employment in areas in which he purportedly had specific qualifications held no basis for denying his backpay

4433-4233-0100—Cont.

specification, since brief periods during which he worked in purportedly specific areas did not establish that he developed expertise in such areas]

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)

(wrongfully discharged Ee is only required to make reasonable effort to mitigate damages, and is not held to highest standard of diligence; burden is not onerous, and does not mandate that Ee be successful in mitigating damage)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)

(unlawfully laid-off Ee found entitled to backpay notwithstanding E's argument that Ee never looked for replacement work until he was laid off from his day job, where it was impossible to determine which job was *primary* and which *supplemental* and that had Ee lost his day job he might have been content to work at only his night job at E)

4433-4233-0400 Failure to seek or accept interim employment

December 12, Inc.; December 12, Inc. of Nevada 282 NLRB No. 077
[discriminatee need not instantly seek new employment, nor seek employment in each and every quarter of backpay period, rather, entire backpay period must be scrutinized, nor are claimants penalized for poor recordkeeping, uncertainty as to memory, or even exaggeration, nor does he need to spend all of every workday seeking employment]

Arthur Briggs, Inc. 281 NLRB No. 114
[fact that backpay claimant was unable to recall names of Es he contacted during backpay period, occurring over 3 years ago, held not unreasonable nor sufficient to establish E's burden that claimant did not reasonably search for work as he testified, and failure to recall was not unusual or suspicious]

Arthur Briggs, Inc. 281 NLRB No. 114
[search for work by using telephone to contact prospective Es, assertedly diminishing claimant's ability to make such search, held adequate and means of contacting far more Es than by travelling all over city looking for work]

Arthur Briggs, Inc. 281 NLRB No. 114
[backpay claimant's failure to answer specified newspaper ads for type of work he was qualified for held not to establish that advertised jobs would have been available or that claimant would have been selected had he applied; and failure to respond did not discredit his testimony that he reviewed and responded to newspaper ads in search for work]

Arthur Briggs, Inc. 281 NLRB No. 114
[failure to exhaust every job possibility does not disqualify claimant from backpay award; rather, test is whether, all factors considered, claimant made good faith effort to obtain work]

Electrical Workers, Local Union No. 2148 (Newberry Industrial, Inc.) 281 NLRB No. 112
[no willful loss of earnings or lack of due diligence in Ee's rejection of two-week referrals where he reasonably believed acceptance would result in his being moved from top to bottom of out-of-work list and have prejudiced his chances for 5- to 6-month referral]

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center 281 NLRB No. 052
[no failure to seek employment or unavailability for work due to second job or responsibility for ailing parent where discriminatee satisfied requirement that she submit weekly list of Es contacted sufficient to receive unemployment compensation, had worked second job while employed by E's predecessor, and explained that someone else was at home with parent while she looked for work]

Allied Lettercraft Company, Inc. 280 NLRB No. 113
[backpay claimant did not fail to mitigate backpay where he registered with state unemployment agency and with U's hiring hall from which he received his first job referral and became employed, through no fault of his own, some 8 months after discharge; and in addition to reliance on state agency and U's hiring hall, claimant responded to want ads in various newspapers either by calling or visiting prospective Es]

Allied Lettercraft Company, Inc. 280 NLRB No. 113
[backpay claimant did not fail to look for work during interim period, notwithstanding E's contention claimant enjoyed vacation until his unemployment benefits ran out where, during interim period, claimant moved his family in with relatives, filed in bankruptcy leaving him w/o any credit; and, as unemployed member of depressed industry and with limited skills, he was forced to work at job earning only about $100 a month]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017
[backpay tolled where during one year period claimant filed only one job application]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017
[seeking parttime employment--only worked parttime at job unlawfully discharged from while holding fulltime position elsewhere--at only 2 companies during 8 to 9 month period does not show reasonable diligence and backpay denied for these quarters]

Hacienda Hotel and Casino 279 NLRB No. 004
[discriminatee did not fail to properly seek interim employment notwithstanding E's contention that her chances for employment were better in home city than in cities to which she traveled, that she knew she couldn't find work elsewhere, and that she traveled to resort area to vacation, where E failed to show suitable employment was available in home city, and discriminatee did not remove herself from labor market as evidenced by her registration on U's out-of-work list, and by seeking employment in other cities]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. 279 NLRB No. 009
[Ees' failure to respond to newspaper employment ads and to consult listings of employment agencies did not sustain E's burden of showing that discriminatees *wilfully incurred* loss by clear and unjustifiable refusal to take desirable new employment]

Niagara Falls Sightseeing By Sheridan, Inc. 279 NLRB No. 007
[no wilful loss of earnings where, upon discharge as summer tour guide in late summer, college student made five employment applications in August, sought and secured employment in fall, made twenty applications in spring, secured employment as securities commission salesman but only recovered cost of licenses and training, and, after graduation, sought permanent and interim employment in numerous positions w/o time out for vacation]

Midwest Motel Management Corp. of Birmingham 278 NLRB No. 060
[success is not measure of sufficiency of discriminatee's search for interim employment, since law requires only an honest and good faith effort and, in detemining reasonableness of effort, discriminatee's skills, experience, qualifications and age, and labor conditions in area are to be considered]

Midwest Motel Management Corp. of Birmingham 278 NLRB No. 060
[E's contention that discriminatee made no search for work for period of time during which documents reflecting his search for work were not available, rejected; Bd does not require discriminatees to document search for work and, besides, discriminatee credibly testified that his assembled notes on search for employment, which were transferred to state employment forms, were both destroyed in fire at his house]

Midwest Motel Management Corp. of Birmingham 278 NLRB No. 060
[discriminatee made sincere and reasonable effort to find interim employment, notwithstanding his exaggerated claim that during 18-month backpay period he sought work with as many as 3,000 Es; discriminatee was exaggerating for purposes of comparison only and he never intended to be taken literally; rather, he was simply asserting that his search for work *felt* more like 3,000 Es, thereby simply asserting that he was continually searching for work, which was substantiated by documents backed up by his continuing contacts with state employment service]

Evans Plumbing Co. 278 NLRB No. 009
[no inadequate search for work where both Ees signed U hall's referral list and state unemployment office's out-of-work list, and one Ee also contacted individual Es]

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096
(in finding discriminatee entitled to full backpay, Bd noted that discriminatee made diligent effort to obtain interim employment; she acquired 6 jobs in 2-year period and attempted to mitigate E's backpay liability whenever possible, such as by working at several undesirable jobs and accepting interim employment which resulted in her being dependent on others for transportation)

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096
(discriminatees held to have made diligent search for interim employment where they made either extraordinary or diligent and conscientious effort to find interim jobs and succeeded in doing so resulting in substantial mitigation of E's backpay liability; and circumstances surrounding dismissals from interim jobs did not detract from such diligent effort to mitigate E's backpay liability)

Smyth Manufacturing Co., Inc.; Beacon Industries 277 NLRB No. 066
(delaying employment briefly to secure job that Ee believed would be preferable did not constitute willful loss of earnings)

Smyth Manufacturing Co., Inc.; Beacon Industries 277 NLRB No. 066
(E failed to meet its burden of proving that Ee did not make reasonably diligent search for work after unlawful termination where GC proffered affidavit from Ee, who was unable to testify, in which Ee named 4 companies where he had sought work and referred to two employment interviews, thereby providing E with specific information that it could have checked to determine truth of Ee's assertions concerning his search for interim work)

Smyth Manufacturing Co., Inc.; Beacon Industries 277 NLRB No. 066
(willful loss of earnings incurred where discriminatee spent 2 days during 3 month period in contacting prospective Es)

4433-4233-0400—Cont.

Smyth Manufacturing Co., Inc.; Beacon Industries 277 NLRB No. 066
(willful loss of earnings incurred where, in over 5 months of unemployment, discriminatee only looked at newspaper advertisements, contacted one prospective E, and talked to friend about another possible job)

Overseas Motors, Inc. 277 NLRB No. 061
(E's burden of showing willful loss of earnings by discriminatee not met by evidence of lack of success in securing interim employment or low interim earnings from self employment. Rather Respondent must affirmatively demonstrate that discriminatee neglected to make reasonable efforts to make reasonable efforts to find interim work discriminatee need make only reasonable efforts, not undertake highest standards of diligence)

Fugazy Continental Corp. 276 NLRB No. 152
(no backpay awarded for period when Ee admittedly and w/o explanation sought no interim employment)

Fugazy Continental Corp. 276 NLRB No. 152
(no failure to seek employment where, although Ee did not seek same kind of job as he had held with E, he visited state and other employment agencies, sent out resumes, followed up on newspaper ads, and sought franchises)

C-F Air Freight, Inc. 276 NLRB No. 062
(no deductions should be made from Ee's backpay for 3-week period immediately after his discharge during which he did not seek employment, since discriminatee need not seek work instantly but rather Ee must seek employment diligently during entire backpay period, and during 3-week period in question Ee spoke to friend in air freight industry about possible employment)

Murbro Parking, Inc. 276 NLRB No. 009
(no willful loss of earnings for periods where discriminatee registered with state employment agency and visisted their office once a week, checked wants ads at least twice a week, and further, made over 75 contacts regarding employment in nearly 2 year and 10 month period from date of discharge to date of operative offer of reinstatement, notwithstanding contention that with due diligence discriminatee could have obtained job, since there were more openings than applicants for positions for which he qualified, and that in survey of classified ads there were hundreds of openings advertised for which he qualified during period)

Murbro Parking, Inc. 276 NLRB No. 009
(E failed to meet burden of proving willful loss of earnings, notwithstanding expert testimony that there were more job openings for which discriminatee qualified than applicants during relevant period, and evidence of survey of newspaper advertisements showing that in 18 months during period there were hundreds of jobs advertiesed in 17 catagories for which discriminatee qualified, absent evidence he was aware of openings cited, would have been hired if had applied, or that terms and conditions of employment at allegedly available jobs were such that discriminatee would have failed to mitigate damages had he refused jobs)

Murbro Parking, Inc. 276 NLRB No. 009
]mere existence of newspaper advertisements does not establish jobs would have been available if discriminatee had applied or that he would have been selected)

Iron Workers Local 118 (Pittsburgh Des Moines Steel Company) 275 NLRB No. 185
(no willful loss of earnings by discriminatee's failure to seek referrals to jobs, in view of Respondent U's unlawful threat not to refer him to any job until he paid his supplemental dues)

Local 3, Electrical Workers (R.H. Macy & Co., Inc.) 275 NLRB No. 142
(backpay claimant held not entitled to receive any backpay for 4 months that he remained unemployed, since he failed to make reasonably diligent effort to find interim employment where claimant flatly declined several job referrals given him by respondent U because he only wanted to return to his former employment, he visited only 2 Es during entire backpay period, sought jobs for which he was not qualified, made only 3 telephone calls concerning jobs, and refused to follow through on job opportunities listed in newspaper advertisements on mere assumption that Es were non-U)

Davis Coal Company Debtor-In-Possession 275 NLRB No. 102
(fact that discriminatees unsuccessfully filed applications for employment with several Es satisfied burden that they made serious efforts to obtain interim employment)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(bits and scraps of paper on which discriminatee made notes when she applied for interim employment and from which she composed running log of her job-seeking efforts held not essential to establish extent of efforts in seeking employment, particularly in view of her availability to testify)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(discriminatee's efforts to obtain interim employment during 8-month period limited to 7 applications and to registering with state employment commission held reasonable effort to obtain employment)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(discriminatee held to have made reasonable search for interim employment where she made inquiries of friends and acquaintances regarding availability of employment, since personal referrals are frequent source of leads to available jobs and such inquiries tend to show continuing effort to find work)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(instances where discriminatee sought work for which she had no qualification or experience held not to constitute outlandish employment applications indicating desire not to succeed; instead, they demonstrated willingness to go beyond her limited background in seeking employment; had she confined her search to jobs substantially equivalent to that from which she was discharged, her effort would have been reasonable; and she is not to be faulted for doing more)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(absent some showing that discriminatee would under no circumstances accept employment out-of-state where she intermittently resided, her out-of-state inquiries tend to show expanded effort to obtain interim employment, rather than absence of good faith)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(where E discounted discriminatee's trips made in search of interim employment from Es substantially distant from her home than E's workplace w/o first determining whether they were hiring, ALJ held that whether such trips were efficient or not is not issue; rather, issue is whether she made such effort, which she was found to have made)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(application by discriminatee, whose work with E as insurance clerk involved medical claims, for interim employment at number of medical or dental offices held not illogical, and fact that she was patient at some does not indicate fabrication nor does fact that she did not obtain copies of applications she had submitted)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(E's implication that discriminatee was not forthright in her testimony about efforts to obtain interim employment in order to mitigate backpay losses held endeavor to shift burden to discriminatee who over 4 years later is asked to describe details of her search for employment; uncertainties arising in situation such as here are resolved in favor of discriminatee against E responsible for ULPs)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(reasonableness of search for interim employment is not determined by success of effort, nor does fact discriminatee enjoyed no interim earnings tend to show failure to make reasonable search for work)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(inability to document discriminatee's testimony regarding application for work with particular E held not to imply that discriminatee did not do so, since burden of so proving is on E; and official of E to whom application was made was readily available but was not called to testify)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(E's faulting of discriminatee's application for interim work as being limited to daytime shift whereas greater chance for employment existed on night shifts, rejected; even if discriminatee knew about that, she was not required to search for work substantially different from her job with E where she worked days)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(E's general showing that during discriminatee's backpay period jobs were available in community where she resided held not to demonstrate discriminatee's failure to make reasonable search for interim employment because there was no indication specifically showing whether available jobs were in fact suitable for her as to pay, location, working conditions, or in relation to her past experience)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(E's contention that, because jobs were available in community where discriminatee resided, her lack of success in obtaining interim employment shows she really did not look for work, rejected; while such general circumstances raise a suspicion, they do not disprove specific efforts she did make as her credible testimony showed)

4433-4233-0400—Cont.

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134
(discriminatee's statements when discussing interim employment with prospective interim Es that she intended to return to her job with E if she were reinstated as result of Bd proceeding, to which she also referred in her resume, held not to demonstrate intention to avoid employment; her statements were truthful and indicated forthrightness rather than malice; to fault her for making such statements would invite dishonesty and would be contrary to public policy; and requiring her to seek permant employment would place premium on delay in offering her reinstatement by E)

Greyhound Taxi Co., Inc. 274 NLRB No. 060
(no willful loss of earnings where discriminatee, having little experience in endeavors other than in taxi industry, and notwithstanding his reliance on public transportation, searched for other work by visiting unemployment offices more than required, making applications not only with potential interim Es where his experience would be beneficial but also with other Es requiring only minimal skills; and his failure to apply at other taxi companies in area did not make his search not diligent since such Es harbored animus toward him from his prior employment with them)

Greyhound Taxi Co., Inc. 274 NLRB No. 060
(no willful loss of earnings where discriminatee admittedly did not seek other employment in period immediately following his second discharge when his grievance was actively pending nor thereafter when he was awaiting reinstatement; in latter period discriminatee was actively pursuing grievance seeking his reinstatement, and in such circumstances it was not unreasonable for discriminatee to await outcome of grievance proceeding before commencing extensive search for interim employment in view of his prior experience seeking work)

Hinz Store Fixtures & Construction Co., Inc. JD-(SF)-97-86
[Ee made reasonable effort where he found nine-months employment, and his account of eforts thereafter were adequate, notwithstanding his inability to recall names of Es where he applied for employment and minor inaccuracies, such as allusion to newspaper by inaccurate name]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86
[in view of long delays between time Ee searched for work and backpay trial, Ee's inability to recollect specifics of his job contacts during interim period was insufficient to establish lack of diligent search for work]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86
[E's burden of establishing that Ee failed to make reasonable search for employment held not supported by E's reliance on its official's vague and unsubstantiated testimony that personnel agencies in applicable industry were having difficulty obtaining Ees during *busy season* and that at various *unspecified* times E and other agencies had problems finding Ees; such testimony failed to establish availability of jobs for Ee or that he would have been hired upon applying at any specified time]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86
[Ee made reasonable search for interim employment by going to various employment agencies, visiting number of companies in industry's center as well as in other locations, seeking assistance at ethnic community center, and enlisting aid of employed friends and relatives which is not an unusual procedure for individuals seeking employment]

Washington Beef Producers JD-(SF)-86
[discriminatees found eligible for backpay notwithstanding contentions raised as to numerous Ees that they did not make reasonable search for interim employment]

St. Mary's Home, Inc. t/a St. Mary's Infant Home JD-285-85
(nurse's aide's search for employment at three area hospitals during six-month layoff insufficiently diligent to justify receipt of backpay)

St. Mary's Home, Inc. t/a St. Mary's Infant Home JD-285-85
(nurse's aide's who, during three-year backpay period, sought private duty nursing, laundry and dietary work at hospitals, and day-care center, retail-store, and house-cleaning work w/i allowable constraints of back injury, lack of transportation, and need to be at home with her children during evenings w/o finding work, sufficiently diligent)

Bonanza Hills, Inc., d/b/a Sav-Time Markets #1 and #2 JD-SF)-70-85
[*proof of lack of success in securing employment does not establish backpay claimant failed to seek or accept suitable employment, particularity in view of credited evidence of consistent efforts to secure employment*)

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeland Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)
[no wilful loss of earnings where backpay claimant's efforts to seek interim employment, although not diligent, were sufficient, and there were some earnings from self employment]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeline Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)
(no wilful loss of earnings where backpay claimant's efforts to seek interim employment, although not diligent, were sufficient, and there were some earnings from self employment)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)
(unlawfully laid-off Ee found entitled to backpay notwithstanding E's argument that Ee never looked for replacement work until he was laid off from his day job, where it was impossible to determine which job was *primary* and which *supplemental* and that had Ee lost his day job he might have been content to work at only his night job at E)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)
(Ee found entitled to backpay notwithstanding E's contention that Ee's efforts at working were half-hearted and that as consequence she made herself unemployable, where Ee made reasonable effort to mitigate damages and any vagueness and indefiniteness in Ees testimony was probably caused by fact that Ee was rural and uneducated and events occurred over 8 years prior to hearing)

Iron Workers Local 118 (Waldo F. Kusterus) v. N.L.R.B. 804 F.2d 1100 (C.A. 9, Nov. 1986)
[Ee out of work as result of ULP is not held to highest standard of diligence in his efforts to secure comparable employment; rather, reasonable efforts are sufficient]

4433-4233-8900 **Self-employment**

Ad Art, Incorporated 280 NLRB No. 114
[*self employment is proper and adequate way for discriminatee to attempt to mitigate his loss and full time self-employment cannot be construed as withdrawal from labor market or be equated with willful loss of earnings*]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017
[starting own business and becoming self employed is proper and adequate way for Ee to attempt to mitigate loss of wages no matter how inept Ee is]

Fugazy Continental Corp. 276 NLRB No. 152
(backpay claims not defeated by fact Ees were self-employed; E produced no evidence to prove that their incomes were inaccurate or that E's competitors had job openings)

Fugazy Continental Corp. 276 NLRB No. 152
(no wilful loss of earnings by Ees' self-employment notwithstanding lack of commensurate earnings or in some cases of any profit)

Fugazy Continental Corp. 276 NLRB No. 152
(no wilful loss of earnings where Ee became self-employed)

Fugazy Continental Corp. 276 NLRB No. 152
(contrary to E, chauffeur who formed and managed taxicab company while chauffeuring for limousine company did not remove himself from job market but sought to augment his income)

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86
[Ee's interim employment consisting of self employment, painting apartments, or driving taxi held adequate attempt by Ee to mitigate his damages; fact that amounts earned therefrom did not result in what E deemed to be sufficient earnings was not significant; and principle of mitigation of damages does not require that Ee's self employment be successful; it only requires good faith effort]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86
[fact that Ee failed to report his interim earnings from self employment to IRS held not to warrant inference, and to constitute speculation unsupported by record, that Ee had other income that he concealed from Bd; rather than inferring that such failure indicated that other income was concealed from Bd, equally plausible inference would be that Ee was scrupulously honest dealing with Bd since it was probable that, had Ee failed to disclose self employment income to Bd, such income would not have been discovered]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeland Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)
[no wilful loss of earnings where backpay claimant's efforts to seek interim employment, although not diligent, were sufficient, and there were some earnings from self employment]

4433-4233-0900—Cont.

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeline Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)

(no wilful loss of earnings where backpay claimant's efforts to seek interim employment, although not diligent, were sufficient, and there were some earnings from self employment)

4433-4233-1300 Failure to retain interim employment

Health Enterprises of America, Inc. d/b/a Calsun Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calsun Tower Geriatric Center 281 NLRB No. 052

[E's voluntary quit from interim job not shown to be wilful loss of earnings where note in personnel file of interim E merely stated that she had to be in another state sooner than she had thought, and her whereabouts were unknown; backpay therfore to be held in escrow for 1 year]

Allied Lettercraft Company, Inc. 280 NLRB No. 113

[backpay claimant held not to have incurred willful loss of earnings either when he quit or was discharged from various jobs, where he was not retained in jobs because his experience and skills were not up to interim E's standards, and he left interim job voluntarily when U referred him to job in U shop paying higher wages and allowing him use of U's hiring hall]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[claimant does not willfully incur loss of earnings merely by voluntarily quitting interim employment, unless he does so w/o good reason unconnected with the discrimination]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[contention of willful loss of earnings, upheld, where Ee obtained employment at higher salary than at time discharged and then quit job. Bare claim of stress caused by working in excess of 40 hours a week, and performing extra duties w/o further explanation does not justify quitting position with no prospect for suitable substitute employment]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[no willful loss of earnings where claimant had second job, or moonlighting job, from which he was unlawfully discharged, and he accepts another second job during backpay period for 40 hours or more a week but quits this job after approximately 4 months for personal reasons w/o having another job available]

Hacienda Hotel and Casino 279 NLRB No. 084

[discriminatee's quitting interim employment held not to constitute willful loss of earnings where interim employment's lower wages were hardly comparable to earnings discriminatee would have made working for E had she not been unlawfully discharged]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. 279 NLRB No. 069

[discriminatee's leaving interim E for health reasons did not constitute *wilfully incurred* loss]

Lord Jim's 277 NLRB No. 176

[E's contention that Ee willfully incurred loss of earnings by quitting interim employment, rejected, where Ee's interim job was that of busboy and bathroom cleaner, requiring her to carry large pails of porkbones and her former job was that of a cocktail waitress at an elegant, well-appointed lounge and thus, since interim mob was not substantially equivalent, but was more onerous, Ee had no duty to remain on job]

Electrical Workers, Local 453 (Sacks Electric Co.) 277 NLRB No. 122

(discriminatee held not to have incurred willful loss of earnings by quitting interim employment where he did so only upon receipt of letter from Respondent's counsel assuring him he would be treated fairly if he returned to U's hiring hall, and when he did return, he was again unlawfully refused access to hiring hall)

Electrical Workers, Local 453 (Sacks Electric Co.) 277 NLRB No. 122

(discriminatee held not to have incurred willful loss of earnings by quitting interim employment because job required him to work outside where Ee was 65 years old, interim E had no warm-up room and Ee felt those conditions were too much for him at his age)

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096

(discriminatee held entitled to full backpay following her termination from interim employment where record failed to show that she was discharged for cause)

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096

(Bd did not charge discriminatee with interim earnings following her termination from interim employment at motor inn; in doing so, Bd relied solely on ALJ's finding of alternative and frivolous reason for her discharge, i.e., discriminatee's voluntary surrender of room keys she inadvertently retained during prior employment with interim E)

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096

(discriminatee who had no control over her loss of transportation resulting in loss of interim employment for 4-week period held not to have engaged in willful loss of earnings and entitled to full backpay)

Fugazy Continental Corp. 276 NLRB No. 152

(no wilful loss of earnings where Ee quit interim job which required him to move three times in six months period, where his residence had been permanent when he worked for E)

Fugazy Continental Corp. 276 NLRB No. 152

(no wilful loss of earnings by failure to gain similar employment or to remain on job where Ee was losing money)

Holiday Radio, Inc., d/b/a KSLM--AM and KSD--FM 275 NLRB No. 184

(where discriminatee quit interim employment because of *political and philosophical* problems with interim E, Bd held it was error for ALJ to refuse to admit testimony offered by GC regarding nature of Ee's interim employment, where GC made offer of proof that Ee would testify she resigned because interim E required her to engage in political activities on her own time and thus, such testimony was relevant to issue of whether Ee failed to mitigate loss of earnings by leaving interim E)

Chem Fab Corporation 275 NLRB No. 6

(no wilful loss of earnings where discriminatee quit interim job since quitting was not unreasonable in view of distatefulness of work, pay difference and subsequent efforts to find work; E's contention that he should have applied for type of work E claimed was similar to that he did for E, rejected in absence of evidence that such jobs were available to discriminatee)

Washington Beef Producers JD-(SF)-86

[backpay claimant who purportedly quit his interim employment outside state to return to state of original employment held not to warrant having his backpay curtailed since return to family and the familiar is viewed in different perspective by Bd]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeland Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)

[no wilful loss of earnings where discriminatee quit interim employment, since interim employment was more strenuous than trade he had performed for respondents]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeline Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)

(no wilful loss of earnings where discriminatee quit interim employment, since interim employment was more strenuous than trade he had performed for respondents)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)

(Ee found entitled to backpay notwithstanding E's contention that Ee's efforts at working were half-hearted and that as consequence she made herself unemployable, where Ee made reasonable effort to mitigate damages and any vagueness and indefiniteness in Ees testimony was probably caused by fact that Ee was rural and uneducated and events occurred over 8 years prior to hearing)

N.L.R.B. v. The Westin Hotel 758 F.2d 1126 (C.A. 6, Apr. 1985)

(discriminatee justified in terminating interim employment due to adverse working conditions where, after it rained, two inches of water and sewage accumulated in area where she was working, soaking her feet and ruining her new shoes, and she was told that happened every time it rained)

4433-4233-1500 Failure to work full time at interim employment

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[no willful loss of earnings where claimant had second job, or moonlighting job, from which he was unlawfully discharged, and he accepts another second job during backpay period for 40 hours or more a week but quits this job after approximately 4 months for personal reasons w/o having another job available]

Holiday Radio, Inc., d/b/a KSLM--AM and KSD--FM 275 NLRB No. 184

(discriminatee held to have incurred willful loss of earnings by leaving geographical area of interim employment and thereafter voluntarily reducing his days of work from 6 to 3 and then resigning employment, where Ee's departure from interim E was not caused by any matter incidental to his interim employment but instead was caused by Ee's personal decision to move to another area)

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[backpay claimant initially hired by interim E on *on-call* basis did not act unreasonably in continuing on-call employment w/o seeking outside work, if

4433-4233-1500—Cont.

it was reasonable to believe that such employment would be quickly converted to full-time; test is not actual conversion to full-time employment but whether claimant should reasonably have concluded that full-time job will immediately be available; and absent evidence regarding claimant's expectancy of full-time employment, E failed to prove claimant acted unreasonably in search for interim employment]

Washington Beef Producers **JD-(SF)-86**

[where backpay claimant was employed by interim E having intermittent layoffs of 2 months or more during which ALJ assumed claimant was not in job market, ALJ held that layoffs of 2 months or more w/o fixed date of return did not allow claimant to simply await recall, and that passive registration with state unemployment agency w/o contacting Es for interim employment, standing alone, was insufficient to constitute good faith search for interim employment]

4433-4233-1600 Acceptance of lower paying job

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**

[no willful loss of earnings by claimant accepting parttime position and not looking for fulltime position thereafter where record shows claimant started search for work w/i reasonable period of time, accepted parttime position when no fulltime position available in only line of work he was trained for and by accepting parttime work there was potential to work way up in seniority and become fulltime]

Daniel Construction Company, A Division of Daniel International Corporation **276 NLRB No. 115**

(willful loss of earnings incurred, notwithstanding discriminatee was employed during period in question, where he was not so fully employed that he was precluded from seeking more suitable job)

Fugazy Continental Corp. **276 NLRB No. 152**

(no wilful loss of earnings where Ee greatly reduced E's backpay liability by obtaining interim jobs and where he diligently sought work at all other times)

Fugazy Continental Corp. **276 NLRB No. 152**

(no wilful loss of earnings where Ee took lesser paying job due to inability to qualify for same type of job after E's cancellation of Ee's lease of equipment necessary to carry out same type of job)

Washington Beef Producers **JD-(SF)-86**

[where backpay claimant left one interim E for another that paid him less, ALJ agreed with E's contention that interim earnings should be calculated at higher wage of former interim E, rejecting GC's contention that claimant, in leaving former interim E, was merely seeking superior position]

4433-4233-1800 Registration with USES or state employment office

Consolidated Dress Carriers, Inc., et al. **JD-(NY)-68-86**

[E's reliance on fact that backpay claimant did not register with state employment agency held insufficient to meet E's burden of establishing that claimant failed to make reasonable search for employment, particularly in absence of any showing by E that registration at state employment service would have produced actual or potential employment for claimant]

Washington Beef Producers **JD-(SF)-86**

[where backpay claimant was employed by interim E having intermittent layoffs of 2 months or more during which ALJ assumed claimant was not in job market, ALJ held that layoffs of 2 months or more w/o fixed date of return did not allow claimant to simply await recall, and that passive registration with state unemployment agency w/o contacting Es for interim employment, standing alone, was insufficient to constitute good faith search for interim employment]

Washington Beef Producers **JD-(SF)-86**

[where during portion of backpay period when claimant was in layoff status from interim E she registered with state unemployment office and with private employment agency which sent her on various job referrals, no reduction in backpay allowed in view of evidence of such actual job search and E's burden to show lack of sufficient diligence in seeking employment]

Washington Beef Producers **JD-(SF)-86**

[backpay claimant's overtime hours worked for interim E in excess of hours he would have worked for respondent E not included in interim earnings on ground that greater efforts of Ee should accrue to his own benefit rather than to benefit of wrongdoing E; however, fact that claimant voluntarily left interim job paying $5.00 an hour for interim job paying $4.50 an hour but with excessive overtime would be unfair to E; accordingly, backpay specification formula modified by assuming that claimant's base hours accrued at $5.00 per hour rather than $4.50]

N.L.R.B. v. The Westin Hotel **758 F.2d 1126 (C.A. 6, Apr. 1985)**

(no wilful loss of earnings by failure to fully utilize state employment agency's services, as contended, where discriminatee was never advised of agency's list of area jobs like that she had held)

4433-4233-2700 Search for jobs out of town

N.L.R.B. v. The Westin Hotel **758 F.2d 1126 (C.A. 6, Apr. 1985)**

(discriminatee's failure to seek employment in downtown area where she had worked for respondent, which was 25 miles from her hometown, justified in view of her fear of being refused employment w/o first clearing the circumstances of her charged wrongful discharge by respondent and her inability to finance necessary repairs to her car to provide transportation for the 25 mile commute)

4433-4233-3100 Acceptance of job outside local job market

Washington Beef Producers **JD-(SF)-86**

[backpay of claimant not curtailed because of his journeys outside state where claimant, after being laid off from interim employment, traveled outside state when he was unemployed, and continued to look for work in other state until he obtained it; Bd does not *dock* claimant where there is no evidence that employment opportunities in new location are less than those in old]

4433-4233-4500 Removal from labor market

Fugazy Continental Corp. **276 NLRB No. 152**

(E's defense that Ee had become independent contractor and thereby removed himself from job market, rejected, where Ee was doing same work that he had done prior to discharge)

Fugazy Continental Corp. **276 NLRB No. 152**

(contrary to E, chauffeur who formed and managed taxicab company while chauffeuring for limousine company did not remove himself from job market but sought to augment his income)

Iron Workers, Local No. 433 (RPM Erectors, Inc.) **275 NLRB No. 216**

(no backpay due where Ee refused to pay supplemental back dues resulting from employment with member Es of multi-E unit thereby making Ee ineligible for dispatch to jobs with member Es, notwithstanding claim the bankruptcy ptn he had filed prohibited it and payment would compromise pending lawsuit challenging legality of dues; Sec. 8(b)(2) and U-security clause precluded U's referring one Ee, and not the others, w/o payment of dues, and there were several ways he could have paid them w/o abandoning his position as a plaintiff in the Ees' lawfuit challenging the dues' legality)

Iron Workers Local 118 (Waldo F. Kusterns) v. N.L.R.B. **804 F.2d 1100 (C.A. 9, Nov. 1986)**

[ct remanded case for computation of back pay consistent with its opinion, where Bd improperly found that Ee, although wrongfully refused dispatch by U to job outside bargaining unit for failing to pay supplemental dues arrearages, was not entitled to back pay because he failed to mitigate damages by refusing to pay the dues, which refusal lawfully rendered him ineligible for dispatch to jobs w/i unit, thereby taking himself out of labor market; exercise of reasonable diligence to seek comparable employment did not require Ee to take affirmative steps to eliminate all potential liability of U]

4433-4233-4525 Leaving geographical area of employment

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**

[moving to less urbanized area does not constitute willful loss of earnings. *Discharged Ee is not confined to geographical area of former employment; he or she remains in labor market by seeking work in any area with comparable employment opportunities*]

Hacienda Hotel and Casino **279 NLRB No. 004**

[discriminatee did not fail to properly seek interim employment notwithstanding E's contention that her chances for employment were better in home city than in cities to which she traveled, that she knew she couldn't find work elsewhere, and that she traveled to resort area to vacation, where E failed to show suitable employment was available in home city, and discriminatee did not remove herself from labor market as evidenced by her registration on U's out-of-work list, and by seeking employment in other cities]

Hacienda Hotel and Casino **279 NLRB No. 004**

[discriminatee reimbursed for air fares between destinations in cities to which she traveled seeking interim employment, where discriminatee remained in labor market since, being unable to find work in home city, it was proper for her to seek employment elsewhere and to be reimbursed for doing so]

Overseas Motors, Inc. **277 NLRB No. 061**

(Respondent E's contention backpay period tolled since discriminatee unavailable for work because he was out of country, rejected, since it provided no evidence contraverting GC's pleadings and compliance officer's testimony that discriminatee was back in country and able to work on dates as stated by GC, and thus Respondent has not met its burden of showing discriminatee not available for work)

Holiday Radio, Inc., d/b/a KSLM--AM and KSD--FM **275 NLRB No. 184**

(discriminatee held to have incurred willful loss of earnings by leaving geographical area of interim employment and thereafter voluntarily reducing

4433-4233-4525—Cont.

his days of work from 6 to 3 and then resigning employment, where Ee's departure from interim E was not caused by any matter incidental to his interim employment but instead was caused by Ee's personal decision to move to another area)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) 274 NLRB No. 134

(discriminatee's intermittent residence out-of-state held not to establish willful loss of earnings and she did not remove herself from job market by moving from large community, which assertedly had low rate of unemployment, to small community with lesser job opportunities; discriminatee's numerous efforts in both locations to find interim work, her out-of-state interim work, and frequent returns to place of discharge indicated her willingness to return to E as she did when E offered her employment)

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[ct remanded to Bd for modification of its order which denied backpay to undocumented aliens who had not left U.S. during backpay period nor were subject of deportation proceedings. Ct held Bd erred when it interpreted *Sure-Tan* 467 U.S. 883, which deemed undocumented alien discriminatees who had left U.S. to be unavailable for work, and not entitled to packpay, and conditioned reinstatement on legal reentry, to mean that undocumented aliens never entitled to backpay and would require compliance officer to determine legality of each alien discriminatee's presence in U.S.]

4433-4233-4550 Illness and/or bereavement

Greyhound Taxi Co., Inc. 274 NLRB No. 060

(in determining whether unlawfully discharged Ee, who remained out of job market for over 5 years because of psychiatric condition claimed to be caused by E's ULPs, was entitled to backpay, Bd stated it did not know that it should be in business of making open-ended awards for disability in manner of ct in civil tort action)

Greyhound Taxi Co., Inc. 274 NLRB No. 060

(backpay reduced by amount discriminatee would have earned during part of backpay period when he was unavailable for employment due to disabling illness; absent testimony regarding discriminatee's health during other applicable pay periods, GC was required to ascertain onset of disabling nature of illness and make any further necessary deductions consistent herewith)

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeland Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)

[no wilful loss of earnings due to illness, although discriminatee therefore limited his job search to an area w/i two hundred miles of his home, since respondent failed to show that this restriction affected discriminatee's ability to find work]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeline Local Union No. 38 748 F.2d 1001 (C.A. 5, Dec. 1984)

(no wilful loss of earnings due to illness, although discriminatee therefore limited his job search to an area w/i two hundred miles of his home, since respondent failed to show that this restriction affected discriminatee's ability to find work)

Harold L. Wakefield v. N.L.R.B. 779 F.2d 1437 (C.A. 9, Jan. 1986)

[E liable not only for period of Ee's physical disavility due to E's agents' assault but also for period of resulting psychological disavility, notwithstanding Ee's pre-existing mental condition, since wrongdoer takes its victim as it finds him]

4433-4233-4575 Restricting availability for job

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center 281 NLRB No. 052

[no failure to seek employment or unavailability for work due to second job or responsibility for ailing parent where discriminatee satisfied requirement that she submit weekly list of Es contacted sufficient to receive unemployment compensation, had worked second job while employed by E's predecessor, and explained that someone else was at home with parent while she looked for work]

Lord Jim's 277 NLRB No. 176

[E's contention that Ee willfully incurred loss of earnings by returning to school full-time during backpay period, rejected, since specification sought backpay for only a part-time workweek and Ee testified she was able to work part-time and attend school full-time]

Fugazy Continental Corp. 276 NLRB No. 152

(Ee's specifying that he wanted to work nights not removal from job market where he had often worked nights for E and night shift work was common in industry)

4433-4233-4580 On strike or refusal to cross picket line

Northwest Metal Products, Inc. 281 NLRB No. 156

[following remand of backpay case to ALJ to determine whether or not economic striker would have returned to work during strike, Bd affirmed ALJ's conclusion that E failed to establish that striker would have refused valid offer of reinstatement if it had been made during strike]

Electrical Workers, Local 453 (Sachs Electric Co.) 277 NLRB No. 122

(discriminatee held not to have incurred willful loss of earnings by participating in walkout at interim E's premises where there was no evidence walkout was not protected concerted activity and he continued to seek interim employment thereafter)

John Cuneo, Inc. 276 NLRB No. 012

(Ee held not entitled to backpay for period during which he absented himself from job market for entire period of strike against interim E)

Northwest Metal Products, Inc. 275 NLRB No. 143

(backpay case remanded to ALJ to determine whethter or not discriminatee (economic striker) would have returned to work during strike)

4433-4233-5400 Rejection of invalid reinstatement offer

AVI Graphics, Inc. d/b/a Manhattan Graphic Productions 282 NLRB No. 051

[no valid offer of reinstatement where discriminatee reinstated at predischarge salary rather than salary that would have incorporated general wage increase given to all Ees during backpay period and which Ee would have received but for discriminatory discharge, and such pay raise included in backpay determination]

Murbro Parking, Inc. 276 NLRB No. 009

(backpay period not tolled by discriminatee's rejection of offer of reinstatement as parking lot attendant, rather than to job as lot checker from which he had been discharged, since offer to substantially equivalent position not alternative open to E where discriminatee's former job still extant, and where job offered required handling money and discriminatee feared supervisor might frame him regarding money)

Rikal West, Inc. 274 NLRB No. 170

(rejection of invalid offer of reinstatement does not constitute waiver of entitlement to backpay and does not toll backpay)

Washington Beef Producers JD-(SF)-86

[backpay claimant's refusal of reinstatement held not to toll E's backpay liability nor to constitute failure to mitigate damages, where offer of reinstatement was to night shift rather than to day shift at which claimant was originally employed; similar jobs in different shifts are not equivalent positions; and claimant, in mitigating damages, is not required to abandon day shift job search to accept night shift job]

4433-4233-5500 Rejection of valid reinstatement offer

AVI Graphics, Inc. d/b/a Manhattan Graphic Productions 282 NLRB No. 051

[where E gave discriminatee reasonable time to accept reinstatement offer but refused to extend the reporting date because business was such that he needed Ee then and, in fact, hired another Ee, but discriminatee stated he needed more time to take care of father's medical condition, held E made valid reinstatement offer which discriminatee rejected, thus ending backpay period]

Pacific Mutual Door Company 278 NLRB No. 120

[E's offer of reinstatement to two economic strikers were neither invalid, conditional nor discriminatory, notwithstanding facts that offers were made seriation, not by seniority, and directly to Ees; fact that reinstatement offers were made to less than all eligible former strikers at onetime did not render each offer invalid; thus, rejection of E's reinstatement offers to eligible strikers tolled their backpay and satisfied E's reinstatement obligation with respect to alleged ULPs]

4433-4233-6000 Taxes

Arthur Briggs, Inc. 281 NLRB No. 114

[claimant's backpay held not affected by his failure to pay income tax on his interim earnings]

Fugazy Continental Corp. 276 NLRB No. 152

(no wilful loss of job where E went out of business and Ee unsuccessfully sought similar work elsewhere; Ee's use of words *chauffeur-retired* on his income tax return were merely explanation w/o bearing on his right to backpay)

4433-4233-6900 Reinstated claimant quitting

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[reinstatement to position with diminished hours, drop in income, less desirable assignments and less desirable equipment, held improper; no tolling of backpay, and inasmuch as these changes are directly attributable to his unlawful discharge, his quitting E's employ w/o having another job was not willful loss of earnings but is constructive discharge]

4433-4233-7200 Accepting job involving shorter work week

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[no willful loss of earnings by claimant accepting parttime position and not looking for fulltime position thereafter where record shows claimant started search for work w/i reasonable period of time, accepted parttime position when no fulltime position available in only line of work he was trained for and by accepting parttime work there was potential to work way up in seniority and become fulltime]

4433-4233-7900 Accepting dissimilar job

Fuguzy Continental Corp. **276 NLRB No. 152**
(E's defense that Ee had become independent contractor and thereby removed himself from job market, rejected, where Ee was doing same work that he had done prior to discharge)

Fuguzy Continental Corp. **276 NLRB No. 152**
(no willful loss of earnings where, although Ee could not find employment in same kind of job as that from which he was unlawfully discharged, he sought employment in three other kinds of jobs and finally found employment in one of them)

4433-4233-8100 Failure to seek work after layoff or discharge from interim job

Washington Beef Producers **JD-(SF)-86**
[where during portion of backpay period when claimant was in layoff status from interim E she registered with state unemployment office and with private employment agency which sent her on various job referrals, no reduction in backpay allowed in view of evidence of such actual job search and E's burden to show lack of sufficient diligence in seeking employment]

4433-4233-8500 Failure to seek referrals out of hiring hall

December 12, Inc.; December 12, Inc. of Nevada **282 NLRB No. 077**

Iron Workers Local 118 (Pittsburgh Des Moines Steel Company) **275 NLRB No. 185**
(no willful loss of earnings by discriminatee's failure to seek referrals to jobs, in view of Respondent U's unlawful threat not to refer him to any job until he paid his supplemental dues)

4433-5600 Interest

Carruthers Construction Company, Inc. **274 NLRB No. 109**
(E's contention that no interest on backpay should be awarded herein because of Bd's asserted delays in processing underlying ULP case, rejected)

4433-5633 Computed at internal revenue service's short term federal rate for underpayment of taxes

Western Truck Services, Inc. **JD-(SF)-26-85**
]*Florida Steel Corporation* criteria appropriate for computing interest due on retirement contributions to be made on monthly basis to independent Ee IRAs, rather than *Merryweather Optical Co.* criteria used for determining additional sums due on pension fund contributions, since payment to an individual's IRA is equivalent to payment directly to the individual)

4433-6000 Taxes

Arthur Briggs, Inc. **281 NLRB No. 114**
[claimant's backpay held not affected by his failure to pay income tax on his interim earnings]

American Model & Pattern, Inc. **277 NLRB No. 018**
(in computing interest owed Ees on unlawfully discontinued IRA contributions, tax benefits lost by Ees should *not* be taken into account)

Orleans International, Inc. **274 NLRB No. 169**
(E's not required to reimburse unlawfully discharged individual for any income tax losses he may incur as result of receiving backpay as one-time payment)

4433-7000 Woolworth formula

4433-7025 Interim earnings and expenses should be credited to specific quarters within which due and payable

Davis Coal Company Debtor-In-Possession **275 NLRB No. 102**
(when discriminatee worked in one quarter and was paid for this work in following quarter, interim earnings were subtracted from gross backpay in quarter *paid* and not from quarter *earned*)

4433-7085 Not used where employment did not cease

Pete O'Dell & Sons Steel Erectors **275 NLRB No. 140**

4433-8400 Respondent ordered to preserve and make available relevant records

Sure-Tan, Inc. and Surak Leather Co. **277 NLRB No. 023**
(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd ordered E to preserve and, upon request, make available to Bd or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze amount of backpay due under terms of instant order)

4450 BACKPAY PERIOD

Northwest Metal Products, Inc. **281 NLRB No. 156**
[following remand of backpay case to ALJ to determine whether or not economic striker would have returned to work during strike, Bd affirmed ALJ's conclusion that E failed to establish that striker would have refused valid offer of reinstatement if it had been made during strike]

4450-0100 Generally

Hacienda Hotel and Casino **279 NLRB No. 084**
[year in which discriminatee was found by Bd in earlier decision to have been first discriminated against held not *normal* period and therefore not used as basis in computing backpay; similarly, year in which earlier decision disclosed discriminatee was terminated and later reinstated on 2 occasions was not *normal* period]

Sims-Luse Olds, Buick, Pontiac, GMC Trucks, Inc. **JD-247-85**
(basis for determining gross backpay was period of approximately three quarters duration, rather than shorter periods as urged by GC and E, where former period was more appropriate for judging hours Ee would normally have worked had he not been discharged)

4450-2300 Beginning of period

4450-2307 Date of discriminatory action

Modern Iron Works, Inc. **281 NLRB No. 151**
[E ordered to make Ees whole by paying them backpay for lost earnings from date of unlawful discharge to date of E's reinstatement offer]

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[contrary to ALJ's recommendation that backpay for Ees, wrongfully denied opportunity to form machine operating crew, be cut off as of date of his decision, Bd ordered backpay period to run from date of wrongful action until E offered each Ee opportunity to transfer to crew position]

Strawsine Manufacturing Co., Inc., et al. **280 NLRB No. 063**
[in case involving E's unlawful removal of operations to another state, E ordered to offer Ees who were terminated substantially equivalent positions at new facility or any of E's other plants, with traveling and moving expenses and backpay; further, backpay period for Ees who are unable to accept offers of employment that require moving is from date of termination to date Ees secures substantially equivalent employment with another E]

Iron Workers Local 118 (Waldo F. Kusterns) v. N.L.R.B. **804 F.2d 1100 (C.A. 9, Nov. 1986)**
[where U had unlawfully insisted that Ee pay supplemental dues arrearages before being dispatched to job outside bargaining unit in which arrearages were incurred, ct enforced Bd order awarding Ee back pay from date of U's first unlawful dispatch refusal to date of referral to comparable employment]

4450-2507-2500 Unlawful discharge of striker or employee erroneously believed to be striker

St. Mary's Home, Inc. t/a St. Mary's Infant Home **JD-285-85**
(defense to backpay specification that Ee had abandoned strike and secured other employment in which she continued after strike ended w/o reapplying to E for employment, rejected where Ee was entitled to backpay as unlawfully discharged striker as of date of termination notice, in absence of reinstatement offer, and, therefore, precedents regarding reinstatement of strikers did not apply)

4450-2514 Date work became available for discriminatee

Electrical Workers, Local Union No. 46 (NECA) **277 NLRB No. 139**
(U to pay traveler whom it had discriminatorily refused for two months to give exam qualifying him for highest priority referrals amount he would have earned, absent discrimination, from date he first registered on out-of work list, subsequent to first referral exam given after he asked to take it, to date he was given exam)

4450-2528 Date vacancies for which discriminatees were qualified were filled

Soil Engineering & Exploration Co., Inc. **JD-389-85**
[discriminatorily laid off Ees entitled to backpay, not from date of layoff, but from date they were discriminatorily denied reinstatement; E would have laid them off for economic reasons three days after discriminatory layoff and was justified in retaining better qualified Ees but was obligated to reinstate them pursuant to past practice when better qualified Ees quit, rather than hiring new Ees as replacements]

4450-2546 Date of strikers' unconditional offer to return to work

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[E's response to U's unconditional offer of ULP strikers to return to work was that it would reemploy them only as work became available and then

4450-2546—Cont.

only under unlawfully implemented terms and conditions of employment, violative, and backpay starts from day of offer to return to work]

4450-2570 Date of discriminatory refusal to recall after nondiscriminatory layoff or discharge

Telford & Doolen, Inc. 277 NLRB No. 112

(Bd provided that backpay award to laid-off Ee, whom E failed to recall pursuant to expired contract's seniority provisions and thereby unilaterally changed terms and conditions of employment, run from date of Ee's layoff to date when he was lawfully discharged, during which period E occasionally recalled Ees)

4450-2592 Beginning period in 8(a)(5) case

KCW Furniture Company, Inc. 276 NLRB No. 100

(where E unilaterally instituted terms and conditions of employment inconsistent with existing contract, Ees held entitled to backpay from date on which E unilaterally implemented changes in contracts terms and conditions of employment, to date on which E effectively terminated automatically renewable contract, rather than earlier date on which E claimed to have terminated contract)

4450-2592-2500 Date employer refused to execute contract

R.E.C. Corporation 277 NLRB No. 120

(make whole remedy of retroactive application of bargaining agreement which E has unlawfully refused to sign required)

4450-2592-5000 Date of unilateral implementation of terms and conditions of employment

KCW Furniture Company, Inc. 276 NLRB No. 100

(where E unilaterally instituted terms and conditions of employment inconsistent with existing contract, Ees held entitled to backpay from date on which E unilaterally implemented changes in contracts terms and conditions of employment, to date on which E effectively terminated automatically renewable contract, rather than earlier date on which E claimed to have terminated contract)

4450-5000 End of period

Iron Workers Local 118 (Waldo F. Kusterns) v. N.L.R.B. 804 F.2d 1100 (C.A. 9, Nov. 1986)

[where U had unlawfully insisted that Ee pay supplemental dues arrearages before being dispatched to job outside bargaining unit in which arrearages were incurred, ct enforced Bd order awarding Ee back pay from date of U's first unlawful dispatch refusal to date of referral to comparable employment]

4450-5005 Open-ended; continuing obligation

Niagara Falls Sightseeing By Sheridan, Inc. 279 NLRB No. 007

[backpay period for college student's employment as summer tour guide continued for all summers while he was in college and after graduation until start of his career where some guides worked two or more seasons, no record evidence established that tour guide might not return after skipping a season, and discriminatee sought employment each summer]

4450-5006 Valid offer of reinstatement

Modern Iron Works, Inc. 281 NLRB No. 151

[E ordered to make Ees whole by paying them backpay for lost earnings from date of unlawful discharge to date of E's reinstatement offer]

Louton, Inc., t/a/ The Original Oyster House 281 NLRB No. 154

[backpay period not terminated as of date discriminatee testified that she would not return to work even if offered reinstatement, since backpay is not tolled until discriminatee receives unconditional offer to return to work]

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 281 NLRB No. 117

[contrary to ALJ's recommendation that backpay for Ees, wrongfully denied opportunity to form machine operating crew, be cut off as of date of his decision, Bd ordered backpay period to run from date of wrongful action until E offered each Ee opportunity to transfer to crew position]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. 279 NLRB No. 069

[E was under continuing obligation to reinstate Ee where Ee never received E's valid offer of reinstatement; backpay period ended on date E mailed Ee good-faith offer of reinstatement, but Ee did not recieve offer since he had moved leaving no forwarding address; while E's good faith offer tolled E's backpay liability, it did not relieve E of its obligation to reinstate Ee]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051

[backpay tolled as of date when last of claimants were offered and had opportunity to accept reinstatement, rather than date on which E completed last of its major projects, since it was impossible for Bd to conclude that any particular claimant would have been laid off as of particular date where E failed to show that claimants were hired for particular project, that all Ees working on project, that all Ees working on project were laid off at project's end, or that E's layoff and recall procedures were tied to Ees' seniority]

Boland Marine And Manufacturing Company, Inc 280 NLRB No. 051

[claimant's backpay tolled as of date he was validly reinstated, rather than as of date of earlier reinstatement to position no substantially equivalent where at time of earlier reinstatement Ee was employed on E's project pursuant to U job referral w/o E's knowledge; referral was to night, rather than day, shift; and at time of referral, project was almost completed and claimant could have had no expectation of regular employment similar to that he enjoyed at another project prior to discharge]

Niagara Falls Sightseeing By Sheridan, Inc. 279 NLRB No. 007

[no valid offer of reinstatement where E allegedly made two telephone calls to discriminatee's family offering reinstatement w/o attempting to communicate directly with discriminatee orally or in writing; moreover, compliance instructions direct that reinstatement offers be made in writing with copy served on Bd's compliance officer]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047

(letter requesting that Ee who had been unlawfully laid off to advise E earliest date he could report for work did not constitute offer of recall, since not specific, unequivocal, nor did it assure Ee that he would have preexisting benefits of which he had been deprived because of his U activities)

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company 277 NLRB No. 047

(E's letter to Ee who had been unlawfully laid off stating *We expect to have an opening for an apprentice with your qualification w/i two weeks. Please advise this office by certain date if you would be interested in accepting employment with company* not offer of reinstatement, since failed to specify job or when it would be available, nor was expectation of opening unconditional profer of same or substantially equivalent position as that from which Ee had been laid off)

John Cuneo, Inc. 276 NLRB No. 012

(E's alleged offer of reinstatement to Ee in form of mailgram held invalid since mailgram amounted to nothing more than notice to Ee that there might be future opening at E for employment; moreover, E's mailgram did not allow sufficient time for Ee to properly consider mailgram even if it had been otherwise valid; as such, mailgram was not valid offer of reinstatement such as to toll E's backpay obligations)

Holiday Radio, Inc., d/b/a KSLM–AM and KSD–FM 275 NLRB No. 184

(in order to terminate a claimants' backpay and reinstatement rights in their entirety as of a certain date, Respondent must demonstrate that, even in the absence of the ULPs, it would have terminated the claimants for legitimate business reasons)

Holiday Radio, Inc., d/b/a KSLM–AM and KSD–FM 275 NLRB No. 184

(although discriminatee accepted interim employment paying higher wages, Bd will not presume Ee has abandoned entitlement to reinstatement in the absence of an unconditional offer of reemployment by E)

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. JD-(SF)-127-86

[reinstatement offer not valid where E went out of business and was unable to implement offer]

Hinz Store Fixtures & Construction Co., Inc. JD-(SF)-97-86

[E's reinstatement offer not valid and did not toll backpay liability in view of subsequent events, notwithstanding fact that letter containing offer was not delivered to Ee because he failed to notify E of change of address and that Ee received actual notice of offer in subsequent telephone conversation with E, where E told Ee in telephone conversation that work available when reinstatement offer was made was no longer available, and failed to recall Ee, pursuant to contractual seniority, rather than employ new hire]

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[*it does not effectuate policies of Act to terminate Ee's backpay rights prior to time genuine offer (of reinstatement) is made, since statement of waiver absent such offer does not manifest unequivocal resolve not to accept reinstatement*]

4450-5006-2500 Offer of reinstatement to some discriminatees tolls backpay as to those offered reinstatement

Pacific Mutual Door Company 278 NLRB No. 120

[E's offer of reinstatement to two economic strikers were neither invalid, conditional nor discriminatory, notwithstanding facts that offers were made seriatim, not by seniority, and directly to Ees; fact that reinstatement offers were made to less than all eligible former strikers at onetime did not render each offer invalid; thus, rejection of E's reinstatement offers to eligible strikers tolled their backpay and satisfied E's reinstatement obligation with respect to alleged ULPs]

4450-5006-7500 Offer must be kept open for reasonable period of time

AVJ Graphics, Inc. d/b/a Manhattan Graphic Productions **282 NLRB No. 051**

[where E gave discriminatee reasonable time to accept reinstatement offer but refused to extend the reporting date because business was such that he needed Ee then and, in fact, hired another Ee, but discriminatee stated he needed more time to take care of father's medical condition, held E made valid reinstatement offer which discriminatee rejected, thus ending backpay period]

C-F Air Freight, Inc. **276 NLRB No. 062**

(E's contention that backpay period was tolled on date discriminatees were sent unconditional offers of reinstatement, rejected where backpay claimants were given 10 days from date of offer to report for work and GC's backpay specification contended that backpay period ended 7 days after date of offer)

John Cuneo, Inc. v. N.L.R.B. **792 F.2d 1181 (C.A. D.C., June 1986)**

[E's offer of reinstatement ineffective since not sufficiently specific nor unequivocal and did not afford Ee adequate time (only 4 days) to consider his reply; further, Bd not precluded from asserting mailgram did not constitute valid offer of reinstatement by fact in earlier briefs Bd referred to mailgram as offer of reinstatement as this issue was neither litigated nor decided in the earlier proceeding]

4450-5010 Death of discriminatee

Fugazy Continental Corp. **276 NLRB No. 152**

(death of Ee no defense to backpay claim, since backpay awarded beneficiaries of Ee's estate)

4450-5015 Date undocumented alien leaves country

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[ct remanded to Bd for modification of its order which denied backpay to undocumented aliens who had not left U.S. during backpay period nor were subject of deportation proceedings. Ct held Bd erred when it interpreted *Sure-Tan* 467 U.S. 883, which deemed undocumented alien discriminatees who had left U.S. to be unavailable for work, and not entitled to packpay, and conditioned reinstatement on legal reentry, to mean that undocumented aliens never entitled to backpay and would require compliance officer to determine legality of each alien discriminatee's presence in U.S.]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[*undocumented aliens are entitled to protection of Act and when remaining in U.S. during backpay period, entitled to backpay. To deny undocumented aliens Bd remedies would encourage unscrupulous Es to hire undocumented workers; Congress intended to protect collective bargaining rights by ensuring that there is no subclass of workers nor would allowing backpay to aliens who work during backpay period encourage illegal entry or reentry to U.S.*]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[Bd remedy which would deny backpay to discriminatees who were undocumented aliens would make hiring undocumented workers more attractive to unscrupulous Es thus undermining two major goals of Immigration Act i.d. prevention of loss of American workers' jobs, and protection of American workers' wage rates and working conditions]

4450-5018 Rejection of valid reinstatement offer

Murbro Parking, Inc. **276 NLRB No. 009**

(backpay period not tolled by discriminatee's rejection of offer of reinstatement as parking lot attendant, rather than to job as lot checker from which he had been discharged, since offer to substantially equivalent position not alternative open to E where discrimnatee's former job still extant, and where job offered required handling money and discriminatee feared supervisor might frame him regarding money)

Trident Seafoods Corporation **275 NLRB No. 003**

(strikers not entitled to backpay from time of discharge (termination slips marked *not eligible for rehire* until offered unconditional reinstatement as E established that any earlier offers of reinstatement would have been futile since Ees would not have returned to work even if termination slips marked *eligible for rehire* and were accorded rights of strikers)

4450-5042 Date claimant obtains substantially equivalent employment

4450-5042 Date claimant obtains substantially equivalent employment

Struwine Manufacturing Co., Inc., et al. **280 NLRB No. 063**

[in case involving E's unlawful removal of operations to another state, E ordered to offer Ees who were terminated substantially equivalent positions at new facility or any of E's other plants, with traveling and moving expenses and backpay; further, backpay period for Ees who are unable to accept offers of employment that require moving is from date of termination to date Ees secures substantially equivalent employment with another E]

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**

[claimant's backpay tolled as of date he was validly reinstated, rather than as of date of earlier reinstatement to position not substantially equivalent where at time of earlier reinstatement Ee was employed on E's project pursuant to U job referral w/o E's knowledge; referral was to night, rather than day, shift; and at time of referral, project was almost completed and claimant could have had no expectation of regular employment similar to that he enjoyed at another project prior to discharge]

Daniel Construction Company, A Division of Daniel International Corporation **276 NLRB No. 118**

(E's responsibility to offer to reinstate unlawfully discharged Ees and to make them whole for losses does not terminate in event Ees obtain substantially equivalent employment elsewhere; fact that E lost maintenance and construction contract at location where Ees were discharged does not terminate backpay liability upon Ees' obtaining equivalent employment where E demonstrated it could transfer Ees, not hired by replacement contractor, to other operations)

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**

(Bd's traditional balancing test applied and E, while not required to reinstate discriminatorily discharged Ees, ordered to make them whole for back pay until they obtain substantially equivalent employment elsewhere, where U steward and son, immediately after their unlawful discharges which substantially provoked them, threatened company president with bodily harm; such reaction by Ees, instead of taking recourse to known legal remedies, was less justified as would be case with unsophisticated Ees; and any amicable relationship between parties, should Ees be reinstated, was improbable)

John Cuneo, Inc. v. N.L.R.B. **792 F.2d 1181 (C.A. D.C., June 1986)**

[Respondent-E failed to sustain its contention that backpay period ended for striker-Ee, whom it failed to reinstate, at the time Ee returned to work at previous E where he was on layoff status]

4450-5045 Date discriminatee abandoned employment

Holiday Radio, Inc., d/b/a KSLM--AM and KSD--FM **275 NLRB No. 184**

(although discriminatee accepted interim employment paying higher wages, Bd will not presume Ee has abandoned entitlement to reinstatement in the absence of an unconditional offer of reemployment by E)

4450-5048 Date of misconduct barring reinstatement

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**

[post discharge conduct of breaking glass in roadway grounds for lawfully refusing reinstatement. Backpay runs until time of this conduct and not when wrongfully discharged by E]

Fiber Glass Systems, Inc. **278 NLRB No. 154**

[discriminatee's pointing pistol at Ee and threatening to kill him if he did not vote for U terminated entitlement to backpay and barred reinstatement]

Sahara Datsun, Inc. **278 NLRB No. 148**

[backpay period ended on date that discriminatee first forfeited right to reinstatement by informing bank through which E obtained financing for its customers that E was submitting falsified customer credit applications]

4450-5052 Date discriminatee was medically declared unfit for former employment or was granted permanent disability award

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**

[discriminatee not physically unfit to perform former waitress job or unavailable for work, notwithstanding her alleged statement that she could not function as waitress due to her back problem, where she had held two waitress jobs during backpay period, her current job required bending over, getting down on her knees, climbing on stools and carrying twenty-pound objects, and E's witness's testimony was indefinite as to whether she had actually said she could not do waitress work]

4450-5060 Date discriminatee would have been terminated or laid off for non-discriminatory reasons

Searle Auto Glass, Inc. d/b/a Best Glass Company **280 NLRB No. 139**

[contention that discriminatee would have been discharged upon return of vacationing Ee he was replacing, rejected where Ee would have probably been kept on had E's ULP not deprived him of permanent employment intended by foreman]

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**

[backpay tolled as of date when last of claimants were offered and had opportunity to accept reinstatement, rather than date on which E completed last of its major projects, since it was impossible for Bd to conclude that any particular claimant would have been laid off as of particular date where E failed to show that claimants were hired for particular project, that all Ees

4450-5060—Cont.

working on project, that all Ees working on project were laid off at project's end, or that E's layoff and recall procedures were tied to Ees' seniority]

Holiday Radio, Inc., d/b/a KSLM--AM and KSD--FM **275 NLRB No. 184**

(backpay and reinstatement obligation towards two on-the-air announcers held not terminated, notwithstanding E's contention that automation subsequent to Ees' discharge would have required their termination, where E did not show that Ees actually would have been terminated but only that they would have suffered same reduction in wages as other announcers which was result of automation; Ees are entitled to reinstatement and backpay at lower rate of pay as the other announcers)

Holiday Radio, Inc., d/b/a KSLM--AM and KSD--FM **275 NLRB No. 184**

(Ees' rights to reinstatement and backpay terminated on date that new general manager was hired, where manager testified w/o contradiction, that upon his hire, he conducted a review of E's operations and decided that instant Ees' services were no longer needed and thus, Ees would have been terminated subsequent to their unlawful termination for nondiscriminatory reasons)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **773 F.2d 77 (C.A. 6, Sep. 1985)**

(backpay awards for Ees, who had been wrongfully discharged over year before plant shutdown about which E failed to bargain, cannot continue past shutdown; since any backpay awarded to remedy E's failure to bargain should be awarded equally to all Ees affected by plant shutdown, since all were equally injured by E's failure to bargain, and backpay awards for discharged Ees, insofar as they extend past plant shutdown, appear punitive rather than remedial)

4450-5066 Date discriminatee would have left employ of employer

Niagara Falls Sightseeing By Sheridan, Inc. **279 NLRB No. 007**

[backpay period for college student's employment as summer tour guide continued for all summers while he was in college and after graduation until start of his career where some guides worked two or more seasons, no record evidence established that tour guide might not return after skipping a season, and discriminatee sought employment each summer]

Hutchens Trucking Company, Inc. **JD-164-85**

(backpay continued to run notwithstanding discriminatee turned down recall notice from prior E for whom he had worked on and off for 5 years before being unlawfully denied employment with respondent as discriminatee stated he refused recall because he wanted steady employment which he never had with this prior E)

Lemon Drop Inn, Inc. v. N.L.R.B. **752 F.2d 323 (C.A. 8, Jan. 1985)**

(reinstatement proper remedy because *it is the only sanction which prevents an employer from benefiting from his ULPs through discharges which may weaken or destroy a union*)

John Cuneo, Inc. v. N.L.R.B. **792 F.2d 1181 (C.A. D.C., June 1986)**

[Respondent-E failed to sustain its contention that backpay period ended for striker-Ee, whom it failed to reinstate, at the time Ee returned to work at previous E where he was on layoff status]

4450-5070 Date which discriminatee is referred to job substantially equivalent to that to which he was not referred

Electrical Workers, Local Union No. 46 (NECA) **277 NLRB No. 139**

(U to pay traveler whom it had discriminatorily refused for two months to give exam qualifying him for highest priority referrals amount he would have earned, absent discrimination, from date he first registered on out-of work list, subsequent to first referral exam given after he asked to take it, to date he was given exam)

Marbro Parking, Inc. **276 NLRB No. 009**

(backpay period not tolled by discriminatee's rejection of offer of reinstatement as parking lot attendant, rather than to job as lot checker from which he had been discharged, since offer to substantially equivalent position not alternative open to E where discriminatee's former job still extant, and where job offered required handling money and discriminatee feared supervisor might frame him regarding money)

Marbro Parking, Inc. **276 NLRB No. 009**

(E failed to meet burden of proving willful loss of earnings, notwithstanding expert testimony that there were more job openings for which discriminatee qualified than applicants during relevant period, and evidence of survey of newspaper advertisements showing that in 18 months during period there were hundreds of jobs advertiesed in 17 catagories for which discriminatee qualified, absent evidence he was aware of openings cited, would have been hired if had applied, or that terms and conditions of employment at allegedly available jobs were such that discriminatee would have failed to mitigate damages had he refused jobs)

4450-5079 Date discriminatee could have returned to former position

John Cuneo, Inc. **276 NLRB No. 012**

(E's contentions that Ee was laid-off permanent Ee of another E at time of hire and was not entitled to backpay from date of recall by former E, and that Ee was on layoff status with that E and could only achieve temporary status with E, rejected; Ee's previous job history had no bearing on his entitlement to reinstatement and backpay)

Hutchens Trucking Company, Inc. **JD-164-85**

(backpay continued to run notwithstanding discriminatee turned down recall notice from prior E for whom he had worked on and off for 5 years before being unlawfully denied employment with respondent as discriminatee stated he refused recall because he wanted steady employment which he never had with this prior E)

4450-5084 Date employer ceased operations

Apex Insulation **279 NLRB No. 176**

[matter of date E ceased operations, which is the date make whole remedy to end for discriminatees, left to compliance stage]

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos **277 NLRB No. 39**

(E ordered to bargain regarding effects of closing operation, and pay limited backpay under *Transmarine* i.e. from 5 days after Bd decision until occurance of first of following: (1) agreement on matters pertaining to effects of closing (2) impasse (3) failure of U to request bargaining w/i five days of decision, or to commence negotiations w/i 5 days of Respondents' notice of desire to bargain (4) subsequent failure of U to bargain in good faith; contention order violated automatic stay of Bankruptcy Code, rejected)

Daniel Construction Company, A Division of Daniel International Corporation **276 NLRB No. 115**

(E held liable for backpay of unlawfully discharged Ees after date E's contract for providing maintenance and construction services to manufacturer expired; backpay was based on what Ees would have earned had they been employed by replacement contractor, where all Ees, except one, were hired by that contractor, and probabilites were *overwhelming* that either E or contractor would have employed discharged Ees)

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. **JD-(SF)-127-86**

[Bd presumes that when an E goes completely out of business and terminates its Ees, and there is no evidence that it closed for illegal reasons or that its operations were transferred elsewhere or that it operated at other locations, that Ees discharged for illegal reasons prior to its closure would have been terminated at time of closure and that such presumption pretermits their entitlement to backpay]

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. **JD-(SF)-127-86**

[backpay period ended when E went out of business and terminated Ees, absent Bd order or backpay specification that backpay liability continued until discriminatee obtained substantially equivalent employment]

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **773 F.2d 77 (C.A. 6, Sep. 1985)**

(backpay awards for Ees, who had been wrongfully discharged over year before plant shutdown about which E failed to bargain, cannot continue past shutdown; since any backpay awarded to remedy E's failure to bargain should be awarded equally to all Ees affected by plant shutdown, since all were equally injured by E's failure to bargain, and backpay awards for discharged Ees, insofar as they extend past plant shutdown, appear punitive rather than remedial)

4450-5088 Date discriminatee recovered from unfair labor practice-related physical or pychological injuries

Greyhound Taxi Co., Inc. **279 NLRB No. 144**

[pursuant to ct remand as law of case, Bd held Ee entitled to backpay for entire period of his psychologic disability which ALJ had found proper but which Bd had disallowed; in adopting ALJ's backpay computation, Bd noted that E did not except to ALJ's computation but simply challenged ALJ's finding that Ee incurred no willful loss of earnings during his psychological disability and his conclusion that E was responsible for that disability and for backpay during that period]

Greyhound Taxi Co., Inc. **274 NLRB No. 060**

(where E constructively discharged Ee by threatening and assaulting him causing minor physical injuries incapacitating Ee for about 2 weeks, Bd terminated E's backpay obligation when Ee recovered from injuries and, contrary to ALJ, disallowed backpay for 5 year period Ee remained out of job market because of preexisting psychologic disability; ALJ's conclusion

4450-5088—Cont.

that Ee's disability resulted solely from attack and unlawful termination was completely unjustified, since evidence was insufficient to support conclusion that Ee, who had exhibited erratic behavior before discharge, would have been fit for work had ULPs not occurred)

Harold L. Wakefield v. N.L.R.B. 779 F.2d 1437 (C.A. 9, Jan. 1986)

[E liable not only for period of Ee's physical disavility due to E's agents' assault but also for period of resulting psychological disavility, notwithstanding Ee's pre-existing mental condition, since wrongdoer takes its victim as it finds him]

4450-5090 End of period in 8(a)(5) case

Telford & Doolen, Inc. 277 NLRB No. 112

(Bd provided that backpay award to laid-off Ee, whom E failed to recall pursuant to expired contract's seniority provisions and thereby unilaterally changed terms and conditions of employment, run from date of Ee's layoff to date when he was lawfully discharged, during which period E occasionally recalled Ees)

4450-5090-1700 Agreement reached on mandatory subjects of bargaining

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos 277 NLRB No. 39

(E ordered to bargain regarding effects of closing operation, and pay limited backpay under *Transmarine* i.e. from 5 days after Bd decision until occurance of first of following: (1) agreement on matters pertaining to effects of closing (2) impasse (3) failure of U to request bargaining w/i five days of decision, or to commence negotiations w/i 5 days of Respondents' notice of desire to bargain (4) subsequent failure of U to bargain in good faith; contention order violated automatic stay of Bankruptcy Code, rejected)

4450-5090-2500 Termination date of contract in which terms and conditions of employment were unilaterally implemented

KCW Furniture Company, Inc. 276 NLRB No. 100

(where E unilaterally instituted terms and conditions of employment inconsistent with existing contract, Ees held entitled to backpay from date on which E unilaterally implemented changes in contracts terms and conditions of employment, to date on which E effectively terminated automatically renewable contract, rather than earlier date on which E claimed to have terminated contract)

4450-5090-3300 Impasse reached on mandatory subjects of bargaining

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos 277 NLRB No. 39

(E ordered to bargain regarding effects of closing operation, and pay limited backpay under *Transmarine* i.e. from 5 days after Bd decision until occurance of first of following: (1) agreement on matters pertaining to effects of closing (2) impasse (3) failure of U to request bargaining w/i five days of decision, or to commence negotiations w/i 5 days of Respondents' notice of desire to bargain (4) subsequent failure of U to bargain in good faith; contention order violated automatic stay of Bankruptcy Code, rejected)

Stone Boat Yard: Stone Boat Yard, Debtor in Possession 276 NLRB No. 130

(while it is not always necessary to restore *status quo ante* before having bargaining impasse, one cannot have bargained to legal impasse over nonmandatory subject -- matter of restoring status quo ante)

4450-5090-5000 Failure of union to request bargaining within 5 days after receiving notice of employer's desire to bargain

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos 277 NLRB No. 39

(E ordered to bargain regarding effects of closing operation, and pay limited backpay under *Transmarine* i.e. from 5 days after Bd decision until occurance of first of following: (1) agreement on matters pertaining to effects of closing (2) impasse (3) failure of U to request bargaining w/i five days of decision, or to commence negotiations w/i 5 days of Respondents' notice of desire to bargain (4) subsequent failure of U to bargain in good faith; contention order violated automatic stay of Bankruptcy Code, rejected)

4450-6000 Extension of period

Electrical Workers, Local 453 (Sachs Electric Co.) 277 NLRB No. 122

(termination of discriminatee for cause, after date he was put back to work for Respondent which ended backpay period, does not serve to revive the backpay period)

4450-7500 Tolling of backpay

4450-7501 Generally

Modern Iron Works, Inc. 281 NLRB No. 151

[in accordance with its normal practice, Bd deferred to subsequent compliance proceedings question whether E at some later date tolled its backpay liability to any Ees by offering them reinstatement to their former positions, w/o prejudice to their seniority and other rights and privileges]

Hinz Store Fixtures & Construction Co., Inc. JD-(SF)-97-86

[E's reinstatement offer not valid and did not toll backpay liability in view of subsequent events, notwithstanding fact that letter containing offer was not delivered to Ee because he failed to notify E of change of address and that Ee received actual notice of offer in subsequent telephone conversation with E, where E told Ee in telephone conversation that work available when reinstatement offer was made was no longer available, and failed to recall Ee, pursuant to contractual seniority, rather than employ new hire]

4450-7501-3300 8(a)(3) cases

IMCO/International Measurement & Control Company, Inc. 277 NLRB No. 096

(E's refusal to pay reinstated discriminatee pay rate which included general raises granted Ees during discriminatee's interim backpay period constituted failure to make valid reinstatement offer; and since, E's offer set discriminatee's wage rate at amount less than that to which she was entitled, her acceptance of offer did not toll E's backpay liability; accordingly, E required to pay discriminatee, in addition to interim backpay, difference between actual rate of pay following return to work and rate which she should have received)

C-F Air Freight, Inc. 276 NLRB No. 062

(E's contention that backpay period was tolled on date discriminatees were sent unconditional offers of reinstatement, rejected where backpay claimants were given 10 days from date of offer to report for work and GC's backpay specification contended that backpay period ended 7 days after date of offer)

4450-7530 Arbitration or grievance decision in respondent's favor

Brown Company; Brown Company, Livingston-Graham Division; et al. 278 NLRB No. 113

[request by E who had violated Act by unilaterally transferring unit work in mid-term of bargaining agreement that it not be liable for backpay during period which it relied on decision of joint labor-management grievance committee, rejected]

4450-7540 Unavailability of work

Maple Tree, Inc. 281 NLRB No. 097

[E's contention that discriminatees would have been laid off approximately 6 weeks after they were unlawfully discharged because of unavailability of work, rejected, where no Ees were laid off at time specified by E and even if there was reduction in available work for discriminatees, E would have transferred them to other jobs]

Hinz Store Fixtures & Construction Co., Inc. JD-(SF)-97-86

[E's reinstatement offer not valid and did not toll backpay liability in view of subsequent events, notwithstanding fact that letter containing offer was not delivered to Ee because he failed to notify E of change of address and that Ee received actual notice of offer in subsequent telephone conversation with E, where E told Ee in telephone conversation that work available when reinstatement offer was made was no longer available, and failed to recall Ee, pursuant to contractual seniority, rather than employ new hire]

4450-7540-5000 Backpay limited to periods when discriminatee was laid off from regular job

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051

[backpay tolled as of date when last of claimants were offered and had opportunity to accept reinstatement, rather than date on which E completed last of its major projects, since it was impossible for Bd to conclude that any particular claimant would have been laid off as of particular date where E failed to show that claimants were hired for particular project, that all Ees working on project, that all Ees working on project were laid off at project's end, or that E's layoff and recall procedures were tied to Ees' seniority]

4450-7560 Unavailability of discriminatee for work

4450-7560-1500 Undocumented aliens

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023

(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate order pertaining to deported undocumented alien discriminatees, Bd made order subject to condition that before awarding backpay, Bd determine whether any of the discriminatees were lawfully available for employment during backpay period between date of their illegal discharges and date E mailed valid offers of reinstatement)

Sure-Tan, Inc. and Surak Leather Co. 277 NLRB No. 023

(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd tolled e's backpay from date valid reinstatement offers are

4450-7560-1500—Cont.

mailed to discriminatees, and provided that Bd will order hearing to determine backpay liability shortly after offers are made and that E will place in escrow money sufficient to satisfy its potential backpay liability for Ees who do not appear at hearing, but such money will be refunded if discriminatee has not been located w/i 1 year)

Felbro, Inc. **274 NLRB No. 186**
(in computing backpay, undocumented alien workers must be deemed *unavailable* for work (and accrual of backpay therefore tolled) during any period they were not lawfully entitled to be present and employed in the United States and issue as to availability was left to compliance stage)

4450-7560-6000 Illness, injury, or other absences

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[discriminatee not physically unfit to perform former waitress job or unavailable for work, notwithstanding her alleged statement that she could not function as waitress due to her back problem, where she had held two waitress jobs during backpay period, her current job required bending over, getting down on her knees, climbing on stools and carrying twenty-pound objects, and E's witness's testimony was indefinite as to whether she had actually said she could not do waitress work]

Overseas Motors, Inc. **277 NLRB No. 061**
(Respondent E's contention backpay period tolled since discriminatee unavailable for work because he was out of country, rejected, since it provided no evidence contraverting GC's pleadings and compliance officer's testimony that discriminatee was back in country and able to work on dates as stated by GC, and thus Respondent has not met its burden of showing discriminatee not available for work)

4450-7560-8000 Discriminatee in Armed Forces

Kawasaki Motors Corporation, U.S.A. **282 NLRB No. 028**
[backpay period tolled for time discriminatee removed himself from work force by entering military]

United States Steel Corporation **279 NLRB No. 004**
[issue of whether backpay period tolled as of date discriminatee entered armed forces left to compliance stage]

4450-7575 Rejection of valid offer of reinstatement

Burger Transfer & Storage Co. **281 NLRB No. 155**
[E's operations managers' statement to discharged strikers generally that their actions were hurting company, that company could do better for them, and company wanted them to return to work, was not unconditional offer of reinstatement, was vague, did not clearly rescind their discharges, and thus their failure to return to work after purported *offer* did not toll backpay]

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[backpay period not terminated as of date discriminatee testified that she would not return to work even if offered reinstatement, since backpay is not tolled until discriminatee receives unconditional offer to return to work]

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(E not relieved of its obligation to make Ee valid offer of reinstatement and E's backpay obligation continued to run until such offer was made, notwithstanding E's contention that any backpay obligation was tolled when Ee told Bd's Regional Office that he would not accept reinstatement with E if it were offered)

Murbro Parking, Inc. **276 NLRB No. 009**
(backpay period not tolled by discriminatee's rejection of offer of reinstatement as parking lot attendant, rather than to job as lot checker from which he had been discharged, since offer to substantially equivalent position not alternative open to E where discriminatee's former job still extant, and where job offered required handling money and discriminatee feared supervisor might frame him regarding money)

Rikal West, Inc. **274 NLRB No. 170**
(rejection of invalid offer of reinstatement does not constitute waiver of entitlement to backpay and does not toll backpay)

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company **808 F.2d 1155 (C.A. 6, Dec. 1986)**
[*conditional offer* of alternative employment, rather than unconditional offer of reinstatement, does not toll E's backpay obligation, since there was no showing nor finding that caretaker position at E's apartment complex some 30 to 50 miles distant from complex (from which 2 Ees were discharged) had been filled by time E communicated its conditional offer]

4450-7580 Strike

A & T Manufacturing Company **280 NLRB No. 106**
[claimant's backpay not tolled as of date of economic strike where at time of strike claimant was discriminatorily laid off Ee, making it impossible to ascertain whether he would have gone on strike absent E's prior discrimination, and such uncertainty must be resolved against E as wrongdoer]

Northwest Metal Products, Inc. **275 NLRB No. 143**
(backpay case remanded to ALJ to determine whether or not discriminatee (economic striker) would have returned to work during strike)

4467 AFFIRMATIVE DEFENSES

4467-1500 Provisions of other federal statutes

Hacienda Hotel and Casino **279 NLRB No. 084**
[tip income not limited to understated amount reported on discriminatee's Federal income tax return, and ALJ's computation based on other considerations held proper; while not condoning discriminatee's action and not unmindful of other considerations, Bd held its responsibility was to restore discriminatee as accurately as possible to former economic position in absence of discrimination; matter was now of public record and best left to IRS which was being furnished copy of decision herein; and to base computation on reported income would allow E as wrongdoer to benefit from inaccurate reporting to IRS]

4467-2300 Conduct constituting cause for discharge

JCO Food Corp., d/b/a C-Town **281 NLRB No. 072**
[unlawfully discharged Ee's outburst upon seeing her replacement at work next day that she was a Puerto Rican, not a *shit Dominican,* not so serious or flagrant as to warrant withholding reinstatement where unaccompanied by threats or violence, notwithstanding Bd does not condone such ethnic slurs]

Sahara Datsun, Inc. **278 NLRB No. 148**
[backpay period ended on date that discriminatee first forfeited right to reinstatement by informing bank through which E obtained financing for its customers that E was submitting falsified customer credit applications]

Electrical Workers, Local 453 (Sachs Electric Co.) **277 NLRB No. 122**
(termination of discriminatee for cause, after date he was put back to work for Respondent which ended backpay period, does not serve to revive the backpay period)

4467-2350 Commission of crime

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**
[Ee discharged for stealing, proscribed by one of E's unlawful unilaterally promulgated disciplinary work rules, held not entitled to backpay, notwithstanding GC's contention that Ee was so entitled because E imposed its disciplinary system to Ee's deteriment, where E presented sufficient evidence of its consistent policy of discharging for theft]

4467-2500 Participation in strike misconduct or other misconduct

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[ULP striker forfeited rights to reinstatement and backpay by throwing nails on main driveway to plant notwithstanding guard and nonstriking Ees first threw nails beside picketing strikers' cars]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[where group of pickets carrying baseball-bat-sized sticks approached and surrounded car of nonstriker which frightened driver so that car lurched forward and struck picket who, in turn, struck car with her stick, as did other pickets, and as car propelled her off to driver's side struck car again, Bd found that pickets did more than just block car's ingress and their misconduct would reasonably tend to intimidate Ee; therefore, discharge of picket not violative]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[throwing rocks at nonstriking Ees' vehicles grounds for not reinstating strikers]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[dropping nails in pathway of cars entering on exiting plant, grounds for refusing reinstatement]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[throwing bottle of paint and striking supervisor's car gounds for refusing reinstatement]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[stabbing at tire with ice pick grounds for refusing reinstatement notwithstanding tire was not damaged]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[post discharge conduct of breaking glass in roadway grounds for lawfully refusing reinstatement. Backpay runs until time of this conduct and not when wrongfully discharged by E]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[picket showing nail to management official and then tossing nail under tire which then penetrated tire sufficient misconduct so as to preclude reinstatement. Cf *Newport News Shipbuilding and Dry Dock Co.* 265 NLRB No. 104, where placing single nail on roadway which was retrieved prior to causing

4467-2500—Cont.

any damage and there was no malice in act was held not so serious misconduct as to warrant discharge]

Richmond Recording Corporation d/b/a PRC Recording Company **280 NLRB No. 077**
[striker who followed delivery van from plant onto interstate highway and drove in a reckless manner by zigzagging in front of van and applying his brakes lost his right to reinstatement]

Ad Art, Incorporated **280 NLRB No. 114**
[all backpay for whole backpay period denied, rather than just for quarters concerning which discriminatee deliberately concealed interim earnings, in order to protect Bd processes and since discriminatee's conduct brings case w/i exception to *American Navigation Co.*, 268 NLRB 426, making calculation of backpay impossible, where he withheld relevant evidence and testified falsely regarding interim earnings, and attempted to prevent witness from testifying]

A & T Manufacturing Company **280 NLRB No. 106**
[E may discipline or refuse to reinstate strikers by showing it had honest belief that they were guilty of strike misconduct of sever nature; and while nail strewing at E's facility is serious conduct justifying discharge of strikers who engaged in such conduct, fact that there are tacks on E's property with no evidence of responsibility on part of pickets does not constitute serious misconduct]

Las Vegas Paving Corp. **JD-(SF)-49-86**
[layof of Ees for refusing to join U, violative; further, E's contention that Ees forfeited right to backpay by engaging in post-layoff misconduct, rejected, since Ees engaged only in use of various non-threatening gestures and vulgarity directed at Ees who remained at work]

4467-2700 Failure of employee to comply with subpoena

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[claim of willful concealment of interim earnings because claimant only revealed earnings one week before trial while under subpoena thereby making disclosure *involuntary*, rejected. Fact claimant erred in his estimates of earnings at interim E does not support contention of fraudulent withholding of information nor does fact that some earnings not reported on income tax returns serve to toll backpay]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. **279 NLRB No. 069**
[E's mtn to dismiss C on grounds that witness who had been issued subpoena on E's behalf did not appear denied where service of subpoena was defective inasmuch as there was no tender by E of appropriate mileage and witness fee as requested by witness]

4467-3500 Concealment of interim earnings

AVI Graphics, Inc. d/b/a Manhattan Graphic Productions **282 NLRB No. 051**
[discriminatee did not intentionally conceal interim earnings where he reported interim employers but overlooked fact that he started work in latter part of quarter prior to one he claimed]

Arthur Briggs, Inc. **281 NLRB No. 114**
[denial of backpay for 2 quarters encompassing backpay claimant's willful concealment of interim earnings held proper; but, contrary to dissent which would deny backpay for any quarter, backpay awarded for remaining quarters]

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[E's request that discriminatee be made to forfeit backpay for two quarters due to concealment of interim earnings, rejected where Ee testified to filling in for a friend at a restaurant and disclosed her receipt of groceries and cash to GC on direct examination, and the money and groceries were in the nature of a gift in return for a favor, rather than wages]

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[forfeiture of earnings applies only where claimant is found to have wilfully deceived Bd, not where claimant fails to report earnings through inadvertance]

Allied Lettercraft Company, Inc. **280 NLRB No. 113**
[backpay claimant held not to have concealed interim earnings precluding him from receiving any backpay, where claimant, in filling out forms for Regional Office did not disclose his earnings from jobs obtained by means other than U's hiring hall, but prior to issuance of backpay specification he disclosed such earnings which were listed in specification as miscellaneous interim earnings]

Allied Lettercraft Company, Inc. **280 NLRB No. 113**
[claimant's backpay denied for quarter in which he improperly concealed interim earnings, where his explanation for not reporting interim job in question was ultimately not that he forgot it, but that he was only employed on job on trial basis]

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[GC met burden notwithstanding claimants were discharged in 1977 and Bd failed to solicit information from discriminatees until 1982 which made it difficult for individual discriminatees to list with specificity and accuracy details of their job search and led to last minute disclosures and recollections since no showing of willful concealment. Claimants not penalized solely because of poor record keeping of uncertain memories]

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[claim of willful concealment of interim earnings because claimant only revealed earnings one week before trial while under subpoena thereby making disclosure *involuntary*, rejected. Fact claimant erred in his estimates of earnings at interim E does not support contention of fraudulent withholding of information nor does fact that some earnings not reported on income tax returns serve to toll backpay]

Hacienda Hotel and Casino **279 NLRB No. 084**
[E's contention that discriminatee should be denied all backpay for quarters in which she intentionally concealed interim employment on ground she did not report interim earnings from Es named in her interim job applications with prospective Es, rejected, where discriminatee denied having been employed by any of the Es named in her applications and admitted she deliberately submitted interim job applications with fictitious employment history, and social security records failed to disclose employment by Es named in her applications]

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(discriminatee's failure to mention job offer he had received 5 years ago in Regional Office questionnaire could not be equated with intentional concealment of interim earnings where failure to mention unaccepted job offer could be attributed to lapse of memory rather than desire to conceal; in any event, since Bd found that discriminatee had been justified in passing up offer to accept another job 2 weeks later)

Overseas Motors, Inc. **277 NLRB No. 061**
(no inference that discriminatee who claimed he lived on loans, interim earnings from self employment and unemployment compensation during backpay period was not disclosing interim earnings, notwithstanding large gap between earnings, unemployment compensation and discriminatee's expenses to be filled by loans, absent evidence of failure to disclose earnings; burden on Respondent is not merely to litigate question of existence or non existence of loans, but to show that there were other interim earnings)

Consolidated Dress Carriers, Inc., et al. **JD-(NY)-68-86**
[in order to mitigate its backpay liability, E has burden of proving that Ee willfully concealed his interim earnings for quarters during which he was self employed, and such burden must be met by introduction of probative evidence and not by mere speculation and inference]

Consolidated Dress Carriers, Inc., et al. **JD-(NY)-68-86**
[fact that Ee failed to report his interim earnings from self employment to IRS held not to warrant inference, and to constitute speculation unsupported by record, that Ee had other income that he concealed from Bd; rather than inferring that such failure indicated that other income was concealed from Bd, equally plausible inference would be that Ee was scrupulously honest dealing with Bd since it was probable that, had Ee failed to disclose self employment income to Bd, such income would not have been discovered]

4467-3600 Employee gave false testimony at hearing

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[discriminatees' records of prior tips appropriate basis for projecting tip income during backpay period, notwithstanding discrepancy with smaller amounts reported on income tax returns, in view of discriminatees' demeanor, existence of tip entries at time of GC's contact, and adherence to testimony about tips despite possible prosecution for perjury or income tax evasion; also E's failure to produce gross sales receipts prevented checking tip estimates against percentage of sales, and E's production of records of food, w/o non-food, sales and tips reports prepared by its payroll service were insufficient to disturb ALJ's conclusions

Ad Art, Incorporated **280 NLRB No. 114**
[all backpay for whole backpay period denied, rather than just for quarters concerning which discriminatee deliberately concealed interim earnings, in order to protect Bd processes and since discriminatee's conduct brings case w/i exception to *American Navigation Co.*, 268 NLRB 426, making calculation of backpay impossible, where he withheld relevant evidence and testified falsely regarding interim earnings, and attempted to prevent witness from testifying]

4467-4100 Employee discharged from, or quit, interim employment

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[no willful loss of earnings where claimant had second job, or moonlighting job, from which he was unlawfully discharged, and he accepts another second job during backpay period for 40 hours or more a week but quits this job after approximately 4 months for personal reasons w/o having another job available]

Newport News Shipbuilding & Dry Dock Company **278 NLRB No. 150**
[discriminatee who quits interim employment, in which he has secured substantially equivalent employment with comparable wages, hours and working conditions (granted by E), w/o good cause has willful loss of earnings warranting reduction of backpay]

4467-4100—Cont.

Newport News Shipbuilding & Dry Dock Company 278 NLRB No. 150
[discharge for cause from interim job can serve as basis for reducing backpay, but burden on Respondent to establish that conduct for which discriminatee discharged from interim job was such willful or gross misconduct as to constitute willful loss of earnings]

4467-5300 Employee's misrepresentations on employment application

Hacienda Hotel and Casino 279 NLRB No. 084
[E's contention that discriminatee should be denied all backpay for quarters in which she intentionally concealed interim employment on ground she did not report interim earnings from Es named in her interim job applications with prospective Es, rejected, where discriminatee denied having been employed by any of the Es named in her applications and admitted she deliberately submitted interim job applications with fictitious employment history, and social security records failed to disclose employment by es named in her applications]

Niagara Falls Sightseeing By Sheridan, Inc. 279 NLRB No. 007
[falsification as to proficiency in German language on application for employment as seasonal tour guide not basis for denying or tolling backpay, notwithstanding E's warning on application that falsification was grounds for dismissal and contention that Ee would have been discharged when falsification was discovered on his assignment to German language tour, where operations manager condoned falsification, to extent it provided grounds for discharge, by hiring Ee with knowledge of falsification, and Ee's assignment to German language tour was improbable, as he was not assigned such tour in two months of employment]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[discriminatee's lying about employment history on job application, which was brought out at hearing during cross-examination, not grounds for denying backpay and reinstatement, absent showing E would not have hired him but for reliance on false information]

John Cuneo, Inc. v. N.L.R.B. 792 F.2d 1181 (C.A. D.C., June 1986)
[remand to Bd to decide whether Ee forfeited permanent status with Respondent E, which status would effect his entitlement to backpay, when he deliberately misrepresented to Respondent on employment application that he was unemployed when in fact he was temporarily laid off at another E, and to determine what Respondent E must prove to show it would not have hired Ee had it known his true employment status]

4467-6000 Delay in Board reaching *final* decision

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017
[Bd rejected E's contention that time it took from original decision adjudicating issue of discrimination until start of backpay hearing--over 4 years--was so great as to render accumulation of information sufficient to sustain the burden of proving mitigation an impossibility as Board is not required to place consequences of its own delay, even if inordinate, upon wronged Ees to the benefit of wrongdoing E]

Smyth Manufacturing Co., Inc.; Beacon Industries 277 NLRB No. 066
(laches rejected as defense where E argued that it should not be required to pay interest on backpay awards because of Bd's delay, since, even assuming that Bd was responsible for 5 year delay, it is not required to place consequences of its own delay, even if inordinate, upon wronged Ees, to benefit of wrong doing employers)

4467-7700 Employee would have been discharged, laid off, suspended, etc. for nondiscriminatory reasons

JCO Food Corp., d/b/a C-Town 281 NLRB No. 072
[unlawfully discharged Ee's outburst upon seeing her replacement at work next day that she was a Puerto Rican, not a *shit Dominican*, not so serious or flagrant as to warrant withholding reinstatement where unaccompanied by threats or violence, notwithstanding Bd does not condone such ethnic slurs]

Searle Auto Glass, Inc. d/b/a Best Glass Company 280 NLRB No. 159
[contention that discriminatee was not entitled to backpay, because he would have been discharged anyway, rejected where Bd's finding that claim of legitimate reason for discharge was pretext was *res judicata*]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee discharged solely as result of unlawful, unilaterally promulgated disciplinary work rules held entitled to backpay where, although rules were not distributed until one day after Ee's discharge, discharge notice used for Ee was that developed for use in enforcing unilaterally promulgated rules and, hence, Ee was discharged pursuant thereto (Burton)]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee held not entitled to backpay since he was not discharged solely as result of unlawful, unilaterally promulgated disciplinary work rules, where his discharge was not noted on discharge notice developed for use with rules nor was any rule cited as basis for his discharge (Newton)]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee held not entitled to backpay since he was not discharged solely as result of unlawful, unilaterally promulgated disciplinary work rules, where their discharge for sleeping on duty proscribed by one of E's promulgated rules, was consistent with E's preexisting practice (Carter, Mouille)]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ees discharged for inefficiency or insufficient production held entitled to backpay where discharges were pursuant to unlawful, unilaterally promulgated disciplinary work rules; absent evidence concerning efficiency or production levels expected of Ees before rules were introduced, it was impossible to determine whether E was merely continuing past practice or establisdhing new productivity rules; and E, not GC, should bear burden of showing preexisting practice as defense, which burden should be more than merely showing that E had ad hoc standard which was not changed by advent of rules (Anderson, et al)]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee discharged for kissing female security guard during worktime, subsequent to E's unlawful unilateral promulgation of disciplinary work rules, held not entitled to backpay; although there were no such incidents prior to promulgation of rules, E sufficiently showed that Ees had been discharged previously for *goofing off* and assault, and GC did not counter such evidence with showing that Ee's misconduct would not have resulted in disciplining prior to implementation of rules]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ees discharged for insubordination in refusing to perform assigned duties held entitled to backpay, since E failed to show that discharges would have occurred prior to unlawful, unilateral promulgation of disciplinary work rules where E's claimed preexisting disciplinary practice for insubordination provided no basis for ascertaining that any specific standard existed for disciplining Ees under circumstances in which each E's refusal to perform work assignment differed; and prior to rules, E did not have flat policy of discharging anyone for insubordination]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ees discharged for insubordination accompanied by abusive language toward supervisors or guards and, in one case, assault or supervisor held not entitled to backpay, where GC failed to rebut E's showing that, prior to its unlawful, unilateral promulgation of disciplinary work rules, E generally disciplined Ees for threatening and physically or verbally abusing supervisors]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee discharged for clocking another Ee's timecard held entitled to backpay since he was discharged or disciplined any Ee for same conduct prior to promulgation of rules]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ees discharged for horseplay and *goofing off* held not entitled to backpay since discharges were not result of unlawful, unilaterally promulgated disciplinary work rules where E successfully rebutted GC's prima facie case that they were so entitled by showing that before rules were promulgated E noted out discipline, including discharges, against Ees who engaged in horseplay]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee discharged for operating bull dozer so that substantial damage was caused to E's parking lot held not entitled to backpay since he was not discharged as result of unlawful, unilaterally promulgated disciplinary work rules but becuase of aggravated nature of his conduct and E's preexisting policy of discharging Ees whose negligence resulted in damage to equipment to which Ee's conduct was sufficiently analogous]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee discharged for bringing alcoholic beverages on E's premises, proscribed by one of E's unlawful, unilaterally promulgated disciplinary work rules, held entitled to backpay, since E failed to rebut GC's prima facie case that Ee was so entitled, where there was no evidence that E discharged or otherwise disciplined any Ee before promulgation of rules for possession of alcholic beverages on its facilities]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee discharged for neglecting his five watch duty and allowing five to ignite held entitled to backpay, since he was discharged pursuant to unlawful, unilaterally promulgated work rules, and not because of separately promulgated *instructions* which, promulgated after adoption of rules clarified and explained pertinent work rule and were not separate and distinct directive; moreover, supervision testified that before receiving *instructions* he would not have discharged Ee for first offense but felt compelled to do so by virtue of *instructions*]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[Ee discharged for absenteeism held not entitled to backpay, even though they were discharged pursuant to unlawful, unilaterally promulgated disciplinary work rules as evidenced by E's obvious attempt to conform to such rules, since E rubutted GC's prima facie case by showing that prior to promulgation of rules, E discharged Ees for repeated excessive absences and treated Ees similarly before and after adopting rules (Toye, et al)]

4467-7700—Cont.

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**
[Ees suspended for waiting for lunch whistle to blow rather than working until then held entitled to backpay, where it was reasonable to infer that suspensions were for violating pertinent unlawful, unilaterally promulgated disciplinary work rules issued only 2 weeks before suspensions; Ees received suspension notices from supervisor on forms identical to those distributed with rules, thereby demonstrating supervisior's knowledge of rules; and E presented no evidence that it disciplined any Ees in similar circumstances before promulgating rules]

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**
[Ees suspended for sleeping on job held not entitled to backpay, even though he was suspended for conducts described in unlawful, unilaterally promulgated disciplinary work rules and suspension notice was identical to form distributed with rules, where E had consistently imposed discipline for Ee's conduct; suspension, rather than discharge as in case of other Ees, did not demonstrate deviation from practice existing before rules but rather demonstrated that E took disciplinary action for sleeping on job and exercised discretion both before and after rules promulgation in imposing greater or lesser discipline for infractions (Hart)]

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**
[moreover, respondent may not rely on statiscial formula to demonstrate backpay claimants would have laid off, but rather must make showing as to each claimant]

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**
[Ees whose suspensions were solely attributable to unlawful, unilaterally adopted disciplinary work rules held entitled to backpay where rules were either cited on warning notice or clearly indicated as reason for suspensions, and suspensions were not in accord with practice before adoption of rules; seeming inconsistency in finding suspensions solely as result of rules, but discharges for same conduct not solely as result thereof justified by fact that rules of discharge were not rigid, specific, and formalized rules, whereas rules on suspension were to a degree rigid and formalized]

Holiday Radio, Inc., d/b/a KSLM–AM and KSD–FM **275 NLRB No. 184**
(backpay and reinstatement obligation towards two on-the-air announcers held not terminated, notwithstanding E's contention that automation subsequent to Ees' discharge would have required their termination, where E did not show that Ees actually would have been terminated but only that they would have suffered same reduction in wages as other announcers which was result of automation; Ees are entitled to reinstatement and backpay at lower rate of pay as the other announcers)

Holiday Radio, Inc., d/b/a KSLM–AM and KSD–FM **275 NLRB No. 184**
(Ees' rights to reinstatement and backpay terminated on date that new general manager was hired, where manager testified w/o contradiction, that upon his hire, he conducted a review of E's operations and decided that instant Ees' services were no longer needed and thus, Ees would have been terminated subsequent to their unlawful termination for nondiscriminatory reasons)

Programming & Systems, Inc. **275 NLRB No. 157**
(conventional reinstatement and backpay orders do not preclude respondent, in compliance stage of instant proceeding, from showing that it subsequently would have discharged Ees for lawful reasons of lack of qualifications under state law to hold position of teacher)

Greyhound Lines, Inc. **273 NLRB No. 180**
(make-whole remedy precluded where Ee was disciplined for *just cause* (insubordination) notwithstanding Ee's *Weingarten* rights violated by E's policy of requiring U representative to remain silent during investigatory interview)

Exxon Shipping Company **JD-(NY)-96-85**
(allegation in complaint that discharge of Ee who had been unlawfully interviewed w/o requested U representation, dismissed, since under *Taracorp. Industries*, 273 NLRB No. 54, no make whole remedy will be ordered for *Weingarten* violations, where E was discharged for violation of rule against possession of drugs on E's property rather than for asserting his right to U representation)

4467-8100 Receipt of sum in satisfaction of claims

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(fact Ee received pay for time of unlawful layoff and signed release did not constitute waiver of public remedies of backpay, reinstatement, and notice posting, where record insufficient to determine whether payment constituted full payment of backpay under Bd law, release executed when other discriminatory acts against Ee had not been remedied, nor was charging U involved in execution)

4467-8300 Futile to offer reinstatement

Trident Seafoods Corporation **275 NLRB No. 003**
(strikers not entitled to backpay from time of discharge (termination slips marked *not eligible for rehire* until offered unconditional reinstatement as E established that any earlier offers of reinstatement would have been futile since Ees would not have returned to work even if termination slips marked *eligible for rehire* and were accorded rights of strikers)

4467-9100 Rejection of reinstatement offer

Berger Transfer & Storage Co. **281 NLRB No. 185**
[E's operations managers' statement to discharged strikers generally that their actions were hurting company, that company could do better for them, and company wanted them to return to work, was not unconditional offer of reinstatement, was vague, did not clearly rescind their discharges, and thus their failure to return to work after purported *offer* did not toll backpay]

4467-9300 Acceptance of substantially equivalent employment

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company **808 F.2d 1155 (C.A. 6, Dec. 1986)**
[*conditional offer* of alternative employment, rather than unconditional offer of reinstatement, does not toll E's backpay obligation, since there was no showing nor finding that caretaker position at E's apartment complex some 30 to 50 miles distant from complex (from which 2 Ees were discharged) had been filled by time E communicated its conditional offer]

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company **808 F.2d 1155 (C.A. 6, Dec. 1986)**
[reasonableness of effort to find *substantially equivalent employment* should be evaluated in light of discriminatee's background and experience and relevant job market]

4467-9600 Employee disqualified from job by lack of state license

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[no dimunition of backpay claim notwithstanding claimant did not have proper license to drive tour bus as claimant had worked for 10 years at E and all through backpay period w/o proper license]

Overseas Motors, Inc. **277 NLRB No. 061**
(E's contention in backpay proceeding that failure of discriminatee who was employed as auto mechanic to renew his auto mechanic's certificate rendered discriminatee unemployable during period he was w/o license and tolled backpay period inasmuch as to have employed discriminatee during this period would have been violation of state law and could have led to loss of E's license, rejected, where defense litigated and rejected in underlying ULP case, and under rule of *law of the case* cannot now be relitigated, or even if defense not litigated E colaterally estopped since statute in effect and defense available in underlying ULP case)

Overseas Motors, Inc. **277 NLRB No. 061**
(suspension of driver's license of discriminatee who was auto mecahnic during backpay period did not toll backpay and E's contention discriminatee was thus uninsurable and unemployable, rejected in backpay proceeding, where E had employed discriminatee for long periods when E knew discriminatee had suspended license, had concealed discriminatee's record from its insurance carrier and had made no real attempt to obtain insurance from another carrier; further, discriminatee's loss of license and alleged uninsurability were litigated in underlying ULP case, and E now barred from raising these defenses under doctrine of *law of the case*)

Overseas Motors, Inc. **277 NLRB No.061**
(discriminatee's lack of license did not render him unfit for work since he could be immediately granted trainee license and work under certified mechanic, which is all statute required)

4467-9800 Employee illegal alien

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**
[ct remanded to Bd for modification of its order which denied backpay to undocumented aliens who had not left U.S. during backpay period nor were subject of deportation proceedings. Ct held Bd erred when it interpreted *Sure-Tan* 467 U.S. 883, which deemed undocumented alien discriminatees who had left U.S. to be unavailable for work, and not entitled to packpay, and conditioned reinstatement on legal reentry, to mean that undocumented aliens never entitled to backpay and would require compliance officer to determine legality of each alien discriminatee's presence in U.S.]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**
[*undocumented aliens are entitled to protection of Act and when remaining in U.S. during backpay period, entitled to backpay. To deny undocumented aliens Bd remedies would encourage unscrupulous Es to hire undocumented workers; Congress intended to protect collective bargaining rights by ensuring that there is no subclass of workers nor would allowing backpay to aliens who work during backpay period encourage illegal entry or reentry to U.S.*]

4467-9800—Cont.

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[Bd remedy which would deny backpay to discriminatees who were undocumented aliens would make hiring undocumented workers more attractive to unscrupulous Es thus undermining two major goals of Immigration Act i.d. prevention of loss of American workers' jobs, and protection of American workers' wage rates and working conditions]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[undocumented aliens entitled to protection of Act and are entitled to backpay when remaining in U.S. and available for work during backpay period, notwithstanding illegal entry into U.S. and contention such illegal aliens suffered no harm since they were not legally entitled to work]

5500 REIMBURSEMENT ORDERS

5514 DUES, INITIATION FEES, AND ASSESSMENTS

Leon Arie Edrich and Ignatius Elefant, Co-Partners d/b/a Sanford Home For Adults, Successor, et al. (Local 6, International Federation of Health Professionals, Longshoremen) 280 NLRB No. 140

[each respondent , predecessor E, successor E, and U, while jointly and severably liable for entire obligation, is primarily liable for reimbursement of that portion of monies which it received as initiation fees, dues and other monies deducted from Ees' wages pursuant to contractual U security provision since E had turned monies over to U]

R. Waldo, Inc. 280 NLRB No. 135

[U and E jointly and severally liable to reimburse present and former members of U for all monies deducted under U security provision of unlawful contract from date said contract executed]

Mode O'Day Company, Division of Wickes Companies, Inc. 280 NLRB No. 029

[E ordered to reimburse Ee for deductions from wages which were made pursuant to unlawfully obtained U dues check off authorization that Ee executed at time of hire, notwithstanding E's contention that no remedy was required since Ee worked in excess of 30 days and was thus obligated to pay initiation fee; Ee had no obligation to pay any U fees or dues during first 30 days of employment since her check off authorization was not voluntarily executed]

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 277 NLRB No. 078

(E to remit to U dues due and owing for each Ee who executed a dues-deduction authorization with interest)

Safeway Stores, Inc. 276 NLRB No. 099

(where Ees at new store were coerced to support unlawfully assisted U solely on basis of unlawful entry into contract by E and U, contract's U-security provisions, and U references to such provisions in soliciting Ees, E and U ordered, jointly and severally to reimburse Ees for all initiation fees, dues, or other moneys, except Ees who were U members before they transferred to, or otherwise commenced work at new store)

5546 BONUS PAYMENTS

Sahara Datsun, Inc. 278 NLRB No. 148

[E to reimburse Ees for weekly incentive bonuses which it unilaterally and discriminatorily discontinued for three weeks]

5548 MEDICAL EXPENSES

Arrow Sash and Door Company 281 NLRB No. 149

[E ordered to make Ees whole for any losses they suffered due to unlawful unilateral change in health plan, notwithstanding bargaining agreement reached subsequent to time E unlawfully instituted new health plan provided therein that health plan unlawfully instituted by E would be retroactive covering period during which plan unlawfully in effect]

Searle Auto Glass, Inc. d/b/a Best Glass Company 280 NLRB No. 159

[medical expenses incurred for discriminatee's wife's gallbladder operation not reimbursable, since GC did not show that U health and welfare plan then in effect covered dependents or specific expenses involved where compliance officer could not compare plan's expenses with plan's coverage for lack of complete copy of plan]

Rikal West, Inc. 274 NLRB No. 170

(which would have been covered by Company insurance for losses proximately caused by E's discrimination against Ee)

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. JD-25-86

[where E-members of E association, unlawfully refused to execute extension agreement negotiated by E association and made unlawful unilateral changes in working conditions, Es ordered to reimburse Ees for any medical or dental bills they may have paid to health care providers that contractual policies would have covered and for any premiums they may have paid to third party insurance companies to continue medical and dental coverage in absence of Es' required contributions]

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[Bd Order enforced that required E to reimburse providers of medical treatment for discriminatee even though those charges might now be subject to statute of limitations defense–discriminatee never paid providers–as Order is consistent with S.Ct's holding that *make whole* remedial power of Bd is *broad discretionary one subject to limited judicial review*]

5549 SICK LEAVE

Americana Healthcare Center 273 NLRB No. 213

(where E unlawfully terminated agreed-upon sick leave provision which, by mutual mistake of parties, was not incorporated into agreement, E ordered to make whole Ees who would have been entitled to sick leave benefits by providing them with sick leave credit since E's unlawful discontinuance thereof)

Americana Healthcare Center 273 NLRB No. 213

(where E unlawfully terminated agreed-upon sick leave provision which, by mutual mistake of parties, was not incorporated into agreement, E ordered to compensate Ees for unused sick leave in accordance with established procedure; although Ees may not have *requested* compensation, such requests shall be presumed, since requests would have been futile in light of E's unlawful action in discontinuing sick leave benefits)

5550 CONTRIBUTIONS TO WELFARE, PENSION AND OTHER FUNDS

Arrow Sash and Door Company 281 NLRB No. 149

[E not ordered to make contributions to pension funds for period it unlawfully failed to make contributions, since U waived Ees' right to contributions for that period by virtue of subsequent bargaining agreement terminating any pension coverage retroactive to date E ceased making contributions]

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center 281 NLRB No. 052

[predecessor and successor jointly and severally liable as to dischargee for health and welfare contributions pursuant to arbitration award with interest or penalty on arrearages computed as in *Merriweather Optical Co.*, 240 NLRB 1213 (1979)]

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center 281 NLRB No. 052

[health and welfare contributions for discriminatee to be paid, notwithstanding contention that they had been settled by consent decree, where discriminatee had not been reinstated at time of agreement, and consent decree provided that E's ultimate liability would not be settled until all appeals (including backpay proceeding) had been exhausted; further, contribution on behalf of discriminatee's replacement could not be substituted on behalf of discriminatee]

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center 281 NLRB No. 052

[contention that arbitration award and consent decree merely stated that discriminatee should be *reinstated with backpay* and by omitting provision for health and welfare contribution inferentially excluded them, rejected where both required that discriminatee be made whole with amounts to be fixed by Bd, and such contributions are generally required as part of Bd make-whole remedies]

Hawg-N-Action, Inc. & J. L. Excavating, Inc. 281 NLRB No. 013

[E to pay contractually agreed upon trust fund payments in amounts it failed to make and reimburse Ees for expenses incurred as result]

Grand Flooring & Plastering Company 280 NLRB No. 052

[upon granting GC's mtn for summary judgment in backpay proceeding, Bd applied, to amounts of fringe benefit contributions and vacation pay E was ordered to pay, amount of proceeds RD received, pursuant to protective restraining order issued by ct of appeals, from public sale of E's assets currently being held in interest-bearing escrow account]

Cascade Painting Company, Inc. 277 NLRB No. 103

(Bd left to compliance stage question whether Es must pay any additional amounts into fringe benefit funds in order to satisfy Bd's make-whole

5550—Cont.

remedy; because Ee benefit fund provisions are variable and complex, Bd does not provide at adjudicatory stage of proceeding for addition of interest at fixed rate on unlawfully withheld fund payments; at compliance stage additional amounts may be determined by provisions governing funds and, absent such provisions, by evidence of any loss directly attributable to unlawful withholding, but not on collateral losses)

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(E required to recompense discriminatees for pension contributions for period dating from time current Ees were given retroactive contributions to date E and U agreed to profit-sharing program in lieu of their previous pension plan)

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[where E-members of E association unlawfully refused to execute extension agreement negotiated by E association and made unlawful unilateral changes in working conditions, Es ordered to make contractually established payments to various trust funds; in accordance with Bd policy, amount of interest due on such payments is to be determined at compliance stage of proceedings]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[where E-members of E association unlawfully refused to execute extension agreement negotiated by E association and made unlawful unilateral changes in working conditions, Es ordered to reimburse their Ees for contributions they themselves may have made for maintenance of contractual health and welfare, pension, industry and apprenticeship funds after Es unlawfully discontinued or failed to make contributions to those funds]

E. G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. **JD-168-85**
(fact that E paid alternative health insurance benefits for its Ees or set up its own training program did not entitle it to an offset against its obligations to jointly administer E-U trust funds, and fact that funds were established by instruments other than bargaining agreement is irrelevant)

5550-5000 Credit to pension fund for past service

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) **274 NLRB No. 134**
(order requiring E-local, which unlawfully discharged Ees, and international and pension plan, as agents of local, to give discriminatees credit under plan, even though they did not perform services for local during backpay period, held not to conflict with fiduciary duty of plan nor with ERISA; record did not establish that plan will thereby lose its tax-empt status; backpay specification stated course of action against international and plan as to which relief may be ordered; and whatever remedies Ees may have under plan are not a substitute for statutory remedy for ULPs)

5570 LITIGATION COSTS AND EXPENSES (SEE ALSO 625-1967-5600)

Leon Arie Edrich and Ignatius Elefant, Co-Partners d/b/a Sanford Home For Adults, Successor, et al. (Local 6, International Federation of Health Professionals, Longshoremen) **280 NLRB No. 140**
[respondent, E, is liable to GC for court costs in connection with an Order of Second Circuit Ct of Appeals enforcing Bd backpay and reimbursement Order]

Garland Coal & Mining Co. **276 NLRB No. 102**
(E's request for reimbursement of fees and expenses incurred by all parties in preparation and presentation of initial consolidated hearing involving both U and individual as charging parties in their respective cases, denied; while there were unique factors involved in remand and reopening of record in case involving individual, in which C was dismissed, Bd lacked statutory authority to grant fees and expenses under circumstances of instant case)

Batavia Nursing and Convalescent Inn **275 NLRB No. 125**
(U's request that E be required to pay U its reasonable legal fees, denied, since E's defenses were not frivolous and turned partly on credibility resolutions)

5570-0100 Generally

Electrical Workers, Local 453 (Sachs Electric Co.) **277 NLRB No. 122**
(charging party's mtn for allowance of legal fees to be paid to himself as an attorney, from funds created for discriminatees which included himself, denied, since Bd's clients are the discriminatees and it is not w/i Bd's province to enforce an agreement to pay backpay which also relates to the payment of legal fees for discriminatees)

Workroom For Designers, Inc. and Sidney H. Slaselman, an Individual **274 NLRB No. 115**
(award to U of legal fees and expenses, inappropriate, notwithstanding E's numerous and outrageous ULPs, since respondents' defenses were debatable, rather than frivolous, where merits of several of complaint's allegations turned on credibility resolutions, and issues of individual liability of E's chief officer and shareholders and U's alleged misconduct raised unusual legal issues)

5570-5000 Types of litigation expenses

Springfield Transit Management, Inc. **281 NLRB No. 130**
[Bd declined to order E to reimburse U for litigation fees and expenses related to trial of cases, where E was found to have unlawfully refused to sign contract, such refusal occurred after impasse was reached, state ct had ordered arbitration, and arbitration award setting out terms of contract had issued]

Rosehill Cemetery Association **281 NLRB No. 046**
[in granting GC's mtn for summary judgment against E, Bd denied GC's request that it order E to reimburse Bd and U for expenses related to instant proceeding]

EPE, Inc. **273 NLRB No. 169**
(E ordered to reimburse U for costs and expenses incurred in preparation and conduct of contract negotiations and in investigation and preparation of instant proceeding, where E's conduct demonstrated a proclivity to violate the Act and E's litigation of instant proceeding was frivolous)

5578 VACATION PAY

Grand Flooring & Plastering Company **280 NLRB No. 052**
[upon granting GC's mtn for summary judgment in backpay proceeding, Bd applied, to amounts of fringe benefit contributions and vacation pay E was ordered to pay, amount of proceeds RD received, pursuant to protective restraining order issued by ct of appeals, from public sale of E's assets currently being held in interest-bearing escrow account]

Hacienda Hotel and Casino **279 NLRB No. 084**
[discriminatee who, upon being denied vacation because she failed to submit timely request, took leave of absence instead, held entitled to vacation pay where at the time she had been reemployed by E pursuant to Bd order as enforced by ct, but he had not done so in full compliance therewith; discriminatee failed to make timely request because of E's unlawful conduct; and E, in addition to failing to reinstate discriminatee to former position, further failed to comply with Bd's order and ct's judgment in denying her vacation to which she was entitled]

5584 JOINT LIABILITY OF UNION AND EMPLOYER

R. Waldo, Inc. **280 NLRB No. 138**
[U and E jointly and severally liable to reimburse present and former members of U for all monies deducted under U security provision of unlawful contract from date said contract executed]

Safeway Stores, Inc. **276 NLRB No. 089**
(where Ees at new store were coerced to support unlawfully assisted U solely on basis of unlawful entry into contract by E and U, contract's U-security provisions, and U references to such provisions in soliciting Ees, E and U ordered, jointly and severally to reimburse Ees for all initiation fees, dues, or other moneys, except Ees who were U members before they transferred to, or otherwise commenced work at new store)

Rainey Security Agency, Inc. **274 NLRB No. 041**
(where E and minority U unlawfully entered into U-security contract following E's unlawful recognition of U and U's unlawful acceptance thereof, Bd, contrary to ALJ, who recommended that E be secondarily liable for reimbursement of initiation fees and membership dues, found nothing so unusual about facts herein as to warrant imposition of other than traditional order making E and U jointly and severally liable)

5596 ORGANIZING AND NEGOTIATING EXPENSES OF UNION

The Cincinnati Enquirer, Inc., A Division of Gannett, Inc. **279 NLRB No. 149**
[ordering E to reimburse U for postal expenses where E discriminatorily denied U use of E-maintained Ee mailboxes to distribute U literature, not warranted absent *sufficient nexus* between discriminatory conduct and expenses incurred by U where U voluntarily used postal service to distribute literature; cease and desist order appropriate instead]

5598 MAKE WHOLE REMEDY

St. John's General Hospital of Allegheny County—ADR Center **281 NLRB No. 157**
[E ordered, if requested by U, to rescind unlawful unilateral changes in regard to rotating work place assignments, wage increases, and method of determining compensation for certain Ees. Absent such request, however, E shall not rescind changes unilaterally made until it has met its bargaining obligations; further, since change affecting wages was not to detriment of Ees, no restitution or make whole remedy required]

5598—Cont.

J. D. Landscaping, Corp. **281 NLRB No. 004**
[successor E to offer predecessor E's six most senior Ees, out of fifteen Ees not hired, employment and make them whole for discriminatorily refusing them employment due to U activities and to place rest of them on preferential hiring list for employment if work force expanded, and, if expansion occurred between events in case and compliance date, to offer predecessor's most senior Ee employment and make him whole, in all cases, discharging other Ees if necessary]

Advertiser's Manufacturing Company **280 NLRB No. 128**
[E to make whole Ees who suffered loss of earnings due to E's unilateral changes in piece rates, methods of payment, date of annual wage increases, and reduction in hours of work]

Watson-Rummell Electric Co. **277 NLRB No. 162**
[E to make Ees whole for loss of pay or benefits due to E's refusal to honor expired contract or unilateral changes]

Daniel Construction Company, A Division of Daniel International Corporation **276 NLRB No. 115**
(E's responsibility to offer to reinstate unlawfully discharged Ees and to make them whole for losses does not terminate in event Ees obtain substantially equivalent employment elsewhere; fact that E lost maintenance and construction contract at location where Ees were discharged does not terminate backpay liability upon Ees' obtaining equivalent employment where E demonstrated it could transfer Ees, not hired by replacement contractor, to other operations)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) **274 NLRB No. 134**
(E's defense attacking character of discriminatees as being unworthy, vindictive persons who did not deserve to be made whole held irrelevant; discriminatees either are or are not entitled to claimed remedies by application of established backpay standards; E, not discriminatees, is respondent herein, and remedies ordered are vindication of public, not private, rights)

Greyhound Lines, Inc. **273 NLRB No. 180**
(make-whole remedy precluded where Ee was disciplined for *just cause* (insubordination) notwithstanding Ee's *Weingarten* rights violated by E's policy of requiring U representative to remain silent during investigatory interview)

N.L.R.B. v. DMR Corp. and Harrill Electric Contractors, Inc. **795 F.2d 472 (C.A. 5, July 1986)**
[Es' claim that Bd erred in ordering make-whole relief held w/o merit where Es failed to show that order was patent attempt to achieve ends other than those which can fairly be said to effectuate policies of Act; Bd may properly prevent Es from gaining advantage by their unlawful conduct; order requiring that Ees be made whole for unlawful repudiation of bargaining agreement served this end]

5598-5600 **Interest**

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**
[Bd leaves to compliance addition of interest at fixed rate on unlawfully withheld payments to benefit funds and any additional amounts to be paid into benefit funds after referencing provisions in documents governing funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to withholding action, which might include loss of return on investment of funds withheld, additional administrative costs, etc., but not collateral losses]

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(interest on retained backpay should not inure to benefit of E rather than to benefit of those former Ees which it wronged)

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[where E-members of E association unlawfully refused to execute extension agreement negotiated by E association and made unlawful unilateral changes in working conditions, Es ordered to make contractually established payments to various trust funds; in accordance with Bd policy, amount of interest due on such payments is to be determined at compliance stage of proceedings]

Thomas Sheet Metal Co., Inc.; et al. **JD-(ATL)-86-84**
(Bd does not provide for interest at fixed rate on benefit fund payments due as part of make-whole remedy, since provisions of Ee benefit fund agreements are varable and complex; accordingly, question of amount of interest E must pay into benefit fund in order to satisfy make-whole remedy left to further proceedings)

5599 OTHER FEES

Electrical Workers, Local 453 (Sachs Electric Co.) **277 NLRB No. 122**
(charging party's mtn for allowance of legal fees to be paid to himself as an attorney, from funds created for discriminatees which included himself, denied, since Bd's clients are the discriminatees and it is not w/i Bd's province to enforce an agreement to pay backpay which also relates to the payment of legal fees for discriminatees)

Fugazy Continental Corp. **276 NLRB No. 152**
(R ordered to reimburse unlawfully discharged chauffeurs for cost of their franchises as well as backpay where they were not reinstated, and E not only refused to repuchase their franchises or help them resell them but sold their franchises to others, thus eliminating their chances of resale)

6600 BARGAINING ORDERS

6601 GENERALLY

Modern Iron Works, Inc. **281 NLRB No. 151**
[charging party's request that E be compelled to bargain with Ee committee, denied; since E had no adequate notice that such relief would be sought or basis therefor, it would be improper to expand C to consider such request]

Watson-Rummell Electric Co. **277 NLRB No. 162**
[E which effectively withdrew from multi-E association to bargain with U on individual basis]

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. **753 F.2d 313 (C.A. 3, Jan. 1985)**
(ct's *narrow scope of review* of Bd's R/Os exceeded if ct required Bd to independently articulate its reasons for imposing a bargaining order. S.Ct admonished lower cts to allow agencies to fashion their own rules of procedure)

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. **753 F.2d 313 (C.A. 3, Jan. 1985)**
(bargaining order appropriate where record amply justifies denomination of ULPs by E as *serious, extensive, pervasive* and *coercive*; ULPs consisted of threats of plant closing and layoffs, impression of surveillance created, discharge of U adherent and senior manager involved in persistent campaign of ULPs which satisfied standards for *Gissel II* order and are of kind that are unlikely to dissipate)

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. **753 F.2d 313 (C.A. 3, Jan. 1985)**
(requirement of a reasoned analysis setting forth factors justifying imposition of bargaining order was meant neither to burden Bd nor to limit issuance of bargaining orders whenever necessary. Sufficient for Bd to provide extensive list giving rise to recommendation that bargaining order be issued)

6607 APPROPRIATE ONLY FOR MAJORITY REPRESENTATIVE

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[nonmajority bargaining order not remedial option]

Stop N' Go Inc. **279 NLRB No. 052**
[8(a)(5) violation finding and bargaining order inappropriate, notwithstanding E's numerous ULPs, where 27 cards of alleged 41-card majority in 69-Ee unit were not properly authenticated]

Southern Illinois Petrol, Inc. **277 NLRB No. 017**
(bargaining order held inappropriate where, notwithstanding that U authorization cards clearly and unambiguously authorized U to act as Ees bargaining representative, cards were invalid for purpose of establishing that U represented majority of Ees in light of Ees being solicited and signing cards solely for purpose of obtaining election)

Superior Container, Inc. **276 NLRB No. 055**
(in finding contrary to ALJ, that U did not have card majority, Bd did not, for reasons expressed in *Gourmet Foods*, 270 NLRB 578, adopt ALJ's recommended remedy insofar as it provided for bargaining order)

Limpert Brothers, Inc. **276 NLRB No. 037**
(E's refusal to recognize U, violative, and bargaining order appropriate, since U had obtained card majority and E's conduct precluded fair election where E interrogated Ees shortly after gaining knowledge of U activity, threatened them with plant closure, discriminatorily laid off large percentage of workforce one day after learning of U campaign and discharged other Ees for refusing to cross ULP picket line set up by laid off Ees)

Roskin Brothers, Inc. **274 NLRB No. 053**
(bargaining order for separate unit of warehouse Ees held inappropriate, and unit composed of warehouse Ees and other Ees would negate the possibility of U's majority status, where E's entire facility consisted of a single one-story building and all categories of Ees--warehouse, sales and office--have occasion to be in all areas performing their jobs, warehouse Ees' duties are substantially integrated with other Ees, all Ees share common fringe benefits, are subject to common work rules and hiring, and discharge policies)

6612 TO REMEDY ULP'S WHICH PRECLUDE FAIR ELECTION

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[appropriate, where E's violations, which were swift, severe in nature and extensive in number, included threats of plant closure which are among types of ULPs which destroy election conditions for longer period of time

6612—Cont.

than other ULPs; and coercive effect was heightened even further by fact that threats began week following advent of U campaign]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[appropriate, where E's violations included discharge of 2 Ees at *forefront of strike movement* and illegal promise of benefit; and such violations, committed by top management official readily perceived as representing company policy, heightened coercive effect of ULPs]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[appropriate, where E's violations, consisting of threat to close down plant, illegal promise of benefit, and coercive interrogation, directly affected significant number of Ees]

Cartridge Actuated Devices, Inc. **282 NLRB No. 066**
[appropriate, notwithstanding claim that there was no evidence that E's conduct influenced any Ees to alter their support for U or that they were coerced into revoking their authorization cards since, in determining whether bargaining order is appropriate, Bd examines severity of violations committed, as well as present effects of coercive ULPs; and although authorization cards were signed after E engaged in unlawful 8(a)(1) conduct, unlawful discharges of leading U adherents, long considered *hallmark* violations, justified issuance of bargaining order]

Abdul Samad Ra'Oof Shabazz and Jacqueline Craig, A Co-Partnership d/b/a Michigan Expediting Service; et al. **282 NLRB No. 030**
[C did not allege sufficient facts to enable Bd to evaluate pervasiveness of violations and determine whether bargaining order was warranted, where allegations did not indicate size of unit or state number of Ees who witnessed alleged infliction of bodily injury on Ee, heard E's statement about discharge of Ee for U activities, and were subjected to E's threat of bodily injury; nor did C allege extent of dissemination, if any, of such violations among Ees not directly affected by them; accordingly, case remanded to ALJ to determine appropriateness of order]

Bridgeway Oldsmobile, Inc. **281 NLRB No. 165**
[bargaining order appropriate where upon E's opening of new dealership, Ees were requested to withdraw from U and told U was not wanted after U had obtained majority and demanded recognition, E interrogated Ees and threatened to close shop and finally, prior to election, E packed unit with anti-U Ees to ensure its success in defeating U; such conduct strikes at *core* of Ees' organizational rights and because acts were executed by E's top management and unit is small, fair rerun election is not possible and there is no evidence E had taken any subsequent remedial steps to disavow its unlawful acts]

Alaska Cummins Services, Inc. d/b/a Goves Truck and Trailer **281 NLRB No. 161**
[bargaining order appropriate where, within a period of a little over one month after U filed *R* ptn, E interrogated Ees, told Ees that no planned changes in many benefits could be pursued while ptn was pending, solicited grievances, threatened to deny use of company equipment, threatened to close shop and discriminatorily laid off 40% of bargaining unit]

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**
[order to bargain with the one of competing Us which did not have contract with E, appropriate, in view of E's unlawful interrogations, assistance to favored U by soliciting Ees to sign authorization cards for that U, threats of discharge if Ees did not sign authorization cards for that U, and subsequent discharge of almost half Ees out of small unit who signed cards for competing U with which E least preferred to deal; bargaining order not foreclosed by fact that there were competing Us or by contract where contract had not been enforced at facility involved, nor by passage of time, particularly absent Ee turnover]

The Well-Bred Loaf, Inc. **280 NLRB No. 036**
[appropriate in view of unlawful interrogation, threats of discharge, and actual discharge of six out of twenty-three Ees in small unit, including two U leaders; any mitigating effect by reinstating two Ees overcome by additional interrogation and discharge of two more Ees afterwards]

Judy Hornby Designs, Inc. **279 NLRB No. 168**
[bargaining order not required to remedy threat made to U representative and overheard by Ee and later disseminated by U official to 4 other Ees--there was a total of 7 unit Ees--that E would close the plant before recognizing or having anything to do with U, as remark was heated and isolated reaction to forcible entry by U representative unto its premises rather than calculated threat to unit Ees that would tend to undermine majority strength and impede election process]

Times Wire & Cable Company **280 NLRB No. 003**
[bargaining order inappropriate, notwithstanding Bd was directing third election, where U won first election in spite of E's ULPs but election was set aside because of U's misconduct and although second election was also set aside because E withheld an expected wage increase, such ULP cannot be viewed as sufficiently serious to warrant bargaining order especially since ULPs were 5 years old]

Armon Company **279 NLRB No. 188**
[Bargaining order from date of U demand for recognition, appropriate notwithstanding strike and signing of one additional authorization card after commission of ULPs, where E committed more ULPs thereafter including *hallmark* violations of unlawful discharges, layoffs, reduction in hours, more onerous working conditions, as well as interrogation, discouragement of wearing of U insignia, and threats to close facility and discharge Ees; moreover ULPs were committed by top management and affected majority of unit Ees]

The Tribune Company **279 NLRB No. 138**
[in light of dismissal of C]

United States Aviex Company **279 NLRB No. 110**
[inappropriate, in view of few isolated 8(a)(1) violations involving unlawful promise affecting one Ee and his family member, unlawful interrogation not accompanied with threats of reprisal or promises of benefit, attempts on several occasions to create impression of surveillance having minimal effect, and limited attempt to demean Ees because of their U support]

B & P Trucking, Inc. **279 NLRB No. 092**
[bargaining order appropriate in view of E's unlawful threats to close facility, discharge of Ees' appointed spokesman, and closing of facility and discharge of all Ees, where violations emanated from high-level management officials, affected all Ees, and were so serious that no circumstances could be discerned that would mitigate them]

Stop N' Go Inc. **279 NLRB No. 052**
[8(a)(5) violation finding and bargaining order inappropriate, notwithstanding E's numerous ULPs, where 27 cards of alleged 41-card majority in 69-Ee unit were not properly authenticated]

Fiber Glass Systems, Inc. **278 NLRB No. 154**
[bargaining order, inappropriate where unlawful interrogation, threats, formation of grievance committee, no-solicitation rule, and prohibition of wearing U insignia were not so substantial that their effects could not be erased by traditional remedies and qcr resolved by rerun election, and lone unlawful discharge would not tend to have lasting inhibiting effect in view of peculiar circumstances supporting denial of reinstatement and limitation of backpay]

Sahara Datsun, Inc. **278 NLRB No. 148**
[appropriate in view of unlawful threats, interrogation, discharges, and unilateral discontinuation of bonuses and institution of written, in place of oral, warnings; order to operate from date E's misconduct began]

Dayton Auto Electric, Inc. **278 NLRB No. 080**
[appropriate, where U had card majority and in view of E's calculated campaign to discourage support for U, unlawful interrogation, unlawful discharge or layoff of 7 out of 12 Ees after U's demand for recognition, and threat to discharge ULP strikers, since while ULPs not so outrageous and pervasive fair election impossible, ULPs herein still have tendency to undermine majority status and impede election process]

Clark Equipment Company **278 NLRB No. 085**
[pre-election interrogation, threats of loss of benefits or other reprisals, interference with and threats of arrest for distribution of campaign literature, surveillance of Ee's personal property for evidence of U activity, and post-election interference with Bd's processes by twice advising Ee he was not legally required to honor Bd subpoenas, not violation of 8(a)(5) nor sufficiently egregious in name or number to warrant bargaining order, particularly where unit was large, misconduct involved few Ees and was not disseminated, U adherents were not discriminated against, and election was not close]

Quality Aluminum Products, Inc. **278 NLRB No. 049**
[appropriate in view of severity and pervasiveness of hallmark violations of layoff of 30 percent of unit, threats of discharge and plant closure, and creation of impression of surveillance directly affecting 41 percent of small unit; lingering impact on reinstated Ees comprising half of small unit and subject to seasonal layoff; and faint likelihood of fair election]

Reeves Brothers, Inc. **277 NLRB No. 153**
[bargaining order inappropriate since GC failed to demonstrate U's majority status]

Uniontown Hospital Association **277 NLRB No. 144**
(bargaining order inappropriate where E's ULPs, though numerous, involved only oral and written communications to Ees which were not the type to linger in Ees' minds and preclude free and uncoerced election, and did not involve threats of closure, discharge of even one U adherent, or unlawful grant of benefits)

Studio S.J.T., Limited **277 NLRB No. 126**
(bargaining order appropriate where widespread, repetitive, and blatant violations by top management officials demonstrated seriousness of E's overall commitment to eliminate U by any means; E's willingness to engage in extreme misconduct to thwart Ee support for U was revealed by its physical abuse and threats of bodily harm againstmost prominent U proponent)

6612—Cont.

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(bargaining order appropriate where E's violations were severe in nature, extensive in number, and affected significant number of unit Ees; thus, E's threats to discharge Ees, to close plant, and to refuse to bargain with U and force Ees out on strike and then replace them, as well as statements concerning loss of customers because of unionization of plant, constituted long recognized *hallmark violations;* moreover, such violations affected 9 of 28 unit Ees and were committed by E's top officials thus heightening effect of violations since officials are readily perceived as representing company policy)

Long-Airdox Company, A Division of Marmon Group, Inc. **277 NLRB No. 124**
(bargaining order appropriate where, after election U lost, E continued its pre-election unlawful conduct by telling Ees that if U got in, E would have refused to negotiate with U and forced Ees out on strike and then replaced them, and that pay cut would have been completely restored sooner if Ees had not attempted unionization; and by such conduct, E eroded possibility of ensuring fair election)

Radio Broadcasting Co. **277 NLRB No. 121**
(bargaining order not warranted where most of E's unlawful conduct took place during one meeting held 3 weeks before election and there were no postelection violations; only ULPs were violations of 8(a)(1) and they were not highly coercive)

Kona 60 Minute Photo **277 NLRB No. 092**
(appropriate, since E's unlawful conduct struck at very core of Ees' organizational efforts, where E's repeated threats to discharge Ees for U activity were widely disseminated and had profound impact on Ees; seriousness of E's conduct was underscored by small size of unit and high level of management officials involved; and, as a whole, E's acts involved type of severe and pervasive coercion which has lingering effects not readily dispelled)

Kona 60 Minute Photo **277 NLRB No. 092**
(appropriate where, in light of violations found, possibility of erasing effects of E's ULPs and of conducting fair election by use of traditional remedies was slight; requiring E to refrain from such conduct would not eradicate lingering effects of violations nor would election reliably reflect genuine, uncoerced Ee sentiment; thus, Ees' representation desires expressed through authorization cards would be better protected by issuance of bargaining order than by traditional remedies)

Kona 60 Minute Photo **277 NLRB No. 092**
(appropriate, even though there had been some turnover in unit and significant passage of time since ULPs occurred; in circumstances of case, particularly seriousness of violations and their impact on entire unit, to withhold bargaining order would, in effect, reward E for its own wrongdoing)

Marion Center Supply, Inc. **277 NLRB No. 026**
(appropriate in view of E's committing four *hallmark* violations including discharge of main U adherent and active U supporter, and threats of discharge and plant closure and refusal to bargain)

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(bargaining order appropriate, where E engaged in pervasive ULPs in order to dissipate support of U; and E's numerous threats of shutdown of its operations and unlawful discharges demonstrated propensity to engage in unlawful conduct which *goes to te very heart of the Act;* moreover, E's conduct precluded holding of fair election, since possibility of success fully eradicating lingering effects of E's unlawful conduct, and insuring fair election by use of traditional remedies, was slight, if not nonexistent)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(appropriate, where E's ULPs were sufficiently extensive and grave to foreclose likelihood that fair election can be held in foreseeable future; E's ULPs, both before and after election, served to dissipate U's card majority; E's managers and supervisors made concerted effort to identify U supporters and coercively to persuade them to relinquish their U support through unlawful interrogation, polling, and prehire screening; E's discharge of U's organizing committee members demonstrated E's enduring hostility toward U supporters; and E's continued willingness to violate Act indicated that Bd's usual remedies will be ineffective)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(in finding bargaining order warranted, Bd held threats of closure of E's operation and discharge of leading U activists were particular violations which were likely to have lasting inhibitive effect on substantial percentage of work force)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(in finding bargaining order warranted, Bd relied on E's extensive interrogation about Ees' U activities and threats of reprisal, conducted by management from top to bottom, and directed at almost all Ees, both individually and in groups, with some Ees subject of repeated interrogations and threats)

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(in finding E's extensive and grave ULPs to warrant bargaining order, Bd held that, despite Ee turnover, inhibitive effects of ULPs were likely to persist; while supervisors who perpetrated majority of ULPs and number of victims of E's violation had left E's employ, one remaining supervisor had demonstrated willingness to carry out threat to eliminate U at all cost; and Ee turnover of about 12 percent was no reason to assume that other Ees were unaffected since unlawful discharges were likely to be common knowledge among Ees and E's unlawful polling touched majority of them)

Magic Island, Inc. **276 NLRB No. 107**
(bargaining order appropriate since fair election could not be held where E engaged in campaign consisting of violent obscenities coupled with threats directed at principal U organizers during critical period, promised benefits to those not supporting the U, terminated 5 of 9 U sympathizers by the time of the election, disseminated to entire unit false accusations concerning U supporters, and threatened to blackball all Ees who supported the U in election)

Walter Garson, Jr & Associates **276 NLRB No. 137**
(bargaining order not appropriate, notwithstanding E's unlawful threats of closure, since Ees sought confrontation with E, threats had little impact inasmuch as Ees subsequently signed U authorization cards, nor did Ees' attempted disavowal of U evidence coercion where decision to abandon unionization was result of Ees' own deliberations)

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(bargaining order appropriate where lingering effects of E's past conduct render uncertain possibility that imposition of traditional c/d, reinstatement, and backpay orders and posting of notices to remedy ULP's would permit holding of fair election)

McLean Roofing Company **276 NLRB No. 093**
(bargaining order appropriate where clear majority of Ees expressed their desire to be represented by U, E committed ULPs impact of which was heightened by small number of Ees in unit and owner's participation in ULPs)

Brocal Corp. d/b/a Alert Medical Transport **276 NLRB No. 066**
(bargaining order issued where ULPs included unlawful discharges, abolishing job classification and laying off Ees w/i classification, interrogations, giving turkeys to influence vote, surveillance and threat to shut down)

Angelica Corporation **276 NLRB No. 038**
(inappropriate, where GC failed to demonstrate that preelection promises were so extraordinary or that postelection benefits granted were so substantial that their effects could not be resolved by preferred method of fair Bd rerun election)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(bargaining order not appropriate where majority status of U was not demonstrated; and even assuming U had attained majority status, remedial bargaining order not warranted since ULPs were not sufficiently extensive and of such nature as to have lingering effect that could not be erased by Bd's traditional remedies)

Superior Container, Inc. **276 NLRB No. 055**
(in finding contrary to ALJ, that U did not have card majority, Bd did not, for reasons expressed in *Gourmet Foods,* 270 NLRB 578, adopt ALJ's recommended remedy insofar as it provided for bargaining order)

Limpert Brothers, Inc. **276 NLRB No. 037**
(E's refusal to recognize U, violative, and bargaining order appropriate, since U had obtained card majority and E's conduct precluded fair election where E interrogated Ees shortly after gaining knowledge of U activity, threatened them with plant closure, discriminatorily laid off large percentage of workforce one day after learning of U campaign and discharged other Ees for refusing to cross ULP picket line set up by laid off Ees)

Ednor Home Care, Inc. **276 NLRB No. 042**
(inappropriate, notwithstanding U's majority status, and E's owner's embarkation upon course of conduct designed to destroy U's majority, since traditional remedies would suffice, where E had long history of voluntary acquiesence in U representation at his other enterprises, and absent U animus)

Crest Industries Corp. **276 NLRB No. 067**
(bargaining order not appropriate where only ULP found was single threat to discharge Ees if they spoke to U representatives)

Moe Warehouse & Accessory **275 NLRB No. 165**

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(ALJ properly found that there was no conduct on part of E which would tend to preclude probability of fair rerun election after applying traditional remedies and no bargaining order was required where U, by withdrawing C allegations, in effect waived its contract claim as bar to election and left only alleged discriminatory job transfer of Ee to be considered as objectionable conduct)

6612—Cont.

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198
(not appropriate, where only ULPs committed by E during post election period consisted of contract violations; instead, in view of E's ULPs as weighed against U's misconduct consisting of threats and acts of violence during strike against E, first election set aside and second election directed)

Steffer Brothers JD-269-86
[appropriate, in view of E's pervasive and flagrant ULPs, their lasting inhibitive effect, and E's continued willingness to violate Act even after U had lost election]

Morning Star International, Inc. JD-209-86
[appropriate, where E's unlawful conduct struck at very core of Ees' organizational effort and consisted of no-holds-barred verbal assault against U by E, followed by rule making and production reviews which incorporated their own threats of discharge or other reprisals; threats disseminated by top management officials which had profound impact on Ees; and, as a whole, E's reaction to U organizing efforts involved type of severe and pervasive coercion with lingering effects not readily dispelled by ordinary remedies]

Morning Star International, Inc. JD-209-86
[E's letter offering to recall unlawfully laid off Ees held not to obviate necessity for *Gissel* bargaining order, where letter was not declaration of unqualified assurances that Ees' statutory rights will be honored; while disavowing and repudiating all alleged conduct, letter denied any misconduct; and offers to recall Ees, while effective to cut off E's backpay liability, hardly assured Ees they will not suffer same fate, especially since offers were made only after C herein issued]

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86
[order appropriate because E's pervasive ULPs affected at least half of unit Ees and facts herein were very similar to those in *Quality Aluminum Products*, 278 NLRB No. 49]

Apple Glass Company JD-89-86
[appropriate in view of discharge of chief U organizer on very day Ees started signing cards and threats to close plant; Ee turnover not factor to be considered as mitigating need for order]

Maureen Erickson, Stewart Muller et al., A Limited Partnership d/b/a Dickerson Pond Associates, Ltd. JD-(NY)-7-86
[bargaining order issued where E had unlawfully discharged 4 out of 5 unit Ees]

Brenal Electric, Inc. JD-(NY)-21-84
[bargaining order appropriate, where E upon learning of Ees' support for U embarked upon course of conduct which included unlawful interrogations, soliciting grievances and bypassing U, promising Ees benefits if they would withdraw support from U, threats to close plant, and discharges]

Robert W. Wise, d/b/a Robert W. Wise Cabinetry JD-(SF)-157-85
(appropriate in view of unlawful interrogation, threats, solicitation of grievances, promises, discharges and refusal to bargain)

N.L.R.B. v. Eli Gordon, Gerald Tillinger and Seymour Tillinger, a Copartnership d/b/a Balsam Village Management Company 792 F.2d 29 (C.A. 2, May 1986)
[appropriate in view of unlawful threats to discharge, discharges, and refusal to bargain, notwithstanding E's contention that Bd did not adequately articulate basis for order and that there was 100% Ee turnover]

N.L.R.B. v. J. Coty Messenger Service, Inc. ———F.2d——— (C.A. 2, May 1985)
[ct vacated portion of Bd's order directing E to bargain with U where Bd failed to *show that bargaining order is appropriate when it is issued, not at some earlier date and to give reasoned analysis of impact Ee turnover would have on chances for fair election*]

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. 753 F.2d 313 (C.A. 3, Jan. 1985)
(bargaining order appropriate where record amply justifies denomination of ULPs by E as *serious, extensive, pervasive* and *coercive*; ULPs consisted of threats of plant closing and layoffs, impression of surveillance created, discharge of U adherent and senior manager involved in persistent campaign of ULPs which satisfied standards for *Gissel II* order and are of kind that are unlikely to dissipate)

6612-0100 Generally

Plateau Coal Sales, Inc. 279 NLRB No. 156
[bargaining order required where U represented majority of normal complement of Ees whom E agreed to hire and ULPs implicated highest management officials and affected every member of small unit where entire unit of Ees was unlawfully denied employment because they refused to work nonU which conduct would continue to undermine U support and impede election process]

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)
(bargaining order, rather than election, is most salutary response by Bd where record exhibited occurrence of serious coercive practices, reasonably likely to have severe and lasting effects -threats of plant closure star chamber interrogation tactics, written admonitions, withholding of overtime, loss of employment, grant of benefits, reassignment and discharge- even in absence of direct proof of probability of recurrence)

6612-7500 Order operates from date of issuance by Board

Loose Leaf Hardware, Inc. v. N.L.R.B. 748 F.2d 347 (C.A. 6, Nov. 1984)
(E's contention that reaffirmed bargaining order could not be applied from initial date of entry rejected where, after hearing was held on E's objections to election pursuant to ct remand, objections were overruled, and bargaining order was reaffirmed; E's bargaining obligation arose at time of election, not when Bd reaffirmed its order on remand)

6612-8700 Order operates from date of either employer's misconduct precluding fair election or union's demand for recognition

Central Broadcast Company 280 NLRB No. 086
[date E began ULPs where ULPs did not start until after demand for recognition]

B & P Trucking, Inc. 279 NLRB No. 092
[appropriate from date U requested recognition]

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota 276 NLRB No. 106
(E to bargain from date of demand for recognition)

Jean Foust, Sole Proprietor, d/b/a Regency Manor Nursing Home 275 NLRB No. 171
(bargaining order held appropriate from date E engaged in unlawful campaign, where E engaged in serious ULPs i.e., threats of plant closure, discharge and actual discharge of U supporters and in particular, concocted and implemented a scheme whereby E coerced Ees into accepting *supervisory* positions in an attempt to preclude pro-U Ees from voting, thereby seriously impairing integrity of Bd's electoral process, making it highly unlikely that a free and fair election could be held)

6615 RETROACTIVE BARGAINING ORDER

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)
[ct held Bd abused its discretion by ordering E to comply with bargaining agreement retroactively to date E unlawfully refused to sign agreement, rather than from date agreement became effective, since Bd has traditionally granted relief in similar cases retroactive to inception of contract, and absent explanation for doing so Bd cannot impose different remedies; further, if make whole relief for whole period of contract not ordered then status quo not restored]

6618 APPROPRIATE DESPITE INCREASE OR TURNOVER IN UNIT EMPLOYEES SINCE ULPs

N.L.R.B. v. Newly Weds Foods, Inc. 758 F.2d 4 (C.A. 1, Mar. 1985)
(E's contention that Ee turnover since election warrants new election given the closeness of result, rejected, since Ee turnover during delay caused by E's challenge of R election is not proper basis for ordering new election)

6625 BARGAINING CONCERNING PARTICULAR SUBJECT

6625-0200 Initial terms and conditions of employment

Martin J. Barry Company 278 NLRB No. 056
[proper remedial obligations for *Golden State* successor involving predecessor's unlawful refusal to execute and implement contract with U was to make Ees whole for predecessor's ULP up to time predecessor ceased business and then, bargain in good faith with U for contract, since such remedy is sufficient to convince unit Ees that employing enterprise intends to comply with the Act and strikes a balance between interests of successor, the public and the affected Ees]

6625-2900 Effect of subcontracting on unit employees

Everett Yacht Club JD-(SF)-115-85
(E ordered to bargain with U concerning effects of subcontracting on its Ees and to meet limited backpay requirement both to make whole Ees for losses suffered as result of E's ULP and to recreate in practicable manner situation in which parties' positions are not entirely devoid of economic consequences for E. Sum paid shall never exceed amount Ee would have earned from date on which E subcontracted work to time Ees secured equivalent employment elsewhere, or date E shall have offered to bargain, whichever occurs sooner,

6625-2800—Cont.

provided that sum will not be less than Ees would have earned for 2-week period at rate of their normal wages when last in E's employ)

6625-4000 **Change to independent distributorship system**

Alamo Cement Company d/b/a San Antonio Portland Cement Company 277 NLRB No. 033
(bargain over effects of unilateral changes)

6625-4400 **Effect of change in operations on unit employees**

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. 789 F.2d 9 (C.A. D.C., Apr. 1986)
[Bd's remedy confirms that U has bargaining rights with respect to all mandatory subjects of bargaining for all current and future Ees of E's unionized facility and for all previous Ees of E's unionized facility improperly displaced by virtue of illegal diversion of bargaining unit work]

6625-4800 **Effect of termination of operations on employees**

Borden, Inc., Chemical Division Thermoplastic Products 279 NLRB No. 059
[on U's request, E to bargain over severance pay issue w/o insisting on Ee execution of E general release of Ees' civil and statutory health and safety complaints as a condition of agreement]

Vitek Electronics, Inc. v. N.L.R.B. 763 F.2d 561 (C.A. 3, June 1985)
(fact that E closed down plant and bargaining unit no longer exists did not render bargaining order moot or futile even through bargaining order did not order *effects* bargaining since it did order E to bargain concerning rates of pay, wages, hours and other terms and conditions of employment and S.Ct held in *First National Maintenance*, 452 U.S. 666, that this language mandates bargaining over effects of plant closing)

6650 BARGAIN IN GOOD FAITH

6650-1200 **Execute agreed contract**

6650-1201 Generally

Martin J. Barry Company 278 NLRB No. 056
[order directing E, who was admitted *Burns* successor, to execute and implement contract agreed to by predecessor and make Ees whole for failure to so implement, contravened 10(c) of the Act and Bd was w/o remedial autority to so order, since, under principles of *H.K. Porter*, 397 U.S. 99 (1970), Bd lacks remedial authority to impose contractual terms involuntarily on either party to a collective bargaining agreement]

Martin J. Barry Company 278 NLRB No. 056
[proper remedial obligations for *Golden State* successor involving predecessor's unlawful refusal to execute and implement contract with U was to make Ees whole for predecessor's ULP up to time predecessor ceased business and then, bargain in good faith with U for contract, since such remedy is sufficient to convince unit Ees that employing enterprise intends to comply with the Act and strikes a balance between interests of successor, the public and the affected Ees]

6650-1205 As of original agreement date

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 277 NLRB No. 078
(E to execute and give retroactive effect to agreed on contract on request by U, with determination of whether effective date for purposes of retroactive effect should be the date from which the prior agreement would be renewed or the date on which parties reached agreement on the new contract left to compliance stage of proceeding)

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)
[ct held Bd abused its discretion by ordering E to comply with bargaining agreement rectroactively to date E unlawfully refused to sign agreement, rather than from date agreement became effective, since Bd has traditionally granted relief in similar cases retroactive to inception of contract, and absent explanation for doing so Bd cannot impose different remedies; further, if make whole relief for whole period of contract not ordered then status quo not restored]

6650-2500 **Honor contract**

Watson-Rummell Electric Co. 277 NLRB No. 162
[E to give retroactive and continuing effect to expired contract until E and U reach impasse or execute new contract or U refuses to bargain]

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 277 NLRB No. 078
(E to honor prior contract's U-security provision that was incorporated by reference in new contract it was ordered to execute)

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 277 NLRB No. 078
(E to comply with dues-checkoff provision of contract, where E refused to sign agreed-upon contract incorporating checkoff provision from expired contract)

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)
[ct held Bd abused its discretion by ordering E to comply with bargaining agreement rectroactively to date E unlawfully refused to sign agreement, rather than from date agreement became effective, since Bd has traditionally granted relief in similar cases retroactive to inception of contract, and absent explanation for doing so Bd cannot impose different remedies; further, if make whole relief for whole period of contract not ordered then status quo not restored]

6650-3700 **Furnish information**

6650-3714 All relevant and necessary information

Smyth Manufacturing Co., Inc.; Boscon Industries 277 NLRB No. 066
(E required to preserve and furnish to Bd agents, on request, for examination and copying, all documents and records related to *subcontracting or assigning to others the manufacture of parts for or on behalf of* E in order for Bd to police compliance with Bd's subcontracting remedy against E)

6650-3735 Wage and financial data

E. I. Du Pont De Nemours & Company 276 NLRB No. 034
(where E contended that supplying bargaining agent with requested information would compromise confidentiality of proprietary information, Bd ordered E to furnish requested information subject to bargaining in good faith regarding conditions under which information would be furnished, so that access would be provided in manner consistent with monitoriing appropriate safeguards protective of E's confidentiality concerns)

6650-3750 Health and safety data

Bloomsburg Craftsmen, Inc. 276 NLRB No. 043
(E ordered to furnish requested information despite conclusion of grievance procedure for which U originally requested it)

6662 CONDITIONAL ORDERS

E. I. Du Pont De Nemours & Company 276 NLRB No. 034
(where E contended that supplying bargaining agent with requested information would compromise confidentiality of proprietary information, Bd ordered E to furnish requested information subject to bargaining in good faith regarding conditions under which information would be furnished, so that access would be provided in manner consistent with monitoriing appropriate safeguards protective of E's confidentiality concerns)

6662-7000 **Conditioned on request for recission of unilateral change**

St. John's General Hospital of Allegheny County—ADR Center 281 NLRB No. 157
[E ordered, if requested by U, to rescind unlawful unilateral changes in regard to rotating work place assignments, wage increases, and method of determining compensation for certain Ees. Absent such request, however, E shall not rescind changes unilaterally made until it has met its bargaining obligations; further, since change affecting wages was not to detriment of Ees, no restitution or make whole remedy required]

6675 EXTENSION OF CERTIFICATION YEAR

Mediterranean Diner, Inc., t/a Bay Diner, Inc., and New Bay Diner, Inc., t/a Mediterranean Lounge 279 NLRB No. 077
[extension of certification year unwarranted where predecessor met with U on 3 occasions, predecessor was never charged with overall refusal to bargain, and successor's acquisition of predecessor and its refusal to bargain with U followed expiration of initial certification year]

Accurate Web, Inc. 279 NLRB No. 030
[certification year for U extended, (where U not accorded full certification year) *to embrace that time in which the E has engaged in its unlawful refusal to bargain,* inasmuch as there should have been bargaining since certified U requested same w/i certification year]

Alamo Cement Company d/b/a San Antonio Portland Cement Company 277 NLRB No. 033
(Bd ordered E to bargain for a reasonable time after remedying ULPs where ordering complete renewal of certification year and requiring E to bargain a full year was too much and extension of certification year by three and a half weeks inadequate)

6687 AFFIRMATIVE DEFENSES

6687-0300 **Bargaining order inappropriate due to lapse of time**

6687-0300—Cont.

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **282 NLRB No. 031**
[notwithstanding election held 5 years before Bd issued its decision and Certification of Representative during which time E contends that because of substantial Ee turnover U may not represent majority of Ees, Bd granted summary judgment over E's failure to bargain with U in absence of newly discovered evidence]

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**
[order to bargain with the one of competing Us which did not have contract with E, appropriate, in view of E's unlawful interrogations, assistance to favored U by soliciting Ees to sign authorization cards for that U, threats of discharge if Ees did not sign authorization cards for that U, and subsequent discharge of almost half Ees out of small unit who signed cards for competing U with which E least preferred to deal; bargaining order not foreclosed by fact that there were competing Us or by contract where contract had not been enforced at facility involved, nor by passage of time, particularly absent Ee turnover]

6687-0500 Cessation or removal of operations

Woodline Motor Freight, Inc. **278 NLRB No. 152**
[order to redomicile tractors at original terminal, appropriate, where necessary to restore status quo ante and action would not be unduly burdensome, i.e., require capital investment disproportionate to E's resources, or impose substantial, continuing losses. Here, terminal was profitable before discriminatory relocation, and E has continued to operate terminal]

Vitek Electronics, Inc. v. N.L.R.B. **763 F.2d 561 (C.A. 3, June 1985)**
(fact that E closed down plant and bargaining unit no longer exists did not render bargaining order moot or futile even through bargaining order did not order *effects* bargaining since it did order E to bargain concerning rates of pay, wages, hours and other terms and conditions of employment and S.Ct held in *First National Maintenance*, 452 U.S. 666, that this language mandates bargaining over effects of plant closing)

6687-1300 Change in ownership or management

Martin J. Barry Company **278 NLRB No. 056**
[order directing E, who was admitted *Burns* successor, to execute and implement contract agreed to by predecesor and make Ees whole for failure to so implement, contravened 10(c) of the Act and Bd was w/o remedial autority to so order, since, under principles of *H.K. Porter*, 397 U.S. 99 (1970), Bd lacks remedial authority to impose contractual terms involuntarily on either party to a collective bargaining agreement]

Martin J. Barry Company **278 NLRB No. 056**
[proper remedial obligations for *Golden State* successor involving predecesor's unlawful refusal to execute and implement contract with U was to make Ees whole for predecessor's ULP up to time predecessor ceased business and then, bargain in good faith with U for contract, since such remedy is sufficient to convince unit Ees that employing enterprise intends to comply with the Act and strikes a balance between interests of successor, the public and the affected Ees]

Martin J. Barry Company **278 NLRB No. 056**
[E's contention that it was not *Golden State* successor and liable for predecessor's ULPs because it had no contractual relationship with predecessor nor did it purchase predecesor's assets, rejected, since E agreed to substantially reduce management fees charged to predecessor (who remained a customer of E) and such arrangement *effectively constituted payment* for predecessor's business]

N.L.R.B. v. Honaker Mills, Division of Top Form Mills, Inc. **———F.2d——— (C.A. 4, Feb. 1986)**
[E was not released from bargaining order even though it sold business prior to Bd's order, where buyer of business did not admit it was successor E and E had not had chance to establish it no longer had any relationship to facility in question]

6687-2500 Loss of union's majority

6687-2550 Employee turnover

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **282 NLRB No. 031**
[notwithstanding election held 5 years before Bd issued its decision and Certification of Representative during which time E contends that because of substantial Ee turnover U may not represent majority of Ees, Bd granted summary judgment over E's failure to bargain with U in absence of newly discovered evidence]

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(in finding E's extensive and grave ULPs to warrant bargaining order, Bd held that, despite Ee turnover, inhibitive effects of ULPs were likely to persist; while supervisors who perpetrated majority of ULPs and number of victims of E's violation had left E's employ, one remaining supervisor had demonstrated willingness to carry out threat to eliminate U at all cost; and Ee turnover of about 12 percent was no reason to assume that other Ees were unaffected since unlawful discharges were likely to be common knowledge among Ees and E's unlawful polling touched majority of them)

Apple Glass Company **JD-89-86**
[appropriate in view of discharge of chief U organizer on very day Ees started signing cards and threats to close plant; Ee turnover not factor to be considered as mitigating need for order]

N.L.R.B. v. Eli Gordon, Gerald Tillinger and Seymour Tillinger, a Copartnership d/b/a Balsam Village Management Company **792 F.2d 29 (C.A. 2, May 1986)**
[Ee turnover not mitigating factor where it was caused by very discharge violations sought to be remedied, E's reinstatement offer conditioned on renouncing U did not alleviate discharges for failure to do so, and reinstatement offer four months after discharges was so belated as to be properly construed as not in good faith]

6687-5000 Prior bargaining order

Gentzler Tool & Die Corp. **275 NLRB No. 124**
(notwithstanding Bd has pending ptn for enforcement of its Order requiring execution of contract, retroactive application of contract and that E c/d from dealing directly with Ees, Bd issued another D/O arising from subsequent C finding E violations for refusal to bargain and withdrawal of recognition which are different violations than those found in first decision, and therefore, Order in first decision would not remedy those violations found in second decision; hence, need for another Order)

6687-5400 Employer's contractual obligations

United Artists Communications, Inc., Operating Capri Theatre **280 NLRB No. 119**
[order to bargain with the one of competing Us which did not have contract with E, appropriate, in view of E's unlawful interrogations, assistance to favored U by soliciting Ees to sign authorization cards for that U, threats of discharge if Ees did not sign authorization cards for that U, and subsequent discharge of almost half Ees out of small unit who signed cards for competing U with which E least preferred to deal; bargaining order not foreclosed by fact that there were competing Us or by contract where contract had not been enforced at facility involved, nor by passage of time, particularly absent Ee turnover]

6687-7800 Settlement agreement

Hotel Holiday Inn De Isla Verde **278 NLRB No. 147**
[upon ct remand, Bd deferred to strike settlement agreement restricting conditions of reemployment of economic strikers allegedly discharged for misconduct, and vacated its order requiring reinstatement where at time of settlement, there was no finding strikers had been unlawfully discharged and, thus, they did not have legal right to remedy nor did E have legal obligation to provide remedy; here, in return for meeting on some middle ground, E voluntarily offered to reinstate strikers, and both E and U voluntarily offered to forgo any adjudication rights they might have had]

Hotel Holiday Inn De Isla Verde **278 NLRB No. 147**
[in deferring, pursuant to ct remand, to strike settlement agreement restricting conditions of reemployment of economic strikers allegedly discharged for misconduct, and vacating its order requiring reinstatement, Bd, in addition to its stated reasons for so holding, based deferral on absence of evidence or allegation that settlement was entered into fraudulently or under duress]

6687-8100 Union misconduct

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual **274 NLRB No. 115**
(order that respondents bargain from date of U demand for recognition in view of respondents' outrageous and pervasive ULPs not precluded by misconduct of U and strikers in delaying vehicles entering and leaving plant, following some vehicles to see if they were taking work from plant to be performed elsewhere, single act of vandalism, and kicking of one of E's officers twice)

6687-9000 Union's inflexible negotiation demands

Southwest Forest Industries, Inc., Los Angeles Container Division **278 NLRB No. 031**
[E ordered to make Ees whole by restoring status quo for unilateral changes, notwithstanding U would not have bargained with E under any circumstances, since U had filed ULP charge over changes and linked continued bargaining to resolution of ULP and changes had not been subject of prior bargaining between U and E, which distinguished case from *Dependable Maintenance*, 274 NLRB No. 37, where status quo remedy was found inappropriate; thus, conclusion that U would not have bargained even absent ULP was purely speculative and wrongdoer bears the risk of any uncertainty its wrong has created]

7700 NOTICE REQUIREMENTS

7728 PLACE OF POSTING

7728-0600 **All locations where ULPs occurred**

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers 279 NLRB No. 116
[Bd modified ALJ's recommended order that E that performed construction work for mining companies post notice at location where violations occured and at any location where E was still working, by not requiring posting at sites where ULPs did not occur, however, since E is no longer working at sites where ULPs occured and Ees at those sites have been laid off, E ordered to mail copies of notice to its Ees at their last known addresses who were employed at sites involved in ULPs]

John J. Hudson, Inc. 275 NLRB No. 123
(notice to be posted at facility where E's ULPs occurred, rather than companywide, in absence of finding of clear pattern or practice of unlawful conduct)

7728-1200 **All locations**

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers 279 NLRB No. 116
[Bd modified ALJ's recommended order that E that performed construction work for mining companies post notice at location where violations occured and at any location where E was still working, by not requiring posting at sites where ULPs did not occur, however, since E is no longer working at sites where ULPs occured and Ees at those sites have been laid off, E ordered to mail copies of notice to its Ees at their last known addresses who were employed at sites involved in ULPs]

Dependable Building Maintenance Company; et al. 276 NLRB No. 007
(where the issue of whether there was a central location where Bd notices as to three Es' violations would be seen by all Ees had not been litigated, Es were only required to post the notices in conspicuous places, including those where notices to Ees were customarily posted, rather than to mail copies of the notices to all unit Ees as recommended by the ALJ; if, however, either party wished to contest this manner of posting, the issue could be raised at the compliance stage of the proceeding)

John J. Hudson, Inc. 275 NLRB No. 123
(notice to be posted at facility where E's ULPs occurred, rather than companywide, in absence of finding of clear pattern or practice of unlawful conduct)

7742 MANNER OF NOTICE

7742-1700 **Mailed**

Island Creek Coal Company and Langley and Morgan Corporation, Joint Employers 279 NLRB No. 116
[Bd modified ALJ's recommended order that E that performed construction work for mining companies post notice at location where violations occured and at any location where E was still working, by not requiring posting at sites where ULPs did not occur, however, since E is no longer working at sites where ULPs occured and Ees at those sites have been laid off, E ordered to mail copies of notice to its Ees at their last known addresses who were employed at sites involved in ULPs]

P.J. Hamill Transfer Company, and Robert Blackwell, Trustee in Bankruptcy, alter ego and/or successor, and Brennan Express, Inc., alter egos 277 NLRB No. 39
(copy of notice ordered to be mailed to all unit Ees because E had ceased operations)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008
(because of seasonal nature of E's operation of outdoor theater which is closed during winter months, E and U ordered jointly to mail copy of notice to last known address of each Ee who was employed during last payroll period before E's operation closed)

Dependable Building Maintenance Company; et al. 276 NLRB No. 007
(where the issue of whether there was a central location where Bd notices as to three Es' violations would be seen by all Ees had not been litigated, Es were only required to post the notices in conspicuous places, including those where notices to Ees were customarily posted, rather than to mail copies of the notices to all unit Ees as recommended by the ALJ; if, however, either party wished to contest this manner of posting, the issue could be raised at the compliance stage of the proceeding)

Batavia Nursing and Convalescent Inn 275 NLRB No. 125
(U's request that E be required to mail copy of notice to each present Ee and to each Ee employed at time of unlawful election day assault upon U's field organizer in presence of Ees, denied, since U failed to show that notice would not be adequately exposed by compliance with notice-posting order)

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual 274 NLRB No. 115
(copy of Bd's notice to be mailed to all of respondents' Ees employed since they began their unlawful course of conduct, since, in view of their flagrant and repeated violations, it is essential that each Ee be made individually aware of her or his statutory rights and that her or his exercise of those rights will be respected by respondents, and, since the notice is long, that each Ee should have an opportunity to read and absorb it fully)

7742-3300 **Read by company official or Board agent**

Batavia Nursing and Convalescent Inn 275 NLRB No. 125
(U's request that E who was held accountable for its attorney's unlawful election day assault upon U's field organizer in presence of Ees, be required to read notice aloud to its present Ees denied since U failed to show that notice would not be adequately exposed by compliance with notice-posting order and there was no evidence that ULP herein was committed pursuant to orders from E's top management)

7742-5000 **Published in newspaper of general circulation**

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual 274 NLRB No. 115
(copy of Bd's notice to be mailed to all of respondents' Ees employed since they began their unlawful course of conduct, since, in view of their flagrant and repeated violations, it is essential that each Ee be made individually aware of her or his statutory rights and that her or his exercise of those rights will be respected by respondents, and, since the notice is long, that each Ee should have an opportunity to read and absorb it fully)

8800 ORDERS TO REMEDY SPECIFIC VIOLATIONS

8817 SECTION 8(a)(1)

8817-0300 **Rescind changes in work schedule**

Benmit Division, U.S. Tubular, Inc. 280 NLRB No. 063
[E to reinstate former overtime conditions and former shift schedules, so that shifts will no longer be an hour apart]

8817-0700 **Rescind or make compensation payments**

Toyota of San Francisco 280 NLRB No. 093
[to remedy E's refusal to pay any commissions to striking salesmen who had taken orders for cars prior to strike which were delivered by strike replacements or management, E ordered to pay strikers 50% of what their commission would have been had they also made delivery, inasmuch as this approximated actual practice as to division of commissions]

8817-1500 **Grant union reasonable access to employer's facilities in nonwork areas during employees' nonwork time**

Strawsine Manufacturing Co., Inc., et al. 280 NLRB No. 063
[where E unlawfully moved operations to another state, E ordered to allow Ees at new facility to have unrestricted access to U organizers during nonworking time on plant approaches and plant parking lots for a period of 1 year from date of Bd decision subject to E's reasonable and nondiscriminatory regulations]

8817-1600 **Grant union or employees reasonable access to bulletin boards**

Dresser Industries, Inc. 278 NLRB No. 116
[Bd modifies recommended order's provision requiring E to permit Ees to post dissident intra-union literature on E bulletin boards and posting surfaces on grounds that requirement was unduly broad because it would prevent E from placing legitimate, nondiscriminatory restrictions on use of such areas]

8817-3200 **Cease depriving employees of right to representation at investigatory interview**

Amoco Oil Company 278 NLRB No. 003
[c/d order appropriate for *Weingarten* violation since violation was not de minimus even though not followed by discipline where violation involved two Ees and was not isolated event]

Communication Workers, Local 5008 v. N.L.R.B. (Illinois Bell Telephone Co.) 784 F.2d 847 (C.A. 7, Mar. 1986)
[ct enforced Bd's order that modified its make-whole remedy to c/d order as remedy for isolated *Weingarten* violation; however repeated *Weingarten* violations are repeated more harshly]

8817-5600 **Reevaluate discriminatee**

United States Postal Service 275 NLRB No. 041
(Ee ordered to reevaluate Ee whose negative evaluation resulted from concerted protected activities and was considered by E in refusing to promote him; however, E not ordered to promote Ee since its failure to promote him was not unlawful inasmuch as E established individual chosen for promotion was more qualified than Ee, and Ee would not have been chosen even absent protected activity, nor was E required to retrace evaluation process and refill position)

8817-6100 **Expunge references to disciplinary action from employee's records**

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. JD-(NY)-24-85

8817-7200 **Promote discriminatee**

8817-7200—Cont.

United States Postal Service 275 NLRB No. 041
(Ee ordered to reevaluate Ee whose negative evaluation resulted from concerted protected activities and was considered by E in refusing to promote him; however, E not ordered to promote Ee since its failure to promote him was not unlawful inasmuch as E established individual chosen for promotion was more qualified than Ee, and Ee would not have been chosen even absent protected activity, nor was E required to retrace evaluation process and refill position)

8817-8800 Disband employee grievance committee

Fiber Glass Systems, Inc. 278 NLRB No. 154
[E to disestablish grievance committee and new procedure]

8817-8900 Orders concerning solicitation and/or distribution rules

The Cincinnati Enquirer, Inc., A Division of Gannat, Inc. 279 NLRB No. 149
[ordering E to reimburse U for postal expenses where E discriminatorily denied U use of E-maintained Ee mailboxes to distribute U literature, not warranted absent *sufficient nexus* between discriminatory conduct and expenses incurred by U where U voluntarily used postal service to distribute literature; cease and desist order appropriate instead]

The Gerkin Co. 279 NLRB No. 136
[E to rescind unlawful no-solicitation no-distribution rule]

8817-9900 Restore benefits and working conditions

Bennit Division, U.S. Tubular, Inc. 280 NLRB No. 083
[E to reinstate, to extent not already done, prior working conditions relative to vending machines and telephones]

8817-9700 Grant access to union representatives

Batavia Nursing and Convalescent Inn 275 NLRB No. 125
(U's request for requirement that E affford U organizer access to E's premises and opportunity to address its Ees for reasonable period on company time, denied, since ULPs consisting of election day assault by E's attorney upon U's field organizer in presence of Ees were not so aggravated as to warrant unusual remedial action and U had not shown that it had no viable alternative means for organizational access to Ees)

8833 SECTION 8(a)(2)

8833-1400 Disestablish company union

Superior Container, Inc. 276 NLRB No. 055
(where E unlawfully dominated and controlled formation and administration of Ee committee in nature of a labor organization, E ordered to withdraw recognition from and to disestablish committee)

The Lawson Company v. N.L.R.B. 753 F.2d (C.A. 6, Jan. 1985)
(Bd's disestablishment order enforced only with respect to stores of E which U has sought to organize and in which GC has challenged validity of E's Sales Assistant Committee)

8833-2800 Withdraw and withhold recognition

8833-2867 Permanent withdrawal of recognition ordered where

8833-2867-3500 Employer dominated union

Superior Container, Inc. 276 NLRB No. 055
(where E unlawfully dominated and controlled formation and administration of Ee committee in nature of a labor organization, E ordered to withdraw recognition from and to disestablish committee)

8833-7700 Provide outside union access to plant premises and/or bulletin boards

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. 764 F.2d 182 (C.A. 3, June 1985)
(Bd's order granting rival U access to E's premises and ordering another U to reimburse dues withheld after it entered into illegal U security contract with E during real qcr, held not an abuse of discretion, since such remedy restores climate of neutrality in which Ees free choice may be made Us competing for representation or for no representation at all)

8833-8300 Reimbursement of dues paid under contract

Leon Aric Edrich and Ignatius Ekfunt, Co-Partners d/b/a Sanford Home For Adults, Successor, et al. (Local 6, International Federation of Health Professionals, Longshoremen) 280 NLRB No. 140
[each respondent , predecessor E, successor E, and U, while jointly and severably liable for entire obligation, is primarily liable for reimbursement of that portion of monies which it received as initiation fees, dues and other monies deducted from Ees' wages pursuant to contractual U security provision since E had turned monies over to U]

8850 SECTION 8(a)(3)

8850-0100 Generally

Griffith-Hope Company 275 NLRB No. 073
(where Bd found that E's unlawful unilateral subcontracting of unit work resulting in layoff of Ees, violated 8(a)(5) but not 8(a)(3), Bd held such dismissal did not affect remedy herein)

8850-0600 Transfer or offer to transfer employees

Medallion Kitchens, Inc. 277 NLRB No. 178
[where E closed production plant and reopened new plant 175 miles away, E need not offer economic strikers who were unlawfully denied reinstatement at old plant positions at new plant since transfer of Ees from old to new plant not guaranteed but rather all interested Ees were required submit applications to be considered for employment at new plant]

8850-0700 Offer employment to applicant

J. D. Landscaping, Corp. 281 NLRB No. 004
[successor E to offer predecessor E's six most senior Ees, out of fifteen Ees not hired, employment and make them whole for discriminatorily refusing them employment due to U activities and to place rest of them on preferential hiring list for employment if work force expanded, and, if expansion occurred between events in case and compliance date, to offer predecessor's most senior Ee employment and make him whole, in all cases, discharging other Ees if necessary]

8850-1000 Grant union reasonable access to bulletin boards

Strawsine Manufacturing Co., Inc., et al. 280 NLRB No. 063
[where E unlawfully moved operations to another state, E ordered to, on request, immediately grant U reasonable access, for a 1-year period, to plant bulletin boards and all places where notices to Ees are customarily posted at new facility]

8850-1500 Give union list of employees' names and addresses

Strawsine Manufacturing Co., Inc., et al. 280 NLRB No. 063
[where E unlawfully moved operations to another state, E ordered to, on request made w/i 1 year from date of decision, immediately supply U a list of names and addresses of all Ees at new facility and keep list current for a 1-year period]

8850-2500 Resume discriminatorily discontinued position or operations

Strawsine Manufacturing Co., Inc., et al. 280 NLRB No. 063
[even though E closed facility for unlawful reasons, E was not ordered to reopen facility where its fiscal situation had degenerated since time it closed plant and thus, such remedy would impose a severe financial burden]

B & P Trucking, Inc. 279 NLRB No. 092
[E to restore status quo ante by resuming trucking portion of its operations absent evidence that doing so would endanger its economic viability where operation was approaching profitability, E had achieved objective of increasing control over timing of deliveries, resumption would require little cash investment, and E's financial position was not precarious]

Woodline Motor Freight, Inc. 278 NLRB No. 153
[trucking company ordered to redomicile tractors to terminal from which tractors relocated to remedy unlawful relocation of tractors, layoff of Ees and reduction of some Ees' hours at that terminal, since such remedy will be ordered to restore status quo ante unless it would be so burdensome as not to effectuate Act]

Service Merchandise Company, Inc. 278 NLRB No. 023
[to remedy unlawful discharge of its drivers and subcontracting of its driving operations, E ordered to reestablish its private trucking operations, reinstate and make whole its drivers, as such remedy would not endanger its continued viability]

Dextra Industries, Inc. 273 NLRB No. 204
(E not required to resume operations with its own Ees that were unlawfully terminated because to do so would be unduly burdensome and is unnecessary to effectuate purposes of Act which can be sufficiently accomplished by Bd's full make-whole remedy covering terminated Ees)

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. 273 NLRB No. 197
(E which had unlawfully subcontracted its delivery operation and discharged drivers, not ordered to reestablish operation where E sufficiently proved reestablishment of operation would endanger E's viability; furthermore, ULPs would be sufficiently remedied by make whole order covering Ees of discontinued business)

8850-3000 Restore benefits and privileges

Advertiser's Manufacturing Company 280 NLRB No. 128
[E to reinstate discriminatorily discontinued practices as to Ees' parking in parking lot, football pools during work hours, Ee's drinking soda at work station for medical reasons, and receiving clerk's maintenance of inventory cards]

8850-3010 Wage increase

Leeds Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014
(Respondent, (joint E) grant retroactive (wage) increases (to Ees of *Leeds*) that conform to increases given to similarly classified *cablevision* Ees who received comparable evaluations rather than ALJ's recommended remedy granting *Leeds* Ees retroactive increases not less than average wage increases granted to *Cablevision Ees, since remedy recommended was too broad)*

8850-3020 Living quarters in company housing

Casis Management Corp. 281 NLRB No. 174
[eviction of superintendent of E's apartment building from his rent-free apartment held not separate violation but merged into his unlawful discharge, where apartment was integral part of Ee's compensation, and its use, as incident of wages and benefits, was lost as result of unlawful discrimination; and such loss was to be compensated through usual backpay proceedings with restoration of his employment benefits]

8850-3500 Grant Union access to nonwork areas during nonworking time

Strawsine Manufacturing Co., Inc., et al. 280 NLRB No. 063
[where E unlawfully moved operations to another state, E ordered to allow Ees at new facility to have unrestricted access to U organizers during nonworking time on plant approaches and plant parking lots for a period of 1 year from date of Bd decision subject to E's reasonable and nondiscriminatory regulations]

8850-4000 Rescind discriminatory policy

Advertiser's Manufacturing Company 280 NLRB No. 128
[E to reinstate discriminatorily discontinued practices as to Ees' parking in parking lot, football pools during work hours, Ee's drinking soda at work station for medical reasons, and receiving clerk's maintenance of inventory cards]

8850-4500 Expunge discriminatory action, or claimed basis thereof, from record

Northwind Maintenance and Painting Co., Inc. 281 NLRB No. 048
[E to remove references to unlawful layoffs from Ees' files, notify Ees in writing that this has been done and that layoffs will not be used against them in any way]

Bay State Ambulance and Hospital Rental, Inc. 280 NLRB No. 122
[E ordered to remove from its records any reference to Ees' unlawful discharges and notify Ees in writing of such removal and inform them that unlawful conduct will not be used as a basis for future personnel actions concerning them]

Sahara Datsun, Inc. 278 NLRB No. 148
[E to rescind unilaterally and discriminatorily instituted system of written warnings and remove warnings form Ees' personnel files]

Foote & Davies, Inc. 278 NLRB No. 012
[E ordered to expunge answer to Ee's grievance over failure to recall him where E informed Ee his reinstatement rights as economic striker would not be honored since expunction order is generally appropriate to remedy discriminatory adverse affects on employment]

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. 277 NLRB No. 053
(E to expunge from its files any reference to Ees' unlawful terminations, notify them in writing that it has done so and that evidence of their unlawful terminations will not be used as a basis for future personnel actions against them)

Ausable Communications, Inc. 273 NLRB No. 166
(E ordered to expugne from files any reference to discriminatory lay offs of Ees, and notify Ees that this has been done)

Carbo Fuel Oil; Gibralter Heat Corp.; Concord Oil Corp. JD-(NY)-24-85

8850-4600 Notify employee that discriminatory disciplinary action is expunged from record

Northwind Maintenance and Painting Co., Inc. 281 NLRB No. 048
[E to remove references to unlawful layoffs from Ees' files, notify Ees in writing that this has been done and that layoffs will not be used against them in any way]

Bay State Ambulance and Hospital Rental, Inc. 280 NLRB No. 122
[E ordered to remove from its records any reference to Ees' unlawful discharges and notify Ees in writing of such removal and inform them that unlawful conduct will not be used as a basis for future personnel actions concerning them]

Ausable Communications, Inc. 273 NLRB No. 166
(E ordered to expugne from files any reference to discriminatory lay offs of Ees, and notify Ees that this has been done)

8850-4700 Relocation expenses

Strawsine Manufacturing Co., Inc., et al. 280 NLRB No. 063
[in case involving E's unlawful removal of operations to another state, E ordered to offer Ees who were terminated substantially equivalent positions at new facility or any of E's other plants, with traveling and moving expenses and backpay; further, backpay period for Ees who are unable to accept offers of employment that require moving is from date of termination to date Ees secures substantially equivalent employment with another E]

8850-5000 Assign work on nondiscriminatory basis

Passaic Daily News t/a The Herald News 276 NLRB No. 078
(Bd revised original remedy which ordered newspaper to publish a column prepared by Ee in order to avoid any First Amendment problem by ordering newspaper to restore Ee immediately to column writing duties and *decide* whether to publish Ee's column upon factors other than U or protected activity; such order does not compel publication *or* thrust Bd into editorial decision-making process and involves only an inquiry into E's motive, an inquiry which is constitutionally permissible)

8850-5100 Preferential hiring list

J. D. Landscaping, Corp. 281 NLRB No. 004
[successor E to offer predecessor E's six most senior Ees, out of fifteen Ees not hired, employment and make them whole for discriminatorily refusing them employment due to U activities and to place rest of them on preferential hiring list for employment if work force expanded, and, if expansion occurred between events in case and compliance date, to offer predecessor's most senior Ee employment and make him whole, in all cases, discharging other Ees if necessary]

N.L.R.B. v. Charles D. Bonanno Linen Service, Inc. 782 F.2d 7 (C.A. 1, Jan. 1986)
[E ordered to place former strikers replaced during economic phase of strike which subsequently converted to ULP strike, on preferential hiring list; E's contention order punitive and abuse of Bd's discretion since more expansive than violation, rejected, where Bd found both precise violation of Sec. 8(a)(3) for refusing to reinstate strikers replaced after conversion of strike to ULP strike, and a general violation of Secs. 8(a)(3) and (1) in its general disregard of reinstatement rights of all ULP strikers; nor did fact no violation of Ees' preferential hiring rights had yet occured render order inappropriate]

8850-8200 Restore demoted employee to former job classification and pay

Passaic Daily News t/a The Herald News 276 NLRB No. 078
(Bd revised original remedy which ordered newspaper to publish a column prepared by Ee in order to avoid any First Amendment problem by ordering newspaper to restore Ee immediately to column writing duties and *decide* whether to publish Ee's column upon factors other than U or protected activity; such order does not compel publication *or* thrust Bd into editorial decision-making process and involves only an inquiry into E's motive, an inquiry which is constitutionally permissible)

8883 SECTION 8(a)(5)

8883-0100 Generally

SGS Control Services, Inc. 278 NLRB No. 137
(make whole relief ordered for those Ees who suffered losses as result of E's unilateral changes when it implemented last contract offer prior to impasse)

Griffith-Hope Company 278 NLRB No. 073
(where Bd found that E's unlawful unilateral subcontracting of unit work resulting in layoff of Ees, violated 8(a)(5) but not 8(a)(3), Bd held such dismissal did not affect remedy herein)

8883-0400 Execute, honor, or assume contract

Public Service Electric and Gas Company 280 NLRB No. 048
[E to execute contract reflecting parties' agreement in prior contract that contract be be retroactive to prior contract's expiration date in accordance with prior contract's retroactivity clause, where E had unlawfully conditioned signing of new contract on U's consenting to E's abrogation of retroactivity clause]

Ben Franklin National Bank 278 NLRB No. 136
[since collective bargaining agreement herein which E unlawfully refused to sign would have expired prior to time of Bd decision, E ordered to sign agreement only at request of U, or absent such request, bargain with U upon request]

Coastside Scavenger Company 273 NLRB No. 198
]*Heinz remedy* (E's obligation to bargain in good faith includes duty to sign written agreement embodying terms that had been agreed upon), inappropriate where parties did not reach agreement at times mentioned in C or at any other time)

8883-0400—Cont.

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. JD-25-86

[where E-members of E association unlawfully refused to execute extension agreement negotiated by association, Es ordered to sign and give retroactive effect to such agreement]

N.L.R.B. v. Genitzler Tool and Die Company 778 F.2d 1211 (C.A. 6, Dec. 1985)

[Bd's order that E sign bargaining agreement and give retroactive effect to its terms, enforced; E's contention that it is in compliance with Bd's order since it had compensated Ees for any losses and restored benefits, and that U had failed to comply with order by declining to correct contract, rejected]

8883-0500 Expunge invalid disciplinary records

Rogers Cleaning Contractors, Inc. and Its Alter Ego, Olmsted Cleaning Contractors, Inc. 277 NLRB No. 053

(E to expunge from its files any reference to Ees' unlawful terminations, notify them in writing that it has done so and that evidence of their unlawful terminations will not be used as a basis for future personnel actions against them)

8883-0700 Remove from files reference to unlawful layoffs resulting from subcontracting of unit work

Griffith-Hope Company 275 NLRB No. 073

(where E violated 8(a)(5) by unilaterally subcontracting unit work resulting in layoff of Ees, Bd ordered E to remove from its files any reference to resultant unlawful layoffs, notify affected individuals that such action was taken and that its unlawful conduct will not be used as basis for future personnel action concerning them)

8883-1400 Resume discontinued operations

Oak Rubber Company 277 NLRB No. 148

(E ordered to move transferred work back to original location, notwithstanding Ees at new location had won R election, since whether or not Ees at new plant are organized or unorganized is irrelevant to any remedy to which Ees at original location are entitled)

8883-1500 Grant wage increase

Public Service Electric and Gas Company 280 NLRB No. 048

[E to make Ees whole for losses caused by its failure to pay wage increase in new contract retroactively to expiration of prior contract pursuant to that contract's retroactivity clause]

8883-1600 Terminate subcontracting and resume operation

Pan American Grain Company, Inc. and Bulk Terminal Operations, Inc. 281 NLRB No. 019

[E to terminate unlawful subcontracting and employ unit Ees through local U pursuant to agreement to abide by new E association contract]

Hood Industries, Inc., and Its Wholly Owned Subsidiary, B & K Transportation, Inc. 273 NLRB No. 197

(E which had unlawfully subcontracted its delivery operation and discharged drivers, not ordered to reestablish operation where E sufficiently proved reestablishment of operation would endanger E's viability; furthermore, ULPs would be sufficiently remedied by make whole order covering Ees of discontinued business)

8883-1900 Furnish wage and related data

E. I. Du Pont De Nemours & Company 276 NLRB No. 034

(where E contended that supplying bargaining agent with requested information would compromise confidentiality of proprietary information, Bd ordered E to furnish requested information subject to bargaining in good faith regarding conditions under which information would be furnished, so that access would be provided in manner consistent with monitoring appropriate safeguards protective of E's confidentiality concerns)

8883-2200 Honor contract executed by employer association

Buckley Belt Service, Inc., d/b/a Buckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066

[case name and number]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. JD-25-86

[where E-members of E association, who unlawfully refused to execute extension agreement negotiated by association, made unlawful unilateral changes in working conditions, Es deemed responsible for their conduct's effects w/i 6-month period preceding issuance of C and ordered to fulfill their contractual duties during such period, including reimbursing their Ees for any loss of wages and benefits arising from Es' failure to apply or maintain agreement's terms and conditions, with interest computed in usual manner]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)

[ct held Bd abused its discretion by ordering E to comply with bargaining agreement rectroactively to date E unlawfully refused to sign agreement, rather than from date agreement became effective, since Bd has traditionally granted relief in similar cases retroactive to inception of contract, and absent explanation for doing so Bd cannot impose different remedies; further, if make whole relief for whole period of contract not ordered then status quo not restored]

8883-2300 Reinstate and make whole employees terminated without bargaining with representative

Sandpiper Convalescent Center and Sandpiper Village 279 NLRB No. 147

[Bd ordered E to offer reinstatement to unlawfully laid off Ees, overruling ALJ's refusal to order reinstatement because layoffs were for economic reasons, since failure to order reinstatement inconsistent with ALJ's substantive findings of fact which rejected economic reasons for layoffs, and in ivew of increase in work force after layoffs]

Intersystems Design and Technology Corp. 278 NLRB No. 111

[E's unilateral layoff of Ees w/o notice to or bargaining with U, violative; further, E's contention that make whole remedy is inappropriate because U waived opportunity to bargain over effects of decision after learning of layoffs because U did not demand effects bargaining, rejected, where U was faced with fait accompli because it did not receive any notice of layoffs and any bargaining demand by U would have been futile where E wrote U a letter in relation to layoffs maintaining it had no obligation to bargain over decision or choice of Ees for layoff]

8883-2600 Pay backpay because of discontinuance of operations

Interdel, Inc. 281 NLRB No. 080

[where U requested and E failed and refused to negotiate regarding effects of E's closing of its facility on Ees in unit, Bd provided for payment of limited backpay as is customary in cases where Bd has found only an *effects-bargaining* violation]

O.L. Willis, Inc. 277 NLRB No. 029

[bargaining order accompanied with limited backpay remedy found appropriate where E failed to notify U of its intention to close and thereby deprived U of opportunity to bargain concerning effects of closing on Ees; E ordered to bargain with U concerning effects on unit Ees from closing of E's facility and to pay Ees backpay in manner required by *Transmarine Navigation Corp.*, 170 NLRB 389]

8883-2800 Rescind unilateral changes

Watson-Rummell Electric Co. 277 NLRB No. 162

[E on U's request to rescind unilateral changes made since contract expired]

Rockwood & Company and W. H. Gonyea Trust No. 1–17 d/b/a Timber Products Co. 277 NLRB No. 078

(E to c/d from implementing new work rules and dental and vision plans)

Alamo Cement Company d/b/a San Antonio Portland Cement Company 277 NLRB No. 033

(rescind unilateral changes on request)

Dependable Building Maintenance Company; et al. 276 NLRB No. 007

(where, after Es had unlawfully implemented their final offer in absence of impasse, impasse occurred, and Es lawfully implemented their final offer, status quo ante order requiring E's return to conditions before unlawful implementation of their final offer limited to the periods ending with their respective lawful implementation of final offer)

8883-2825 Disciplinary action taken without consulting union

Sahara Datsun, Inc. 278 NLRB No. 148

[E to rescind unilaterally and discriminatorily instituted system of written warnings and remove warnings form Ees' personnel files]

8883-2837 Make payments into trust fund

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011

[Bd leaves to compliance addition of interest at fixed rate on unlawfully withheld payments to benefit funds and any additional amounts to be paid into benefit funds after referencing provisions in documents governing funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to withholding action, which might include loss of return on investment of funds withheld, additional administrative costs, etc., but not collateral losses]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Sizzler 279 NLRB No. 097

[determination of what amounts E, who unlawfully terminated group insurance payments to U's welfare fund, must pay to fund to make it whole left to compliance stage]

8883-2837—Cont.

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[E to make contractually required contributions for unit Ees to health and benefit plan and pension fund]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[whether E was to pay additional interest into Ee benefit funds besides those moneys unlawfully withheld left to compliance stage of proceeding due to variable and complex provisions of fund agreements]

Dependable Building Maintenance Company; et al. **276 NLRB No. 007**
(Es to make Ees whole for losses including fringe trust contributions resulting from Es' unlawful unilateral changes, to date when Es lawfully made such changes)

8883-2838 No recission where changes benefit employees

Cal-Am Partners d/b/a Amscot Coal **281 NLRB No. 027**
[enforcement of order w/o prejudice to increased hourly wage rate and cash bonus incentive system]

8883-2850 Resume deduction and/or transmittal of dues pursuant to checkoff

8883-2850-5000 Reimburse union for dues not transmitted

Westwood Industries, Inc. **280 NLRB No. 012**
[in ordering E to remit to U all dues not checked off and tendered to U pursuant to contract, Bd left to compliance stage determination of amounts actually lost by U since record did not reveal whether Ees otherwise continued to tender dues to U apart from checkoff mechanism]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[where E-members of E association unlawfully refused to execute extension agreement negotiated by E association and made unlawful unilateral changes in working conditions, Es ordered to reimburse U for any dues which, pursuant to dues-checkoff authorizations, they failed to deduct from Ees' paychecks and transmit to U as required by contract, insofar as U has not obtained dues directly from Ees, with interest computed in usual manner]

8883-2863 Reinstate pension and/or other benefit plans

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) **274 NLRB No. 134**
(E-local which unlawfully discharged Ee, and international and pension plan, as agents of local, ordered to take action specified in parties' stipulation requiring plan to take necessary steps to give discriminatees credit under plan in order to achieve service credits for them even though, because of unlawful discrimination, they did not perform actual services for local in backpay period)

N.L.R.B. v. Americana Healthcare Center **782 F.2d 941 (C.A. 11, Feb. 1986)**
[Bd order enforced where E and U duly negotiated contract for unit Ees which negotiations, inter alia, included Ee sick leave benefits were omitted from parties' written contract by inadvertence and mutual mistake, substantial evidence supported Bd's determination that parties agreed to continue sick leave benefits according to previous practice]

8883-2875 Restore union representative's right of access to plant

National Broadcasting Company, Inc. **276 NLRB No. 017**
(in finding that E unlawfully denied access to non-Ee U representative at E's remote facility engaged in broadcasting golf tournament, Bd limited access to reasonable times and places sufficient to allow U to fulfill its representational duties w/o an unwarranted interruption of E's operations)

8883-3200 Correct agreement by incorporating omitted agreed-upon provision

Americana Healthcare Center **273 NLRB No. 213**
(where E unlawfully terminated agreed-upon sick leave provision which, by mutual mistake of parties, was not incorporated into agreement, E ordered, upon written request from U, to correct agreement so as to include provision and to furnish U with duly signed copy)

8883-4200 Restore benefits and privileges

Advertiser's Manufacturing Company **280 NLRB No. 128**
[E on request to reinstate unilaterally changed practices as to free telephone privileges, tardiness, breaks and lunch periods on loading dock, time off for personal reasons, piece rates for house samples, and methods of payment]

8883-4500 Restitution for unilateral changes

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **277 NLRB No. 078**
(E to make Ees whole for losses due to E's unilaterally establishing work rule change denying Ees working a 4-day week the right to bump less senior Ees for a fifth day of work)

8883-4525 For lost wages and benefits

Pan American Grain Company, Inc. and Bulk Terminal Operations, Inc. **281 NLRB No. 019**
[E to make whole unit Ees deprived of work by E's unlawful subcontracting]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[E, who unilaterally and unlawfully terminated group insurance payments to U's welfare fund, ordered to make payments to those Ees who shared in costs of group insurance only if (1) Ee or his beneficiaries incurred expenses or suffered losses because of E's unilateral action, and (2) such expenses or losses exceeded amount Ee would have paid for group insurance coverage; and payments to those meeting foregoing conditions to consist of difference between (i) expenses incurred and/or losses suffered, and (ii) amounts Ees would have paid for group insurance]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[E, who unilaterally and unlawfully terminated group insurance payments to U's welfare fund, ordered to make payments to those Ees for whom E paid entire costs of group insurance for any expenses incurred or losses suffered by Ees or beneficiaries as result of E's unilateral action until E reaches agreement with U concerning insurance with U concerning insurance coverage or until impasse is reached]

Jack Nykiel, A Sole Proprietorship, d/b/a Joey's Stables **279 NLRB No. 097**
[two remedial periods provided for in making Ees whole for losses suffered or expenses incurred as result of E's unlawful discontinuance of group insurance payments to U's welfare fund, with first period ending at date of order herein and second ending at agreement or impasse since, if there was only one remedial period losting until agreement or impasse occurred, (1) E might thereby be encouraged to delay bargaining, and (2) Ees or beneficiaries now entitled to remedial payments might suffer considerable delay before receiving remedial payments]

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. **JD-25-86**
[where E-members of E association, who unlawfully refused to execute extension agreement negotiated by association, made unlawful unilateral changes in working conditions, Es deemed responsible for their conduct's effects w/i 6-month period preceding issuance of C and ordered to fulfill their contractual duties during such period, including reimbursing their Ees for any loss of wages and benefits arising from Es' failure to apply or maintain agreement's terms and conditions, with interest computed in usual manner]

Southwestern Steel & Supply, Inc. v. N.L.R.B. **806 F.2d 1111 (C.A. D.C., Dec. 1986)**
[E required to compensate unit members who would have been employed by E had it hired in conformity with hiring hall provision of bargaining agreement, which it unlawfully refused to continue to honor after expiration of agreement]

8883-4550 Following expiration of contract

Watson-Rummell Electric Co. **277 NLRB No. 162**
[E to make Ees whole for loss of pay or benefits due to E's refusal to honor expired contract or unilateral changes]

Watson-Rummell Electric Co. **277 NLRB No. 162**

Southwestern Steel & Supply, Inc. v. N.L.R.B. **806 F.2d 1111 (C.A. D.C., Dec. 1986)**
[E required to compensate unit members who would have been employed by E had it hired in conformity with hiring hall provision of bargaining agreement, which it unlawfully refused to continue to honor after expiration of agreement]

8883-4900 Offer to accept grievance for processing

United States Postal Service **281 NLRB No. 138**
[E not to assert as bar to grievance and arbitration procedures EEO settlement that was unilaterally negotiated with Ee, and, where it has already done so, E to restore status quo ante by reconvening or holding de novo arbitration and paying U for resulting increase in expenses]

United States Postal Service **281 NLRB No. 139**
[E to have arbitration reconvened or held de novo, and to withdraw or not present argument that EEO settlement defeated U's grievance, for reasons stated in *United Postal Service*, 281 NLRB No. 138]

United States Postal Service **281 NLRB No. 032**
[although Bd customarily directs E to restore status quo ante if it has taken unilateral action to Ee's detriment, Bd held c/d order was insufficient where it was unclear whether E's unilateral grievance adjustment was detrimental or beneficial and, consequently, Bd ordered status quo ante restoration conditioned on Ee's desire expressed through U; accordingly, if U elects with Ee's concurrence to have previous conditions restored, E required to

8883-4900—Cont.

set aside unilaterally adjusted grievance, reactivate grievance, and process it in good faith with all due eiligence]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[E to cooperate in processing grievance filed by unit Ees regarding E's use of non-U labor to perform unit work while unit Ees were not working]

8883-7500 Restitution for wages and benefits under contract

Public Service Electric and Gas Company **280 NLRB No. 048**
[E to make Ees whole for losses caused by its failure to pay wage increase in new contract retroactively to expiration of prior contract pursuant to that contract's retroactivity clause]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**
[E to make Ees whole for failure to pay contract wage]

R.E.C. Corporation **277 NLRB No. 120**
(make whole remedy of retroactive application of bargaining agreement which E has unlawfully refused to sign required)

Luther Manor Nursing Home **277 NLRB No. 007**
(where E unlawfully refused to execute agreed-upon contract, Bd required E to apply contract retroactively for any loss of earnings or benefits according to E's wage offer's effective dates, which parties used to determine duration of contract, rather than subsequent date on which parties reached agreement on complete contract)

Ellsworth Sheetmetals, Inc. **235 NLRB No. 172**
(alter ego E ordered to make Ees whole for difference betweeen what they were paid and the contract wage rate, and pay into funds referred to in contract the prescribed benefit payments, where E had unilaterally changed wage rates and ceased making benefit payments)

Meilman Food Industries, Inc. **234 NLRB No. 094**
(backpay for contractual cost-of-living increases withheld unlawfully)

Road Sprinkler Fitters Local Union No. 669, Plumbers v. N.L.R.B. **789 F.2d 9 (C.A. D.C., Apr. 1986)**
[for all E's unionized facility bargaining unit Ees who suffered as consequence of (E's) illegal diversion of work from (E's) unionized facility (to E's non-Unionized facility)]

8883-9200 Compensate employees for unlawful refusal to bargain

C-E Natco/C-E Invalco **282 NLRB No. 047**
[where Bd initially found lockout not unlawful but held E's bargaining with Ees and offering them terms for returning to work different from those offered U, omitting reinstatement and make-whole remedy provisions, Bd, on mtn for reconsideration, held make-whole remedy warranted, because Ees who accepted E's unlawful individual offers returned to work and were paid, but Ees who insisted on right to U representation on issue of resuming work suffered loss of pay; reinstatement not ordered because apparently all locked out Ees were reinstated]

8883-9300 Reimburse union for loss of health, welfare, pension plan and other payments

H.H.H. Enterprises, Inc., d/b/a Stephenson Haus **279 NLRB No. 139**
[determination of contributions that E; which unlawfully failed to make to U's health insurance fund, would be required to make lift to compliance stage]

Watson-Rummell Electric Co. **277 NLRB No. 162**
[E to reimburse Ees for losses due to failure to honor expired contract]

Southwestern Steel & Supply, Inc. **276 NLRB No. 174**
(determination of whether or not any of various (Ee benefit) funds under *contributing Es agreement--- with Us,* involve non-mandatory subjects of bargaining left to compliance stage of proceeding. Findings and remedy limited solely to those (Ee benefit) funds which involve matters that would constitute a mandatory subject of bargaining)

8883-9500 Reinstatement of expired or retroactively effective contracts

Rockwood & Company and W. H. Gonyea Trust No. 1--17 d/b/a Timber Products Co. **281 NLRB No. 117**
[contrary to ALJ's recommended order that E reinstitute terms and conditions of employment in effect prior to E's unilateral changes, Bd required E to reinstitute terms and conditions of employment as provided in Bd's prior decision, in which Bd found E was obligated to give retroactive effect to bargaining agreement reached by parties herein]

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(E directed to maintain and give effect to contract with U unless and until, after valid election, Bd certifies another U as Ee representative or that no U represents Ees)

650 ORDERS AGAINST UNIONS

1100 CEASE-AND-DESIST ORDERS

1125 BROAD ORDERS

1125-0100 Generally

1125-0150 Proclivity to violate Act as basis for broad order

Local 388, Plumbers (Daily Heating and Air Conditioning, Inc. — **280 NLRB No. 141**

[broad secondary boycott order not warranted, notwithstanding GC's contention that U had entered into previous settlements involving similar conduct since settlement agreements and consent decrees have no probative value in establishing a Respondent's proclivity to violate the Act]

Teamsters Local 115 (Gross Metal Products, Inc.) — **275 NLRB No. 220**

(prior ALJ decision in which Respondent held to have violated Act may be used to show proclivity to violate Act and justify broad order notwithstanding no exceptions taken to decision)

Upholstery Division of The United Steelworkers of America, AFL-CIO, Local Union 406-U (Jody Becker, An Individual) — **JD-130-86**

N.L.R.B. v. Carpenters Union Local No. 1622 — **786 F.2d 903 (C.A. 9, Jan. 1986)**

[U's 8(b)(4)(i) and (ii)(B) violations, coupled with similar violations which were the subject of a prior settlement stipulation, constitute the propensity necessary to justify broad cease and desist order]

1125-4100 Threatening, coercing, or restraining secondary employer or any other person

Local 388, Plumbers (Daily Heating and Air Conditioning, Inc. — **280 NLRB No. 141**

[broad secondary boycott order not warranted, notwithstanding GC's contention that U had entered into previous settlements involving similar conduct since settlement agreements and consent decrees have no probative value in establishing a Respondent's proclivity to violate the Act]

N.L.R.B. v. Carpenters Union Local No. 1622 — **786 F.2d 903 (C.A. 9, Jan. 1986)**

[U's 8(b)(4)(i) and (ii)(B) violations, coupled with similar violations which were the subject of a prior settlement stipulation, constitute the propensity necessary to justify broad cease and desist order]

1125-7200 Any other employer or any other person in union's territorial jurisdiction

Lone Star Steel Company v. N.L.R.B. — **766 F.2d 1459 (C.A. 10, July 1985)**

[ct held Bd's supplemental c/d order issued pursuant to ct remand against unlawfully striking U, deleting reference to *or any other E*, was proper under S.Ct's *Communications Workers* decision, 362 U.S. 479, since order satisfactorily implemented this ct's mandate and complied with 10(c) requirements, where Bd did not find that U engaged in *generalized scheme* against all Es; while U had engaged in nationwide strike, there was no evidence that U had similarly violated Act by striking other Es]

Lone Star Steel Company v. N.L.R.B. — **766 F.2d 1459 (C.A. 10, July 1985)**

[Bd's supplemental c/d order issued against respondent U pursuant to ct remand which Bd accepted as *law of this case*, deleting words *or any other E* held proper, notwithstanding U's contention that Bd thereby indicated it will refuse to follow ct's decision in future cases, where Bd's supplemental order expressly accepted ct's decision in instant case and was silent with respect to its intentions in future cases; ct declined to read into such silence implied intention that Bd will treat future cases contrary to ct's decision]

1600 ORDERS TO ALLEVIATE EFFECT OF FRIVOLOUS LITIGATION

1667 TYPES OF ORDER PROVISIONS

1667-5000 Reimbursement of litigation expenses

Garland Coal & Mining Co. — **276 NLRB No. 102**

(Bd denied U's request for attorney's fees on ground E continued to act in bad faith by threatening grievance and safety committee members with discharge should they properly represent Ees, despite adverse arbitration decision and dismissal by RD of 8(b)(3) charge; Bd will not award litigation expenses even where E may have been found to have engaged in *clearly aggravated and pervasive conduct*, except in extraordinary circumstances involving frivolous defenses, which was not the case herein)

2200 ORDERS RELATING TO AGREEMENTS

2210 ORDERS RELATING TO EMPLOYEES' VIOLATION OF CONTRACTUAL PROVISION

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) — **277 NLRB No. 048**

(U to c/d unilateral repudiation of contract provisions setting time frame for commencement of negotiations for new agreement)

3300 ORDERS RELATING TO REINSTATEMENT

4400 BACKPAY ORDERS

4412 AS REMEDY FOR PICKET LINE MISCONDUCT

4412-5000 Not appropriate

Local 87 Service Employees (Pacific Telephone and Telegraph Company) — **279 NLRB No. 025**

[request for reimbursement of medical expenses nonstriking Ee may have suffered as result of misconduct by pickets denied, in view of availability of private remedies traditionally used to process tort claims, and lack of Bd order awarding backpay to Ees unable to work as result of U's unlawful conduct would not leave Ees w/o redress against those responsible for their injuries]

4417 JOINT BACKPAY LIABILITY

4417-2000 International and/or local and/or district council

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) — **275 NLRB No. 048**

(local U and district council jointly and severally liable to discriminatees against whom local unlawfully filed internal U charges and whom district council unlawfully tried)

4417-8000 Union and employer

Steelworkers, Local 15063 (Geraldine Shanks, an individual) — **281 NLRB No. 169**

[U's contention in backpay proceeding that it should be relieved of liability for discharged Ee's losses because of Bd's allegedly prejudicial acceptance of settlement of Ee's related charge against E, which settlement did not require E to pay any backpay, rejected where U had not raised this defense in ULP proceeding or ct enforcement proceeding, had advanced no equitable reasons warranting relief from enforced remedy, and was simultaneously contending that it should bear no liability because E had acted lawfully in discharging Ee]

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) — **794 F.2d 420 (C.A. 9, July 1986)**

[E and U are jointly and proportionately liable for backpay when E has caused damage by wrongfully discharging Ee and U has increased that damage by breaching its duty of fair representation. The E for backpay from date of wrongful termination to date Ee would have been reinstated had U not breached its duty, and U for backpay thereafter]

4450 BACKPAY PERIOD

4450-2500 Beginning of period

650-ORDERS AGAINST UNIONS

4450-2525 Date of discrimination caused by union

Electrical Workers, Local 453 (Sachs Electric Co.) **277 NLRB No. 122**
(in case involving U discrimination in its hiring hall, backpay period commences on date U *requested* travelers to quit their jobs in favor of local U members)

4450-3000 End of period

4450-5027 Date discriminatee refuses reinstatement or referral

Electrical Workers, Local 453 (Sachs Electric Co.) **277 NLRB No. 122**
(period ended on date discriminatee refused referral because he lacked transportation to get to job to which he was referred)

N.L.R.B. v. General Truckdrivers, Warehousemen and Helpers, et al. **778 F.2d 207 (C.A. 5, Dec. 1985)**
[U's argument that backpay obligations should cease once member-discriminatees have rejected valid job referrals, upheld and such determination is left to compliance stage]

4450-5031 Date discriminatee discontinues applying to hiring hall

Local 1136, Laborers (Southern Illinois Builders Association) **276 NLRB No. 157**
(U's backpay liability *not tolled* as of date Ee stopped signing U's referral list, in light of U's continuing unlawful discrimination (in operation of its hiring hall) which made futile any attempts by Ee to secure employment through U's referral system after that date)

4450-5054 Date of completion of construction project to which discriminatee might have been transferred absent discrimination (See 650-4450-5049)

Plumbers Local No. 305 (Stone & Webster Engineering Corp. et al.) **282 NLRB No. 012**
[U to make travellers whok it refused to rgister on out-of-work list whole for earnings and benefits from jobs they would have obtained, absent U's discrimination, from date U unlawfully refused to allow Ees to register on out-of-work list to date when U allowed Ees to register including any job commencing during that period which continued beyond date when they registered]

4450-5066 Date discriminatee would have left employ of employer

Electrical Workers, Local Union No. 2148 (Newberry Industrial, Inc.) **281 NLRB No. 112**
[backpay period to end date Ee was referred to project, rather than a month after he would have been referred to project if he had not been discriminatorily bypassed for referral, where, notwithstanding he told job superintendent a month after referral that he wanted to leave because he found job dangerous, he did not decide to do so until he had another job lined up, and inference that he would have left a month after he would have been referred regardless of other job was not justified]

4483 ULPS INVOLVED

4483-2500 Refusing to process grievance

Local 814, a/w Teamsters (Beth Israel Medical Center) **281 NLRB No. 153**
[where U violated duty of fair representation by failing to take Ee's grievance over discharge to arbitration and E had refused to allow filing of untimely grievance, U ordered to do any of the following: 1) attempt to secure consideration of grievance by E and pursue to arbitration in good faith, or 2) pay Ee backpay until Ee is reinstated by E, or 3) pay Ee backpay until he secures substantially equivalent employment]

5500 REIMBURSEMENT ORDERS

5511 DUES, INITIATION FEES, AND ASSESSMENTS

Leon Aris Edrich and Ignatius Elefant, Co-Partners d/b/a Sanford Home For Adults, Successor, et al. (Local 6, International Federation of Health Professionals, Longshoremen) **280 NLRB No. 140**
[each respondent , predecessor E, successor E, and U, while jointly and severably liable for entire obligation, is primarily liable for reimbursement of that portion of monies which it received as initiation fees, dues and other monies deducted from Ees' wages pursuant to contractual U security provision since E had turned monies over to U]

R. Waldo, Inc. **280 NLRB No. 138**
[U and E jointly and severally liable to reimburse present and former members of U for all monies deducted under U security provision of unlawful contract from date said contract executed]

Furriers Joint Council of New York, a/w Food & Commercial Workers (Associated Fur Manufacturers, Inc., et al.) **280 NLRB No. 107**
[where U unlawfully deducted dues from members' vacation paychecks, U not ordered to reimburse members' dues where Ees were covered by valid and lawful U security and dues-checkoff provisions requiring them to maintain membership by paying dues]

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) **280 NLRB No. 082**
[where truck owner-operators, herein found to be independent contractors, were treated as Ees subject to contract's terms in violation of Sec. 8(e), Bd declined to issue order requiring Us to reimburse owner-operators for payment of initiation fees and dues, deducted contributions to U benefit funds, or income lost by reason of enforcement of unlawful terms of contract; Bd noted that no evidence was introduced with respect to alleged losses directly attributable to coercion by U, nor was remedial issue expressly litigated]

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) **278 NLRB No. 033**
[U ordered to reimburse Ees for unlawfully collected dues only and not initiation fees since Ees were obligated to pay initiation fees, ableit at a later time]

Safeway Stores, Inc. **276 NLRB No. 099**
(where Ees at new store were coerced to support unlawfully assisted U solely on basis of unlawful entry into contract by E and U, contract's U-security provisions, and U references to such provisions in soliciting Ees, E and U ordered, jointly and severally to reimburse Ees for all initiation fees, dues, or other moneys, except Ees who were U members before they transferred to, or otherwise commenced work at new store)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) **276 NLRB No. 010**
(U ordered to refund, with interest, amount of appeal bond or deposit U member made as prerequisite for filing his appeal from discipline imposed on him pursuant to internal U charges)

Hotel & Restaurant Employees (Southbay Limited Partnership d/b/a Sunnyvale Hilton) **275 NLRB No. 72**
(U which unlawfully caused E, pursuant to valid U security clause, to withhold and remit to U amount over and above Ee's regular dues in partial satisfaction of U's demand for back dues allegedly accrued during E's prior employment with another E, but which Ee was under no obligation to pay ordered to refund to Ee amount of average)

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**
(U ordered to refund portion of all excessive initiation fees as of specified date, but exact amount of refund left to compliance stage where, in contrast to prior Bd cases pertaining to excessive fees involving recent increase of prior existing fee not alleged to be excessive and resulting in Bd order requiring rfund of amount of increase, here U has been charging same excessive fee for several years, no recent increase was involved, and there was no evidence of what reasonable fee should be)

Haddon House Food Products, Inc. and Flavor Delight, Inc. v. N.L.R.B. **764 F.2d 182 (C.A. 3, June 1985)**
(Bd's order granting rival U access to E's premises and ordering another U to reimburse dues withheld after it entered into illegal U security contract with E during real qcr, held not an abuse of discretion, since such remedy restores climate of neutrality in which Ees free choice may be made Us competing for representation or for no representation at all)

5512 SERVICE FEES OR ASSESSMENTS IMPOSED ON NONMEMBERS

Ellis et al. v. Railway Clerks, et al. **———U.S.——— (U.S. S.CT, Apr. 1984)**
[where Ees, such as agency-fee-paying nonmembers in U shop, object to particular U expenditures, test must be whether expenditures are necessarily or reasonably incurred for performing duties of exclusive Ee representative in dealing with E on labor-management issues; under this standard, objecting Ees may be compelled to pay their fair share of not only direct costs of negotiating and administering contract and of settling grievances and disputes, but also of expenses of activities or undertakings normally or reasonably employed to implement or effectuate duties of U as exclusive representative]

Ellis et al. v. Railway Clerks, et al. **———U.S.——— (U.S. S.CT, Apr. 1984)**
[agency-fee-paying nonmembers in U shop must help defray costs of U's national conventions at which members elect officers, establish bargaining goals and priorities, and formulate overall U policy; conventions are essential to U's discharge of its duties as bargaining agent, and are directly related to its effectiveness in negotiating labor agreements; and U, which is required to hold either referendum or convention at least every 5 years for election of

5512—Cont.

officers, cannot be faulted for choosing to do so at convention rather than by referendum]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[where agency-fee-paying nonmembers in U shop claimed that U's expenditures toward purchasing refreshments for U business meetings and occasional social activities are entirely unrelated to U's function as bargaining agent and therefore could not be charged to them, ct held that, while such affairs are not central to collective bargaining, small expenditures involved are important to U's members because they bring about harmonious working relationships, promote closer ties among Ees, and create more pleasant environment for U meetings]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[agency-fee-paying nonmembers in U shop must help pay for costs of publication of U's monthly magazine whose contents are varied and include articles about negotiations, contract demands, strikes, etc.; magazine is important to U in carrying out its representational obligation and is reasonable way of reporting to its constituents; inasmuch as U cannot spend nonmembers' funds for particular activities, such as U organizing or litigation, it has no justification for spending nonmembers' funds for writing about such activities, but U is allowed to charge them for reporting on activities it can charge them for doing]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[agency-fee-paying nonmembers in U shop held not required to pay for U's organizing expenses to which they objected; organizational efforts were not what Congress aimed to enhance by authorizing U shop; using objecting Ees' dues to recruit members among workers outside bargaining unit affords only most attenuated benefits to bargaining on behalf of dues payer; and *free rider* Congress had in mind was Ee whom U was required to represent and from whom it could not withhold benefits obtained for its members, but nonbargaining unit organizing is not directed at such Ee]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[agency-fee-paying nonmembers in U shop held chargeable for litigation expenses incident to negotiating and administering contract or to settling grievances and disputes, representation litigation, jurisdictional disputes with other Us, and agency or ct litigation that concerns unit Ees and is normally conducted by U; litigation expenses not having such connection are not to be charged to nonmembers; therefore nonmembers need not share costs of U's challenge to legality of industry mutual aid pact, bankruptcy litigation seeking to protect Ees' rights, or defending suits alleging discrimination]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[finding it unnecessary to pass on issue of whether agency-fee-paying nonmembers in U shop were required to participate in death benefit program, ct held they were not entitled to refund of past contributions to program; even if they had right to injunction to prevent future collections from them for death benefits, and although they objected to use of their funds to support plan, they remained entitled to its benefits as long as they paid their dues, and thus they enjoyed form of insurance for which U collected a premium]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[where agency-fee-paying nonmembers in U shop objected to use of their contributions to particular U activities, ct held there was no constitutional barrier to allowing U to use their contributions for U's national conventions, U's social activities, and its monthly publication; U shop countenances significant infringement on First Amendment rights, and such interference is justified by governmental interest in industrial peace]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[where agency-fee-paying nonmembers in U shop objected to making contributions to U's social activities on basis of First Amendment rights, ct held it need not determine whether contributing money to such affairs is an act triggering First Amendment protection; to the extent it is, communicative content is not inherent in the act but stems from U's involvement in it; since the objection is that these are *Union* social hours, fact that Ee is forced to contribute does not increase infringement of First Amendment rights already resulting from compelled contributions to U]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[where agency-fee-paying nonmembers in U shop objected to making contributions to publication of U's monthly magazine and to U's national conventions on basis of First Amendment rights, ct held that, while both have direct communicative content and involve expression of ideas, there was little infringement of First Amendment rights beyond that already accepted, and none that is not justified by governmental interests behind U shop itself; expenses involved relate to U's collective bargaining work; and governmental interest in overcoming free-rider problem requires flexibility in U's use of compelled funds]

Ellis et al. v. Railway Clerks, et al. ———U.S.———
(U.S. S.CT, Apr. 1984)

[where agency-fee-paying nonmembers in U shop objected to particular U contributions they were required to make, ct held fact that objecting Ees invoked First Amendment was insufficient reason to impose heightened standard of clear and convincing standard of proof rather than preponderance of evidence proof normally applicable in civil suits for damages; ct has held that U bears burden of proving what proportion of expenditures went to activities that could be charged to objecting Ees, and that no heightened standard is appropriate in such a situation]

5534 MEDICAL INSURANCE OR EXPENSE

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[request for reimbursement of medical expenses nonstriking Ee may have suffered as result of misconduct by pickets denied, since such expenses are better sought through private remedies traditionally used for recovery of such damages inasmuch as such remedies place Ees before tribunals which have more experience and are better equipped than Bd to measure impact of tortious conduct]

5570 LITIGATION COSTS AND EXPENSES

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) 275 NLRB No. 048

(Us to make discriminatees whole for travel and other expenses incurred in attending U trial that violated Sec. 8(b)(1)(A) and for wages and other benefits lost due to scheduling of trial during working hours)

5570-0100 Generally

Newspaper and Mail Deliverers' Union of New York & Vicinity (Raritan Periodical Sales, Inc.) 277 NLRB No. 064

(U not ordered to pay attorneys fees even though it adhered to position contrary to that of the Bd and several of its ALJs since the repeated assertion of its legal position had not been adequately tested in the cts and rejected and thus was not frivolous)

5570-5000 Types of litigation expenses

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) 276 NLRB No. 141

(where U brought civil action in state ct to collect fines unlawfully imposed on U members for joining and/or supporting rival U in Bd election, U ordered to reimburse members for all reasonable expenses and legal fees incurred by them, plus interest, in defending against such legal actions)

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) 794 F.2d 420 (C.A. 9, July 1986)

[U has no duty to process frivolous grievance. However, U may be liable for expense of outside representation if it has failed to process nonfrivolous grievance fairly]

5577 WELFARE PENSION AND OTHER FUND PAYMENTS

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[where truck owner-operators, herein found to be independent contractors, were treated as Ees subject to contract's terms in violation of Sec. 8(e), Bd declined to issue order requiring Us to reimburse owner-operators for payment of initiation fees and dues, deducted contributions to U benefit funds, or income lost by reason of enforcement of unlawful terms of contract; Bd noted that no evidence was introduced with respect to alleged losses directly attributable to coercion by U, nor was remedial issue expressly litigated]

Local 1136, Laborers (Southern Illinois Builders Association) JD-179-86

[U's defense to backpay specification held frivolous and stricken from ans where U claimed it owed no money to pension and health and welfare funds on discriminatee's account because he was not U's Ee and U was prohibited by Sec. 302 from making such contributions on discriminatee's behalf; U's assertions were unsupported by any facts or argument, and amounts due reflected money which, absent U's discrimination, would have been paid by Es, and there was no indication such payments would have violated Act]

5582 LOSS OF EARNINGS

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[where truck owner-operators, herein found to be independent contractors, were treated as Ees subject to contract's terms in violation of Sec. 8(e), Bd declined to issue order requiring Us to reimburse owner-operators for payment of initiation fees and dues, deducted contributions to U benefit funds, or income lost by reason of enforcement of unlawful terms of contract; Bd

5582—Cont.

noted that no evidence was introduced with respect to alleged losses directly attributable to coercion by U, nor was remedial issue expressly litigated]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) **280 NLRB No. 124**

[U to make whole Ees denied referral for loss of pay or other benefits suffered by reason of discrimination against them by paying them sums equal to moneys they ordinarily would have earned from date of discrimination until U ceases unlawful conduct by properly referring them]

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) **275 NLRB No. 048**

(Us to reimburse discriminatees for wages lost due to U's scheduling of their unlawful trial on internal U charges during working hours)

5583 PAYMENTS MADE BY EMPLOYER TO EMPLOYEES UNDER ILLEGAL CONTRACT CLAUSE

Laborers Local Union No. 380 (Mautz & Oren, Inc.) **275 NLRB No. 147**

(if E has paid U steward for overtime performed on particular Saturday, pursuant to unlawful superseniority clause, Respondents will be responsible for seeing to it that such payment is returned to E)

5588 JOINT LIABILITY OF UNION AND EMPLOYER

R. Waldo, Inc. **280 NLRB No. 135**

[U and E jointly and severally liable to reimburse present and former members of U for all monies deducted under U security provision of unlawful contract from date said contract executed]

Safeway Stores, Inc. **276 NLRB No. 099**

(where Ees at new store were coerced to support unlawfully assisted U solely on basis of unlawful entry into contract by E and U, contract's U-security provisions, and U references to such provisions in soliciting Ees, E and U ordered, jointly and severally to reimburse Ees for all initiation fees, dues, or other moneys, except Ees who were U members before they transferred to, or otherwise commenced work at new store)

Rainey Security Agency, Inc. **274 NLRB No. 041**

(where E and minority U unlawfully entered into U-security contract following E's unlawful recognition of U and U's unlawful acceptance thereof, Bd, contrary to ALJ, who recommended that E be secondarily liable for reimbursement of initiation fees and membership dues, found nothing so unusual about facts herein as to warrant imposition of other than traditional order making E and U jointly and severally liable)

5591 PERSONS SUBJECT TO ORDER

Local 426, Laborers (Joseph Brown, an Individual) **280 NLRB No. 074**

[make-whole portion of remedy limited to charging party rather than extended to other nonmember applicants similarly discriminated against where record did not identify other nonmember applicants discriminated against in referral or otherwise]

5598 MAKE WHOLE REMEDY

Plumbers Local No. 305 (Stone & Webster Engineering Corp. et al.) **282 NLRB No. 012**

[U to make travellers whok it refused to rgister on out-of-work list whole for earnings and benefits from jobs they would have obtained, absent U's discrimination, from date U unlawfully refused to allow Ees to register on out-of-work list to date when U allowed Ees to register including any job commencing during that period which continued beyond date when they registered]

Local 814, a/w Teamsters (Beth Israel Medical Center) **281 NLRB No. 153**

[where U violated duty of fair representation by failing to take Ee's grievance over discharge to arbitration and E had refused to allow filing of untimely grievance, U ordered to do any of the following: 1) attempt to secure consideration of grievance by E and pursue to arbitration in good faith, or 2) pay Ee backpay until Ee is reinstated by E, or 3) pay Ee backpay until he secures substantially equivalent employment]

Local 426, Laborers (Joseph Brown, an Individual) **280 NLRB No. 074**

[make-whole portion of remedy limited to charging party rather than extended to other nonmember applicants similarly discriminated against where record did not identify other nonmember applicants discriminated against in referral or otherwise]

Rubber Workers, Local 250 (Mack-Wayne Closures) **279 NLRB No. 165**

[where U breached duty of fair representation by arbitrarily refusing to process grievance, provisional make-whole remedy entered, notwithstanding merits of Ee's grievance were uncertain, because uncertainty derived in large measure from U's breach of its duty; U ordered to ask E to rescind warning and discharge and to reinstate him and, if E refuses to do so, promptly pursue remaining stages of grievance procedure]

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) **275 NLRB No. 048**

(Us to make discriminatees whole for travel and other expenses incurred in attending U trial that violated Sec. 8(b)(1)(A) and for wages and other benefits lost due to scheduling of trial during working hours)

Plumbers, Local No. 198 v. N.L.R.B. **747 F.2d 326 (C.A. 5, Nov. 1985)**

(Bd's award of make-whole remedy to all nonmembers and traveler applicants injured by U's discriminatory operation of hiring hall as well as to named complainants found consistent with precedent for making such awards where specific evidence established a class of unnamed injured discriminatees; such class was established herein by introducing U's referral books, one for local U members and one for travelers and nonmembers, and testimony of U's assistant business agent and others supporting conclusion of actual discrimination against such class)

6600 BARGAINING ORDERS

6601 GENERALLY

Local 3, Electrical Workers (Telecom Plus of Downstate New York, Inc.) **280 NLRB No. 031**

[where C alleged that U had unlawfully insisted on tape recording parties' contract negotiations and generally refused to bargain, issuance of RO was inappropriate, even assuming that U's conduct was unlawful, inasmuch as E, after hearing, ceased its operations and terminated all Ees in unit and there was little likelihood that E would resume operations and that U would resume its representative status; notwithstanding issues were moot, C dismissed w/o prejudice to E's filing new charge if it resumed operations and U resumed its representative status]

7700 NOTICE PROVISIONS

7742 MANNER OF NOTICE

7742-2500 Mailed

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**

(because of seasonal nature of E's operation of outdoor theater which is closed during winter months, E and U ordered jointly to mail copy of notice to last known address of each Ee who was employed during last payroll period before E's operation closed)

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[Bd's order requiring U to publish Bd's notice in U's newsletter and to include copy of notice in mailing of newsletter held w/i Bd's remedial discretion and not unwarranted extraordinary remedy serving only to punish U, since newsletter notice merely contained statements by U as to conduct it will and will not perform, and inclusion of copy of notice was not so unduly burdensome so as to be considered punitive]

7742-5000 Published in local newspaper of general circulation

Newspaper and Mail Deliverers' Union of New York & Vicinity (Raritan Periodical Sales, Inc.) **277 NLRB No. 064**

Plumbers, Local No. 198 v. N.L.R.B. **747 F.2d 326 (C.A. 5, Nov. 1985)**

(Bd's order that notice of remedy be published in newspapers of general circulation, affirmed, since class of discriminatees included travelers and nonmembers, many of whom would not be expected to see posted notice or notice appearing in trade or U publications)

7742-7500 Published in union publication

Newspaper and Mail Deliverers' Union of New York & Vicinity (Raritan Periodical Sales, Inc.) **277 NLRB No. 064**

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[Bd's order requiring U to publish Bd's notice in U's newsletter and to include copy of notice in mailing of newsletter held w/i Bd's remedial discretion and not unwarranted extraordinary remedy serving only to punish U, since newsletter notice merely contained statements by U as to conduct it will and will not perform, and inclusion of copy of notice was not so unduly burdensome so as to be considered punitive]

7742-8700 Read notice at regular membership meeting

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) **276 NLRB No. 010**

(Bd deleted from ALJ's proposed extraordinary remedy requirement that U at next membership meeting announce it has rescinded new policy of filing internal U charges against members declining job referrals while on U's out-of-work list and simultaneously working non-U, and that it will adhere to

7742-8700—Cont.

procedures followed before it filed charges until such time as U gives adequate notice that it is adopting new policy)

8200 REPAY MONETARY PENALTIES IMPOSED ON EMPLOYER FOR USE OF NONUNION MATERIALS

8800 AFFIRMATIVE ORDERS RELATING TO SPECIFIC VIOLATIONS

8811 SECTION 8(b)(1)

8811-3300 Section 8(b)(1)(A)

Millwright and Machinery Erectors, Local Union 720, Carpenters (UMC of Louisiana, Inc.) 276 NLRB No. 010

(Bd deleted from ALJ's proposed extraordinary remedy requirement that U at next membership meeting announce it has rescinded new policy of filing internal U charges against members declining job referrals while on U's out-of-work list and simultaneously working non-U, and that it will adhere to procedures followed before it filed charges until such time as U gives adequate notice that it is adopting new policy)

8811-3301 Generally

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) 275 NLRB No. 048

(Us ordered to reimburse Ees for travel and other expenses, lost wages and benefits, all as a result of Ees' appearance before U trial board on internal U charges brought against Ees because they filed ULP charges with Bd; in so ordering, Bd found principles requiring that U reimburse Ees for lost wages and benefits when it unlawfully refused to refer Ees as applicable to instant situation, any Bd's ordering reimbursement of litigation expenses to remedy E's Sec. 8(a)(4) violation is equally appropriate here to reimburse Ees who had to defend against U's retaliatory internal charges)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(although U claimed that Bd's remedy was unduly harsh and might weaken or destroy it, ct enforced Bd's order allowing determination of unnamed discriminatees at compliance stage, but w/o prejudice to the U's right to challenge the awards or procedures and with requirement that Bd articulate reasons for its decision; ct stated that Bd should consider its procedures' capability to determine whether remedy became penal in nature, and thus not permitted under the Act, and the extent of actual damages, which conventional common law or equitable doctrines would require of a ct, but not of the Bd)

8811-3316 Rescind and or refund unlawful fines, fees or assessments

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144

Local Lodge No. 1198, District Lodge No. 99, Machinists (Interstate Food Processing Corp.) 278 NLRB No. 025

[U ordered to reimburse Ees for unlawfully collected dues only and not initiation fees since Ees were obligated to pay initiation fees, ableit at a later time]

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) 276 NLRB No. 141

(rescind and reimburse U members for fines imposed on them for joining and/or supporting rival U in Bd election)

Communications Workers, Local 9201 (Pacific Northwest Bell) 275 NLRB No. 214

(U ordered to rescind only that portion of fines for crossing picket line that was attributable to Ees' conduct after U would have received their letters of resignation from membership)

8811-3319 Rescind unlawful charges

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) 275 NLRB No. 048

(U's order to rescind unlawful charges, trying, judging, and admonishing of Ees for filing Bd charges)

8811-3320 Keep records on hiring and referral operations and/or allow for inspection and copying

8811-3320 Keep records on hiring and referral operations and/or allow for inspection and copying

Electrical Workers, Local Union No. 46 (NECA) 277 NLRB No. 139

(U to maintain and make available to Bd job registration records and any other documents or records showing job referrals and the basis for such work assignments of Ees, members, applicants and registrants and notify discriminatee that hiring hall facilities will be available to him on equal basis with them)

Carpenters, Local 745 (Dillingham Construction Pacific, Ltd. d/b/a Hawaiian Dredging & Construction Company) JD-(SF)-102-86,119 [keep records for 2 years that will adequately disclose fully basis on which each referral made]

8811-3324 Expunge unlawful discipline from records

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) 276 NLRB No. 141

(expunge from files and records any reference to imposition of fines on U members for joining and/or supporting rival U during Bd election)

8811-3333 Reimburse dues paid under contract

Leon Aris Edrich and Ignatius Elefant, Co-Partners d/b/a Sanford Home For Adults, Successor, et al. (Local 6, International Federation of Health Professionals, Longshoremen) 280 NLRB No. 140

[each respondent , predecessor E, successor E, and U, while jointly and severably liable for entire obligation, is primarily liable for reimbursement of that portion of monies which it received as initiation fees, dues and other monies deducted from Ees' wages pursuant to contractual U security provision since E had turned monies over to U]

Furriers Joint Council of New York, a/w Food & Commercial Workers (Associated Fur Manufacturers, Inc., et al.) 280 NLRB No. 107

[where U unlawfully deducted dues from members' vacation paychecks, U not ordered to reimburse members' dues where Ees were covered by valid and lawful U security and dues-checkoff provisions requiring them to maintain membership by paying dues]

8811-3335 Reimburse employee for backpay

Local 814, a/w Teamsters (Beth Israel Medical Center) 281 NLRB No. 153

[where U violated duty of fair representation by failing to take Ee's grievance over discharge to arbitration and E had refused to allow filing of untimely grievance, U ordered to do any of the following: 1) attempt to secure consideration of grievance by E and pursue to arbitration in good faith, or 2) pay Ee backpay until Ee is reinstated by E, or 3) pay Ee backpay until he secures substantially equivalent employment]

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) 794 F.2d 420 (C.A. 9, July 1986)

[Ees must show both wrongful discharge by E and breach of duty by U before Bd can order backpay remedy]

8811-3362 Process grievance to arbitration

Local 814, a/w Teamsters (Beth Israel Medical Center) 281 NLRB No. 153

[where U violated duty of fair representation by failing to take Ee's grievance over discharge to arbitration and E had refused to allow filing of untimely grievance, U ordered to do any of the following: 1) attempt to secure consideration of grievance by E and pursue to arbitration in good faith, or 2) pay Ee backpay until Ee is reinstated by E, or 3) pay Ee backpay until he secures substantially equivalent employment]

Rubber Workers, Local 250 (Mack-Wayne Closures) 279 NLRB No. 165

[where U breached duty of fair representation by arbitrarily refusing to process grievance, provisional make-whole remedy entered, notwithstanding merits of Ee's grievance were uncertain, because uncertainty derived in large measure from U's breach of its duty; U ordered to ask E to rescind warning and discharge and to reinstate him and, if E refuses to do so, promptly pursue remaining stages of grievance procedure]

8811-3366 Pay reasonable fees of counsel for grievant's participation in arbitration proceeding

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) 794 F.2d 420 (C.A. 9, July 1986)

[U has no duty to process frivolous grievance. However, U may be liable for expense of outside representation if it has failed to process nonfrivolous grievance fairly]

8811-3367 Litigation expenses

Steelworkers, Local 15063 (Geraldine Shanks, an individual) 281 NLRB No. 169

[in backpay proceeding, U ordered to pay reasonable attorney's fees incurred-litigating Ee's mandamus suit against Bd to compel Bd to seek enforcement of its order and Sec. 301 suit against U, notwithstanding fact that

8811-3367—Cont.

these actions were unsuccessful, since Ee would not have needed to retain attorney to assist in efforts to regain her job but for U's failure to fairly represent her]

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**
(where U brought civil action in state ct to collect fines unlawfully imposed on U members for joining and/or supporting rival U in Bd election, U ordered to reimburse members for all reasonable expenses and legal fees incurred by them, plus interest, in defending against such legal actions)

8811-3368 Reimburse employees for travel expenses

Northern California District Council of Laborers, Local Union No. 294 (Hayward Baker Company) **275 NLRB No. 048**
(Us to reimburse discriminatees for travel and other expenses incurred by their attendance at unlawful U trial)

8811-3372 Request reinstatement of dischargee

Local 814, a/w Teamsters (Beth Israel Medical Center) **281 NLRB No. 153**
[where U violated duty of fair representation by failing to take Ee's grievance over discharge to arbitration and E had refused to allow filing of untimely grievance, U ordered to do any of the following: 1) attempt to secure consideration of grievance by E and pursue to arbitration in good faith, or 2) pay Ee backpay until Ee is reinstated by E, or 3) pay Ee backpay until he secures substantially equivalent employment]

Rubber Workers, Local 250 (Mack-Wayne Closures) **279 NLRB No. 165**
[where U breached duty of fair representation by arbitrarily refusing to process grievance, provisional make-whole remedy entered, notwithstanding merits of Ee's grievance were uncertain, because uncertainty derived in large measure from U's breach of its duty; U ordered to ask E to rescind warning and discharge and to reinstate him and, if E refuses to do so, promptly pursue remaining stages of grievance procedure]

8811-3376 Cease prosecuting court action

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) **276 NLRB No. 141**
(where U unlawfully imposed ct collectible fines on U members for joining and/or supporting rival U in Bd election, U ordered to seek dismissal of its civil action before state ct or any similar action in such ct or elsewhere for collection of fines)

8811-3387 Abolish unlawfully maintained provision of constitution and bylaws

Automobile Workers, Local 73 (McDonnell Douglas Corporation) **282 NLRB No. 064**
[Local Us ordered to expunge from their governing documents portion of their international U's constitution containing unlawful restrictions on resignation; reaffirming its decision in *Neufeld Porsche-Audi*, 270 NLRB 1330 (1984), Bd required expunction only from those documents over which Locals had full control and for which they were responsible; mere posting of notice to members found insufficient, insofar as retention of unlawful provision in governing documents would restrain current and future members from exercising right to resign]

8822 Section 8(b)(2)

8822-4500 Keep records of hiring and referral operations

8822-4533 Make records available to Regional Director

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) **280 NLRB No. 124**
[U to keep for two years from date of decision permanent written record of hiring and refferal operations adequate to disclose fully basis on which each referral is made and make those records available to RD on request]

8822-4567 Submit quarterly reports concerning employment of discriminatees

Local 426, Laborers (Joseph Brown, an Individual) **280 NLRB No. 074**
[U to submit four quarterly reports to RD, one after each quarter, giving dates and number of discriminatee's job applications and referrals and length of employment during the quarter]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) **280 NLRB No. 124**
[U to submit quarterly reports to RD of date and number of named discriminatees' job applications to U, date and number of actual job referrals by U, and length of discriminatees' employment during quarter]

8822-4575 Make records available to applicants

Local 426, Laborers (Joseph Brown, an Individual) **280 NLRB No. 074**
[for two years U to place referral register on table or other accessible location in hiring hall for applicants' inspection on completion of each day's entries]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) **280 NLRB No. 124**
[U for two years from date of decision to place hiring and referral registers on tables or ledges in its offices in cities where E operates business for access and inspection by applicants as matter of right on completion of each day's entries]

8822-5000 Making hiring hall registers available for inspection

Local 426, Laborers (Joseph Brown, an Individual) **280 NLRB No. 074**
[U to keep permanent written record of hiring and referral operation for two years adequate to decide basis for each referral and on request make available to RD or his agents for inspection]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) **280 NLRB No. 124**
[U to preserve and, on request, make available to Bd all records, reports, work lists, and all other documents necessary to analyze amount of backpay due discriminatees under terms of order]

8822-9500 Make whole for any loss of pay because of discrimination

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) **280 NLRB No. 124**
[U to make whole Ees denied referral for loss of pay or other benefits suffered by reason of discrimination against them by paying them sums equal to moneys they ordinarily would have earned from date of discrimination until U ceases unlawful conduct by properly referring them]

Electrical Workers, Local Union No. 46 (NECA) **277 NLRB No. 139**
(U to pay traveler whom it had discriminatorily refused for two months to give exam qualifying him for highest priority referrals amount he would have earned, absent discrimination, from date he first registered on out-of work list, subsequent to first referral exam given after he asked to take it, to date he was given exam)

Iron Workers, Local No. 433 (RPM Erectors, Inc.) **275 NLRB No. 216**
(no backpay due where Ee refused to pay supplemental back dues resulting from employment with member Es of multi-E unit thereby making Ee ineligible for dispatch to jobs with member Es, notwithstanding claim the bankruptcy ptn he had filed prohibited it and payment would compromise pending lawsuit challenging legality of dues; Sec. 8(b)(2) and U-security clause precluded U's referring one Ee, and not the others, w/o payment of dues, and there were several ways he could have paid them w/o abandoning his position as a plaintiff in the Ees' lawsuit challenging the dues' legality)

Iron Workers Local 118 (Waldo F. Kusterns) v. N.L.R.B. **804 F.2d 1100 (C.A. 9, Nov. 1986)**
[where U had unlawfully insisted that Ee pay supplemental dues arrearages before being dispatched to job outside bargaining unit in which arrearages were incurred, ct enforced Bd order awarding Ee back pay from date of U's first unlawful dispatch refusal to date of referral to comparable employment]

Iron Workers Local 118 (Waldo F. Kusterns) v. N.L.R.B. **804 F.2d 1100 (C.A. 9, Nov. 1986)**
[ct remanded case for computation of back pay consistent with its opinion, where Bd improperly found that Ee, although wrongfully refused dispatch by U to job outside bargaining unit for failing to pay supplemental dues arrearages, was not entitled to back pay because he failed to mitigate damages by refusing to pay the dues, which refusal lawfully rendered him ineligible for dispatch to jobs w/i unit, thereby taking himself out of labor market; exercise of reasonable diligence to seek comparable employment did not require Ee to take affirmative steps to eliminate all potential liability of U]

8833 SECTION 8(b)(3)

8833-0100 Generally

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) **277 NLRB No. 048**
(contention that restoration to current contract of foreman-call provision that was included in prior contract was necessary to restore status quo ante, rejected, since it was inappropriate where it would compel E to agree to

8833-0100—Cont.

substantive term of contract concerning which parties had failed to reach consensus during contract negotiations)

Electrical Workers, Local No. 428 (Kern County Chapter, National Electrical Contractors Association) 277 NLRB No. 048

(E associations' contention that contract deleting their right to call foremen by name be rescinded so as to preserve their E-members' statutory right to select their supervisors and grievance adjustment representatives, rejected, since right involved herein is statutory, and recission remedy, in circumstances of this case, would have no practical effect and would not effectuate purposes and policies of the Act)

8833-2400 **Execute agreed-upon contract**

Local Union No. 30 and 30A, Operating Engineers (Hyatt Management Corporation of New York, Inc.) 280 NLRB No. 018

[parties to execute contract for duration of its term, rather than extend its duration beyond its expiration date, notwithstanding Ees would have to forego wage increase and E the benefits of management-rights clause for expired portion, since Bd only has authority to enforce contract negotiated by the parties, not to compel them to agree to other provisions of terms]

8833-8200 **Accept payments for insurance or benefit funds**

Carpenters' District Council of St. Louis, an affiliate of Carpenters (Dan Ficken Construction Company) 276 NLRB No. 071

(to remedy its unlawful refusal to accept payments from E members of multi-E association, U ordered to accept and credit to respective accounts of Es all payments past and current submitted by Es for purchase of medical insurance, health and welfare benefit stamps, and sell such fringe benefit stamps to Es)

8833-9900 **Cease using grievance and arbitration procedure to expand certified unit**

Chicago Truck Drivers, Helpers and Warehouse Workers Union (Independent) 279 NLRB No. 122

[U to withdraw its grievance and arbitration demands seeking to compel Es to merge their separate established bargaining units by dovetailing separate seniority lists]

8888 SECTION 8(e)

Southern California Pipe Trades District Council No. 16, Plumbers, etc. (Jamco Developmentment Corporation) 277 NLRB No. 128

(where Us unlawfully entered into, maintained, or enforced secondary subcontracting clause permtted under construction industry proviso Bd, applying *Eta-Hokin* (159 NLRB 839) severability concept, ordered U to c/d from entering into, maintaining, or enforcing self-help aspects of relevant contract provisions insofar as they applied to secondary subcontracting provision; Bd declined to order invalidation of latter provision or to enjoin Us' attempts to enforce in judicial forum arbitration awards based on such provision)

8888-0100 **Generally**

Orange Belt District Council of Painters No. 48, AFL-CIO, CLC (Frank A. Calhoun) 277 NLRB No. 173

[Bd applied *Jamco* (277 NLRB No. 128) rationale that, although self-enforcement provisions violate 8(e) to extent that they interrelate with secondary provisions in construction industry bargaining agreements, secondary provisions themselves retain protection of 8(e) proviso and may be enforced by resort to grievance-arbitration or judicial processes; accordingly, Bd modified ALJ's recommended order to make clear limited extent of inj against self-help provisions]

8892 SECTION 8(f)

8892-0100 **Generally**

Associated General Contractors of California, Inc.; et al., Teamsters Local Union Nos. 94, et al. (California Dump Truck Owners Association) 280 NLRB No. 082

[where truck owner-operators, herein found to be independent contractors, were treated as Ees subject to contract's terms in violation of Sec. 8(e), Bd declined to issue order requiring Us to reimburse owner-operators for payment of initiation fees and dues, deducted contributions to U benefit funds, or income lost by reason of enforcement of unlawful terms of contract; Bd noted that no evidence was introduced with respect to alleged losses directly attributable to coercion by U, nor was remedial issue expressly litigated]

675 PROCEEDINGS TO DETERMINE BACKPAY LIABILITY (FOR COMPUTATION OF BACKPAY SEE HEADINGS UNDER 625-4433)

0100 GENERALLY

1000 BACKPAY SPECIFICATION PROCEEDINGS

Noah Robinson; Master Food Services, Inc.; et al. **276 NLRB No. 123**
(backpay specification proceeding against multiple Es remanded to RD for hearing limited to taking evidence on single E/alter ego issue and on discriminatees' interim earnings and offsets, where Es contended one E filed in bankruptcy and others were not in business during relevant period; to find Es responsible during such period would require finding Es jointly and severally liable with E who was not party to underlying ULP proceeding herein, and consequently there was nothing in record to support such finding; and GC did not seek summary judgment herein on Es' joint and several liability)

Sentry Armored Courier Corporation **275 NLRB No. 014**
(notwithstanding specification included backpay for 8(a)(4) violation that ALJ who heard underlying ULP case held in abeyance pending decision of Ee's other E (worked 2 jobs) as to whether he violated that E's rules by abusing sick leave, which abuse brought to E's attention by Respondent in retaliation for Ee filing charges, and which later resulted in suspension for which backpay alleged in specification; no outstanding order finding this 8(a)(4) violation and ALJ at baccpay hearing precluded from making findings of fact and conclusions of law, issuing order and awarding backpay for alleged violation. Case remanded to original ALJ for this)

Midtown Service Center, Inc. **JD-(ATL)-28-86**
[alleged interim earnings correct and backpay figure set forth in specification accurate in view of E's failure to appear at (backpay) hearing and contradict interim earnings set forth in backpay specification]

Washington Beef Producers **JD-(SF)-86**
[memo to file prepared by Bd agent in conjunction with filling out backpay claimant's compliance form received into evidence by ALJ in backpay specification proceeding, where GC supplied memo to E, and compliance forms filled out by Bd agent incorporated by reference memo at issue, and thus converted it from purported confidential document to essential portion of relevant, admitted document]

Washington Beef Producers **JD-(SF)-86**
[in backpay specification proceeding ALJ considered memo to file prepared by Bd agent in conjunction with filling out backpay claimant's compliance form as being portion of relevant admitted document, and as proper substitute testimony of Bd agent concerning conduct of claimant; and since GC is party in backpay proceeding, GC agent's statements are admissions of party opponent, falling w/i Rule 801(d)(2) of FRCP, which defines as *not hearsay* admissions of party opponent]

E. G. Sprinkler Corporation and its alter ego
Goodman Piping Products, Inc. **JD-168-85**
(respondents in backpay proceeding have burden of proof that backpay specification is incorrect either with respect to formula used or computation made, and general denial of specification is insufficient)

E. G. Sprinkler Corporation and its alter ego
Goodman Piping Products, Inc. **JD-168-85**
(Bd enforcement proceeding in ct of appeals has been held to be proceeding by governmental unit to enforce its regulatory power w/i meaning of provisions of Bankruptcy Act, and hence is not subject to automatic stay provision of that Act; and instant backpay proceeding is part and parcel of process leading to enforcement ptn filed in ct of appeals and, hence, falls under same exemption)

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) **794 F.2d 420 (C.A. 9, July 1986)**
[Ees must show both wrongful discharge by E and breach of duty by U before Bd can order backpay remedy]

1500 EFFECT OF FILING OF BANKRUPTCY PETITION AND OTHER RELATED JUDICIAL PROCEEDINGS

Martin Arsham Sewing Co., a/k/a Marsco, Inc. **280 NLRB No. 081**
[backpay proceeding remanded for hearing on GC's supplemental mtn for determination of personal liability alleging E official wrongfully converted company assets to his personal use with intention to frustrate Bd's backpay order by rendering E bankrupt and insolvent; although GC's original personal liability mtn failed to demonstrate that official committed any act justifying *piercing of corporate veil*, GC's supplemental mtn provided Bd with additional information regarding official's actions with respect to bankruptcy proceeding and thereby raised issues of fact and law requiring further findings by ALJ]

Martin Arsham Sewing Co., a/k/a Marsco, Inc. **280 NLRB No. 081**
[in backpay proceeding, E's mtn to strike GC's supplemental mtn for determination of personal liability of official of E involved in bankruptcy proceeding, denied, since GC's supplemental mtn was timely filed where it constituted *re-filing* of original mtn w/i meaning of Bd's order denying mtn but stating that GC was not thereby precluded from re-filing mtn with appropriate evidential support]

Martin Arsham Sewing Co., a/k/a Marsco, Inc. **280 NLRB No. 081**
[in directing hearing in backpay proceeding on GC's supplemental mtn for determination of personal liability of official of E involved in bankruptcy proceeding, Bd held that, although GC failed to submit information herein on all items detailed in Bd's original order denying mtn, material submitted was adequate to raise issues appropriately resolved through hearing; however, additional information on items not addressed in GC's supplemental mtn, or lack thereof, may be considered in context of further proceedings]

Grand Flooring & Plastering Company **280 NLRB No. 082**
[upon granting GC's mtn for summary judgment in backpay proceeding, Bd applied, to amounts of fringe benefit contributions and vacation pay E was ordered to pay, amount of proceeds RD received, pursuant to protective restraining order issued by ct of appeals, from public sale of E's assets currently being held in interest-bearing escrow account]

Evans Plumbing Co. **278 NLRB No. 009**
[allegations of gross backpay found true and accurate where E failed to specifically deny backpay specification and state basis for disagreement or to bring inaccuracy to ALJ's attention at hearing when given opportunity to do so, relying instead on its mtn to dismiss because its filing of ptn in bankruptcy allegedly operated as stay to backpay proceeding]

Ohio Container Service, Inc.; Myron E. Wasserman, Trustee in Bankruptcy **277 NLRB No. 025**
(trustee in bankruptcy of Respondent E ordered to remedy stipulated violations of Sections 8(a)(1) and (3) by Respondent; nothing in *Bildisco* 104 S.Ct 1188 which would preclude ordering this remedy, since *Bildisco* was concerned with alleged Section 8(a)(5) contractual violations)

Noah Robinson; Master Food Services, Inc.; et al. **276 NLRB No. 123**
(backpay specification proceeding against multiple Es remanded to RD for hearing limited to taking evidence on single E/alter ego issue and on discriminatees' interim earnings and offsets, where Es contended one E filed in bankruptcy and others were not in business during relevant period; to find Es responsible during such period would require finding Es jointly and severally liable with E who was not party to underlying ULP proceeding herein, and consequently there was nothing in record to support such finding; and GC did not seek summary judgment herein on Es' joint and several liability)

E. G. Sprinkler Corporation and its alter ego
Goodman Piping Products, Inc. **JD-168-85**
(filing of ptn in bankruptcy did not automatically stay backpay proceeding before Bd)

2000 TIME OF DETERMINATION

2050 DETERMINED IN ULP PROCEEDING

2050—Cont.

Searle Auto Glass, Inc. d/b/a Best Glass Company 280 NLRB No. 159
[contention that discriminatee was not entitled to backpay, because he would have been discharged anyway, rejected where Bd's finding that claim of legitimate reason for discharge was pretext was *res judicata*]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124
[for Bd to order that individuals not established as discriminatees be paid backpay would inappropriately shift to compliance stage determinations that should be made in ULP proceedings, since purpose of compliance is to determine scope of respondent's backpay liability based on violations already found by Bd or enforcing ct]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017
[raising of jurisdictional issue at backpay hearing, improper, where in underlying ULP proceeding E admitted it was E engaged in commerce]

Institute of Technical Careers, Inc.; Arthur J. Schuh, Trustee in Bankruptcy 279 NLRB No. 105
[summary judgment on backpay specification denied, since no prior Bd order or ct decree awarding backpay has issued in instant case]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051
[GC required only to demonstrate that backpay claimant was discharged pursuant to E's unlawful, unilaterally promulgated disciplinary work rules, and if that was shown, burden shifted to E to demonstrate that prior to rules promulgation its supervisors discharged or disciplined Ees for similar conduct, which GC may rebut by variety of means, including that E inconsistently implemented its disciplinary practices]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[leaving issue of falsification of employment application to compliance stage of proceeding, inappropriate where issue was raised during ULP hearing, and E failed to take opportunity to show it would not have hired Ee but for reliance on information in his application]

Ohio Container Service, Inc.; Myron E. Wasserman, Trustee in Bankruptcy 277 NLRB No. 025
(GC's issuing of backpay specification prior to entry of Bd's order directing payment of backpay or ct decree enforcing such order, upheld since parties had reached stipulation on amounts of backpay, which they would have been free to do even absent backpay specification)

Sentry Armored Courier Corporation 275 NLRB No. 014
(notwithstanding specification included backpay for 8(a)(4) violation that ALJ who heard underlying ULP case held in abeyance pending decision of Ee's other E (worked 2 jobs) as to whether he violated that E's rules by abusing sick leave, which abuse brought to E's attention by Respondent in retaliation for Ee filing charges, and which later resulted in suspension for which backpay alleged in specification; no outstanding order finding this 8(a)(4) violation and ALJ at backpay hearing precluded from making findings of fact and conclusions of law, issuing order and awarding backpay for alleged violation. Case remanded to original ALJ for this)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)
(determination of whether plant shutdown should cut off back pay awards belonged in backpay proceeding, where, notwithstanding ALJ's finding in ULP proceeding that back pay awards should continue past point of plant shutdown, such finding was not necessary to support his order or Bd's order and therefore finding did not bar relitigation on that issue)

2075 DETERMINATION LEFT TO COMPLIANCE STAGE OR SUPPLEMENTARY PROCEEDING

Dublin Town Ltd. 282 NLRB No. 046
[issues regarding reinstatement of ULP strikers, assertedly engaged in post discharge strike misconduct, left to compliance stage because of incomplete record regarding misconduct]

Alaska Cummins Services, Inc. d/b/a Groves Truck and Trailer 281 NLRB No. 161
[whether E offered discriminatees reinstatement left to compliance stage of proceeding]

Modern Iron Works, Inc. 281 NLRB No. 151
[in accordance with its normal practice, Bd deferred to subsequent compliance proceedings question whether E at some later date tolled its backpay liability to any Ees by offering them reinstatement to their former positions, w/o prejudice to their seniority and other rights and privileges]

Electrical Workers, Local Union No. 2148 (Newberry Industrial, Inc.) 281 NLRB No. 112
[determination as to Ee's backpay and health and welfare and pension contributions for remainder of backpay period after first quarter left to compliance stage where ALJ's backpay specification was adopted for first quarter only]

JCO Food Corp., d/b/a C-Town 281 NLRB No. 072
[exception that Ee had failed to exercise reasonable diligence in securing interim employment not decided on merits, since it was better left to compliance stage]

Springfield Transit Management, Inc. 281 NLRB No. 017
[Bd left to compliance stage determination of whether parties had reached impasse where E claimed impasse terminated its backpay liability, but U excepted to, and Bd did not adopt, ALJ's finding of impasse]

A & T Manufacturing Company 280 NLRB No. 106
[notwithstanding that department in which unlawfully laid off Ee worked had been eliminated and his former duties were being performed by shop leadman, Ee held entitled to back pay from date of layoff through first quarter of current year and, since Ee's backpay was continuing because E failed to offer him reinstatement to available labor job for which he was qualified, further amounts of backpay, beginning with second quarter of current year to date, to be determined in compliance proceeding]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124
[for Bd to order that individuals not established as discriminatees be paid backpay would inappropriately shift to compliance stage determinations that should be made in ULP proceedings, since purpose of compliance is to determine scope of respondent's backpay liability based on violations already found by Bd or enforcing ct]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124
[precise computation of amounts due Ees discriminatorily refused referral w/i 10(b) period where U had retained no records showing its hiring hall and referral practices until two years before hearing and submitted no records for any period at all]

Apex Insulation 279 NLRB No. 176
[matter of date E ceased operations, which is the date make whole remedy to end for discriminatees, left to compliance stage]

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011
[Bd leaves to compliance addition of interest at fixed rate on unlawfully withheld payments to benefit funds and any additional amounts to be paid into benefit funds after referencing provisions in documents governing funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to withholding action, which might include loss of return on investment of funds withheld, additional administrative costs, etc., but not collateral losses]

John Wanamaker Philadelphia 279 NLRB No. 140
[determination of what wage increase Ees would have received absent E's unlawful withholding of such, and unit Ees who would have received it, left to compliance stage]

H.H.H. Enterprises, Inc., d/b/a Stephenson Haus 279 NLRB No. 139
[determination of contributions that E; which unlawfully failed to make to U's health insurance fund, would be required to make lift to compliance stage]

Fashion Furniture Mfg., Inc. 279 NLRB No. 095
[Bd left to compliance stage question of whether E must pay any additional amounts into benefit fund in order to satisfy Bd's *make whole* remedy]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. 279 NLRB No. 066
[whether E was to pay additional interest into Ee benefit funds besides those moneys unlawfully withheld left to compliance stage of proceeding due to variable and complex provisions of fund agreements]

United States Steel Corporation 279 NLRB No. 004
[issue of whether backpay period tolled as of date discriminatee entered armed forces left to compliance stage]

Fiber Glass Systems, Inc. 278 NLRB No. 154
[leaving issue of falsification of employment application to compliance stage of proceeding, inappropriate where issue was raised during ULP hearing, and E failed to take opportunity to show it would not have hired Ee but for reliance on information in his application]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144
[determination of when U would have received Ee's resignation, where U refused to accept it, left to compliance stage of instant proceeding]

Lockheed Shipbuilding and Construction Company 278 NLRB No. 006
[E's obligation to reassign other Ees or to take other steps to create job vacancies for Ees discriminatorily discharged, left to compliance stage]

Joseph A. Perry d/b/a Holiday Inn-Glendale 277 NLRB No. 145
(determination of whether U agreed with E to divide workweek between replacements and reinstated discriminatees, left to compliance stage)

675-PROCEEDINGS TO DETERMINE BACKPAY LIABILITY (FOR COMPUTATION OF BACKPAY SEE HEADINGS UNDER 625-4433)

2075—Cont.

Southwestern Steel & Supply, Inc. **276 NLRB No. 174**
(recommended backpay order clarified to cover specifically any Ee applicants who were denied opportunity to work for E because of E's unlawful refusal to continue using (U) hiring hall. Determination of whether or not such Ees exist left to compliance stage of proceeding)

Southwestern Steel & Supply, Inc. **276 NLRB No. 174**
(determination of whether or not any of various (Ee benefit) funds under *contributing Es agreement--- with Us* involve non-mandatory subjects of bargaining left to compliance stage of proceeding. Findings and remedy limited solely to those (Ee benefit) funds which involve matters that would constitute a mandatory subject of bargaining)

Communications Workers, Local 9201 (Pacific Northwest Bell) **275 NLRB No. 214**
(Bd left to compliance stage of proceeding determination of when U would have received members' resignations, which were sent by certified mail, absent U's refusal to accept such mail, and the amount of U fines imposed on members which were attributable respectively to members' preresignation and postresignation conduct where there was evidence that the U would have received each letter by the close of business at the close of business on the day after the letter was posted)

Programming & Systems, Inc. **275 NLRB No. 157**
(conventional reinstatement and backpay orders do not preclude respondent, in compliance stage of instant proceeding, from showing that it subsequently would have discharged Ees for lawful reasons of lack of qualifications under state law to hold position of teacher)

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) **275 NLRB No. 127**
(identity of financial core members affected by U's ULPs and amount of financial loss they may have suffered as result of those ULPs)

Sterall Manufacturing Company, Inc. **275 NLRB No. 039**
(mtn to reconsider and/or reopen hearing because of discriminatee's strike misconduct after hearing, denied, since E may raise issue of discriminatee's suitability for reinstatement at compliance stage of proceedings)

Cosmano Brothers, Inc. d/b/a Ethnic Produce **275 NLRB No. 038**
(ALJ's ruling precluding E's inquiry into legal presence in the country of discriminatees who were ordered to reinstated found not prejudicial, since E may present any evidence bearing on the issue at compliance stage of proceeding pursuant to S.Ct's *Sure-Tan* decision, issued after ALJ's decision, which conditions implementation of Bd's traditional remedies at compliance stage on discriminatee's legal presence in this country)

Sentry Armored Courier Corporation **275 NLRB No. 014**
(notwithstanding specification included backpay for 8(a)(4) violation that ALJ who heard underlying ULP case held in abeyance pending decision of Ee's other E (worked 2 jobs) as to whether he violated that E's rules by abusing sick leave, which abuse brought to E's attention by Respondent in retaliation for Ee filing charges, and which later resulted in suspension for which backpay alleged in specification; no outstanding order finding this 8(a)(4) violation and ALJ at backpay hearing precluded from making findings of fact and conclusions of law, issuing order and awarding backpay for alleged violation. Case remanded to original ALJ for this)

Felbro, Inc. **274 NLRB No. 186**
(in computing backpay, undocumented alien workers must be deemed *unavailable* for work (and accrual of backpay therefore tolled) during any period they were not lawfully entitled to be present and employed in the Unted States and issue as to availability was left to compliance stage)

Auburn Foundry, Inc. **274 NLRB No. 192**
(where rule in E's handbook prohibiting solicitation and distribution w/o permission was found unlawfully broad, and ALJ accepted representation in E's counsel's brief that E had amended handbooks and posted notice to Ees to inform them that rule had been modified to prohibit solicitation on working time, i.e., time when either Ee was working and found no remedial action required, Bd ordered appropriate remedy and left determination of whether rule and been properly modified to compliance stage of proceeding)

Barry S. Solaf, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group **274 NLRB No. 155**
(E's claim, raised in ans to specification, that discriminatees would have been laid off for legitimate business reasons soon after unlawful conduct and claim that E ceased business operations prior to termination of alleged backpay period, held valid matters for compliance stage and summary judgment denied, since both contentions go to issue of discriminatees' job availability during backpay period)

N.L.R.B. v. BASF Wyandotte Corp. **798 F.2d 849 (C.A. 5, Sept. 1986)**
[E's contentions in regard to order to remedy unilateral withdrawal of privileges given U steward that it had reinstituted practices susceptible to restitution and then bargained to impasse with U over relevant provisions at expiration of contract, left to compliance stage]

N.L.R.B. v. General Truckdrivers, Warehousemen and Helpers, et al. **778 F.2d 207 (C.A. 5, Dec. 1985)**
[U's argument that backpay obligations should cease once member-discriminatees have rejected valid job referrals, upheld and such determination is left to compliance stage]

Plumbers, Local No. 198 v. N.L.R.B. **747 F.2d 326 (C.A. 5, Nov. 1985)**
(U's contention that it was denied due process due to lack of reasonable notice of an identifiable or recognizable group of alleged discriminatees for whom redress was sought, rejected, where C alleged broad discrimination in hiring hall operations generally, not just as to named parties; also, Bd's relegating determination of discriminatees to compliance stage let U contest individual awards and compliance procedures, whereas, if finding of general discrimination were established but redress given only named individuals, collateral estoppel might bar U from relitigating discrimination issue as to unnamed members of the class)

Plumbers, Local No. 198 v. N.L.R.B. **747 F.2d 326 (C.A. 5, Nov. 1985)**
(although U claimed that Bd's remedy was unduly harsh and might weaken or destroy it, ct enforced Bd's order allowing determination of unnamed discriminatees at compliance stage, but w/o prejudice to the U's right to challenge the awards or procedures and with requirement that Bd articulate reasons for its decision; ct stated that Bd should consider its procedures' capability to determine whether remedy became penal in nature, and thus not permitted under the Act, and the extent of actual damages, which conventional common law or equitable doctrines would require of a ct, but not of the Bd)

4000 PLEADINGS

4012 CONTENTS OF BACKPAY SPECIFICATION

4012-5000 General Counsel control of contents

John Cuneo, Inc. **276 NLRB No. 012**
(U did not have right to challenge failure of GC to include additional claimant in backpay specification; Bd had delegated to GC authority to carry out its intent that its orders be properly implemented and U failed to take timely appeal to Bd from GC's determination)

4012-7500 Appeal to Board in re General Counsel limitation of specification

John Cuneo, Inc. **276 NLRB No. 012**
(U did not have right to challenge failure of GC to include additional claimant in backpay specification; Bd had delegated to GC authority to carry out its intent that its orders be properly implemented and U failed to take timely appeal to Bd from GC's determination)

4014 SERVICE OF BACKPAY SPECIFICATION, NOTICE OF HEARING

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. **280 NLRB No. 146**
[former owners of Respondent-E, Canadian citizens now living in Canada, were properly served with backpay specification and notice of hearing, notwithstanding no express statutory provision for Bd service outside U.S., since backpay specification supplemental step in proceeding to which E had been party from outset, and where copies of documents were sent by registered mail to their Canadian address and to their U.S. Attorney who represented E in underlying case and had not withdrawn, and E admitted actual notice through letter of their Canadian attorney]

4015 IMPROPER OR LATE FILING OF, OR FAILURE TO FILE ANSWER

Transportation By La Mar, Inc., Ready Transportation Co., Inc., La Mar Googer and Jerome Butler **281 NLRB No. 079**
[summary judgment granted against Respondent who failed to file answer to backpay specification, however, insofar as answers filed by other Respondents in case raised issue of discriminatees' interim earnings, final amount of backpay liability will be determined at hearing, in which non-answering Respondent will not be permitted to participate]

Great Lakes Coal Company **280 NLRB No. 070**
[mtn for summary judgment granted where respondent withdrew answer and objection to backpay specification and failed to reply to mtn]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt **279 NLRB No. 129**
[E's amended answer to amended backpay specification deemed timely, notwithstanding it was late, since respondent is permitted to amend its answer where RD has amended backpay specification, Bd has in past viewed attempts to cure technical defects in original answer as timely, and Act calls

4015—Cont.

for liberal construction of rules so as to effectuate Act's prupose and provisions]

Howard R. Singer and Michael E. Davis, a Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis **278 NLRB No. 123**

[in backpay specification proceeding on mtn for summary judgment where Es' answers were filed w/i 10 days of date of GC's letter notifying Es of their obligation to file answers and informing them that unless ans was received *immediately* mtn for summary judgment would be filed, Bd agreed with E's contention that inasmuch as *immediately* would be absurd if taken literally, it should be taken to mean *w/i reasonable time*; and since answers were filed w/i 10 days of date of GC's letter, filing time was reasonable and timely]

Howard R. Singer and Michael E. Davis, a Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis **278 NLRB No. 123**

[in backpay specification proceeding Bd, in finding E's filing of ans timely, held that Bd's R/R 102.121 stating that its rules *shall be liberally construed to effectuate purposes and provisions of Act*, although not stating that Bd's deadlines can be disregarded, Bd could not strictly enforce R/R 102.54 requiring filing by certain date where GC's letter waived deadline and granted Es time in which to file their answers]

Howard R. Singer and Michael E. Davis, a Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis **278 NLRB No. 123**

[GC's mtn to strike Es' answers to backpay specification denied where Es filed amended answers which purportedly superseded initial answers and/or cured technical defects; amended answers were sworn to and contained mailing address]

Barry S. Solaf, M.D., d/b/a The Victoria Medical Group, et al. **274 NLRB No. 155**

(GC's contention that E's response to specification was not ans w/i meaning of Bd's R/R 102.54(b) and (c) because it was not sworn to, did not include E's address and did not explicitly admit, deny or explain specification's allegations, rejected and summary judgment denied, where, although ans was technically deficient, it was characterized by E as *response* and there was implicit denial of allegations in E's demand for supporting documentation; further, E's filing second ans in response to Notice to Show Cause, cured defects in initial ans; Bd's R/R's are to be liberally construed)

4025 SUFFICIENCY OF PLEADINGS

4025-0100 Generally

Transportation Management Corporation; et al. **277 NLRB No. 046**

(GC's mtn for summary judgment in backpay proceeding granted where E's answers to three backpay specifications did not conform to R/R Sec. 102.54 as to those matters w/i E's knowledge, did not specifically dispute accuracy of gross backpay figures or provide any specific alternative formula for computing gross backpay due, but merely denied allegations of backpay specifications or stated that E lacked sufficient knowledge to admit or deny specifications)

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) **794 F.2d 420 (C.A. 9, July 1986)**

[Ees must show both wrongful discharge by E and breach of duty by U before Bd can order backpay remedy]

4025-2000 General denial insufficient

Transportation By La Mar, Inc., Ready Transportation Co., Inc., La Mar Gouger and Jerome Butler **281 NLRB No. 079**

[Es' answer to amended backpay specification did not conform to requirements of Sec. 102.54(b) where answer did not specifically dispute accuracy of gross backpay figures contained in amended backpay specification; answer merely stated that Es would not use discriminatees' tax returns as absolute gauge of amount of backpay they were due]

Noah Robinson; Master Food Services, Inc.; et al. **276 NLRB No. 123**

(multiple Es' answers to backpay specification's allegations pertaining to gross backpay during relevant period held insufficient general denials, where answers, disputing accuracy of specification's figures, did not provide any alternative formula for computing gross backpay; number of hours Ees worked presumed fact w/i E's knowledge; Es, claiming lack of specificity in answers because they could not locate one E's payroll records, failed to request them from Bd, which had subpoenaed them; and Es were on prior notice that GC contended answers were not sufficiently specific)

Barry S. Solaf, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group **274 NLRB No. 155**

(E's general denial of GC's gross backpay calculations striken from ans and its alternative backpay computation also striken, where E did not specifically explain basis for disagreement with RD's formula, did not set forth in detail its position as to premises of alternative formula and did not furnish appropriate supporting figures)

E. G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. **JD-168-85**

(respondents in backpay proceeding have burden of proof that backpay specification is incorrect either with respect to formula used or computation made, and general denial of specification is insufficient)

4025-2050 Sufficient as to interim earnings

Midwest Motel Management Corp. of Birmingham **278 NLRB No. 060**

[while finding, contrary to ALJ, that E's general denial of backpay specification concerning amount of interim earnings was sufficient to raise such issue, Bd nevertheless adopted ALJ's findings with respect to interim earnings, since there was no prejudice from ALJ's rulings at hearing or discussion of such issue in his decision, where discriminatee denied ALJ's and E's counsel's inquiries whether there were any other interim earnings, and E did not attempt to present any additional evidence on issue]

Midtown Service Center, Inc. **278 NLRB No. 067**

[Bd in ruling on GC's mtn for summary judgment on backpay specification ordered hearing limited to determination of discriminatee's interim earnings where, although respondent's failure to specifically deny gross backpay allegations resulted in their being deemed admitted as true, its general denial of interim earnings allegations was sufficient under Sec. 102.54 to raise issues warranting a hearing]

Barry S. Solaf, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group **274 NLRB No. 155**

(E's denials for lack of information and/or belief, of allegations concerning discriminatees' interim earnings, held sufficient general denials to raise factual issues warranting hearing)

4025-2500 Adequacy of answer

Heck's, Inc. **282 NLRB No. 043**

[mtn for partial summary judgment granted where respondent's amended answer asserted that certain allegations of backpay specification were incorrect but failed to offer alternative backpay formula or furnish supporting figures for computing amounts; nor did E explain in what respect duties of comparison Ees differed from those of discriminatee or provide other information indisputably w/i its knowledge]

Transportation By La Mar, Inc., Ready Transportation Co., Inc., La Mar Gouger and Jerome Butler **281 NLRB No. 079**

[hearing ordered to determine discriminatees' net interim earnings where Es' denial of knowledge of discriminatees' efforts to mitigate their losses was sufficient to place in issue amount of interim earnings]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt **279 NLRB No. 129**

[answer asserting that E owed no backpay because it had offered discriminatees substantially equivalent employment, it would have ceased doing business if prevailing rates of pay and benefits had continued, U had refused to bargain, and Bd's order was vague and ambigous, insufficient, as it did not specifically dispute adequacy of gross backpay figures or provide specific alternative formula and only raised issues litigated and determined in ULP proceeding and precluded from further litigation]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt **279 NLRB No. 129**

[E's alternative backpay calculation, unacceptable as matter of law where it was based on wage rate found in underlying ULP proceeding to have been unlawfully negotiated directly with Ees, and where E recited alternative computation of discriminatees' hours w/o expressly disputing formula GC used to compute hours or adequately explaining basis for disagreeing with GC's figures]

Howard R. Singer and Michael E. Davis, a Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis **278 NLRB No. 123**

[GC's mtn to strike Es' answers to backpay specification denied where Es filed amended answers which purportedly superseded initial answers and/or cured technical defects; amended answers were sworn to and contained mailing address]

Howard R. Singer and Michael E. Davis, a Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis 278 NLRB No. 123
[Es amended answers to backpay specification framed certain factual issues sufficient to require hearing concerning issues of successorship, when backpay obligation was tolled, and amount of backpay due discriminatee, but not as to three paragraphs of E's answers pertaining to method of calculating gross backpay which were stricken and pertinent allegations of backpay specification deemed to be admitted as true pursuant to GC's mtn for summary judgment and R/R 102.54(c)]

Noah Robinson; Master Food Services, Inc.; et al. 276 NLRB No. 123
(GC's mtn to strike portion of multiple Es' answers to backpay specification, and for partial summary judgment against them, granted with respect to specification's allegations pertaining to number of hours Ees worked and gross backpay during relevant period, where Es' answers to such allegations constituted insufficient general denials; however, Es granted 20 days from date of order herein to file mtn enabling them to answer allegations with appropriate specificity)

Barry S. Solof, M.D., d/b/a The Victoria Medical Group, et al. 274 NLRB No. 155
(GC's contention that E's response to specification was not ans w/i meaning of Bd's R/R 102.54(b) and (c) because it was not sworn to, did not include E's address and did not explicitly admit, deny or explain specification's allegations, rejected and summary judgment denied, where, although ans was technically deficient, it was characterized by E as *response* and there was implicit denial of allegations in E's demand for supporting documentation; futher, E's filing second ans in response to Notice to Show Cause, cured defects in initial ans; Bd's R/R's are to be liberally construed)

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. JD-(SF)-127-86
[allegations of backpay specification deemed admitted to be true, where respondent failed to state bases for disagreement as to back-period and gross backpay or produce evidence in support of its allegation that discriminatee was incarcerated during backpay period and that specification did not include all discriminatee's interim earnings]

Local 1136, Laborers (Southern Illinois Builders Association) JD-179-86
[U's defense to backpay specification held frivolous and stricken from ans where U claimed it owed no money to pension and health and welfare funds on discriminatee's account because he was not U's Ee and U was prohibited by Sec. 302 from making such contributions on discriminatee's behalf; U's assertions were unsupported by any facts or argument, and amounts due reflected money which, absent U's discrimination, would have been paid by Es, and there was no indication such payments would have violated Act]

4025-3000 Abandonment of defense

Midtown Service Center, Inc. JD-(ATL)-28-86
[alleged interim earnings correct and backpay figure set forth in specification accurate in view of E's failure to appear at (backpay) hearing and contradict interim earnings set forth in backpay specification]

4025-4000 Grounds for disagreement must be stated

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt 279 NLRB No. 129
[E's alternative backpay calculation, unacceptable as matter of law where it was based on wage rate found in underlying ULP proceeding to have been unlawfully negotiated directly with Ees, and where E recited alternative computation of discriminatees' hours w/o expressly disputing formula GC used to compute hours or adequately explaining basis for disagreeing with GC's figures]

Evans Plumbing Co. 278 NLRB No. 009
[allegations of gross backpay found true and accurate where E failed to specifically deny backpay specification and state basis for disagreement or to bring inaccuracy to ALJ's attention at hearing when given opportunity to do so, relying instead on its mtn to dismiss because its filing of ptn in bankruptcy allegedly operated as stay to backpay proceeding]

Rikal West, Inc. 274 NLRB No. 170
(in instant case GC's computation of gross backpay more than meets legal standards of permiseable discretion in determining approximate gross backpay where E failed to set forth alternative formula or furnish appropriate supporting figures for computing amounts owed with sufficient particularity as to permit any substitutions)

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 274 NLRB No. 155
(E's general denial of GC's gross backpay calculations striken from ans and its alternative backpay computation also striken, where E did not specifically explain basis for disagreement with RD's formula, did not set forth in detail its position as to premises of alternative formula and did not furnish appropriate supporting figures)

Midtown Service Center, Inc. JD-(ATL)-28-86
[alleged interim earnings correct and backpay figure set forth in specification accurate in view of E's failure to appear at (backpay) hearing and contradict interim earnings set forth in backpay specification]

N.L.R.B. v. Sumco Manufacturing Co., Inc., and Summit Grinding Company 746 F.2d 1189 (C.A. 6, Nov. 1984)
[enforcement of Bd order determining amount of backpay due 16 named discriminatees granted where Respondent, while denying appropriateness of backpay formula and computation, presented no alternative formula or figures. Argument advanced by Respondent appears to reargue ULP case which had previously been finally decided against companies concerned]

4025-4000 Respondent must give correct backpay figure

Transportation By La Mar, Inc., Ready Transportation Co., Inc., La Mar Googer and Jerome Butler 281 NLRB No. 079
[Es' answer to amended backpay specification did not conform to requirements of Sec. 102.54(b) where answer did not specifically dispute accuracy of gross backpay figures contained in amended backpay specification; answer merely stated that Es would not use discriminatees' tax returns as absolute gauge of amount of backpay they were due]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt 279 NLRB No. 129
[answer asserting that E owed no backpay because it had offered discriminatees substantially equivalent employment, it would have ceased doing business if prevailing rates of pay and benefits had continued, U had refused to bargain, and Bd's order was vague and ambigous, insufficient, as it did not specifically dispute adequacy of gross backpay figures or provide specific alternative formula and only raised issues litigated and determined in ULP proceeding and precluded from further litigation]

Howard R. Singer and Michael E. Davis, a Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis 278 NLRB No. 123

Midtown Service Center, Inc. 278 NLRB No. 067
[Bd in ruling on GC's mtn for summary judgment on backpay specification ordered hearing limited to determination of discriminatee's interim earnings where, although respondent's failure to specifically deny gross backpay allegations resulted in their being deemed admitted as true, its general denial of interim earnings allegations was sufficient under Sec. 102.54 to raise issues warranting a hearing]

Rikal West, Inc. 274 NLRB No. 170
(in instant case GC's computation of gross backpay more than meets legal standards of permiseable discretion in determining approximate gross backpay where E failed to set forth alternative formula or furnish appropriate supporting figures for computing amounts owed with sufficient particularity as to permit any substitutions)

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 274 NLRB No. 155
(E's general denial of GC's gross backpay calculations striken from ans and its alternative backpay computation also striken, where E did not specifically explain basis for disagreement with RD's formula, did not set forth in detail its position as to premises of alternative formula and did not furnish appropriate supporting figures)

N.L.R.B. v. Sumco Manufacturing Co., Inc., and Summit Grinding Company 746 F.2d 1189 (C.A. 6, Nov. 1984)
[enforcement of Bd order determining amount of backpay due 16 named discriminatees granted where Respondent, while denying appropriateness of backpay formula and computation, presented no alternative formula or figures. Argument advanced by Respondent appears to reargue ULP case which had previously been finally decided against companies concerned]

4025-8000 Respondent must plead matters within its knowledge

Howard R. Singer and Michael E. Davis, a Partnership and/or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis 278 NLRB No. 123

4025-8050 Failure to deny or explain why information cannot be furnished constitutes admission

Noah Robinson; Master Food Services, Inc.; et al. 276 NLRB No. 123

4050 AMENDMENT OF PLEADINGS

4050-0100 Generally

Kawasaki Motors Corporation, U.S.A. 282 NLRB No. 028
[GC amendment to backpay specification allowed since E's objection was untimely, not having been made before ALJ]

4050-0100—Cont.

Hinz Store Fixtures & Construction Co., Inc. JD-(SF)-97-86

[mtn to reject as untimely E's amended answer, which was filed subsequent to GC's mtn to find certain allegations to be admitted and preclude E from presenting evidence, rejected where on day ALJ entertained oral argument on mtn in telephone conference E announced intention to file amended answer]

4080-3300 Both General Counsel and respondent bound by pleadings

Barkman Contracting, Inc. 276 NLRB No. 112

(backpay not awarded to two discriminatees for particular quarter, since specification did not claim such. GC's mtn at hearing, to amend pleadings to conform to proof was insufficient to affect an amendment to specification. Moreover, (backpay) matter for these Ees was *not fully litigated* at hearing)

Midtown Service Center, Inc. JD-(ATL)-28-86

[alleged interim earnings correct and backpay figure set forth in specification accurate in view of E's failure to appear at (backpay) hearing and contradict interim earnings set forth in backpay specification]

4080-6700 Amendment to modify backpay period permitted

Barkman Contracting, Inc. 276 NLRB No. 112

(backpay not awarded to two discriminatees for particular quarter, since specification did not claim such. GC's mtn at hearing, to amend pleadings to conform to proof was insufficient to affect an amendment to specification. Moreover, (backpay) matter for these Ees was *not fully litigated* at hearing)

4075 AFFIRMATIVE DEFENSES

Sentry Armored Courier Corporation 275 NLRB No. 014

4075-0100 Generally

Evans Plumbing Co. 278 NLRB No. 009

[delay between entry of Bd's enforcement order and filing of backpay proceeding not available as defense to extinguish discriminatee's claim to Bd awarded backpay]

4075-2500 May be stricken

Evans Plumbing Co. 278 NLRB No. 009

[mtn to strike defense of alleged offer of reinstatement and supporting testimony, granted, since it was barred by res judicata where failure to reinstate had been raised as issue in C, admitted in answer, and implicity found in ALJ's decision]

4075-5000 Defenses which may be raised in backpay proceeding

Northwest Metal Products, Inc. 281 NLRB No. 156

[following remand of backpay case to ALJ to determine whether or not economic striker would have returned to work during strike, Bd affirmed ALJ's conclusion that E failed to establish that striker would have refused valid offer of reinstatement if it had been made during strike]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[failure to mitigate backpay]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[willful loss of earnings is affirmative defense]

Northwest Metal Products, Inc. 275 NLRB No. 143

(backpay case remanded to ALJ to determine whethter or not discriminatee (economic striker) would have returned to work during strike)

Trident Seafoods Corporation 275 NLRB No. 003

(strikers not entitled to backpay from time of discharge (termination slips marked *not eligible for rehire* until offered unconditional reinstatement as E established that any earlier offers of reinstatement would have been futile since Ees would not have returned to work even if termination slips marked *eligible for rehire* and were accorded rights of strikers)

Rikal West, Inc. 274 NLRB No. 170

]—*defense of willful loss of earnings is an affirmative defense and burden is on E to prove the defense.* Deductions (from gross backpay) for interim earnings are permitted *not so much (for) the minimization of damages as (for) the healthy policy of promoting production and employment*)

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 274 NLRB No. 155

(E's claim, raised in ans to specification, that discriminatees would have been laid off for legitimate business reasons soon after unlawful conduct and claim that E ceased business operations prior to termination of alleged backpay period, held valid matters for compliance stage and summary judgment denied, since both contentions go to issue of discriminatees' job availability during backpay period)

Marietta Wire and Cable 274 NLRB No. 051

(E may raise, as affirmative defense to reinstatement and backpay, issue of whether Ee falsified and/or omitted information from his employment application)

N.L.R.B. v. General Truckdrivers, Warehousemen and Helpers, et al. 778 F.2d 207 (C.A. 5, Dec. 1985)

[U's argument that backpay obligations should cease once member-discriminatees have rejected valid job referrals, upheld and such determination is left to compliance stage]

4075-6700 Defenses which may not be raised in backpay proceeding

Steelworkers, Local 15063 (Geraldine Shanks, an individual) 281 NLRB No. 169

[U cannot relitigate in backpay proceeding its contentions raised in underlying ULP proceeding that it was not liable for discharged Ee's losses because, allegedly, the E had right to discharge Ee under contract, Ee's grievance was untimely and E had refused to arbitrate, since Bd had determined in ULP proceeding that Ee's losses were due to U's unlawful failure to fairly represent her]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[GC met burden notwithstanding claimants were discharged in 1977 and Bd failed to solicit information from discriminatees until 1982 which made it difficult for individual discriminatees to list with specificity and accuracy details of their job search and led to last minute disclosures and recollections since no showing of willful concealment. Claimants not penalized solely because of poor record keeping of uncertain memories]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt 279 NLRB No. 129

[answer asserting that E owed no backpay because it had offered discriminatees substantially equivalent employment, it would have ceased doing business if prevailing rates of pay and benefits had continued, U had refused to bargain, and Bd's order was vague and ambigous, insufficient, as it did not specifically dispute adequacy of gross backpay figures or provide specific alternative formula and only raised issues litigated and determined in ULP proceeding and precluded from further litigation]

Watt Electric Company And Its Alter Ego, Watt Plumbing, Air Conditioning & Electric, Inc. And John O. Watt 279 NLRB No. 129

[E's alternative backpay calculation, unacceptable as matter of law where it was based on wage rate found in underlying ULP proceeding to have been unlawfully negotiated directly with Ees, and where E recited alternative computation of discriminatees' hours w/o expressly disputing formula GC used to compute hours or adequately explaining basis for disagreeing with GC's figures]

Overseas Motors, Inc. 277 NLRB No. 061

(where Respondent E's defense was litigated in underlying ULP case and decided adversely to E, E now not merely collaterally estopped from raising these defenses in backpay proceeding under collateral estoppel or res judicata, but barred from raising these defenses under doctrine of *law of the case* since backpay proceeding merely continuation of or supplement to ULP proceeding)

Barry S. Solof, M.D., A Professional Corporation, d/b/a The Victoria Medical Group and The West Jefferson Medical Group 274 NLRB No. 155

(E's claim, raised in ans to specification, that it was *no longer a financially viable entity*, held w/o merit to extent E was suggesting inability to pay backpay award, since purpose of backpay proceeding is to determine amount due discriminatees, not a respondent's ability to pay backpay award)

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86

[respondent may not relitigate in Bd backpay hearing issues that were adjudicated in underlying proceeding]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86

[in backpay proceeding, E's contention that it should be permitted to litigate issue of backpay claimant's status as discriminatee, rejected, where contention was not based on any authority but on arguments of *fairness* and *equity*; and such claim was w/o merit in view of underlying case finding that E was guilty of discriminating against claimant]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86

[in backpay proceeding, E's contention that it should be permitted to litigate issue of backpay claimant's status as discriminatee, rejected, where contention was not based on any authority but on arguments relative to preventing windfall to claimant and avoiding punitive remedies; logical extension of E's arguments could lead to impermissible result of allowing respondent, making similar contentions at backpay stage of proceeding, to adduce significant evidence that for one reason or another it did not introduce at underlying trial]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86

[in supplemental backpay proceeding, E's contention that it should be permitted to litigate issue of backpay claimant's status as discriminatee, rejected, where E not only failed to raise issue in underlying trial or in exceptions to Bd and ct, but it also entered into stipulation during initial backpay hearing; stipulation was entered into when E had all relevant documents, and yet it

signed agreement listing claimant as discriminatee and limiting issues it may raise in instant proceeding]

N.L.R.B. v. Sumco Manufacturing Co., Inc., and Summit Grinding Company 746 F.2d 1189 (C.A. 6, Nov. 1984)

[enforcement of Bd order determining amount of backpay due 16 named discriminatees granted where Respondent, while denying appropriateness of backpay formula and computation, presented no alternative formula or figures. Argument advanced by Respondent appears to reargue ULP case which had previously been finally decided against companies concerned]

4075-7500 Defenses which must be raised in ULP proceeding

Steelworkers, Local 15063 (Geraldine Shanks, an individual) 281 NLRB No. 169

[U's contention in backpay proceeding that it should be relieved of liability for discharged Ee's losses because of Bd's allegedly prejudicial acceptance of settlement of Ee's related charge against E, which settlement did not require E to pay any backpay, rejected where U had not raised this defense in ULP proceeding or ct enforcement proceeding, had advanced no equitable reasons warranting relief from enforced remedy, and was simultaneously contending that it should bear no liability because E had acted lawfully in discharging Ee]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[raising of jurisdictional issue at backpay hearing, improper, where in underlying ULP proceeding E admitted it was E engaged in commerce]

Consolidated Dress Carriers, Inc., et al. JD-(NY)-68-86

[in backpay proceeding, E's contention that issue whether economic striker, refused reinstatement upon unconditional offer to return to work, had been terminated prior to strike, was not *litigated,* rejected; E could have and should have raised such affirmative defense before ALJ; records introduced herein were in E's possession and/or available to it when trying underlying case; issue was peculiarly w/i E's knowledge and control with no explanation offered why it did not raise issue at appropriate time; and res judicata bars all claims and defenses that were or could have been raised]

5000 BACKPAY PROCEEDING HEARINGS (See headings under 596-7600)

6000 BURDEN OF PROOF

6017 GENERAL COUNSEL HAS BURDEN OF PROVING GROSS BACKPAY

A & T Manufacturing Company 280 NLRB No. 106

[in backpay proceeding, GC's sole burden is to show gross amounts of backpay due, with burden of proving any mitigation of damages being on E; and any uncertainty is resolved against wrongdoer who made certainty impossible]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[GC met burden notwithstanding claimants were discharged in 1977 and Bd failed to solicit information from discriminatees until 1982 which made it difficult for individual discriminatees to list with specificity and accuracy details of their job search and led to last minute disclosures and recollections since no showing of willful concealment. Claimants not penalized solely because of poor record keeping of uncertain memories]

Hacienda Hotel and Casino 279 NLRB No. 084

[finding of ULP is presumptive proof that some backpay is owed, and in backpay proceeding sole burden of GC is to show gross amounts of backpay due which is amount Ees would have received but for E's illegal conduct; once that is established burden is upon E to establish facts that would mitigate such liability]

6017-3300 Estimates of actual income sufficient

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

Rikal West, Inc. 274 NLRB No. 170

(where there are any uncertainties (in determining gross backpay), such as potential impact of fluctuations in business, they will be assessed against wrongdoer)

Rikal West, Inc. 274 NLRB No. 170

(in instant case GC's computation of gross backpay more than meets legal standards of permiseable discretion in determining approximate gross backpay where E failed to set forth alternative formula or furnish appropriate supporting figures for computing amounts owed with sufficient particularity as to permit any substitutions)

6017-6700 ALJ must recommend most accurate method of computing backpay, not merely determine whether General Counsel's formula is reasonable

Hacienda Hotel and Casino 279 NLRB No. 084

[in backpay proceeding ALJ has job of considering whether GC's backpay formula is proper one in view of all facts adduced by parties, and of making recommendations to Bd as to most accurate method of determining backpay]

Rikal West, Inc. 274 NLRB No. 170

6025 GENERAL COUNSEL HAS BURDEN OF GOING FORWARD WITH EVIDENCE AFTER ISSUE HAS BEEN RAISED AS ACCURACY OF BACKPAY SPECIFICATION

Searle Auto Glass, Inc. d/b/a Best Glass Company 280 NLRB No. 159

[medical expenses incurred for discriminatee's wife's gallbladder operation not reimbursable, since GC did not show that U health and welfare plan then in effect covered dependents or specific expenses involved where compliance officer could not compare plan's expenses with plan's coverage for lack of complete copy of plan]

6033 RESPONDENT HAS BURDEN OF PROVING DEDUCTIONS FROM GROSS BACKPAY

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

Hacienda Hotel and Casino 279 NLRB No. 084

[finding of ULP is presumptive proof that some backpay is owed, and in backpay proceeding sole burden of GC is to show gross amounts of backpay due which is amount Ees would have received but for E's illegal conduct; once that is established burden is upon E to establish facts that would mitigate such liability]

6033-0100 Generally

A & T Manufacturing Company 280 NLRB No. 106

[in backpay proceeding, GC's sole burden is to show gross amounts of backpay due, with burden of proving any mitigation of damages being on E; and any uncertainty is resolved against wrongdoer who made certainty impossible]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[*it rests upon the tort-feasor to disentangle the consequences for which it was chargeable from those from which it was immune*]

Rainbow Tours, Inc., d/b/a Rainbow Coaches 280 NLRB No. 017

[Bd rejected E's contention that time it took from original decision adjudicating issue of discrimination until start of backpay hearing--over 4 years--was so great as to render accumulation of information sufficient to sustain the burden of proving mitigation an impossibility as Board is not required to place consequences of its own delay, even if inordinate, upon wronged Ees to the benefit of wrongdoing E]

Boland Marine And Manufacturing Company, Inc. 280 NLRB No. 051

[in backpay proceeding, unlawfully discharged or suspended Ee is presumed entitled to backpay, and E and not GC, bears burden of establishing facts which would negative or mitigate existence of liability to Ee; adherence to such general allocation of burdens in determining backpay is especially compelling where evidence of E's disciplinary practices relevant to determination of backpay, is peculiarly in possession of E, and it would be inequitable to require GC to ferret out information from sources available to E]

Niagara Falls Sightseeing By Sheridan, Inc. 279 NLRB No. 007

[respondent has burden of establishing facts which negative existence of liability or mitigate it, and evidence that individual in E's employ informed E that reinstatement offer was made by telephone to member of discriminatee's family is insufficient to overcome credited testimony that discriminatee was never informed of reinstatement offer; moreover, pursuant to compliance instructions, reinstatement offer was to be made in writing with copy served on Bd compliance officer]

Fugazy Continental Corp. 276 NLRB No. 152

(E's post-hearing mtn to dismiss Ee's claim due to latter's alleged willful refusal to return to hearing denied where E had not recalled Ee after his original testimony or placed contentions regarding him on record)

Sentry Armored Courier Corporation 275 NLRB No. 014

Howard R. Singer and Michael E. Davis, A Partnership and /or Howard R. Singer d/b/a Howard R. Singer Legal Services and/or David D. DeAngelis JD-207-86

[predecessor E and both successor Es jointly and severally liable where both consecutive successors admitted actual notice of pending ULP proceedings against predecessor, and second successor failed to satisfy burden of demonstrating lack of knowledge, as he did not testify or call any witness to testify, put only one limited and unhelpful question to successor E preceding him, and must be charged with knowledge of finding of predecessor's violation during 5 months of employment with firm]

E. G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. JD-168-85

(respondents in backpay proceeding have burden of proof that backpay specification is incorrect either with respect to formula used or computation made, and general denial of specification is insufficient)

6033-1700 General Counsel's role in producing backpay claimants for cross-examination merely advisory and cooperative

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(E failed to meet its burden of proving that Ee did not make reasonably diligent search for work after unlawful termination where GC proffered affidavit from Ee, who was unable to testify, in which Ee named 4 companies where he had sought work and referred to two employment interviews, thereby providing E with specific information that it could have checked to determine truth of Ee's assertions concerning his search for interim work)

Fugazy Continental Corp. **276 NLRB No. 152**
(exceptions to backpay awards because Ees were not produced by GC and did not testify overruled where E had specifically informed GC that it had no interest in examining Ees and neither objected at hearing to their absence nor sought to subpeona them nor reconsidered its prior acquiescence in amounts they claimed)

6033-3300 Willful idleness

Ad Art, Incorporated **280 NLRB No. 114**
[*self employment is proper and adequate way for discriminatee to attempt to mitigate his loss and full time self-employment cannot be construed as withdrawal from labor market or be equated with willful loss of earnings*]

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[no requirement that Ee wrongfully terminated must instantly seek new work; only required that record as whole show that he exercised due diligence to this end]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. **279 NLRB No. 069**
[Ees' failure to respond to newspaper employment ads and to consult listings of employment agencies did not sustain E's burden of showing that discriminatees *willfully incurred* loss by clear and unjustifiable refusal to take desirable new employment]

Midwest Motel Management Corp. of Birmingham **278 NLRB No. 060**
[while GC has burden to establish reasonableness and accuracy of its calculation of gross backpay amount, burden of proof with respect to E's affirmative defense rests upon it as original wrongdoer to demonstrate affirmatively that discriminatee has failed to make reasonable effort to find interim employment; and discriminatee is held only to reasonable exertion in such regard and not to standard of highest diligence]

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(willful loss of earnings incurred where discriminatee spent 2 days during 3 month period in contacting prospective Es)

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(willful loss of earnings incurred where, in over 5 months of unemployment, discriminatee only looked at newspaper advertisements, contacted one prospective E, and talked to friend about another possible job)

Overseas Motors, Inc. **277 NLRB No. 061**
(E's burden of showing willful loss of earnings by discriminatee not met by evidence of lack of success in securing interim employment or low interim earnings from self employment. Rather Respondent must affirmatively demonstrate that discriminatee neglected to make reasonable efforts to make reasonable efforts to find interim work discriminatee need make only reasonable efforts, not undertake highest standards of diligence)

Holiday Radio, Inc., d/b/a KSLM--AM and KSD--FM **275 NLRB No. 184**
(it is not E's evidentiary burden to explain and clarify Ee's personal reasons for leaving geographical area of interim employment and then quitting, where there was no evidence that Ee's resignation was attributable to anything other than Ee's personal desires unique to himself)

Rikal West, Inc. **274 NLRB No. 170**
(rejection of invalid offer of reinstatement does not constitute waiver of entitlement to backpay and does not toll backpay)

Phil Smidt & Son, Inc. **JD-482-84**
(discriminatee not required to seek work instantly. Not penalized for delay of 2 week after discharge to look for work)

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company **808 F.2d 1155 (C.A. 6, Dec. 1986)**
[reasonableness of effort to find *substantially equivalent employment* should be evaluated in light of discriminatee's background and experience and relevant job market]

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company **808 F.2d 1155 (C.A. 6, Dec. 1986)**
[enforcement of Bd's *backpay* award denied and cause remanded to Bd for recomputation by taking into account ct's determination that discriminatees willfully failed to seek other comparable employment in mitigation of their losses]

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **773 F.2d 77 (C.A. 6, Sep. 1985)**
(wrongfully discharged Ee is only required to make reasonable effort to mitigate damages, and is not held to highest standard of diligence; burden is not onerous, and does not mandate that Ee be successful in mitigating damage)

N.L.R.B. v. The Westin Hotel **758 F.2d 1126 (C.A. 6, Apr. 1985)**
(E's effort to place burden on discriminatee of proving *systematic method of searching for a job* and of retaining employment regardless of working conditions, inappropriate, since burden of proof is on E, and discriminatee need make only a reasonable, not a successful, effort to mitigate damages, the reasonableness being evaluated according to the discriminatee's background and experience and the relevant job market)

6033-5000 Interim earnings

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[forfeiture of earnings applies only where claimant is found to have wilfully deceived Bd, not where claimant fails to report earnings through inadvertance]

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[mtn to strike discriminatee's testimony concerning earnings because she attempted to shield herself against discrepancy between her testimony and income reported on her income tax returns by invoking fifth amendment as to her tax returns, denied where discriminatee subsequently signed form permitting E to obtain her tax returns, and E thus was not prejudiced by her original stance]

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[willful loss of earnings is affirmative defense]

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[E does not meet his burden of proving willful loss of earnings by merely presenting evidence of lack of Ee success obtaining interim employment or demonstration of low interim earnings. Ee is held only to reasonable exertion in this regard, not the highest standard of diligence]

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[claim of willful concealment of interim earnings because claimant only revealed earnings one week before trial while under subpoena thereby making disclosure *involuntary*, rejected. Fact claimant erred in his estimates of earnings at interim E does not support contention of fraudulent withholding of information nor does fact that some earnings not reported on income tax returns serve to toll backpay]

Newport News Shipbuilding & Dry Dock Company **278 NLRB No. 150**
[discriminatee who quits interim employment, in which he has secured substantially equivalent employment with comparable wages, hours and working conditions (granted by E), w/o good cause has willful loss of earnings warranting reduction of backpay]

Overseas Motors, Inc. **277 NLRB No. 061**
(no inference that discriminatee who claimed he lived on loans, interim earnings from self employment and unemployment compensation during backpay period was not disclosing interim earnings, notwithstanding large gap between earnings, unemployment compensation and discriminatee's expenses to be filled by loans, absent evidence of failure to disclose earnings; burden on Respondent is not merely to litigate question of existence or non existence of loans, but to show that there were other interim earnings)

Davis Coal Company Debtor-In-Possession **275 NLRB No. 102**
(when discriminatee worked in one quarter and was paid for this work in following quarter, interim earnings were subtracted from gross backpay in quarter *paid* and not from quarter *earned*)

Rikal West, Inc. **274 NLRB No. 170**
]---*defense of willful loss of earnings is an affirmative defense and burden is on E to prove the defense.* Deductions (from gross backpay) for interim earnings are permitted *not so much (for) the minimization of damages as (for) the healthy policy of promoting production and employment*)

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. **JD-(SF)-127-86**
[allegations of backpay specification deemed admitted to be true, where respondent failed to state bases for disagreement as to back-period and gross backpay or produce evidence in support of its allegation that discriminatee was incarcerated during backpay period and that specification did not include all discriminatee's interim earnings]

Washington Beef Producers **JD-(SF)-86**
[E may limit its backpay liability by establishing that backpay claimant *willfully incurred* losses by a *clearly unjustifiable refusal to take desirable new employment;* to establish such mitigation, E's burden is to show that claimant *neglected to make reasonable efforts to find interim work*]

Washington Beef Producers **JD-(SF)-86**
[success in efforts to find interim work is not measure of sufficiency when discriminatees seek to achieve interim earnings; law *only requires an honest good-faith effort;* while evidence may leave question whether backpay claim-

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ant could have been more diligent in seeking other employment, *the highest stand of diligence is not required and doubt must be resolved against respondent E*]

Washington Beef Producers **JD-(SF)-86**
[compliance form questionnaire evidence regarding backpay claimants' search for interim employment viewed with skepticism by ALJ where claimant witnesses produced indirect answers to examination by E, who asked if entries they made on questionnaire constituted all Es they recalled contacting but were not asked how many Es they contacted on daily, weekly, or monthly basis]

Washington Beef Producers **JD-(SF)-86**
[backpay claimant held to have made reasonable search for interim employment over entire backpay period where, although his compliance questionnaire form listed fewer than 3 Es a month in his employment search, claimant contacted more Es than his questionnaire reflected, since questionnaire did not constitute complete record of such search, and E failed to meet its burden of proof in showing that claimant failed to make good faith interim employment]

Phil Smidt & Son, Inc. **JD-483-84**
(where discriminatee claimed deductions from her self-employed business, E has right to documentary proof of deductions and discriminatee must produce proof or reason why proof unavailable)

6050 BURDEN OF ENFORCING SUBPOENA

O.K. Machine & Tool Corp. And Gyrotronics, Inc. **279 NLRB No. 069**
[E's mtn to dismiss C on grounds that witness who had been issued subpoena on E's behalf did not appear denied where service of subpoena was defective inasmuch as there was no tender by E of appropriate mileage and witness fee as requested by witness]

8000 PROCEDURE WHEN CLAIMANT IS UNAVAILABLE

8025 BACKPAY PLACED IN ESCROW UNTIL CLAIMANT CAN BE EXAMINED OR FOR ONE YEAR, WHICHEVER COMES FIRST

Ace Electric Construction Corporation, et al. **281 NLRB No. 094**
[Bd modified backpay order to conform to *Starlite Cutting*, 280 NLRB No. 120, to provide that, in addition to placing net backpay deemed owed missing discriminatees in escrow backpay award shall lapse for any discriminatees not located at end of 1 year]

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center **281 NLRB No. 052**
[backpay computed in backpay specification for discriminatee whose whereabouts were unknown to be held in escrow by RD for 1 year under standards of *Starlite Cutting Inc.*, 280 NLRB No. 120 (June 24, 1986)]

Health Enterprises of America, Inc. d/b/a Calson Tower Geriatric Center and Geriatric Center of St. Louis, Inc., a Successor to Health Enterprises of America, Inc., d/b/a Calson Tower Geriatric Center **281 NLRB No. 052**
[E's voluntary quit from interim job not shown to be wilful loss of earnings where note in personnel file of interim E merely stated that she had to be in another state sooner than she had thought, and her whereabouts were unknown; backpay therfore to be held in escrow for 1 year]

Starlite Cutting, Inc. and Its Alter Ego Petal Pink Novelty, Inc.; and Joseph Fornaro, an Individual **280 NLRB No. 120**
[backpay to be paid RD to be held in escrow for period not exceeding 1 year from supplemental D/O to afford GC opportunity to locate and examine unavailable discriminatee's interim earnings; if GC fails to do so w/i 1-year period, award to lapse and backpay to be returned to respondent; rule of limitation will effectuate policies of Act by facilitating swift and orderly resolution of backpay proceedings, affording finality and stability to judgments and freeing Bd's time and resources for other cases; *Duncan Foundry & Machine Works*, 222 NLRB 768 (1976) overruled]

Starlite Cutting, Inc. and Its Alter Ego Petal Pink Novelty, Inc.; and Joseph Fornaro, an Individual **280 NLRB No. 120**
[although rule that backpay held in escrow for unavailable discriminatee be returned to respondent if discriminatee not located w/i 1 year may result in forfeiture, discriminatee has no entitlement to backpay, since it is a remedy that is public, not private right, and discriminatee has no property right in award pending his receipt of it; also on his showing by preponderance of evidence compelling reasons for not coming forward timely, Bd would find exception and let him claim award, so that rule is flexible and consistent with federal practice in class actions]

O.K. Machine & Tool Corp. And Gyrotronics, Inc. **279 NLRB No. 069**
[notwithstanding GC's assumption that backpay issues as to Ee might be unresolved at end of year, where parties knew location of Ee, Bd saw no reason for any direction as to E's liability after 1 year since Bd expected issue to be resolved w/i year]

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**

Sure-Tan, Inc. and Surak Leather Co. **277 NLRB No. 023**
(upon ct of appeals' remand pursuant to S.Ct remand for formulation of appropriate remedial order pertaining to deported undocumented alien discriminatees, Bd tolled e's backpay from date valid reinstatement offers are mailed to discriminatees, and provided that Bd will order hearing to determine backpay liability shortly after offers are made and that E will place in escrow money sufficient to satisfy its potential backpay liability for Ees who do not appear at hearing, but such money will be refunded if discriminatee has not been located w/i 1 year)

9000 SETTLEMENTS OF BACKPAY

9067 GROUNDS FOR SETTING ASIDE

Allied Lettercraft Company, Inc. **280 NLRB No. 113**
[purported settlement of backpay claim between claimant and E held ineffective, since settlement was conditioned upon approval by RD of claimant's request to partially withdraw charge and, as approval was not given, settlement never came into being; moreover, power of claimant, as non-charging party, to request withdrawal was doubtful, and RD has great deal of discretion in approving or refusing such withdrawal request]

9500 BACKPAY STIPULATIONS

9550 EFFECT OF BACKPAY STIPULATION

Embossing Printers, Inc. **JD-67-86**
[parties stipulated as to record, decision to be made on record and waived right to file exceptions to Supplemental Decision and Respondent agreed to entry of judgment enforcing Bd's Supplemental Order]

700 GENERAL LEGAL PRINCIPLES

712 AGENCY PRINCIPLES

2500 COMMON LAW AGENCY PRINCIPLES APPLICABLE

Sasson-All Industries, Inc. **276 NLRB No. 139**
(Section 2(13) of Act states: *In determining whether any person is acting as agent of another person so as to make such person responsible for his acts, question of whether specific acts performed were actually authorized or subsequently ratified shall not be controlling.* Bd has held repeatedly that common law rules of agency govern)

2550 ACTUAL AUTHORIZATION OR SUBSEQUENT RATIFICATION NOT CONTROLLING

Joseph A. Perry d/b/a Holiday Inn-Glendale **277 NLRB No. 145**
(E's argument that supervisor was not acting as its agent when she made various threats to Ees because she was acting outside the scope of her authority, rejected, since even though a principal has not specifically authorized or may have specifically forbidden an act, it is sufficient if the principal empowered the agent to represent him in the general area w/i which the agent acted)

Sasson-All Industries, Inc. **276 NLRB No. 139**
(Section 2(13) of Act states: *In determining whether any person is acting as agent of another person so as to make such person responsible for his acts, question of whether specific acts performed were actually authorized or subsequently ratified shall not be controlling.* Bd has held repeatedly that common law rules of agency govern)

5000 RESPONSIBILITY OF EMPLOYER OR UNION FOR ACTS AND STATEMENTS OF AGENTS AND OTHERS

5014 BASIS OF RESPONSIBILITY

Upholstery Division of The United Steelworkers of America, AFL-CIO, Local Union 406-U (Judy Becker, An Individual) **JD-130-86**
[U bound by U steward's threat to Ee where steward was acting on U's behalf by giving Ee his monthly dues refund and had apparent authority to make threat]

5014-0100 Generally

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**
[E's denial that its agent was authorized to make statements to Ees concerning U held ineffective in view of Sec. 2(13) negating such argument]

5014-0120 Actual authority

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[violation, where E's manager asked Ee's grandfather-in-law to ask Ee not to sign U card, and when Ee in response to his request informed her grandfather-in-law that she had already signed card, he informed Ee that E would never let U in and she might as well start looking for another job. Since Ee's grandfather-in-law was agent of E acting on E's express behest]

Phil's Food Market, Inc. **JD-(SF)-105-85**
(guard hired by E to make sure in manner determined by E that strikers and customers did not get into any fights had apparent authority to act for E and acted w/i scope of his authority when he threatened strikers)

5014-0140 Apparent authority

Hyatt Regency New Orleans **281 NLRB No. 042**
[attorney had apparent authority to act as E's agent during negotiations where he identified himself as E's chief spokesman in presence of his principal and attended each bargaining session in its entirety, presenting E's proposals and making demands and concessions on E's behalf; evidence assertedly showing U was aware that principal was in charge at negotiations merely demonstrated that U was aware typical principal agent relationship existed; moreover, U was never informed that attorney's authority was limited]

Electrical Workers, Local Union No. 211 (U.S. Capital Telecommunications Corp.) **279 NLRB No. 119**
[all E needs is *reasonable belief* that steward could carry out threat of work stoppage for finding of apparent authority]

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **279 NLRB No. 082**
[under doctrine of apparent authority, the test for determining whether an Ee is an agent is whether, under all circumstances, Ees would reasonably believe the Ee was reflecting company policy and speaking and acting for management]

Futuramik Industries, Inc. **279 NLRB No. 021**
[in determining whether an Ee has apparent authority to act for E, Bd considers whether, under all the circumstances, Ees could reasonably believe that Ee's conduct reflected company policy and that Ee spoke and acted for management; Ee in instant case met test and was held E's agent where, during company campaign meetings, she stood alongside E's president, answered questions directed to president w/o interference and thus, Ees could reasonably believe her statements were made on behalf of E]

Barnett Supply Company, Inc. **278 NLRB No. 146**
[actions of husband of E's president imputed to E and E bound by his actions, particularly adoption of predecessor E's bargaining agreement and seniority list, since he had apparent authority and was held out by E as agent, where he announced his wife's company would take over predecessor's operation and sign contract with U which had represented predecessor's Ees, sought volunteers among Ees of predecessor to prepare for resumption of production, recalled most senior Ees of predecessor, assigned work, signed wife's name to agreement, and wife did ratify adoption of bargaining agreement and seniority list]

Uniontown Hospital Association **277 NLRB No. 144**
(contrary to ALJ, hospital staff development instructor found part of management *team* and E's agent by Bd where she volunteered to serve on E's committee for resisting U's organizing efforts, spent 80 percent of her worktime during U campaign talking to 80 to 90 nurses about E's position as to U and distributing literature about U, and E let her assume a role whereby unit Ees reasonably believed she spoke for E and, absent disavowal of her conduct, ratified her actions)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 087**
(wife of 1 of 3 partners operating restaurant held to have had apparent authority as agent of E, and Ees reasonably could rely upon that appearance on a daily basis)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre **276 NLRB No. 008**
(E held liable for statements made by its treasurer acting under E's apparent authority, even though E did not authorize treasurer to make such statements)

Communications Workers, Local 6012 (Southwestern Bell Telephone Co.) **275 NLRB No. 210**
(individuals who answered telephone at U hall and told inquiring members that they could not resign found U agents, since they had apparent authority to respond to questions concerning resignation from U)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(to establish apparent authority it must be shown that the principal knowingly permitted the agent to exercise authority in question, or in some manner manifested its consent that such authority be exercised)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(apparent authority is power to effect legal relations of another person by transactions with third persons, professedly as agents for the other, arising from and in accordance with the other's manifestations to such third persons. Such manifestations may include direct statements to third person, directions to agent to tell something to third person, or granting of permission to agent to perform acts under circumstances which create in him reputation of authority in area which agent acts)

Batavia Nursing and Convalescent Inn **275 NLRB No. 125**
(election day assault by E's attorney acting as its lead counsel upon U's field organizer in presence of Ees, unlawful, since attorney's actions were w/in *general* scope of his authority, even though E may not have authorized

5014-0140—Cont.

specific acts in question, where attorney represented E in various election matters; attorney's authority to deal with U was not limited to strictly legal matters but rather was akin to that exercised by E's administrators; and, in such circumstances, Ees reasonably could regard attorney as management representative)

Corrugated Partitions West, Inc. **275 NLRB No. 126**
(second shift leadman held agent of E where he assigned, directed and checked Ees' work in context of being highest ranking member of supervision in plant; E placed leadman in position where he was viewed by everyone involved as being E's representative in charge of second shift who served as plant manager's voice, eyes and ears)

Penn Yan Express, Inc. **274 NLRB No. 057**
(U responsible for acts of newly elected U official as its agent where he visited E for *official* purpose of encouraging E to hire U workers on day after election and acted with apparent authority, since he could have reasonably been believed to be acting on U's behalf; moreover, his holding of elected office was substantial and persuasive evidence of his agency absent compelling contrary evidence; and U condoned his actions, since there was no evidence that U disavowed them after he took office)

Oil Field Construction Company **JD-(SF)-104-86**
[foremen held agents of E and their unlawful statements to Ees were imputable to E, notwithstanding that one foreman was member of contractual unit and served as U's president and steward, where E placed foremen in position where Ees would reasonably believe that foremen were speaking on behalf of E when they stated Ees would suffer or had suffered loss of employment because of their grievance-filing activity]

Stage Employees IATSE, Local 46 (Joseph Cates Company) **JD-(ATL)-55-86**
[U business agent's acceptance of offer of officer of another U to telephone E about hiring U members invested him with apparent authority as U's agent]

Bombay Palace of Westchester, Inc. **JD-(NY)-81-85**
[wife of E's sole owner reasonably perceived by Ees to speak for E, notwithstanding she was not on payroll and had no official title, where she exercised supervisory authority as to hiring, granting promotions, authorizing vacations, giving instructions to staff, criticizing and complimenting their performance, and meeting with them to discuss grievances and problems]

Bombay Palace of Westchester, Inc. **JD-(NY)-81-85**
[E's accountant reasonably perceived as speaking for E where he maintained payroll and other financial records, answered Ee questions regarding payroll, took inventory, checked sales records and guest checks, attended management meetings, represented E in dealings with state labor department in Ees' presence, and accompanied E's owner in meeting with Ees to discuss their complaints]

Bombay Palace of Westchester, Inc. **JD-(NY)-81-85**
[former president and secretary of E, who was brother of E's owner and brother-in-law of its chief operating officer and had resigned his positions w/o Ees' knowledge, reasonably perceived by Ees as speaking for E where he was consulted by manager about problems, and accompanied E to meet with Ees to discuss their complaints]

Willie Abernathy and Michael Abernathy d/b/a Abernathy Scrap Metal **JD-(SF)-172-85**
(individual held agent of E, regardless of whether supervisor, in view of his long friendship with E's owner and fact Ees could reasonably believe that he spoke for management, notwithstanding fact not officially on payroll during period of his actions which were imputed to E)

Ambassador Convalescent Center, Inc. Debtor-In-Possession In Bankruptcy **JD-319-85**
(agent appointed to negotiate bargaining agreement, is deemed to have apparent authority to bind his principal in absence of clear notice to contrary)

B.R.B. Iron Works, Inc. **JD-(NY)-84-85**
(son of 50% co-owner of E, who Ees view as supervisor and who notifies Ees in his department of their termination, at very least held *agent* of E)

Phil's Food Market, Inc. **JD-(SF)-105-85**
(guard hired by E to make sure in manner determined by E that strikers and customers did not get into any fights had apparent authority to act for E and acted w/i scope of his authority when he threatened strikers)

Local 866, Teamsters (Richard Rapp, an Individual) **JD-(NY)-88-85**
(steward found U agent where he had apparent authority to speak on U's behalf as shown by his being appointed co-picket captain with responsibility for organizing and administering strike activity, acting for U at meetings by distributing strike benefits and withdrawal cards and taking down names, and signing memorandum of understanding and contract with U officer and business representative)

HCA Health Services of Mid-West, Inc. d/b/a Doctor's Hospital **JD-(ATL)-29-85**
(security guard acted as E's agent w/i scope of his authority in performing his job duties while patrolling parking deck when he stopped Ee from distributing U handbills in parking deck and removed handbills from parked cars; further, even if not E's agent, he acted with apparent authority of E, since he was E's Ee with identification indicating he was security guard and therefore was reasonably believed to be acting on E's behalf)

The Heil Co. **JD-(ATL)-18-85**
(Ee who acted as conduit between U and Ees, reporting to U that Ees wanted representation and to Ees dates of U meetings, found agent of U and his statements attributed to U where U agent with apparent authority to ratify his statements did so)

The May Department Stores Company **JD-(SF)-13-85**
(Ees who were members of U's in-plant *steering committee* and *organizing committee* held agents of U, since, members were clothed by U with *apparent authority*, where members were told by U to carry U's message to their respective departments, U's paid staff agents were not allowed on E's premises and members were the only way U had to disseminate its message, U gave members distinctive shirts and other trappings denoting their special status and U publicly portrayed members as being well-tutored in U's affairs and told voters to look to them for answers to their questions)

N.L.R.B. v. Electrical Workers, Local 745 **799 F.2d 533 (C.A. 6, Apr. 1986)**
(U steward who threatened Ee with fine if Ee testified against fellow Ee at grievance hearing, held agent of U, notwithstanding U constitution provided that stewards were not officers or agents of U, since U clothed stewards with apparent authority, where U had published article concerning disciplining of U members for testifying in favor of Es w/o consulting U steward)

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) **764 F.2d 739 (C.A. 10, June 1985)**
(test to determine multi-E unit's apparent authority to negotiate bargaining agreement is whether employer has indicated from outset unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has asserted to and entered upon negotiations with group's representative)

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) **764 F.2d 739 (C.A. 10, June 1985)**
(E's repudiation of bargaining agreements reached through multi-E bargaining, violative notwithstanding E's contention that negotiations were entered and agreements reached w/o E's real or apparent authority, where E allowed its managers to sign authorizations for association to bargain on E's behalf over three-year period, observed terms of agreements negotiated by association, and used lawyer recommended by association to negotiate settlement agreement with U)

5014-0180 Estoppel of principal

Dorothy Shamrock Coal Company **279 NLRB No. 174**
[E is bound by acts and statements of its supervisors whether specifically authorized or not. See Section 2(13) of statute]

5014-0190 Adoption, ratification, or condonation

Middletown Hospital Association **282 NLRB No. 079**
[hospital held not to have condoned, adopted, and ratified anti-U conduct of physicians found not to be agents of hospital, where it was speculative that hospital's labor consultants addressed regular meeting of physicians with purpose of enlisting them in hospital's anti-U campaign; and involvement of certain physician, whose conduct was not in issue, in writing anti-U letter and attempting to form doctor-nurse committee did not show that hospital adopted and ratified conduct of physicians *other* than physician involved]

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**
[U responsible for Ees' decision to respect picket line of another U strike taken in presence of high U official, notwithstanding U official response to several inquiries asking what to do was do whatever you want to do]

Barnett Supply Company, Inc. **278 NLRB No. 146**
[actions of husband of E's president in signing bargaining agreement with checkoff provision with U that had represented Ees of E's predecessor, and adopting seniority list of predecessor, ratified by E's president when she withheld U dues from Ees' pay, singed agreement herself without repudiating husband's attempt to bind company]

Uniontown Hospital Association **277 NLRB No. 144**
(contrary to ALJ, hospital staff development instructor found part of management *team* and E's agent by Bd where she volunteered to serve on E's committee for resisting U's organizing efforts, spent 80 percent of her worktime during U campaign talking to 80 to 90 nurses about E's position as to U and distributing literature about U, and E let her assume a role whereby unit Ees reasonably believed she spoke for E and, absent disavowal of her conduct, ratified her actions)

5028 RESPONSIBILITY OF EMPLOYER FOR ACTS OF OTHERS

5028-1200 Interdependent relationships with other employers or employees

5028-1233 Familial relationship

Williamson Piggly Wiggly, Inc. **280 NLRB No. 125**
[violation, where E's manager asked Ee's grandfather-in-law to ask Ee not to sign U card, and when Ee in response to his request informed her grandfather-in-law that she had already signed card, he informed Ee that E would never let U in and she might as well start looking for another job. Since Ee's grandfather-in-law was agent of E acting on E's express behest]

Apple Glass Company **JD-89-86**
[supervisor found E's agent not only because of supervisory position but also because of unique relationship with E as brother-in-law of president and son of office manager]

Dr. Olinda Flores **JD-12-86**
[E's sister who worked in E's office found agent whose knowledge of Ees' concerted protected activities was imputed to E where she regularly served as conduit of information to E concerning Ee activities and statements and she enjoyed a special status and authority in the office]

B.R.B. Iron Works, Inc. **JD-(NY)-84-85**
(son of 50% co-owner of E, who Ees view as supervisor and who notifies Ees in his department of their termination, at very least held *agent* of E)

5028-1267 Economic relationship

American Press, Inc. **280 NLRB No. 109**
[statement by co-owner of predecessor company purchased by successor E, giving assurances to one of his Ees about obtaining job with successor, held properly attributable to latter since co-owner was successor's agent by virtue of his ownership interest and successor's use of him in connection with hiring]

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company **275 NLRB No. 186**
(foreman for company having known business relationship with E, who visited Ee at home and told Ee he had been sent by E held agent of E who was liable for foreman's unlawful threat of plant closure; definition of agency as stated in Sec. 2(13) of Act, and not common law definition, held applicable)

Storall Manufacturing Company, Inc. **275 NLRB No. 039**
(E supplying temporary Ees and related administrative paperwork, skill qualifying, interviewing, reference, verification, payroll, and insurance for E's reinstituted night shift under subcontracting agreement found agent of E, rather than joint E with E)

5028-2300 Nonsupervisory employees

5028-2501 Generally

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(in finding no agency relationship between E and anti-U Ees who assertedly unlawfully threatened and interogated Ees at meeting on E's premises, Bd declined to find that by merely providing access to forum for discussing competing views, E should now be held accountable for any statements made by anti-U Ees which may have occurred during course of discussion)

5028-2512 Acting in apparent concert with desires of employer

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**
[Ee who solicited applicants for employment, introduced himself as a *business representative* of E and told applicants he guaranteed them a job, held an agent of E, since applicants could reasonably believe what Ee said reflected company policy and that Ee was acting for management]

Futuramik Industries, Inc. **279 NLRB No. 021**
[in determining whether an Ee has apparent authority to act for E, Bd considers whether, under all the circumstances, Ees could reasonably believe that Ee's conduct reflected company policy and that Ee spoke and acted for management; Ee in instant case met test and was held E's agent where, during company campaign meetings, she stood alongside E's president, answered questions directed to president w/o interference and thus, Ees could reasonably believe her statements were made on behalf of E]

Electronic Data Systems International Corporation **278 NLRB No. 014**
[anti-U statements in flyers attributed to E where Ees prepared flyers during working hours at company premises using E's equipment, and flyers were distributed on company property during working time in violation of no solicitation rule]

Uniontown Hospital Association **277 NLRB No. 144**
(hospital's infection control coordinator found agent of E where she attended management's campaign meetings, distributed campaign literature, and was considered part of management's *team*)

Westinghouse Electric Corporation **277 NLRB No. 016**
(communications coordinator held agent of E notwithstanding that no actual autority conferred on her, nor was she held out, specifically, as possesing that authority, where E held her out to be conduit through which Ees would be apprised of E's point of view on any number of issues and, therefore would be taken rightfully so by Ees as voice of management)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(no violation where rank-and-file Ee called meeting of Ees and stated he was presenting contract proposals to Ees on behalf of management and proceeded to read proposals from sheet of paper written by general manager, since record did not disclose how Ee obtained E's contract proposals, or that Ee had authority to relay contract proposals to other Ees)

Willie Abernathy and Michael Abernathy d/b/a Abernathy Scrap Metal **JD-(SF)-172-85**
(individual held agent of E, regardless of whether supervisor, in view of his long friendship with E's owner and fact Ees could reasonably believe that he spoke for management, notwithstanding fact not officially on payroll during period of his actions which were imputed to E)

5028-2530 Acting as messenger of supervisor

Star Color Plate Service, Division of Einhorn Enterprises, Inc. **279 NLRB No. 082**
[Ee who was clerical Ee, held agent of E, since Ees reasonably could believe she was acting on behalf of E where Ee acted as conduit between management and Ees, Ees often would ask Ee questions about E policies and rules and Ee had been authorized by one of E's supervisors to engage in anti-U campaign activity]

Dr. Olinda Flores **JD-12-86**
[E's sister who worked in E's office found agent whose knowledge of Ees' concerted protected activities was imputed to E where she regularly served as conduit of information to E concerning Ee activities and statements and she enjoyed a special status and authority in the office]

N.L.R.B. v. McEver Engineering, Inc. **784 F.2d 634 (C.A. 5, Mar. 1986)**
[discharge of Ees who failed to return to work because of their perceived hazzardous conditions on job, violative. Ees were engaged in one-time strike of short duration (protected) as opposed to partial strike (unprotected). E had constructive knowledge of protected nature of activity notwithstanding when Ees told company clerk, sent by supervisor to ask Ees why they were not returning to work, they would return to work after it stopped raining, and he only reported to supervisor that the men were not ready to come back to work]

5028-2537 Authority to act may be inferred from

5028-2537-4000 Employer's failure to disavow conduct

Uniontown Hospital Association **277 NLRB No. 144**
(contrary to ALJ, hospital staff development instructor found part of management *team* and E's agent by Bd where she volunteered to serve on E's committee for resisting U's organizing efforts, spent 80 percent of her worktime during U campaign talking to 80 to 90 nurses about E's position as to U and distributing literature about U, and E let her assume a role whereby unit Ees reasonably believed she spoke for E and, absent disavowal of her conduct, ratified her actions)

Morning Star International, Inc. **JD-209-86**
[E held responsible for Ee's surveillance of U meeting where, during 6-week period, Ee had substituted daily for absent supervisor in such manner that Ees would necessarily conclude that Ee was in position to act on behalf of management, and context in which Ee's surveillance occurred would lead Ees to believe she had hostile purpose of spying and informing on behalf of E, which conclusion was correct; and E did nothing to disavow or repudiate Ee's conduct]

5028-2537-6000 Subsequent ratification of employer

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(no ratification by E when rank-and-file Ee, who had somehow come into possession of contract proposals prepared by E but not presented to Ees, presented these contract proposals on his own to Ees w/o knowledge by E, recounted to general manager what he had done and asked whether proposals still acceptable to E, general manager who had remained silent during Ee's recitation said that he would check with president)

5028-2537-8000 Failure to discipline

Electronic Data Systems International Corporation **278 NLRB No. 014**
[anti-U statements in flyers attributed to E where Ees prepared flyers during working hours at company premises using E's equipment, and flyers were distributed on company property during working time in violation of no solicitation rule]

5028-2550 Company time, use of, indication that employee acts for employer

Electronic Data Systems International Corporation **278 NLRB No. 014**
[anti-U statements in flyers attributed to E where Ees prepared flyers during working hours at company premises using E's equipment, and flyers were distributed on company property during working time in violation of no solicitation rule]

5028-2550—Cont.

Uniontown Hospital Association **277 NLRB No. 144**
(contrary to ALJ, hospital staff development instructor found part of management *team* and E's agent by Bd where she volunteered to serve on E's committee for resisting U's organizing efforts, spent 80 percent of her worktime during U campaign talking to 80 to 90 nurses about E's position as to U and distributing literature about U, and E let her assume a role whereby unit Ees reasonably believed she spoke for E and, absent disavowal of her conduct, ratified her actions)

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(daughter of co-owner of E found agent of E where she summoned a meeting of E's Ees during the workday, while E remained opened for business, with management's acquiescence)

5028-2562 Employees have just cause to believe person acting for employer

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**
[former supervisor who had directed Ees in performance of their duties and at time of his statements to Ees was still in position superior to that of other Ees held properly considered by Ees as E's agent in making statements]

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. **280 NLRB No. 118**
[Ee who solicited applicants for employment, introduced himself as a *business representative* of E and told applicants he guaranteed them a job, held an agent of E, since applicants could reasonably believe what Ee said reflected company policy and that Ee was acting for management]

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**
[individual who was holdover supervisor from predecessor E and was hired as administrator of successor E but had not yet been put on successor E's payroll, held agent of successor E where successor E authorized her to contact Ees regarding hiring decisions and she had meetings with Ees regarding plans for the future and told Ees who was and was not hired by successor E and on what terms they would be hired; thus, Ees had reasonable cause to believe she was acting and speaking for successor E]

Futuramik Industries, Inc. **279 NLRB No. 021**
[in determining whether an Ee has apparent authority to act for E, Bd considers whether, under all the circumstances, Ees could reasonably believe that Ee's conduct reflected company policy and that Ee spoke and acted for management; Ee in instant case met test and was held E's agent where, during company campaign meetings, she stood alongside E's president, answered questions directed to president w/o interference and thus, Ees could reasonably believe her statements were made on behalf of E]

United Cloth Company, Inc. **278 NLRB No. 088**
[remarks of sister of E's manager who was employed by another E, but was asked by E to temporarily assist in improving quality of production, imputed to E, where she clearly directed and trained Ees on quality concerns, and in so doing prodded Ees to achieve quality production, and there was clear and unrefuted implication in minds of Ees that she had power to speak for E, notwithstanding she was directed to work through supervisor]

Uniontown Hospital Association **277 NLRB No. 144**
(contrary to ALJ, hospital staff development instructor found part of management *team* and E's agent by Bd where she volunteered to serve on E's committee for resisting U's organizing efforts, spent 80 percent of her worktime during U campaign talking to 80 to 90 nurses about E's position as to U and distributing literature about U, and E let her assume a role whereby unit Ees reasonably believed she spoke for E and, absent disavowal of her conduct, ratified her actions)

Westinghouse Electric Corporation **277 NLRB No. 016**
(communications coordinator held agent of E notwithstanding that no actual autority conferred on her, nor was she held out, specifically, as possessing that authority, where E held her out to be conduit through which Ees would be apprised of E's point of view on any number of issues and, therefore would be taken rightfully so by Ees as voice of management)

St. Paul's Church Home, Inc. **275 NLRB No. 170**
(anti-U Ees, who assertedly as E's agents, unlawfully threatened and interrogated Ees, held not to have acted as agents of E who was not accountable for their actions and statements, where, under the circumstances, it cannot be concluded that pro-U Ees could reasonably conclude that E bestowed upon anti-U Ees authority to make illegal statements or engage in unlawful conduct, and there was no evidence that E directed anti-U Ees or cloaked them with authority to engage in alleged illegal conduct)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
(no violation where rank-and-file Ee called meeting of Ees and stated he was presenting contract proposals to Ees on behalf of management and proceeded to read proposals from sheet of paper written by general manager, since record did not disclose how Ee obtained E's contract proposals, or that Ee had authority to relay contract proposals to other Ees)

C & L Warehouse & Distributing Corp. **275 NLRB No. 148**
(Ee who was nephew of E's owners held not agent of E, notwithstanding contention that E accorded special privileges to Ee thereby creating impression that Ee spoke and acted for E, where E did not exempt him from rules applied to other Ees and Ee's expression of personal hostility to U would not reasonably have led other Ees to believe that he was echoing E's views)

Roskin Brothers, Inc. **274 NLRB No. 083**
(Ee's comments to other Ees who were U supporters that, *we know what's going on and we're going to fix that,* violative, notwithstanding fact Ee was not a supervisor, since Ee was placed by management in strategic position where Ees could reasonably believe he spoke on its behalf where Ee was used by E to relay messages and instructions to Ees and was correctly perceived as management's *right-hand man* who spoke for management in its absence)

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **273 NLRB No. 189**
(E's building superintendent found to be agent of E where E asked Ee to approach former Ees of predecessor and make offers of settlement to them and Ee actually spoke to Ees and offered them specific sums of money, proposals acted upon by successor E, and Ees could therefore reasonably believe that Ee was acting on behalf of and as conduit for E)

Morning Star International, Inc. **JD-209-86**
[E held responsible for Ee's surveillance of U meeting where, during 6-week period, Ee had substituted daily for absent supervisor in such manner that Ees would necessarily conclude that Ee was in position to act on behalf of management, and context in which Ee's surveillance occurred would lead Ees to believe she had hostile purpose of spying and informing on behalf of E, which conclusion was correct; and E did nothing to disavow or repudiate Ee's conduct]

Benjamin Pontiac Inc. **JD-(NY)-82-85**
(E's non-supervisory car salesman who solicited signatures on decertification ptn held not to be cloaked with managerial authority or authority by E to act in E's interests, and thus ptn justified E's good faith doubt of U's majority status and its refusal to bargain; contention salesman's only duty beyond that of other salesmen of filling out commission statements evidence of managerial authority, rejected, since function purely clerical and ministerial)

5028-2583 Family relationship to owner or officer

Barnett Supply Company, Inc. **278 NLRB No. 146**
[actions of husband of E's president imputed to E and E bound by his actions, particularly adoption of predecessor E's bargaining agreement and seniority list, since he had apparent authority and was held out by E as agent, where he announced his wife's company would take over predecessor's operation and sign contract with U which had represented predecessor's Ees, sought volunteers among Ees of predecessor to prepare for resumption of production, recalled most senior Ees of predecessor, assigned work, signed wife's name to agreement, and wife did ratify adoption of bargaining agreement and seniority list]

T & T Machine Company, Inc. **278 NLRB No. 139**
[teenage nephew of E's president who held part-time summer job with E informing Ee during social visit at Ee's house that his uncle had stated Ee would never be recalled from layoff because Ee had *screwed up getting involved with U,* not imputed to E, absent actual or apparent authority, since being close relative alone not enough to establish agency, notwithstanding unlike rank and file Ees he regularly drove company vehicle, had free access to restricted office areas, and often ate lunch with his uncle]

Port East Transfer, Inc. **278 NLRB No. 125**
[statement of son of E's owner, who was *dispatcher trainee* at time of remarks, that his father had fired Ee for writing pro-U graffiti on E's restroom wall, imputed to E, since Ee could reasonably believe he spoke for management where son was *heir apparent* to company and was in training for supervisory position]

United Cloth Company, Inc. **278 NLRB No. 088**
[remarks of sister of E's manager who was employed by another E, but was asked by E to temporarily assist in improving quality of production, imputed to E, where she clearly directed and trained Ees on quality concerns, and in so doing prodded Ees to achieve quality production, and there was clear and unrefuted implication in minds of Ees that she had power to speak for E, notwithstanding she was directed to work through supervisor]

Lionel G. Sullivan and Ralph A. Fattore, A Partnership d/b/a Downtown Toyota **276 NLRB No. 106**
(daughter of co-owner of E found agent of E where she summoned a meeting of E's Ees during the workday, while E remained opened for business, with management's acquiescence)

Churchill's Catering Corporation d/b/a Churchill's Restaurant **276 NLRB No. 067**
(daughter of owner of restaurant held not agent of E where her regular job was that of office clerk, she had no ownership in restaurant, no authority,

5028-2583—Cont.

express or implied to direct Ees or affairs of business, and she was a student and not a regular Ee)

C & L Warehouse & Distributing Corp. 275 NLRB No. 148
(Ee who was nephew of E's owners held not agent of E, notwithstanding contention that E accorded special privileges to Ee thereby creating impression that Ee spoke and acted for E, where E did not exempt him from rules applied to other Ees and Ee's expression of personal hostility to U would not reasonably have led other Ees to believe that he was echoing E's views)

Mattiace Petrochemical Company A Division of Mattiace Industries Inc., and Petro Chemical Haulers Co., Inc. JD-(NY)-34-86
[liability attributed to E on basis of statements made to unlawfully locked out U adherents by individuals consisting of owner-official's son employed by E, by brother of owner-officials not ordinarily connected with E, and by alleged supervisor, where they acted as intermediaries between management and locked out Ees]

5028-5000 Outsiders

5028-5010 Attorneys or other advisors

Local Union No. 3, Electrical Workers (Burroughs Corp.) 281 NLRB No. 147)
[statements by counsel in course of their representational duties held attributable to client as admission against interest]

Hyatt Regency New Orleans 281 NLRB No. 042
[attorney had apparent authority to act as E's agent during negotiations where he identified hirmself as E's chief spokesman in presence of his principal and attended each bargaining session in its entirety, presenting E's proposals and making demands and concessions on E's behalf; evidence assertedly showing U was aware that principal was in charge at negotiations merely demonstrated that U was aware typical principal agent relationship existed; moreover, U was never informed that attorney's authority was limited]

Kou Fu, Inc. d/b/a Peng Teng 278 NLRB No. 050
[threats of individual imputed to Respondent restaurant owner, since Ees justifiably regarded him as arm of management, notwithstanding contention that he was almost independent contractor publicity consultant, where he had been manager for previous owner of restaurant, he took charge of pre-election meeting of Ees prior to election held between signing of contract to buy and sell restaurant and title closing, signed designation of E's election observer, prescribed waiter's dress and other rules, and was continually on restaurant premises while restaurant was closed for renovations after purchase]

Batavia Nursing and Convalescent Inn 275 NLRB No. 125
(election day assault by E's attorney acting as its lead counsel upon U's field organizer in presence of Ees, unlawful, since attorney's actions were w/in *general* scope of his authority, even though E may not have authorized specific acts in question, where attorney represented E in various election matters; attorney's authority to deal with U was not limited to strictly legal matters but rather was akin to that exercised by E's administrators; and, in such circumstances, Ees reasonably could regard attorney as management representative)

5028-5055 Other employers

Sewell-Allen Big Star, Inc., No. 3 d/b/a Sewell-Allen Big Star No. 52 280 NLRB No. 137
[food wholesaler who was primary supplier of E operating recently purchased grocery store held not to have acted as E's agent in purchase of store, where wholesaler acted as intermediary between E and seller of store in order to advance its own business interests, and its relationship with E was one of supplier to customer, not one of agent to principal]

5028-5065 Supervisor no longer employed by employer

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center 280 NLRB No. 007
[individual who was holdover supervisor from predecessor E and was hired as administrator of successor E but had not yet been put on successor E's payroll, held agent of successor E where successor E authorized her to contact Ees regarding hiring decisions and she had meetings with Ees regarding plans for the future and told Ees who was and was not hired by successor E and on what terms they would be hired; thus, Ees had reasonable cause to believe she was acting and speaking for successor E]

Willie Abernathy and Michael Abernathy d/b/a Abernathy Scrap Metal JD-(SF)-172-85
(individual held agent of E, regardless of whether supervisor, in view of his long friendship with E's owner and fact Ees could reasonably believe that he spoke for management, notwithstanding fact not officially on payroll during period of his actions which were imputed to E)

5028-6200 Employer association members and officers

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. JD-25-86
[E association's negotiators had both actual or express authority to bargain on behalf of E members, based upon E-members' earlier powers of attorney which were not shown to have been withdrawn by probative evidence, as well as implied authority based upon open past practice on part of association's officials whose conduct and apparent authority in such respects was not shown to have been disaffirmed by any E-members]

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) 764 F.2d 739 (C.A. 10, June 1985)
(test to determine multi-E unit's apparent authority to negotiate bargaining agreement is whether employer has indicated from outset unequivocal intention to be bound by group action and whether U has been notified of existence of group and delegation of bargaining authority to it and has asserted to and entered upon negotiations with group's representative)

Sam Bennion and Earl Garr d/b/a Hillsdale Inn, a partnership v. N.L.R.B. (Bartenders and Culinary Workers Union, Local 340) 764 F.2d 739 (C.A. 10, June 1985)
(E's repudiation of bargaining agreements reached through multi-E bargaining, violative notwithstanding E's contention that negotiations were entered and agreements reached w/o E's real or apparent authority, where E allowed its managers to sign authorizations for association to bargain on E's behalf over three-year period, observed terms of agreements negotiated by association, and used lawyer recommended by association to negotiate settlement agreement with U)

5028-7500 Supervisory employees and management representatives

5028-7501 Generally

JMC Transport, Inc. v. N.L.R.B. 776 F.2d 612 (C.A. 6, Nov. 1985)
[supervisor's unlawful, anti-labor motivation in making false report leading to discharge of Ee must be imputed to E, even though officers who actually made the discharge decision did not share that animus, and thus E is deemed to possess unlawful animus]

5028-7514 Authorization and ratification by employer of supervisor's acts

5028-7514-5000 Unnecessary

Dorothy Shamrock Coal Company 279 NLRB No. 174
[E is bound by acts and statements of its supervisors whether specifically authorized or not. See Section 2(13) of statute]

Joseph A. Perry d/b/a Holiday Inn-Glendale 277 NLRB No. 145
(E's argument that supervisor was not acting as its agent when she made various threats to Ees because she was acting outside the scope of her authority, rejected, since even though a principal has not specifically authorized or may have specifically forbidden an act, it is sufficient if the principal empowered the agent to represent him in the general area w/i which the agent acted)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008
(E held liable for statements made by its treasurer acting under E's apparent authority, even though E did not authorize treasurer to make such statements)

5028-7528 Indicia of power to bind

5028-7528-1200 Authority to negotiate on behalf of employer

Spring Valley Farms, Inc. JD-(ATL)-54-86
[*When agent is appointed to negotiate collective bargaining agreement, that agent is deemed to have apparent authority to bind his principal, absent clear notice to contrary. Where there is such notice, condition on agreement is imposed*]

Ambassador Convalescent Center, Inc. Debtor-In-Possession In Bankruptcy JD-319-85
(agent appointed to negotiate bargaining agreement, is deemed to have apparent authority to bind his principal in absence of clear notice to contrary)

5028-7528-2500 Employees have just cause to believe supervisor's acting for employer

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center 280 NLRB No. 007
[individual who was holdover supervisor from predecessor E and was hired as administrator of successor E but had not yet been put on successor E's payroll, held agent of successor E where successor E authorized her to contact Ees regarding hiring decisions and she had meetings with Ees regarding plans for the future and told Ees who was and was not hired by

5028-7528-2500—Cont.

successor E and on what terms they would be hired; thus, Ees had reasonable cause to believe she was acting and speaking for successor E]

5028-7556 Supervisors' participation in union affairs imputable to employer

5028-7556-6700 Forms of participation

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company — 275 NLRB No. 186
(foreman for company having known business relationship with E, who visited Ee at home and told Ee he had been sent by E held agent of E who was liable for foreman's unlawful threat of plant closure; definition of agency as stated in Sec. 2(13) of Act, and not common law definition, held applicable)

5028-7570 Types of employees

5028-7570-0300 Secretary

Yaohan of California, Inc. — 280 NLRB No. 032
[store manager's secretary, although not supervisory, held E's agent when she told Ee, in presence of supervisor and with his concurrence and approval, that if Ee wanted to engage in U activities, she should seek employment elsewhere]

5028-7570-1200 Foreman or immediate supervisor

Dorothy Shamrock Coal Company — 279 NLRB No. 174
[E is bound by acts and statements of its supervisors whether specifically authorized or not. See Section 2(13) of statute]

The Zack Company — 278 NLRB No. 134
[remark by foreman concerning prospect of lay off of Ees for filing grievance held not imputable to E where foreman was neither supervisor nor agent of E since he had no responsibility for or authority over descipline or discharge of Ees, and there was no evidence that foreman took part in or was privy to, E's decision to discharge Ees, or that E knew of foreman's remark]

United States Postal Service — 275 NLRB No. 057
(threat by low-level supervisor to file lawsuit against U on grounds of blocking goals of supervisor and personal harassment, not violative since E *not* accountable for temporary supervisor's remarks while acting as temporary *low-level* supervisor; remarks concerned filing civil suit on supervisor's own personal behalf and did not involve any threatened retaliation by E who had no knowledge of remarks and were not attributable to E or w/i supervisor's responsibilities)

Oil Field Construction Company — JD-(SF)-104-86
[foremen held agents of E and their unlawful statements to Ees were imputable to E, notwithstanding that one foreman was member of contractual unit and served as U's president and steward, where E placed foremen in position where Ees would reasonably believe that foremen were speaking on behalf of E when they stated Ees would suffer or had suffered loss of employment because of their grievance-filing activity]

Apple Glass Company — JD-89-86
[supervisor found E's agent not only because of supervisory position but also because of unique relationship with E as brother-in-law of president and son of office manager]

East Central Communications, Inc. — JD-116-86
[supervisor's affirmative nod made in agreement with Ee's statement that discharge of terminated Ee was because of his U activity held statement by E's agent concerning matter w/i scope of his agency, since it was made during discharge interview with terminated Ee, reason for which was known to supervisor, and was, as matter of law, admission by E]

N.L.R.B. v. CER Inc. — 762 F.2d 482 (C.A. 5, June 1985)
(E held responsible for threats made by its foreman who was also U member, where foreman's actions were consistent with those of a company foreman in furthering work to be performed at jobsite and Ees had reason to believe threats were made in capacity as E's foreman)

Ballou Brick Company v. N.L.R.B. — 798 F.2d 339 (C.A. 8, July 1986)
[comments of supervisor attributed to E as those of E's agent, notwithstanding supervisor's relatively low rank, where listening Ee would reasonably be justified in believing supervisor was speaking for E, especially as supervisor was talking about conversation with relatively high ranking official, and there was no evidence of reason for Ee not to believe him]

5028-7570-2700 Internal security officer

General Motors Corporation, Truck and Coach Division — JD-108-85
(security guard at manufacturer of trucks and busses agent of E and his giving warning to Ee who was attempting to leave plant with E's property imputed to E)

5028-7570-2800 Guards

HCA Health Services of Mid-West, Inc. d/b/a Doctor's Hospital — JD-(ATL)-29-85
(security guard acted as E's agent w/i scope of his authority in performing his job duties while patrolling parking deck when he stopped Ee from distributing U handbills in parking deck and removed handbills from parked cars; further, even if not E's agent, he acted with apparent authority of E, since he was E's Ee with identification indicating he was security guard and therefore was reasonably believed to be acting on E's behalf)

5028-7570-3000 Leadman

Corrugated Partitions West, Inc. — 275 NLRB No. 126
(second shift leadman held agent of E where he assigned, directed and checked Ees' work in context of being highest ranking member of supervision in plant; E placed leadman in position where he was viewed by everyone involved as being E's representative in charge of second shift who served as plant manager's voice, eyes and ears)

5028-7570-3600 Officers, executives, etc.

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre — 276 NLRB No. 008
(E held liable for statements made by its treasurer acting under E's apparent authority, even though E did not authorize treasurer to make such statements)

5028-7570-3900 Office clericals

Star Color Plate Service, Division of Einhorn Enterprises, Inc. — 279 NLRB No. 082
[Ee who was clerical Ee, held agent of E, since Ees reasonably could believe she was acting on behalf of E where Ee acted as conduit between management and Ees, Ees often would ask Ee questions about E policies and rules and Ee had been authorized by one of E's supervisors to engage in anti-U campaign activity]

5028-7570-7200 Sub-foreman

Ro-Lab Rubber Co., Inc. — 279 NLRB No. 057
[working foreman who oversaw production and maintenance operations, directed, inspected and corrected Ees' work, issued reprimands, recommended Ee hires and in at least one instance discharged Ee, held agent of E]

5028-7570-7800 Superintendent

Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. — 273 NLRB No. 189
(E's building superintendent found to be agent of E where E asked Ee to approach former Ees of predecessor and make offers of settlement to them and Ee actually spoke to Ees and offered them specific sums of money, proposals acted upon by successor E, and Ees could therefore reasonably believe that Ee was acting on behalf of and as conduit for E)

5028-7570-8900 Union steward

Local 464A, Food & Commercial Workers (Wakefern Food Corporation) — JD-(NY)-101-85
(U shop stewards held agents of E where they were authorized by contract as well as by custom and practice to speak and act on behalf of management in processing and settling grievances and in assigning overtime, job selection and shift changes)

5028-7570-9900 Other

Middletown Hospital Association — 282 NLRB No. 079
[physicians at hospital who were independent medical practitioners held not general agents of hospital where they had privileges to practice at hospital but were not employed by it and did not serve as its officers or directors]

5042 RESPONSIBILITY OF UNION FOR ACTS OF OTHERS

5042-0100 Generally

Avis Rent-A-Car System, Inc. — 280 NLRB No. 060
[when a U authorizes a picket line, it is required to retain control over picketing. If U is unwilling or unable to take necessary steps to control its pickets, it must bear responsibility for their misconduct]

5042-0150 Evidence

Avis Rent-A-Car System, Inc. — 280 NLRB No. 060
[U is responsible for the acts of its authorized pickets even if not specifically authorized or if act is specifically forbidden; it is not necessary to establish identity of the picket engaged in misconduct or show he acted as U's agent, rather, U has affirmative obligation to control actions of unidentified pickets and cannot escape responsibility by contending that neither its business agent or picket captain were present when misconduct occurred]

5042-3300 Affiliated organizations

5042-3365 Pharmacy and medical facilities

Teamsters Cannery Local No. 670 a/w Teamsters (Stayton Canning Company Cooperative) 275 NLRB No. 127
(dental, eye clinics and pharmacy though not owned or operated by U, nevertheless held agents of U where: (1) board of directors of clinics and pharmacy are comprised of same persons who comprise U's executive board; (2) by refusing services to financial core members as directed by U, clinics were operating to its detriment and for benefit and goals of U, and (3) evidence showed that when U directed pharmacy to service 2 core members, it did so)

5042-3370 Local as agent of International, Building Trades Council or District

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) 278 NLRB No. 008
[responsibility for acts of officials of local U imputed to International since constitutional structure of International and its subordinate locals reserved to International and District sufficiently authority over local's affairs, where subordinate bodies must comply with decisions of International's officers, General Secretary-Treasurer had unlimited access to local's books and records, International had stringent control over strikes; further, International's representative threatened dissident Charging Party in order to silence him]

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) 278 NLRB No. 008
[responsibility for acts of officials of Local U imputed to District, since constitutional structure of International, District and subordinates reserved to District sufficiently detailed and extensive control over locals' affairs where District had authority to levy assessments on locals; further, District's representative was present as representative of District at which alleged unlawful actions against Charging Party taken]

The Rath Packing Company 275 NLRB No. 042
(bypassing international U as exclusive bargaining representative of its unit Ees and dealing directly with its Ees and local U, violative as International revoked any authority local may have had to bargain with E. Assuming, arguendo, local had limited authority to bargain, it exceeded its authority by agreeing to larger deferrals than original contract called for)

5042-3380 International or other parent body

Electrical Workers, Local Union No. 46 (NECA) 277 NLRB No. 139
(district of international U did not ratify or otherwise condone local U's refusing for two months to offer nonmember opportunity to take exam qualifying him for highest priority referral where, after investigating appeal, district representatives told him twice that passing nonmembers' exam would qualify him for highest priority referrals and encouraged him twice to take it)

5042-3380-2500 Approval of subordinates' rules determinative of liability

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) 278 NLRB No. 008
[responsibility for acts of officials of Local U imputed to District, since constitutional structure of International, District and subordinates reserved to District sufficiently detailed and extensive control over locals' affairs where District had authority to levy assessments on locals; further, District's representative was present as representative of District at which alleged unlawful actions against Charging Party taken]

5042-3380-7500 International

Montgomery Elevator Company 278 NLRB No. 122
[statements of local U officer imputed to International U where International had delegated many duties and functions to various local Us including initial resolution of work disputes on the local level, local responsibility of setting wage adjustments, retention by local of unpaid holidays, local control over establishment of shift work, and resolution of grievances on local level]

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) 278 NLRB No. 008
[responsibility for acts of officials of local U imputed to International since constitutional structure of International and its subordinate locals reserved to International and District sufficiently authority over local's affairs, where subordinate bodies must comply with decisions of International's officers, General Secretary-Treasurer had unlimited access to local's books and records, International had stringent control over strikes; further, International's representative threatened dissident Charging Party in order to silence him]

Iron Workers (Walker Construction Company) 277 NLRB No. 099
(conduct of International U's general president, general secretary, general treasurer, and general organizor imputed to International where *clear from their job descriptions and actual exercise of powers that officers of U were agents of U*)

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) 276 NLRB No. 141
(contention by U in one region (local) that conduct involved herein was engaged in by its international and did not automatically bind region, rejected, in view of provisions of international's constitution establishing it as single entity and having regions created for administrative convenience and not as autonomous organizations)

5042-3380-8100 Council or District

Southern Lumber Company, Inc. 279 NLRB No. 027
[U organizer and service representative for Council chartered by International to service and negotiate contracts for locals who conducted organizational compaign on behalf of international U, signed stipulation for certification upon consent election, and tally of ballots and met with E's attorney and requested bargaining on behalf of U, had both actual and apparent authority to act on behalf of local U]

Southern Lumber Company, Inc. 279 NLRB No. 027
[*spokesman for local U*, who was employed by council-subordinate entity to International as so designated by E's attorney, who introduced himself as U spokesman at meeting with E representatives, w/o objection from E or U representative, had both actual and apparent authority to act on behal of local U]

5042-3380-8700 Local not autonomous

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) 278 NLRB No. 008
[responsibility for acts of officials of local U imputed to International since constitutional structure of International and its subordinate locals reserved to International and District sufficiently authority over local's affairs, where subordinate bodies must comply with decisions of International's officers, General Secretary-Treasurer had unlimited access to local's books and records, International had stringent control over strikes; further, International's representative threatened dissident Charging Party in order to silence him]

Aeronautical Industrial District No. 91 and its Local Lodge No. 707, Machinists (Pratt & Whitney Division of UTC Technologies Corporation) 278 NLRB No. 008
[responsibility for acts of officials of Local U imputed to District, since constitutional structure of International, District and subordinates reserved to District sufficiently detailed and extensive control over locals' affairs where District had authority to levy assessments on locals; further, District's representative was present as representative of District at which alleged unlawful actions against Charging Party taken]

Pennsylvania Telephone Guild and The Philadelphia Division of The Pennsylvania Telephone Guild (Bell Telephone Company of Pennsylvania) 277 NLRB No. 055
(R/O directed to guild rather than division of guild as responsible party in proceeding where individual members were not members of divisions, there was only one constitution for guild and its divisions, parties to bargaining agreement were E and guild, and, while division representatives handled grievance matters, guild determined whether grievances would proceed to arbitration)

Inland Boatmen's Union of The Pacific, Hawaii Region (Dillingham Tug & Barge Company) 276 NLRB No. 141
(contention by U in one region (local) that conduct involved herein was engaged in by its international and did not automatically bind region, rejected, in view of provisions of international's constitution establishing it as single entity and having regions created for administrative convenience and not as autonomous organizations)

5042-6700 Agents

5042-6701 Generally

Indiana & Michigan Electric Company 273 NLRB No. 193
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd held that, with regard to specificity requirement for naming of U officials as opposed to specificity regarding what affirmative action can be expected of U in event of unlawful strike, it has long been established that U, like an E, acts through its agents and it would be radical departure from longstanding precedent to hold that U's contractual or other obligations must be explicitly designated as responsibility of specified officials or agents)

5042-6701-2500 Agency established by knowledge and acquiesence in performance of union functions

District 17, Mine Workers, and its Local 5869 (Dehue Coal Company, et al.) **275 NLRB No. 101**
(very presence of number of U field representatives on pickets lines made them participants to unlawful activity taking place)

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[unlawful acts during strike imputed to U, where U called strike, paid strike pay, authorized pickets to be present and to represent it, had knowledge of actions on picket line and did nothing to prevent illegal conduct, notwithstanding no U officers present at picket line when violence occured]

5042-6701-5000 Agency may be established by conduct

District 30, Mine Workers and Local 1834 (TCH Coal Company) **278 NLRB No. 045**
[local U's and District U's endorsement of protest activities of its President and other officers while local U picketed secondary E for not hiring former Ees of primary E, held violative, since any force *that back to work* directives (instructions to U members at U meeting) did carry was belied by local U's officials failure to return to work themselves after issuing such directives and refused to cross U picket lines. U, like an E, acts through its agents, Local U's officers are *admitted agents of U and their conduct, therefore, evidence Local's endorsement of protest activities*]

5042-6701-5025 Failure to repudiate conduct

Congreso De Uniones Industriales De Puerto Rico (Rice Growers Association of California (P.R.) Inc.) **279 NLRB No. 088**
[threat to physically attack, and later attack on Ee at E's plant gate in order to impede his access to work violation, where U picket captain observed conduct and permitted picket to remain on picket line after attack and where U did not repudiate his conduct and accepted him as U delegate, thereby silently adopting and approving violence]

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**
[U responsible for Ees' decision to respect picket line of another U strike taken in presence of high U official, notwithstanding U official response to several inquiries asking what to do was do whatever you want to do]

Penn Yan Express, Inc. **274 NLRB No. 057**
(U responsible for acts of newly elected U official as its agent where he visited E for *official* purpose of encouraging E to hire U workers on day after election and acted with apparent authority, since he could have reasonably been believed to be acting on U's behalf; moreover, his holding of elected office was substantial and persuasive evidence of his agency absent compelling contrary evidence; and U condoned his actions, since there was no evidence that U disavowed them after he took office)

5042-6767 Responsibility for acts within agent's scope of employment

5042-6767-2500 Absence of union policy supporting agent's action not controlling

Avis Rent-A-Car System, Inc. **280 NLRB No. 060**
[U is responsible for the acts of its authorized pickets even if not specifically authorized or if act is specifically forbidden; it is not necessary to establish identity of the picket engaged in misconduct or show he acted as U's agent, rather, U has affirmative obligation to control actions of unidentified pickets and cannot escape responsibility by contending that neither its business agent or picket captain were present when misconduct occurred]

5042-6767-5000 Apparent authority controlling

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[where U's strike coordinator, acting w/i scope of his general or apparent authority as U agent, was present during, and participated in, substantial amount of alleged unlawful picketing activity, at no time disavowed such conduct, or took steps to prevent further picketing, Bd held U was responsible for pickets' conduct, even though coordinator was not present on picket line when most of relevant events occurred]

Bristol Textile Co. **277 NLRB No. 182**
[Ee who served as U's presence w/i plant and as conduit between U and Ees, who perceived him as U's representative, held U's agent, notwithstanding U did not designate or pay him]

Upholstery Division of The United Steelworkers of America, AFL-CIO, Local Union 406-U (Jody Becker, An Individual) **JD-130-86**
[U bound by U steward's threat to Ee where steward was acting on U's behalf by giving Ee his monthly dues refund and had apparent authority to make threat]

5042-6767-5040 Express authorization not required

Avis Rent-A-Car System, Inc. **280 NLRB No. 060**
[U is responsible for the acts of its authorized pickets even if not specifically authorized or if act is specifically forbidden; it is not necessary to establish identity of the picket engaged in misconduct or show he acted as U's agent, rather, U has affirmative obligation to control actions of unidentified pickets and cannot escape responsibility by contending that neither its business agent or picket captain were present when misconduct occurred]

Woodlawn Hospital **274 NLRB No. 123**
(E's letter to U representing Ees on strike which informed U that Ees were discharged, held effective notice to Ees; contention that E must give actual notice to Ees themselves, rejected, since U was acting as agent of Ees; knowledge of discharge is imputed to Ees, where letter contained clear notice that strikers were discharged and where U asserted itself an agent of Ees by responding to letter on behalf of Ees as collective-bargaining agent; further, it is particularly appropriate in a strike situation, that a U be deemed to have broad authority to make and receive offers and proposals on behalf of strikers)

5042-6767-5080 Where authority not expressly limited

SDC Investment, Inc. **274 NLRB No. 078**
(Spanish-speaking U adherent to whom U organizer gave sample copy of leaflet to show his Spanish-speaking coworkers how to vote in election found U agent for purposes of circulating the leaflet, since U adherent was acting w/i his general authority from U organizer when he circulated the leaflet, although U organizer when he circulated the leaflet, although U organizer did not specifically authorize that particular act)

5042-6767-7500 Participation of agent in chain of union command

Lumber Production and Industrial Workers, Local 3171 (Louisiana-Pacific Corporation, Movie Springs Operation **274 NLRB No. 125**
(violation where U's vice president present, though no evidence he participated in, at time striking Ees threw rocks and eggs at nonstriking Ees' vehicles as they left E's facility and which caused bodily injury and property damage, since vice president failed to take any preventive or corrective action)

Woodlawn Hospital **274 NLRB No. 123**
(E's letter to U representing Ees on strike which informed U that Ees were discharged, held effective notice to Ees; contention that E must give actual notice to Ees themselves, rejected, since U was acting as agent of Ees; knowledge of discharge is imputed to Ees, where letter contained clear notice that strikers were discharged and where U asserted itself an agent of Ees by responding to letter on behalf of Ees as collective-bargaining agent; further, it is particularly appropriate in a strike situation, that a U be deemed to have broad authority to make and receive offers and proposals on behalf of strikers)

5042-6783 Special types of agents

Spring Valley Farms, Inc. **JD-(ATL)-54-86**
[*When agent is appointed to negotiate collective bargaining agreement, that agent is deemed to have apparent authority to bind his principal, absent clear notice to contrary. Where there is such notice, condition on agreement is imposed*]

5042-6783-2000 Attorney

Local Union No. 3, Electrical Workers (Burroughs Corp.) **281 NLRB No. 147**
[statements by counsel in course of their representational duties held attributable to client as admission against interest]

5042-6783-2500 Consultant

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[firm hired by U to provide guidance to U especially in regard to strike, held agent of U where agency admitted in prior case]

5042-6783-3000 Business agents

Metropolitan District Council of Philadelphia and Vicinity, Carpenters (E. Allen Reeves, Inc.) **281 NLRB No. 077**
[U's responsibility for mass picketing, blocking ingress to and egress from work sites, and threatening unspecified bodily harm to Ee photographing picketers established by U letter informing one E of intent to picket, U business agent's telephone conversation with second E, and business agents' presence at both Es' sites overseeing and in charge of picket lines on U's behalf]

District 17, Mine Workers, and its Local 5869 (Dehue Coal Company, et al.) **275 NLRB No. 101**
(U's field representatives with authority, as paid officials of U, to police bargaining agreements and to do organizing work, held agents of U)

5042-6783-3500 Coordinator

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[U's strike coordinator who acted as *representative* and spokesman for terminated Ees of E who had previously ceased operations at E's jobsite held agent of U in inducing and encouraging E's Ees to refuse to work at jobsite, where he informed E's Ees and its officials that ex-Ees of prior E had right to their former jobs and repeatedly urged them not to cross ex-Ees' picket line, that he was going to put ex-Ees back to work if E operated at jobsite, and that ex-Ees should have their jobs rather than E's Ees]

5042-6783-3500—Cont.

Mine Workers (Bronzite Mining Company, Inc.) 280 NLRB No. 068
[where U's strike coordinator, acting w/i scope of his general or apparent authority as U agent, was present during, and participated in, substantial amount of alleged unlawful picketing activity, at no time disavowed such conduct, or took steps to prevent further picketing, Bd held U was responsible for pickets' conduct, even though coordinator was not present on picket line when most of relevant events occurred]

5042-6783-4000 Foreman

Oil Field Construction Company JD-(SF)-104-86
[even assuming foreman, who was also U president and steward, caused or attempted to cause E to discriminate against Ees, ALJ held U did not thereby violate Act, since foreman was not acting w/i scope of his authority as agent of U but was acting as agent of E where, as supervisor he was intimately involved in job assignment process, while, as steward, his sole authority was to adjust Ee grievances, and, as U president, to preside over U meetings and to sign checks and official documents]

5042-6783-4500 Employee committee

L & J Equipment Company, Inc. 278 NLRB No. 074
[Bd accepted ct's opinion on remand as law of the case test for determining whether member of Ee organizing committee is U agent with respect to particular conduct, namely, (1) committee must possess actual authority to act on behalf of U; (2) member must be sufficiently active in committee that he had actual or apparent authority to act on its behalf; (3) acts of member must fall w/i scope of his role as member of committee; and (4) U must not have repudiated acts which, although unauthorized, fall w/i apparent authority of member]

L & J Equipment Company, Inc. 278 NLRB No. 074
[Bd accepted ct's opinion on remand as law of the case test for determining whether member of Ee organizing committee is U agent with respect to particular conduct, and noted that with respect to one of four criterions of test set forth by ct that acts of member must fall w/i scope of his role as member of committee ct had stated that U may be held accountable for unauthorized acts of member if acts would be generally regarded by reasonable third parties as connected with election campaign as w/i authority conferred by U on member]

L & J Equipment Company, Inc. 278 NLRB No. 074
[applying ct's agency test in its opinion on remand as law of the case, Bd held references by chairman of Ee organizing committee to possible future violence on picket line were attributable to U, where U assisted in forming committee, instructed it regarding organizing campaign, and entrusted it with organizing duties; chairman, authorized to act on behalf of committee with major role in campaign, was widely viewed by Ees as acting on U's behalf; his statements fell w/i ambit of his role as chairman; and U did not repudiate his conduct]

L & J Equipment Company, Inc. 278 NLRB No. 074
[applying ct's agency test in its opinion on remand as law of the case, Bd held statement by chairman of Ee organizing committee to Ee, regarded as anti-U, that if Ee signed U card pressures on him might cease was attributable to U]

Season-All Industries, Inc. 276 NLRB No. 139
(original or principal proponent of U organizing effort, who made initial contact with U and was sometimes member of groups of Ees who meet with E during U campaign, held not agent of U, since U never created in Ee actual or apparent authority to act as its general agent, nor assigned any representative functions, power or authority by U, nor did U ever invest group with any authority or give appearance of doing so)

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)
[E's contention that Bd should have applied party, rather than third-party, standard of review to conduct, because in-plant organizing committee members acted as U agents or alter egos, rejected where Bd found no connection between U and misconduct]

5042-6783-6000 Negotiator

Southern Lumber Company, Inc. 279 NLRB No. 027
negotiating committeemen who were elected by U, were identified to E as having been selected by U, and who participated in two meetings concerning layoffs, held agents of U]

5042-6783-7000 Officers and directors

Iron Workers (Walker Construction Company) 277 NLRB No. 099
(conduct of International U's general president, general secretary, general treasurer, and general organizer imputed to International where *clear from their job descriptions and actual exercise of powers that officers of U were agents of U*)

Lumber Production and Industrial Workers, Local 3171 (Louisiana-Pacific Corporation, Movie Springs Operation 274 NLRB No. 125
(violation where U's vice president present, though no evidence he participated in, at time striking Ees threw rocks and eggs at nonstriking Ees' vehicles as they left E's facility and which caused bodily injury and property damage, since vice president failed to take any preventive or corrective action)

Penn Yan Express, Inc. 274 NLRB No. 057
(U responsible for acts of newly elected U official as its agent where he visited E for *official* purpose of encouraging E to hire U workers on day after election and acted with apparent authority, since he could have reasonably been believed to be acting on U's behalf; moreover, his holding of elected office was substantial and persuasive evidence of his agency absent compelling contrary evidence; and U condoned his actions, since there was no evidence that U disavowed them after he took office)

5042-6783-7300 Executive Board

Carpenters Local 925; et al. (Charlene Seier, an Individual) 279 NLRB No. 145

United Telephone Answering and Communications Service Union, Local 780, AFL-CIO (Federated Communications Services, Inc.) 276 NLRB No. 028
(picketer telling strike replacement that she would kick her ass and her mother's ass violative; further, U held responsible for picketer's statements since picket line was officially authorized by U and person making statements was an elected member of U's executive board)

5042-6783-7400 Employee committee members

Southern Lumber Company, Inc. 279 NLRB No. 027
[*negotiating committeemen* who were elected by U, were identified to E as having been selected by U, and who participated in two meetings concerning layoffs, held agents of U]

L & J Equipment Company, Inc. 278 NLRB No. 074
[Bd accepted ct's opinion on remand as law of the case test for determining whether member of Ee organizing committee is U agent with respect to particular conduct, namely, (1) committee must possess actual authority to act on behalf of U; (2) member must be sufficiently active in committee that he had actual or apparent authority to act on its behalf; (3) acts of member must fall w/i scope of his role as member of committee; and (4) U must not have repudiated acts which, although unauthorized, fall w/i apparent authority of member]

L & J Equipment Company, Inc. 278 NLRB No. 074
[Bd accepted ct's opinion on remand as law of the case test for determining whether member of Ee organizing committee is U agent with respect to particular conduct, and noted that with respect to one of four criterions of test set forth by ct that acts of member must fall w/i scope of his role as member of committee ct had stated that U may be held accountable for unauthorized acts of member if acts would be generally regarded by reasonable third parties as connected with election campaign as w/i authority conferred by U on member]

L & J Equipment Company, Inc. 278 NLRB No. 074
[applying ct's agency test in its opinion on remand as law of the case, Bd held references by chairman of Ee organizing committee to possible future violence on picket line were attributable to U, where U assisted in forming committee, instructed it regarding organizing campaign, and entrusted it with organizing duties; chairman, authorized to act on behalf of committee with major role in campaign, was widely viewed by Ees as acting on U's behalf; his statements fell w/i ambit of his role as chairman; and U did not repudiate his conduct]

L & J Equipment Company, Inc. 278 NLRB No. 074
[applying ct's agency test in its opinion on remand as law of the case, Bd held statement by chairman of Ee organizing committee to Ee, regarded as anti-U, that if Ee signed U card pressures on him might cease was attributable to U]

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) JD-(NY)-54-86
[*shop committee* composed of Ees held agent of U where it resolved problems concerning individual workers or between Ees, was responsible for enforcing bargaining agreement, had authority to attempt to resolve disputes and to impose discipline, and did effectively recommend discipline; further, committee clothed by U with apparent authority to speak for it to Ees]

The May Department Stores Company JD-(SF)-13-85
(Ees who were members of U's in-plant *steering committee* and *organizing committee* held agents of U, since, members were clothed by U with *apparent authority*, where members were told by U to carry U's message to their respective departments, U's paid staff agents were not allowed on E's premises and members were the only way U had to disseminate its message, U gave members distinctive shirts and other trappings denoting their special status and U publicly portrayed members as being well-tutored in U's affairs and told voters to look to them for answers to their questions)

5042-6783-7800 Pickets, picket major's, etc.

Avis Rent-A-Car System, Inc. **280 NLRB No. 060**
[when a U authorizes a picket line, it is required to retain control over picketing. If U is unwilling or unable to take necessary steps to control its pickets, it must bear responsibility for their misconduct]

Avis Rent-A-Car System, Inc. **280 NLRB No. 060**
[U is responsible for the acts of its authorized pickets even if not specifically authorized or if act is specifically forbidden; it is not necessary to establish identity of the picket engaged in misconduct or show he acted as U's agent, rather, U has affirmative obligation to control actions of unidentified pickets and cannot escape responsibility by contending that neither its business agent or picket captain were present when misconduct occurred]

Congreso De Uniones Industriales De Puerto Rico (Rice Growers Association of California (P.R.) Inc.) **279 NLRB No. 088**
[threat to physically attack, and later attack on Ee at E's plant gate in order to impede his access to work violation, where U picket captain observed conduct and permitted picket to remain on picket line after attack and where U did not repudiate his conduct and accepted him as U delegate, thereby silently adopting and approving violence]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) **279 NLRB No. 025**
[U held not responsible for actions of unidentified individual on picket line who kicked nonstriking Ee; although U is responsible for actions of pickets on U-established picket line, it is not responsible for actions of mere passers-by who have no connection whatever to U]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) **279 NLRB No. 025**
[fact that individual was on sidewalk picketing with others among U's pickets and was in possession of picket sign held sufficient indicia that individual was one of U's pickets since exact identity of individual picket need not be established; and U was responsible for his action in hitting nonstriker with picket sign in violation of 8(b)(1)(A)]

Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local 705, a/w Teamsters (Emery Air Freight Corp.) **278 NLRB No. 168**
[U responsible for Ees' decision to respect picket line of another U strike taken in presence of high U official, notwithstanding U official response to several inquiries asking what to do was do whatever you want to do]

United Telephone Answering and Communications Service Union, Local 780, AFL-CIO (Federated Communications Services, Inc.) **276 NLRB No. 028**
(picketer telling strike replacement that she would kick her ass and her mother's ass violative; further, U held responsible for picketer's statements since picket line was officially authorized by U and person making statements was an elected member of U's executive board)

Local No. P-9, Food & Commercial Workers (Geo. A. Hormel & Company) **JD-125-86**
[if U calls strike, or otherwise authorizes picketing, any acts by pickets in furtherance of strike or picketing will normally be attributable to U, even if U had not authorized those particular acts or had specifically forbade them. It is responsibility of U to retain control over pickets to insure that they do not act improperly, and is not enough to give oral and written instructions to strikers not to commit acts of violence to absolve U of responsibility. There is not need to identify U officers at the picket line to impute wrongdoing to U]

5042-6783-9000 Shop steward

Upholstery Division of The United Steelworkers of America, AFL-CIO, Local Union 406-U (Jody Becker, An Individual) **JD-130-86**
[U bound by U steward's threat to Ee where steward was acting on U's behalf by giving Ee his monthly dues refund and had apparent authority to make threat]

Local 866, Teamsters (Richard Rapp, an Individual) **JD-(NY)-58-85**
(steward found U agent where he had apparent authority to speak on U's behalf as shown by his being appointed co-picket captain with responsibility for organizing and administering strike activity, acting for U at meetings by distributing strike benefits and withdrawal cards and taking down names, and signing memorandum of understanding and contract with U officer and business representative)

N.L.R.B. v. Electrical Workers, Local 745 **759 F.2d 533 (C.A. 6, Apr. 1985)**
(U steward who threatened Ee with fine if Ee testified against fellow Ee at grievance hearing, held agent of U, notwithstanding U constitution provided that stewards were not officers or agents of U, since U clothed stewards with apparent authority, where U had published article concerning disciplining of U members for testifying in favor of Es w/o consulting U steward)

5042-6783-8700 Chapel chairman

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) **275 NLRB No. 164**
(no violation where key U leader in plan involving mass entries onto jobsites of E had neither express, implied, nor apparent authority to bind U for his actions; no one on behalf of U either authorized or condoned his activities; he was not officer, nor Ee of U and was receiving no expense money on date in question)

5042-6783-9000 Steward

Electrical Workers, Local Union No. 211 (U.S. Capital Telecommunications Corp.) **279 NLRB No. 119**
[all E needs is *reasonable belief* that steward could carry out threat of work stoppage for finding of apparent authority]

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**
(although chief steward's failure to notify U representative of *ad hoc* resolutions regarding grievances and contractual matters constituted breach of his fiduciary obligation to U, he had both actual and apparent authority to enter into agreements with E on behalf of U, and such agreements, even to extent they in effect modified contract, became part of negotiated terms and conditions of employment)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd held that, with regard to specificity requirement for naming of U officials as opposed to specificity regarding what affirmative action can be expected of U in event of unlawful strike, it has long been established that U, like an E, acts through its agents and it would be radical departure from longstanding precedent to hold that U's contractual or other obligations must be explicitly designated as responsibility of specified officials or agents)

Oil Field Construction Company **JD-(SF)-104-86**
[even assuming foreman, who was also U president and steward, caused or attempted to cause E to discriminate against Ees, ALJ held U did not thereby violate Act, since foreman was not acting w/i scope of his authority as agent of U but was acting as agent of E where, as supervisor he was intimately involved in job assignment process, while, as steward, his sole authority was to adjust Ee grievances, and, as U president, to preside over U meetings and to sign checks and official documents]

Union Local 20408, United Warehouse, Industrial and Affiliate Trades Employees Union (Dubovsky & Sons, Inc., et al.) **JD-(NY)-54-86**
[U stewards held agents of U in view of their responsibility for enforcing terms of bargaining agreement, their authority to resolve problems, and in view of fact U clothed stewards with apparent autority to speak for it to Ees, and special status accorded stewards by bargaining agreement, including preferential seniority and mandatory arbitration of their discharges during which time they can remain at work even after being fired, and vast power of shop committee of which member, to resolve any differences]

5042-6783-9200 In-plant organizing committee members

L & J Equipment Company, Inc. **278 NLRB No. 074**
[Bd accepted ct's opinion on remand as law of the case test for determining whether member of Ee organizing committee is U agent with respect to particular conduct, namely, (1) committee must possess actual authority to act on behalf of U; (2) member must be sufficiently active in committee that he had actual or apparent authority to act on its behalf; (3) acts of member must fall w/i scope of his role as member of committee; and (4) U must not have repudiated acts which, although unauthorized, fall w/i apparent authority of member]

L & J Equipment Company, Inc. **278 NLRB No. 074**
[Bd accepted ct's opinion on remand as law of the case test for determining whether member of Ee organizing committee is U agent with respect to particular conduct, and noted that with respect to one of four criterions of test set forth by ct that acts of member must fall w/i scope of his role as member of committee ct had stated that U may be held accountable for unauthorized acts of member if acts would be generally regarded by reasonable third parties as connected with election campaign as w/i authority conferred by U on member]

L & J Equipment Company, Inc. **278 NLRB No. 074**
[applying ct's agency test in its opinion on remand as law of the case, Bd held references by chairman of Ee organizing committee to possible future violence on picket line were attributable to U, where U assisted in forming committee, instructed it regarding organizing campaign, and entrusted it with organizing duties; chairman, authorized to act on behalf of committee with major role in campaign, was widely viewed by Ees as acting on U's behalf; his statements fell w/i ambit of his role as chairman; and U did not repudiate his conduct]

L & J Equipment Company, Inc. **278 NLRB No. 074**
[applying ct's agency test in its opinion on remand as law of the case, Bd held statement by chairman of Ee organizing committee to Ee, regarded as

5042-6783-9200—Cont.

anti-U, that if Ee signed U card pressures on him might cease was attributable to U]

L & J Equipment Company, Inc. 278 NLRB No. 074

[applying ct's agency test in its opinion on remand as law of the case, Bd held that conduct of Ee, purportedlymember of Ee organizing committee, in hokding conversations with Ees waiting in line to vote in election was not attributable to U where ct's requirements for finding agency status were not met; namely, that member of Ee organizing committee, whose conduct is in question, must be sufficiently active in committee, indicating actual or apparent authority to act on behalf of committee, and member's acts must fall w/i scope of his role as member of committee]

Season-All Industries, Inc. 276 NLRB No. 139

]Bd has held with persistence, that membership once formal in-plant organizing committee does not automatically establish agency)

The May Department Stores Company JD-(SF)-13-85

(Ees who were members of U's in-plant *steering committee* and *organizing committee* held agents of U, since, members were clothed by U with *apparent authority*, where members were told by U to carry U's message to their respective departments, U's paid staff agents were not allowed on E's premises and members were the only way U had to disseminate its message, U gave members distinctive shirts and other trappings denoting their special status and U publicly portrayed members as being well-tutored in U's affairs and told voters to look to them for answers to their questions)

5042-6783-9300 Interpreter

State Garden Celery Company, Inc. JD-243-84

(individual who acted as interpreter during hiring of Spanish speaking individuals and who was used as conduit to convey instructions to Spanish speaking Ees, but exercised no control over Ees and possessed none of the indicia of supervisor)

5042-6783-9500 Rank-and-file employee

L & J Equipment Company, Inc. 278 NLRB No. 074

[applying ct's agency test in its opinion on remand as law of the case, Bd held that conduct of Ee, purportedlymember of Ee organizing committee, in hokding conversations with Ees waiting in line to vote in election was not attributable to U where ct's requirements for finding agency status were not met; namely, that member of Ee organizing committee, whose conduct is in question, must be sufficiently active in committee, indicating actual or apparent authority to act on behalf of committee, and member's acts must fall w/i scope of his role as member of committee]

Season-All Industries, Inc. 276 NLRB No. 139

(original or principal proponent of U organizing effort, who made initial contact with U and was sometimes member of groups of Ees who meet with E during U campaign, held not agent of U, since U never created in Ee actual or apparent authority to act as its general agent, nor assigned any representative functions, power or authority by U, nor did U ever invest group with any authority or give appearance of doing so)

Fruehauf Corpoartion 274 NLRB No. 067

(rank-and-file Ee was not an agent for U where Ee was no more than a *contact* at plant for U during organizing campaign, albeit Ee initiated U campaign, distributed authorization cards and was U's only in plant *contact*, and U did not hold Ee out as its agent or pay him for his efforts)

5042-6783-9600 Union adherent

SDC Investment, Inc. 274 NLRB No. 078

(Spanish-speaking U adherent to whom U organizer gave sample copy of leaflet to show his Spanish-speaking coworkers how to vote in election found U agent for purposes of circulating the leaflet, since U adherent was acting w/i his general authority from U organizer when he circulated the leaflet, although U organizer when he circulated the leaflet, although U organizer did not specifically authorize that particular act)

Chicago Metallic Corporation 273 NLRB No. 207

(U not responsible for U adherent's coercive and intimidating threats to anti-U Ees during U campaign in absence of evidence U had authorized or condoned such threats)

5042-6783-9700 Rank-and-file member

Bristol Textile Co. 277 NLRB No. 182

[Ee who served as U's presence w/i plant and as conduit between U and Ees, who perceived him as U's representative, held U's agent, notwithstanding U did not designate or pay him]

5056 MEMBERS

5056-0100 Generally

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(no violation where key U leader in plan involving mass entries onto jobsites of E had neither express, implied, nor apparent authority to bind U for his actions; no one on behalf of U either authorized or condoned his activities; he was not officer, nor Ee of U and was receiving no expense money on date in question)

5070 DEFENSES

5070-2000 Capacity of agent

United States Postal Service 275 NLRB No. 057

(threat by low-level supervisor to file lawsuit against U on grounds of blocking goals of supervisor and personal harassment, not violative since E *not* accountable for temporary supervisor's remarks while acting as temporary *low-level* supervisor; remarks concerned filing civil suit on supervisor's own personal behalf and did not involve any threatened retaliation by E who had no knowledge of remarks and were not attributable to E or w/i supervisor's responsibilities)

Woodlawn Hospital 274 NLRB No. 123

(E's letter to U representing Ees on strike which informed U that Ees were discharged, held effective notice to Ees; contention that E must give actual notice to Ees themselves, rejected, since U was acting as agent of Ees; knowledge of discharge is imputed to Ees, where letter contained clear notice that strikers were discharged and where U asserted itself an agent of Ees by responding to letter on behalf of Ees as collective-bargaining agent; further, it is particularly appropriate in a strike situation, that a U be deemed to have broad authority to make and receive offers and proposals on behalf of strikers)

Whisper Soft Mills, Inc. v. N.L.R.B. 754 F.2d 1381 (C.A. 9, Dec. 1984)

(E had no duty to bargain with District Council or local U (the latter being the certified representative), notwithstanding local U's contention it had delegated authority to District Council to bargain on its behalf, since District Council did not consent to local U's grant of authority where District Council claimed throughout negtotiations with E that local U did not want to be a party to any agreement and such statement was in effect a claim by District Council *not* to be an agent of local U)

5070-8000 Unauthorized acts

United States Postal Service 275 NLRB No. 057

(threat by low-level supervisor to file lawsuit against U on grounds of blocking goals of supervisor and personal harassment, not violative since E *not* accountable for temporary supervisor's remarks while acting as temporary *low-level* supervisor; remarks concerned filing civil suit on supervisor's own personal behalf and did not involve any threatened retaliation by E who had no knowledge of remarks and were not attributable to E or w/i supervisor's responsibilities)

Chicago Metallic Corporation 273 NLRB No. 207

(U not responsible for U adherent's coercive and intimidating threats to anti-U Ees during U campaign in absence of evidence U had authorized or condoned such threats)

5084 RATIFICATION OF ACTS OR STATEMENTS BY EMPLOYER OR UNION

District 30, Mine Workers and Local 1834 (TCH Coal Company) 278 NLRB No. 045

[local U's officials failure to return to work themselves after issuing such directives and refused to cross U picket lines. U, like an E, acts through its agents. Local U's officers are *admitted agents of U and their conduct, therefore, evidenced Local's endorsement of protest activities*]

Communications Workers, Local 6012 (Southwestern Bell Telephone Co.) 275 NLRB No. 210

(U president's statements prohibiting resignation held to constitute ratification of similar statements by U steward and individuals answering telephone at U hall)

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152

(no ratification by E when rank-and-file Ee, who had somehow come into possession of contract proposals prepared by E but not presented to Ees, presented these contract proposals on his own to Ees w/o knowledge by E, recounted to general manager what he had done and asked whether proposals still acceptable to E, general manager who had remained silent during Ee's recitation said that he would check with president)

725 CONTRACT LAW

0100 GENERALLY

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**

[U letter of agreement stating that it did not intend to have steward granted superseniority to represent himself--apparently no other unit Ees remained--notwithstanding superseniority provisions of contract, and that agreement was voidable by E or U by written notification at any time, not binding contract but statement of intent voidable by U at will and thus no basis for holding violative E's retention of U steward pursuant to U's invocation of superseniority clause]

Food & Commercial Workers, Local No. 304A v. N.L.R.B. **772 F.2d 421 (C.A. 8, Aug. 1985)**

(where Bd found that parties' disagreement went beyond language dispute but rather involved substance of contract terms, Bd found that assent did not occur and therefore Bd had no authority to order party to execute contract)

0150 TECHNICAL RULES OF CONTRACT LAW NOT NECESSARILY CONTROLLING UNDER NLRA

Inner City Broadcasting Corporation **281 NLRB No. 162**

Ashe Brick Company **280 NLRB No. 162**

[under traditional contract law, offer once rejected ceases to exist. However, Bd and cts have held that is not case in labor law]

NDK Corporation **278 NLRB No. 151**

[federal labor policy favors enforcement of written bargaining agreements and, in implementing such policy, cts accord labor contracts special, protected status and do not judge them by general principles applicable to common law contracts]

Ben Franklin National Bank **278 NLRB No. 136**

Americana Healthcare Center **273 NLRB No. 213**

(in determining whether underlying oral agreement has been reached, Bd is not strictly bound by technical rules of contract law but is free to use general contract principles adopted to bargaining context; thus, acceptance of final offer of complete bargaining agreement manifests mutual assent, creating binding bargaining agreement, and therefore triggers duty to execute written contract on request embodying that agreement)

N.L.R.B. v. Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. **785 F.2d 46 (C.A. 2, Mar. 1986)**

[purchaser of predecessor's business may voluntarily assume predecessor's labor contract, and, in determining whether purchaser has done so, Bd is not bound by technical rules of contract law but may adapt these rules to collective bargaining context]

3300 FORMATION OF A CONTRACT

3325 OFFER

3325-8000 No length of time specified for acceptance, reasonable time

Inner City Broadcasting Corporation **281 NLRB No. 162**

[under labor law, open ended offer may be accepted after reasonable period of time even if accepting party has earlier rejected offer or made counterproposal, and such acceptance will be binding upon both parties, provided offer has not been withdrawn prior to acceptance; on the other hand, offering party may condition offer upon acceptance by specified deadline, thereby precluding making of contract if other party fails to accept prior to deadline; in such case, offer is construed as being withdrawn if acceptance does not come by expressed desdline]

Teamsters Local Union No. 688, a/w Teamsters v. N.L.R.B. (Crown Cork and Seal Company, Inc.) **756 F.2d 659 (C.A. 8, Mar. 1985)**

(E's offer in settlement of outstanding claims arising from plant closing did not lapse notwithstanding offer rejected immediately by U and remained outstanding at least 5 months, as offer never explicitly withdrawn, E did not have reasonable belief offer had lapsed since it asked U to put its acceptance in writing after U orally accepted it, and E never told U it considered acceptance *too late*; furthermore, even if original offer lapsed, E's request for written acceptance construed as recognition of existing and open offer or renewal of previous offer that expired

3325-6300 Misrepresentation of offer

NDK Corporation **278 NLRB No. 151**

[E's defense to its repudiation of contract and other related unlawful conduct on ground U official made fraudulent misrepresentation to E by promising that U would not demand contract compliance, rejected; E's defense was not established since U official did not meet requirement for fraudulent misrepresentation that he knew statement was false and was intended to deceive, where U's contract compliance efforts did not begin until year later; and party *in pari delicto* has no justifiable right to rely on promise having illegal purpose, especially when made with intent to undermine rights of third parties]

Victor Wooten, d/b/a Diablo Paving **JD-(SF)-98-86**

[E executed binding 8(f) agreement with U and was not misled by U agents into thinking agreement was limited to only single construction project, where agreement was clear on its face and contained nothing to indicate it was limited to single project; it explicitly incorporated master agreement by reference, including its duration; U agents did not seek to convey impression to E, either by conduct or statements, that document was anything other than standard shortform U agreement; and E, who had agreement in his possession discussed matter with his company manager]

3325-6700 When terminated

3325-6717 Rejection

Ashe Brick Company **280 NLRB No. 162**

[under traditional contract law, offer once rejected ceases to exist. However, Bd and cts have held that is not case in labor law]

Ben Franklin National Bank **278 NLRB No. 136**

[bargaining contract offer is not automatically terminated upon rejection by other party to bargaining process, and, in absence of prior withdrawal of proposal, either expressly, or through operation of changed circumstances giving rise to reasonably based conclusion that offer has been withdrawn, rejecting party may supercede its previous action and accept proposal, giving rise to legal imperative on part of offer or to abide by mandate of Section 8(d) of Act]

Ben Franklin National Bank **278 NLRB No. 136**

[no basis herein for invalidating U's acceptance on either elapse of 34 days since E's submission of final offer of acceptance, or passage of 23 days from date of initial rejection by U to date of U's ultimate acceptance, since E fixed no date on which offer would expire, nor took any action expressly withdrawing offer prior to U's dispatch of its telegraphic acceptance message; nor did U's failure to request negotiations in interval between between its initial rejection and final acceptance of E's offer release E from obligations of certification year and at no time prior to U's dispatch of acceptance did E withdraw acceptance]

Spring Valley Farms, Inc. **JD-(ATL)-84-86**

[rejection of offer does not operate to render offer null and void. Proposal remains viable and subject to acceptance for reasonable time barring unusual circumstances]

3325-6717-3300 By counter offer

Inner City Broadcasting Corporation **281 NLRB No. 162**

[under labor law, open ended offer may be accepted after reasonable period of time even if accepting party has earlier rejected offer or made counterproposal, and such acceptance will be binding upon both parties, provided offer has not been withdrawn prior to acceptance; on the other hand, offering party may condition offer upon acceptance by specified deadline, thereby precluding making of contract if other party fails to accept prior to

3325-6717-3300—Cont.

deadline; in such case, offer is construed as being withdrawn if acceptance does not come by expressed deadline]

Ashe Brick Company 280 NLRB No. 162

[enforceable contract formed and E obligated to execute and abide by contract, where U accepted unequivocally w/o modification E's complete contract package since E's proposals were still on bargaining table, notwithstanding U had rejected some proposals and made some counter proposals, and that U's acceptance was over 3 months after last bargaining session, absent evidence E had withdrawn proposals prior to U's acceptance, and where U's mention of certain terms in telegram of acceptance were merely mention of certain terms already reached and not offer of new terms]

3325-6717-6700 By refusal

Inner City Broadcasting Corporation 281 NLRB No. 162

[under labor law, open ended offer may be accepted after reasonable period of time even if accepting party has earlier rejected offer or made counter-proposal, and such acceptance will be binding upon both parties, provided offer has not been withdrawn prior to acceptance; on the other hand, offering party may condition offer upon acceptance by specified deadline, thereby precluding making of contract if other party fails to accept prior to deadline; in such case, offer is construed as being withdrawn if acceptance does not come by expressed deadline]

Ashe Brick Company 280 NLRB No. 162

[enforceable contract formed and E obligated to execute and abide by contract, where U accepted unequivocally w/o modification E's complete contract package since E's proposals were still on bargaining table, notwithstanding U had rejected some proposals and made some counter proposals, and that U's acceptance was over 3 months after last bargaining session, absent evidence E had withdrawn proposals prior to U's acceptance, and where U's mention of certain terms in telegram of acceptance were merely mention of certain terms already reached and not offer of new terms]

Teamsters Local Union No. 688, a/w Teamsters v. N.L.R.B. (Crown Cork and Seal Company, Inc.) 756 F.2d 699 (C.A. 8, Mar. 1985)

(E's offer in settlement of outstanding claims arising from plant closing did not lapse notwithstanding offer rejected immediately by U and remained outstanding at least 5 months, as offer never explicitly withdrawn, E did not have reasonable belief offer had lapsed since it asked U to put its acceptance in writing after U orally accepted it, and E never told U it considered acceptance *too late*; furthermore, even if original offer lapsed, E's request for written acceptance construed as recognition of existing and open offer or renewal of previous offer that expired

3325-6733 Lapse of time or occurrence of condition

Inner City Broadcasting Corporation 281 NLRB No. 162

[under labor law, open ended offer may be accepted after reasonable period of time even if accepting party has earlier rejected offer or made counter-proposal, and such acceptance will be binding upon both parties, provided offer has not been withdrawn prior to acceptance; on the other hand, offering party may condition offer upon acceptance by specified deadline, thereby precluding making of contract if other party fails to accept prior to deadline; in such case, offer is construed as being withdrawn if acceptance does not come by expressed deadline]

Ashe Brick Company 280 NLRB No. 162

[enforceable contract formed and E obligated to execute and abide by contract, where U accepted unequivocally w/o modification E's complete contract package since E's proposals were still on bargaining table, notwithstanding U had rejected some proposals and made some counter proposals, and that U's acceptance was over 3 months after last bargaining session, absent evidence E had withdrawn proposals prior to U's acceptance, and where U's mention of certain terms in telegram of acceptance were merely mention of certain terms already reached and not offer of new terms]

Toyota of San Francisco 280 NLRB No. 093

[post strike efforts by U to accept offer made by E on condition there would be no strike were nullity as no offer outstanding upon commencement of strike]

Ben Franklin National Bank 278 NLRB No. 136

[no basis herein for invalidating U's acceptance on either elapse of 34 days since E's submission of final offer of acceptance, or passage of 23 days from date of initial rejection by U to date of U's ultimate acceptance, since E fixed no date on which offer would expire, nor took any action expresly withdrawing offer prior to U's dispatch of its telegraphic acceptance message; nor did U's failure to request negotiations in interval between between its initial rejection and final acceptance of E's offer release E from obligations of certification year and at no time prior to U's dispatch of acceptance did E withdraw acceptance]

R.E.C. Corporation 277 NLRB No. 120

(E's refusal to sign bargaining agreement until U's long time shop chairman fulfills his promise to sign letter resigning from E's employ, unlawful, absent express agreement that conditioned E's signing of agreement on resignation letter; E's contention agreement to sign retirement letter was *side agreement* and integral part of renewal contract, thus refusal to execute letter abrogated entire agreement, barred by parol evidence rule in that E thereby would seek to change term of contract)

Teamsters Local Union No. 688, a/w Teamsters v. N.L.R.B. (Crown Cork and Seal Company, Inc.) 756 F.2d 699 (C.A. 8, Mar. 1985)

(E's offer in settlement of outstanding claims arising from plant closing did not lapse notwithstanding offer rejected immediately by U and remained outstanding at least 5 months, as offer never explicitly withdrawn, E did not have reasonable belief offer had lapsed since it asked U to put its acceptance in writing after U orally accepted it, and E never told U it considered acceptance *too late*; furthermore, even if original offer lapsed, E's request for written acceptance construed as recognition of existing and open offer or renewal of previous offer that expired

3325-6750 Revocation of offer

Inner City Broadcasting Corporation 281 NLRB No. 162

[under labor law, open ended offer may be accepted after reasonable period of time even if accepting party has earlier rejected offer or made counter-proposal, and such acceptance will be binding upon both parties, provided offer has not been withdrawn prior to acceptance; on the other hand, offering party may condition offer upon acceptance by specified deadline, thereby precluding making of contract if other party fails to accept prior to deadline; in such case, offer is construed as being withdrawn if acceptance does not come by expressed deadline]

Felbro, Inc. 274 NLRB No. 186

(E's refusal to abide by contract, on grounds that it revoked its offer before it was notified of contract's ratification by membership, violative, where E and U had agreed on all terms of contract and Ees ratified contract; further, fact that E was not notified of ratification was immaterial to its attempt to revoke offer)

Norsk Hydro Aluminum, Inc. JD-(ATL)-14-86

[E's refusal to execute contract, not violative, since there was no meeting of the minds on major issue of wages where although e had made offer on wages, offer was withdrawn before acceptance by U]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[E's refusal to execute agreed upon contract upon ratification by Ees, which was only condition to execution of contract agreed to, unlawful; E's contention that it have effectively revoked offer by its mailgram sent to U prior to U's mailing notification of ratification vote, rejected, since ratification, not notification of vote, was critical act]

3350 ACCEPTANCE

3350-0100 Generally

Hydro Conduit Corporation 278 NLRB No. 164

[mere filing and service of ULP charge alleging E refused to execute an agreement does not constitute notice of acceptance of an offer in collective bargaining negotiations between private parties so as to make E's failure to execute agreement, when there has otherwise not been a valid acceptance, a violation of Section 8(a)(5)]

Americana Healthcare Center 273 NLRB No. 213

(in determining whether underlying oral agreement has been reached, Bd is not strictly bound by technical rules of contract law but is free to use general contract principles adopted to bargaining context; thus, acceptance of final offer of complete bargaining agreement manifests mutual assent, creating binding bargaining agreement, and therefore triggers duty to execute written contract on request embodying that agreement)

3350-1400 By promise or act

Jack Nyhiel, A Sole Proprietorship, d/b/a Joey's Stables 279 NLRB No. 097

[E's negotiators did not agree with U's position on E's contract proposals by assertedly shaking their heads since, while shake of head could, under some circumstances, bind headshaker to terms of contract, headshaking must, in the very least, be in response to specific proposal or counter-proposal, which was not the case herein]

3350-2500 Must embody all the terms

Ashe Brick Company 280 NLRB No. 162

[enforceable contract formed and E obligated to execute and abide by contract, where U accepted unequivocally w/o modification E's complete contract package since E's proposals were still on bargaining table, notwithstanding U had rejected some proposals and made some counter proposals, and that U's acceptance was over 3 months after last bargaining session, absent evidence E had withdrawn proposals prior to U's acceptance, and where U's mention of certain terms in telegram of acceptance were merely mention of certain terms already reached and not offer of new terms]

3350-2500—Cont.

Interprint Co. 273 NLRB No. 222

(E's refusal to execute allegedly agreed-upon contract on grounds that there was no *meeting of the minds*, not violative, where draft of contract submitted by U to E did not contain commencement or termination dates and no dates were agreed upon by parties during negotiations, several clauses in draft were omitted or altered by U to make contract more acceptable to U, and ALJ, during the hearing, added or omitted terms to contract which in fact the parties had never agreed to, and in effect wrote the contract for the parties, contrary to Bd's remedial powers as interpreted in *H.K. Porter*)

Spring Valley Farms, Inc. JD-(ATL)-54-86

[E obligated to sign agreement reached notwithstanding allegations of rejection by U membership, no meeting of minds over checkoff provision, length of contract and its effective date, where, in fact, ratification by membership not required, agreement, in fact, reached over checkoff and term of contract, and though effective date of contract left blank and parties had not discussed a date for signing, parties were in agreement contract would be effective on signing and so ALJ set effective date 1 week after U's notification to E of its acceptance]

3350-2800 Must be unequivocal

Ashe Brick Company 280 NLRB No. 162

[enforceable contract formed and E obligated to execute and abide by contract, where U accepted unequivocally w/o modification E's complete contract package since E's proposals were still on bargaining table, notwithstanding U had rejected some proposals and made some counter proposals, and that U's acceptance was over 3 months after last bargaining session, absent evidence E had withdrawn proposals prior to U's acceptance, and where U's mention of certain terms in telegram of acceptance were merely mention of certain terms already reached and not offer of new terms]

3350-4300 Must comply with terms of offer

Spring Valley Farms, Inc. JD-(ATL)-54-86

[E obligated to sign agreement reached notwithstanding allegations of rejection by U membership, no meeting of minds over checkoff provision, length of contract and its effective date, where, in fact, ratification by membership not required, agreement, in fact, reached over checkoff and term of contract, and though effective date of contract left blank and parties had not discussed a date for signing, parties were in agreement contract would be effective on signing and so ALJ set effective date 1 week after U's notification to E of its acceptance]

3350-4333 Must be in manner and time specified in offer

Crown Cork & Seal Company, Inc. 275 NLRB No. 207

(no lapse of offer prior to acceptance)

3350-7000 Acceptance takes effect when sent, if sent as per offeror's terms

Ben Franklin National Bank 278 NLRB No. 136

[E's contention that under technical rules of contract law it was not obligated to execute contract, since U's acceptance of E's offer was not effective until U's mailgram of acceptance was received, which was after expiration of certification year, rejected, since technical rules of contract law do not control collective bargaining, and further, assuming arguendo applicability of technical contract rules, U's acceptance was opeative when its mailgram of acceptance was dispatched]

6700 CONSTRUCTION OF CONTRACT

6717 WRITTEN TERMS OF CONTRACT ARE CONCLUSIVE

6717-1200 Ordinary meaning of language is given to words

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[words parties use in drafting contracts are only evidence of their intent; words are not themselves the parties' intent; Bd may not, in guise of enforcing *plain meaning* of contractual language, erect inflexible presumption on issue turning on parties' *actual* intent; intent of parties to bargaining agreements is not to be discerned by reference to abstract definitions unrelated to context in which parties bargained, especially where bargaining history is crucial to understanding of that intent]

6717-7500 Where words are ambiguous or have more than one meaning they are construed against one who drafted contract

Ballou Brick Co. 277 NLRB No. 009

(where E had printed two rules in Ee handbook, one of which flatly forbids any solicitation or distribution at any time and the other which allowed solicitation or distribution on *non-work time*, Bd held that first rule was clearly unlawful and was not saved by second rule since Ees were never told that second rule was E's real rule and further, any ambiguity in two rules was solely the responsibility of E and therefore, E bears the risk the ambiguity will be held against it)

6733 CONTRACT INTERPRETATION

6733-0100 Generally

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[while Bd may interpret bargaining agreements when they are raised as defenses in ULP proceedings, ct's approach is to extend deference to Bd's factual findings on matters bearing on intent of parties, but not to ultimate legal conclusions attached to parties' words and conduct]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[Bd's interpretation of contractual provisions is entitled to no particular deference; if deference were afforded Bd's intrepretation of bargaining agreements, it would be free to apply different standards of interpretation than those applied by cts in Sec. 301 suits, thereby undermining voluntary bargaining process and exerting disruptive influence upon both negotiation and administration of collective agreements]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[standards governing question whether contract *waives* statutory rights and provides defense to ULP charge do not differ from those cts apply in Sec. 301 breach of contract suits; it is not appropriate in either context to interpret agreements in vacuum; rather, they must be read in light of realities of labor relations and federal labor policy; *clear and unmistakable* test dictates that waiver of statutory rights may not be inferred casually, but it also cannot be applied woodenly; whether rights have been waived depends on circumstances of each case]

6733-1000 Board not compelled to decide between conflicting, reasonable interpretations of contract

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) 276 NLRB No. 077

(where depending on whether *owner-operators* are Ees or independent contractors, agreement alleged to violate Section 8(e) may be primary in nature and lawful, or secondary and unlawful, Bd applies rules of construction. If meaning of clause clear Bd will determine validity under 8(e) and where clause not clearly unlawful, Bd will interpret it to require no more than required by law. But, if ambiguous, Bd will not presume unlawfulness, and absent extrinsic evidence of whether clause intended to be administered in lawful or unlawful manner, Bd will not pass on its validity)

Cement Masons, Local 627, Plasterers (Jack Hart Concrete Construction) 274 NLRB No. 187

(Bd dismissed C alleging U unlawfully refused to bargain with E where both parties had reasonable, though differing, interpretation of ambiguous termination provision of original contract agreed to by parties, and Bd refused to endorse any of parties' interpretation)

6733-1500 Board may resolve questions of contract interpretation to determine whether unfair labor practice committed

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) 276 NLRB No. 077

(where depending on whether *owner-operators* are Ees or independent contractors, agreement alleged to violate Section 8(e) may be primary in nature and lawful, or secondary and unlawful, Bd applies rules of construction. If meaning of clause clear Bd will determine validity under 8(e) and where clause not clearly unlawful, Bd will interpret it to require no more than required by law. But, if ambiguous, Bd will not presume unlawfulness, and absent extrinsic evidence of whether clause intended to be administered in lawful or unlawful manner, Bd will not pass on its validity)

Railway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer 274 NLRB No. 198

(where case presented allegations that E had unlawfully repudiated both contract and U's representative status resulting in breakdown of contractual relationship, ALJ invoked Bd's *superior authority* to decide such issues of contract interpretation, or subject matter of pending or potential grievances, in order to pass upon and if necessary remedy alleged ULPs)

N.L.R.B. (Steven R. Lovell, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)

(it is well w/i NLRB's authority to interpret collective bargaining agreements in order to determine whether or not ULPs have been committed)

6733-6500 Clause not clearly unlawful on its face will be interpreted to require no more than what is allowed by law

6733-6500—Cont.

Liquid Carbonic Corporation — 277 NLRB No. 091

6733-7000 Past practices used in interpreting contract

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers — 778 F.2d 284 (C.A. 6, Dec. 1985)

[confining discussion of alleged U steward exception to referral process to analysis of *four corners* of agreement erroneous in labor agreement context, since, notwithstanding exception was not explicity stated in agreement, Bd could have found that law of shop governed selection of stewards]

N.L.R.B. v. Americana Healthcare Center — 782 F.2d 941 (C.A. 11, Feb. 1986)

[Bd order enforced where E and U duly negotiated contract for unit Ees which negotiations, inter alia, included Ee sick leave benefits were omitted from parties' written contract by inadvertence and mutual mistake, substantial evidence supported Bd's determination that parties agreed to continue sick leave benefits according to previous practice]

6733-7500 Extrinsic evidence not admissible to impeach written terms

N.L.R.B. (Steven R. Lovell, etc.) v. Electrical Workers, Local 11 — 772 F.2d 571 (C.A. 9, Sep. 1985)

(where contractual provisions are unambiguous, NLRB need not consider extrinsic evidence. Parol evidence is therefore not only unnecessary but irrelevant)

6733-8000 Provisions interpreted

6733-8010 Duration and termination

The Gateway Theatre Corporation d/b/a Senator Threatre, Capitol Hill Cinemas — 277 NLRB No. 186 one work there had been no complaint, unlawful, since motivated by E's U animus, notwithstanding E's offer to rehire Ee and Ee's refusal because he did not wish to cross picket line, inasmuch as E's offer was not to retain Ee, but to rehire him and does not detract from fact E discharged Ee for no valid reason]

Cement Masons, Local 627, Plasterers (Jack Hart Concrete Construction) — 274 NLRB No. 187

(Bd dismissed C alleging U unlawfully refused to bargain with E where both parties had reasonable, though differing, interpretation of ambiguous termination provision of original contract agreed to by parties, and Bd refused to endorse any of parties' interpretation)

6733-8020 No strike clause

Nicholas, Inc. and Nicholas, Inc., Debtor in Possession — JD-(NY)-31-86

[in cases arising before amendments to Bankruptcy Act effective, E, debtor-in-possession, lawfully discharged Ees for striking in violation of no-strike provision in contract where strike occurred during interim period of E petitioning court approval to reject contract and prior to court granting petition, and E continued to abide by terms of contract during this period, thus affirming contract]

Local Union 1392, Electrical Workers v. N.L.R.B. (Indiana & Michigan Electric Co.) — 786 F.2d 733 (C.A. 6, Mar. 1986)

[where E imposing more severe disciplinary suspensions on U stewards for violating no-strike provision, not unlawful where contractual language showed U intent for its officials to attempt to prevent unauthorized work stoppages, and this language constituted *clear and unmistakable waiver* of officials right to be free from selective discipline]

International Molders and Allied Workers Union, Local No. 164 v. N.L.R.B. — 765 F.2d 858 (C.A. 9, July 1985)

(blanket no-strike clause held waiver of right to strike during both arbitration proceeding and judicial review of arbitration decision, since no-strike clause presumed coterminous with arbitration process, and judicial review is part of final and binding arbitration process; contention waiver not clear and unmistakable, as required by Bd rule, as no evidence parties contemplated question of whether no-strike clause would apply to pending judicial review of arbitration award, thus clause applies only to contingencies individually identified previously as being w/i its coverage, rejected)

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[ct rejected U's contention that Bd's treatment of sympathy strikes as matter of contract interpretation of no-strike clause was inconsistent with *clear and unmistakable* standard which is addressed to Ee's subjective intention to give up a statutory right rather than to objectively reasonable construction of contract that binds Ee; S.Ct has held that general no-strike clause which turns upon proper interpretation of contract, and relevant cases do not support proposition that waiver hinges upon Ee's subjective intent rather than mutual consent reflected in contract]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[rejecting U's contention that Bd's treatment of waiver of sympathy strikes as matter of contract interpretation of no-strike clause was inconsistent with *clear and unmistakable* standard addressed to Ees' subjective intent to give up statutory right, ct held federal labor policy is more threatened by interposition of artificial rules of construction upon parties' mutual intent when *waiver* of sympathy strikes is at stake, than by Bd's giving effect to clear impact of contractual language]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[Bd or ct is not prevented by Act from finding waiver of right to honor picket lines in contractual no-strike clause of sufficient breadth; in assessing whether broad no-strike clause covers sympathy strikes, however, unexpressed reservations of Ees cannot be treated as dispositive, and ct's task is simply to interpret parties' manifestation of mutual consent; and in determining meaning of general no-strike clause, ct is guided by S.Ct's holding that sympathy strike was w/i purview of general no-strike clause, which S.Ct based primarily on language of clause itself]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[where U contended that sympathy strikes are not covered by general no-strike clause because U's no-strike obligation has been held *quid pro quo* for E's agreement to arbitrate disputes, ct held that in some situations it will be apparent from agreement that its no-strike and arbitration clauses are functionally linked, but in other contexts no-strike clause may evidence parties' intent to reach *beyond* arbitral matters, such as E's promise not to engage in lockouts or other concessions; question ultimately depends on intent of contracting parties]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[U's contention that it was entitled to Bd's prior approach in *Davis-Mckee* (238 NLRB 652), that sympathy strike was not covered by no-strike clause, rejected, since at time no-strike clause was drafted Bd was willing to find that no-strike clause waived right to honor picket line; in effect U's argument was that parties, in later ratifying pre-existing contractual language, necessarily intended to incorporate changes in law *sub silentio*; even if such speculation was appropriate, *Davis-Mckee* was not *the law* in circuit where agreement was entered]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[U's contention that it was entitled to Bd's prior approach in *Davis-Mckee* (238 NLRB 652), that sympathy strike was not covered by no-strike clause, rejected; it is simply wrong to assume that *the law* to which parties refer in entering bargaining agreement's is exclusively, or even primarily, Bd law; such agreements are interpreted by arbitrators and cts as well, and cts must give broad, and virtually complete, deference to arbitrator's interpretation of agreement]

6733-8030 Effective date of contract

Spring Valley Farms, Inc. — JD-(ATL)-54-86

[E obligated to sign agreement reached notwithstanding allegations of rejection by U membership, no meeting of minds over checkoff provision, length of contract and its effective date, where, in fact, ratification by membership not required, agreement, in fact, reached over checkoff and term of contract, and though effective date of contract left blank and parties had not discussed a date for signing, parties were in agreement contract would be effective on signing and so ALJ set effective date 1 week after U's notification to E of its acceptance]

N.L.R.B. v. Deauville Hotel — 751 F.2d 1562 (C.A. 11, Feb. 1985)

(ratifications by U members created enforceable agreement even though contract was not signed until three days later)

6733-8036 Recognition in futuro of bargaining representative

Liquid Carbonic Corporation **277 NLRB No. 091**

(Bd held that contract clause requiring E to have its Ees employed by whomever E may choose to subcontract unit work to, and which required any subcontractor employing E's Ees to agree to entire contract covering unit Ees, was not violative on its face of Section 8(e); therefore, C was dismissed and deferral was appropriate to arbitrator's finding that E violated contract by subcontracting unit work since arbitrator expressly considered allegations of C)

6733-8045 Checkoff

United States Postal Service **280 NLRB No. 169**

[E's and U's refusing to honor Ees' revocations of dues-checkoffs, violative where checkoff authorizations were revoked by operation of law when U membership ceased to exist by virtue of effective resignation from membership]

United States Postal Service **279 NLRB No. 008**

[agreement to assign membership dues to U ceased to exist for purposes of dues checkoff when Ee resigned from U and revoked authorization, notwithstanding revocation was not w/i *open* annual period designated in checkoff authorization and governing bargaining agreement, since authorization provided for payment of dues as quid pro quo for U membership, and valid resignation from U revoked authorization by operating of law]

6733-8047 Seniority

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**

[U letter of agreement stating that it did not intend to have steward granted superseniority to represent himself--apparently no other unit Ees remained--notwithstanding superseniority provisions of contract, and that agreement was voidable by E or U by written notification at any time, not binding contract but statement of intent voidable by U at will and thus no basis for holding violative E's retention of U steward pursuant to U's invocation of superseniority clause]

6733-8060 Bargaining *zipper* clause

BASF Wyandotte Corporation **278 NLRB No. 028**

[unilaterally restricting U representatives to cafeteria, rather than allowing them to walk around plant, and prohibiting them from talking to supervisors during U time, not violation, where alleged past practice of walking about plant was not proved, nor was it controlling where there was *complete agreement* clause that abolished past practices, and restrictions did not have substantial impact on U representatives' ability to investigate grievances or represent Ees]

Suffolk Child Development Center, Inc. **277 NLRB No. 158**

(no waiver of right to bargain over change in health insurance plan by agreeing to zipper clause where it was not intended to *wipe slate clean*)

N.L.R.B. v. Americana Healthcare Center **782 F.2d 941 (C.A. 11, Feb. 1986)**

[*zipper* clause in instant case must be read with implied exception that it has no application to agreement negotiated (by parties) pursuant to ct order but ommitted from written contract by inadvertence and mistake. Ct's reading of *zipper* clause leaves it ample scope for application, where it will not nullify statutory policy]

6733-8065 Management rights clause

BASF Wyandotte Corporation **278 NLRB No. 028**

[unilateral implementation of respirator seal rule that had effect of prohibiting wearing of facial hair by Ees whose jobs necessitated their wearing respiratory protective equipment, not violation where U waived right to bargain over rule by agreeing to management rights clause allowing E to make and enforce rules deemed necessary or proper for conduct of Ees and operation of plant]

Suffolk Child Development Center, Inc. **277 NLRB No. 158**

(no waiver of right to bargain over change in health insurance plan by U's agreeing to management rights clause, which did not mention plan)

Kansas National Education Association **275 NLRB No. 092**

(contract's management-rights provision standing alone held at best vague and as such insufficient to meet standard of *clear and unmistakable waiver* of U's right to be consulted about Ee transfer arrangements and did not privilege E to negotiate directly with Ee or to enter into transfer agreement with Ee; transfer rights were not necessarily contemplated by provision's broad reference to *ordinary and customary functions* of management nor was implementation of transfer agreement encompassed by provision's granting E right to adopt unspecified policies in furtherance of management functions)

Georgia Pacific Corporation **275 NLRB No. 017**

(no waiver of U's right to bargain regarding change in shift schedules by management rights clause which provided E retained right *to manage plant and direct working forces, including right to hire, suspend, discharge, promote, or transfer Ees, providing that such power vested in company shall not be used in violation of terms of this agreement*, since change in shift schedule conflicted with work week provision of agreement, and potentially with overtime provision that was based on seniority)

Kobell v. Thorsen Tool Co. **F.Supp.——(DC M.D. PA, Dec. 1982)**

[management rights clause that stated *company retains sole right to manage its business including but not limited to right to decide on method and place of manufacturing* did not constitute waiver by U of right to bargain regarding transfer of work, and preclude finding of reasonable cause to believe Act violated and issuance of Section 10(j) inj when E unilaterally decided to transfer work since clause might not be interpreted as waiver by Bd, where clause does not specifically reserve to E right to move part of operation to another facility in order to avoid high labor costs imposed by agreement]

6733-8075 Primary in nature (protect unit work) or secondary in nature (affect persons or employers not party to contract)

Operating Engineers, Local No. 701, etc. (Howard S. Lease Construction Co. & Associates) **276 NLRB No. 077**

(where depending on whether *owner-operators* are Ees or independent contractors, agreement alleged to violate Section 8(e) may be primary in nature and lawful, or secondary and unlawful, Bd applies rules of construction. If meaning of clause clear Bd will determine validity under 8(e) and where clause not clearly unlawful, Bd will interpret it to require no more than required by law. But, if ambiguous, Bd will not presume unlawfulness, and absent extrinsic evidence of whether clause intended to be administered in lawful or unlawful manner, Bd will not pass on its validity)

6733-8080 Union representation at disciplinary hearing

Prudential Insurance Company of America **275 NLRB No. 030**

(contract provision which provides that neither U nor its members shall interfere with E's right *to interview any Ee with respect to any phase of his work without the grievance committee being present*, held waiver of unit Ees' *Weingarten* rights, notwithstanding arguments that clause predated S.Ct's *Weingarten* decision and referred to grievance committee rather than a representative, and that U had sought removal of clause from contract; if clause did not waive *Weingarten* rights, then it would have no meaning at all)

6733-9000 **Modification of contract**

Automobile Workers, Local No. 1309 (International Harvester Company) **JD-18-86**

[U letter of agreement stating that it did not intend to have steward granted superseniority to represent himself--apparently no other unit Ees remained--notwithstanding superseniority provisions of contract, and that agreement was voidable by E or U by written notification at any time, not binding contract but statement of intent voidable by U at will and thus no basis for holding violative E's retention of U steward pursuant to U's invocation of superseniority clause]

6733-9050 Strike settlement agreement

Sheet Metal Workers, Local 208 (Paul Mueller Company) **278 NLRB No. 087**

[U charging and fining members who had crossed picket line, including one member who had not resigned from U prior to crossing picket line, unlawful, since by signing no-retaliation clause in strike settlement agreement U waived any right to discipline member for strike related activity; U's contention agreement signed under duress rejected, and parol evidence regarding U's contention no retaliation provision signed with understanding it was not applicable to internal U affairs, since provision clear and integrated into agreement]

6750 PAROL EVIDENCE

6750-0100 **Generally**

N.L.R.B. (Steven R. Lovell, etc.) v. Electrical Workers, Local 11 **772 F.2d 571 (C.A. 9, Sep. 1985)**

(where contractual provisions are unambiguous, NLRB need not consider extrinsic evidence. Parol evidence is therefore not only unnecessary but irrelevant)

6750-2500 **Agreements prior to or contemporaneous with an integrated agreement are admissible in evidence**

6750-2533 To establish meaning of integrated agreement

R.E.C. Corporation **277 NLRB No. 130**

(E's refusal to sign bargaining agreement until U's long time shop chairman fulfills his promise to sign letter resigning from E's employ, unlawful, absent express agreement that conditioned E's signing of agreement on resignation letter; E's contention agreement to sign retirement letter was *side agreement* and integral part of renewal contract, thus refusal to execute letter abrogated entire agreement, barred by parol evidence rule in that E thereby would seek to change term of contract)

6750-2567 To prove facts rendering agreement void or voidable for illegality, fraud, duress, mistake or insufficiency of consideration

Waldon, Incorporated 282 NLRB No. 082
[no valid contract where at time E executed contract it pointed out fact that there were errors in contract's wage clause, and that they should be corrected to reflect agreed upon wages; thus, there was no meeting of minds over essential element of contract, and thus, no contract]

NDK Corporation 278 NLRB No. 151
[upon execution of written contract, Act precludes E's reliance upon prior or contemporaneous oral agreement upon which its defense to alleged 8(a)(5) violation is based, and defenses based upon fraudulent misrepresentation concerning contract, whether innocent or fraudulent, cannot be relied upon to alter obligation of written bargaining agreement]

NDK Corporation 278 NLRB No. 151
[E's defense to its repudiation of contract and related conduct, herein found unlawful under federal labor policy, had no greater merit even if judged against more stringent common law principles, where contract was valid on its face, but E's admitted collateral understanding with U that contract would not be enforced was admission that E shared *in pari delicto* relationship with U officials, and under contract law no *in pari delicto* party may obtain legal redress, and law will not aid wrongdoer even if equally guilty offender escapes punishment]

6750-6700 To show agreement never reached

R.E.C. Corporation 277 NLRB No. 120
(E's refusal to sign bargaining agreement until U's long time shop chairman fulfills his promise to sign letter resigning from E's employ, unlawful, absent express agreement that conditioned E's signing of agreement on resignation letter; E's contention agreement to sign retirement letter was *side agreement* and integral part of renewal contract, thus refusal to execute letter abrogated entire agreement, barred by parol evidence rule in that E thereby would seek to change term of contract)

6750-7500 Where language employed leaves meaning obscure, parties' previous negotiations are admissible to show meaning of agreement

Whitley Products, Inc. JD-251-86
[toolroom Ee eligible for retirement under pension plan who voluntarily retired found eligible to receive payments provided by settlement agreement which included toolroom Ees whose employment ended for any reason other than voluntary resignation or discharge for joint cause where the term *voluntary resignation* was ambiguous with respect to its application to retirees, and external parol evidence showed that the parties intended to include voluntary retirees]

6767 USAGE IN INTERPRETATION - HABITUAL OR CUSTOMARY PRACTICE

6767-3300 Operative usages

6767-3367 Add to agreement or manifestation of intention, provisions in accordance with usage and not inconsistent with agreement of manifestation of intention

N.L.R.B. v. Americana Healthcare Center 782 F.2d 941 (C.A. 11, Feb. 1986)
[Bd order enforced where E and U duly negotiated contract for unit Ees which negotiations, inter alia, included Ee sick leave benefits were omitted from parties' written contract by inadvertence and mutual mistake, substantial evidence supported Bd's determination that parties agreed to continue sick leave benefits according to previous practice]

8300 WITHDRAWAL FROM CONTRACT

8375 CONTRACT RESCISSION

8375-5000 Unilateral mistake

Waldon, Incorporated 282 NLRB No. 082
[no valid contract where at time E executed contract it pointed out fact that there were errors in contract's wage clause, and that they should be corrected to reflect agreed upon wages; thus, there was no meeting of minds over essential element of contract, and thus, no contract]

Food & Commercial Workers, Local 274 (Millco, Inc.) 279 NLRB No. 026
[E's contention that U bargained in bad faith by not including most-favored-nations clause in final ratified contract, rejected and U's refusal to include such clause not violative, where such clause was never part of E's last and final offer to U, which was accepted, and issue of clause came up only after E realized that U had negotiated lower wages with a competitor, a fact not indicating mistake or fraud]

8700 ILLEGAL PROVISIONS

9100 BREACH OF CONTRACT

737 EVIDENCE

0100 GENERALLY

0150 FEDERAL RULES OF EVIDENCE, APPLICABILITY (SECTION 10(b))

0150-5000 *So far as practicable*

Malta Construction Company **276 NLRB No. 171**
(statement of fellow Ee of alleged discriminatee who did not testify at trial, held inadmissible under FRE 804(a) where there was no showing that E was unable to produce fellow Ee as witness; Bd precedent establishes that requirements of rule 804(a) must be met for affidavits of unavailable witness to be admissable)

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) **275 NLRB No. 164**
(U's claim that it was prejudiced by admission of improper hearsay evidence, on grounds that facts of instant case do not show *proper circumstance* to admit evidence, rejected where evidence in issue was properly admitted either because Bd was not strictly bound by Federal Rules of Evidence or because evidence was exception to hearsay rule)

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) **275 NLRB No. 164**
(general information brochure that was sales tool to acquaint people with supplies, was properly admitted, to permit witness to testify, as to origin of product, as business record pursuant to Federal Rules of Evidence 803(6), since it was report or record of supplier's business activities kept in regular course of its business activity)

1400 JUDICIAL AND OFFICIAL NOTICE

1401 GENERALLY

Advertisers Manufacturing Company **275 NLRB No. 019**
(a decision, as public document, is competent for official notice where it otherwise is to be shown properly material to issue in subsequent proceeding; and even contrarily, e.g., where decision is determined not one to be relied upon, initial review of decision for contended purpose served involves neither prejudial error, nor, in law, renders reviewing judge biased)

Advertisers Manufacturing Company **275 NLRB No. 019**
(where GC requested that official notice be taken of prior ALJ decisions which were pending on appeal to Bd, ALJ held *unqualified* reliance on official notice of decisional findings subject of unresolved exceptions is unwarranted, and that purpose is just as clearly unwarranted even where exceptions have not been pursued; however, it is unwarranted as well to hold that it is never appropriate to do so where central issue is related and controlling when it may be appropriate to do so *qualifiedly* to expedite a decision)

1401-3000 APA, Effect of

1401-5050 Official notice permissible

Advertisers Manufacturing Company **275 NLRB No. 019**
(Bd will take official notice of its own proceedings and decisions which it may rely on; where material issue of fact is identical and parties are same, finding in one proceeding may be evidence of finding in later proceeding and be considered as direct evidence of same where not prohibited by 10(b); or, if relevant fact e.g. be pre-10(b), although it may not be given independent and controlling weight, such fact may be used as background evidence for bearing on E motivation or U animus in regard to E's conduct w/i 10(b) period)

Electrical Workers Local Union #46 (PAC, Inc.) **273 NLRB No. 167**
(Rule 201(b) of Federal Rules of Evidence require that *a judicially noticed fact may be one not subject to reasonable dispute in that it is either (1) generally known w/i the territorial jurisdiction of the trial court...)*

1401-8900 Other

Advertisers Manufacturing Company **275 NLRB No. 019**
(assessment of a witness' credibility in a subsequent proceeding is not to be deemed governed by those made in an earlier one, and it is generally inappropriate for ALJ to rely on credibility findings made in another case)

1450 SPECIFIC FACTS NOTICED

1450-0900 Board decisions or pending cases

Londs Cablevision, Inc. and Cablevision Company, Inc. **277 NLRB No. 014**
(relevant facts concerning Ee evaluations from ALJ's decision in earlier Bd proceeding)

Iron Workers, Local 601 (Papco, Inc.) **276 NLRB No. 142**
(decision of ALJ in prior case adopted by Bd in absence of exceptions, since decision was a formal determination of Respondent's culpability under the Act—)

Chaim Babad, et al., A Co-Partnership, d/b/a Tilden Arms Management Co. and Toby Estates, Inc., a Single Employer **276 NLRB No. 117**
(judicial notice taken of similar unlawful conduct by E in prior Bd case)

Superior Container, Inc. **276 NLRB No. 056**
(GC's request that ALJ take judicial notice of ALJ's decision in prior case involving same E, for purpose of considering ALJ's findings and conclusions in prior case as dispositive of some elements of proof herein, denied, since seeking to attach finality to earlier findings of ALJ is result that can appropriately be accorded only to Bd decisions or those of ct; however, ALJ officially noticed existence of prior ULP proceeding and ALJ's decision to extent legitimately possible)

Superior Container, Inc. **276 NLRB Nos. 055, 056**
(while denying GC's mtn to consolidate cases involving same parties, Bd held that, to the extent such cases involve related issues, taking of judicial notice of respective decisions in each case was appropriate)

Bronx Metal Polishing Co., Inc. **276 NLRB No. 031**
(GC's request that ALJ take *judicial notice* of prior Bd decision involving same parties and similar issues, granted, but such proof of E's prior misconduct not given dispositive weight)

Caumano Bros., Inc. **275 NLRB No. 119**
(E's U animus found as reason for discharge of other Ees in another Bd decision relied upon for finding U animus behind discharge of Ees in instant case)

United States Postal Service **273 NLRB No. 217**
(charging party's mtn to strike part of Respondent's answering brief because brief contained references to answer filed by Intervenor to complaint in case currently pending before Bd, denied, since it is well settled that Bd may take official notice of its own proceedings)

Embossing Printers, Inc. **JD-19-85**
(prior ULP decision of Bd involving same E)

1450-2700 Commerce facts

Spring Valley Farms, Inc. **274 NLRB No. 091**
(GC's failure to put on evidence in *C* case to support jurisdictional allegations of C under Bd's direct outflow standard, did not prevent Bd from asserting jurisdiciton where ALJ took judicial notice of fact that transcript in prior *R* case involving same E contained a stipulation that E had received goods valued in excess of $50,000 directly from suppliers outside the state, thus satisfying Bd's direct inflow standard for asserting jurisdiction)

1450-4500 Federal laws, regulations, decisions, publications, etc.

Central Broadcast Company **280 NLRB No. 086**
[E's mtn to take judicial notice of, or reopen record to consider, decisions of EEOC and Oklahoma Human Rights Commission finding of no reasonable cause to believe E had discriminated against Ee, denied, since decisions were rendered under statutes with different definitions, policies, and purposes from those of NLRA, and E did not show that either agency considered or could have considered E's allegedly unlawful layoff of Ee; additionally, E did not explain its delaying until September the filing of decisions issued in June by the above governmental bodies]

1450-4800 State laws, regulation, decisions, publications etc.

Central Broadcast Company 280 NLRB No. 056
[E's mtn to take judicial notice of, or reopen record to consider, decisions of EEOC and Oklahoma Human Rights Commission finding of no reasonable cause to believe E had discriminated against Ee, denied, since decisions were rendered under statutes with different definitions, policies, and purposes from those of NLRA, and E did not show that either agency considered or could have considered E's allegedly unlawful layoff of Ee; additionally, E did not explain its delaying until September the filing of decisions issued in June by the above governmental bodies]

1450-6700 Arbitration and/or grievance decision

Drummond Coal Company, Inc. 277 NLRB No. 177
[arbitial award administratively noticed, since charging party's opposition provided no basis for not admitting award into evidence. See *Rule* 201 of F.R.E.]

1450-7200 Record in prior R proceeding involving same parties

Programming & Systems, Inc. 275 NLRB No. 157
(status of U as labor organization held res judicata where issue litigated in prior R case proceeding)

Spring Valley Farms, Inc. 274 NLRB No. 091
(GC's failure to put on evidence in *C* case to support jurisdictional allegations of C under Bd's direct outflow standard, did not prevent Bd from asserting jurisdiciton where ALJ took judicial notice of fact that transcript in prior *R* case involving same E contained a stipulation that E had received goods valued in excess of $50,000 directly from suppliers outside the state, thus satisfying Bd's direct inflow standard for asserting jurisdiction)

1450-8100 Record in prior ULP case against same party

Leeds Cablevision, Inc. and Cablevision Company, Inc. 277 NLRB No. 014
(relevant facts concerning Ee evaluations from ALJ's decision in earlier Bd proceeding)

1450-8900 Other

Rikal West, Inc. 274 NLRB No. 170
(how many weeks in given (calender) quarter)

2800 BURDEN OF PROOF

2810 STANDARD OF PROOF

2810-3300 On General Counsel--preponderance of evidence

Harry Hoffman & Son Printing 278 NLRB No. 101
[*condonation is factual matter which GC must prove by preponderance of evidence*]

2810-6700 On Respondent--rebut or meet presumption that violation occurred

American Bakeries Company and Local Union No. 51, Teamsters (Local No. 326, Bakery Workers) 280 NLRB No. 160
[while *ultimate burden* of persuasion of elements of an ULP and to show appropriateness of bargaining unit by a *preponderance of the testimony taken* (Section 10(b)) never shifts from GC, satisfaction of this burden may be accomplished by establishing an *unrebutted prima facie* case. *An unrebutted prima facie case necessarily amounts to proof by a preponderance of the evidence*]

Garrison Valley Center, Inc. 277 NLRB No. 164
(discharge of Ee who was most active Ee on behalf of U during U's organizing campaign allegedly because Ee left patient at E's nursing home unattended while performing other work, violative, since E failed to meet burden of establishing that E would have discharged Ee even in absence of her U activities. Record evidence demonstrated that E had tolerated brief absences for work-related reasons and would discharge an Ee *only* when serious injury or death resulted from Ee's conduct)

2810-7500 Abuse of discretion

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)
[*It is well settled that direct judicial review of Bd decision to certify bargaining representation on basis of election is extremely limited. We may assume soundness of election is not business of reviewing ct. Substantial evidence on record as whole standard applied to factual determinations should also apply to application of Bd's election rules to facts of given case. Abuse of discretion* standard applies only to applications of Bd policy and not to application of law to facts]

2810-9000 Substantial evidence

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)
[E has heavy burden establishing grounds for not enforcing Bd's bargaining order. In order to challenge Bd's policies directly, as opposed to application of these policies, movant must establish Bd's interpretation of law is unreasonable; i.e., E must establish that there is substantial evidence supporting conclusion that *any election irregularities or misconduct so impaired integrity of ballot result that invalidation of election is necessary*]

2810-9500 On union in establishing lack of knowledge in 8(b)(4) case that E lacked control of disputed work

United Scenic Artists, Local 829, Painters (Theatre Techniques, Inc.) 278 NLRB No. 046
[no violation found by Bd, applying law of case on remand, in U's coercion of neutral E lacking control of disputed work, where there was no *new credible evidence* to support inference that U knew that E other than neutral E contractually controlled disputed work]

2850 BURDEN OF GOING FORWARD WITH PROOF

2850-0100 Generally

B & W Machine & Welding Company JD-(SF)-107-86
[burden of proving supervisory status rests on party asserting such status]

2850-0800 In objections to election proceeding

Local 295-295C, Operating Engineers (Weather Wise Conditioning Corp.) 282 NLRB No. 044
[E has burden of proving that alleged objectionable threat to Ees was made by U representative during critical period after election ptn was filed]

Bo-Ed Inc. d/b/a Golden Fan Inn 281 NLRB No. 035
[party seeking to exclude an individual from voting has the burden of establishing that the individual is, in fact, ineligible to vote]

Collins Industries, Inc. JD-33-86
[even if E's contention was valid that, since U lost election by wide margin, it had greater burden of proof than had result been close, ALJ held such high burden was met where E's vitriolic anti-U speech to Ees day before election included various violations of Act and reached substantially all eligible voters day before election]

2850-1100 Beginning burden rests on General Counsel

2850-1133 Discriminatory reason for discharge or other action

Nation's Capital Area Local, American Postal Workers (United States Postal Service) 278 NLRB No. 110
[C dismissed where GC failed to establish that Ee's protected activity of filing charge with Bd was motivating, under *Wright Line*, factor in U's decision to remove Ee from steward's position]

United Cloth Company, Inc. 278 NLRB No. 088
[burden on GC to establish causal relationship between Ee's engaging in U or other protected activities and actions on part of their E which detrimentally affects such Ees' employment, and to provide prima facie showing sufficient to support inference that protected conduct was motivating factor in E's action against Ees]

Activ Industries, Inc. 277 NLRB No. 040
(in adopting ALJ's conclusion that E unlawfully terminated more than third of its work force, Bd emphasized that it was E's mass discharge, and not its selection of Ees for discharge that was unlawful; accordingly, GC was not required to show correlation between each Ee's U activity and his or her discharge)

Pullman Power Products Corporation 275 NLRB No. 112
(U activities of Ee, plus Ee's layoff, w/o causal connection do not alone make out case of prohibited discrimination; rather Bd must evaluate all relevant evidence to determine if GC has affirmatively shown that layoffs were unlawfully motivated)

Herrick & Smith v. N.L.R.B. 802 F.2d 565 (C.A. 1, Sept. 1986)
[Bd's initial burden is to make prima facie showing that Ee's protected conduct was substantial or motivating factor for discharge, after which burden of going forward shifts to E; amd Bd's showing must stand if supported by substantial evidence on the record, viewed as a whole]

ARA Leisure Services, Inc. v. N.L.R.B. 782 F.2d 456 (C.A. 4, Jan. 1986)
[*GC bears burden throughout to demonstrate that E's anti-U animus contributed to its decision to discharge Ees. He must demonstrate that Ees were engaged in protected activity, that E was aware of activity in that such activity was substantial or motivating reason for E's action. E faced with such evidence may then prove by preponderant evidence that worker would have been fired even in absence of U activity*]

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)
[*where discharged Ee alleges that his discharge constitutes ULP, GC bears burden of proving Ee's exercise of protected activity was motivating factor in*

2850-1133—Cont.

termination. As affirmative defense, E may show by preponderance of evidence that it would have terminated Ee despite protected activity]

2850-1133-5000 General Counsel may not rely on inferences

Enterprise Aggregates Corporation **276 NLRB No. 011**
(no violation when E who had paid retirement benefits previously refused to pay these benefits to strikers, in view of failure by GC to make out prima facie case that denial of benefits was based on Ees' protected activities GC relied solely on earlier case against E on same issue in which Bd found that E's refusal to pay benefits was based on E's animosity towards participants in strike. Absent any other evidence, Bd refused to infer same proximate cause in instant case especially in light of passage of more than year from end of strike and E ceasing operations until Ees requested benefits)

2850-1142 Arbitration award

Sawin & Co., Inc. **277 NLRB No. 044**
(burden is on GC to establish that arbitrator was not presented with facts relevant to resolving ULP issue)

Sawin & Co., Inc. **277 NLRB No. 044**
(burden of proof in discharge and discipline arbitrations is generally on E)

Cone Mills Corporation-White Oak Plant **273 NLRB No. 188**
(Bd reiterated *Olin Corp. clearly repugnant* standard that it would not require arbitrator's award to be totally consistent with Bd precedent; unless GC sustains his burden of proof that award is *palpably wrong*, i.e., that arbitrator's decision is not susceptible to interpretation consistent with Act, Bd will defer)

2850-1150 Justification of superseniority contractual provision

Dravo Corporation, Dravo Marine Equipment Company **276 NLRB No. 128**
(C dismissed where record insufficient to establish that U's vice-president and members of U's negotiating team were entitled to *contractual superseniority*, since they did not perform steward-like on-the-job grievance processing or contract administration; majority of negotiating meetings involved bargaining over such matters as contract concessions and subcontracting out work)

Laborers Local Union No. 380 (Mautz & Oren, Inc.) **275 NLRB No. 147**
(superseniority clause is presumptively unlawful, since it is not limited to layoff and recall of stewards, but extends by contract interpretation of arbitrator to overtime work and wage benefits for stewards on Saturday. Incumbent on Respondents to rebut presumption of unlawfulness, by demonstrating that Saturday overtime work for stewards serves legitimate statutory purpose other than impermissable one of giving stewards additional benefits to exclusion of nonsteward unit Ees)

Laborers Local Union No. 380 (Mautz & Oren, Inc.) **275 NLRB No. 147**
]*superseniority clause* in contract unlawful where Respondents did *not* demonstrate that payment for Saturday overtime work at date of time and one-half to steward would promote administration of collective-bargaining agreement beyond incidental and side benefits of having steward on job to police unit work)

2850-1185 Appropriateness of unit

American Bakeries Company and Local Union No. 51, Teamsters (Local No. 326, Bakery Workers) **280 NLRB No. 160**
[while *ultimate burden* of persuasion of elements of an ULP and to show appropriateness of bargaining unit by a *preponderance of the testimony taken* (Section 10(b)) never shifts from GC, satisfaction of this burden may be accomplished by establishing an *unrebutted prima facie* case. *An unrebutted prima facie case necessarily amounts to proof by a preponderance of the evidence*]

2850-1186 Majority status of union

S.M.S. Automotive Products, Inc. **282 NLRB No. 006**
[ptn signed by majority of Ees, held to be a valid indicator that U had lost majority support, where caption at top of ptn stated in clear and unambiguous language that purpose of ptn was to declare that incumbent U was no longer wanted; further, although U argued that foreign speaking individuals may not have understood ptn, argument was w/o merit and GC satisfied burden of proving ptn was understood by all Ees where there was unrebutted testimony that ptn was explained to all eer in their foreign language]

Stop N' Go Inc. **279 NLRB No. 052**
[majority status in 69-Ee unit not established where, of alleged 41-card majority, 27 cards were only authenticated by U representatives who neither witnessed signing nor received cards from signers]

Rainey Security Agency, Inc. **274 NLRB No. 041**
(in cases alleging unlawful 8(a)(2) recognition, it is the burden of proof of GC to estalbish that U accorded exclusive recognition was not majority representative; however, it is not always incumbent upon GC to affirmatively prove, with anything approaching mathematical precision, that U did not represent majority at critical time, if there is evidence which reasonably tends to cast doubt upon majority status claimed by U)

2850-1187 Unilateral change in terms and conditions of employment

M. J. Santulli Mail Services, Inc. **281 NLRB No. 170**
[while underlying trust agreement pertaining to pension, health, and welfare fund is not essential part of GC's case, and Bd has found Es violated 8(a)(5) w/o underlying trust agreement in evidence, such agreement may provide defense for E; however, once GC has proven contractual requirements of payment into fund and unilateral discontinuance of such payments, it is E's burden to establish that payments need not be made, and any such waiver must generally be clear and unmistakable]

2850-1189 Continuity of employing enterprise where successorship alleged

Croley Coal Corporation and South Harlan Coal Co., Inc. **280 NLRB No. 104**

2850-1190 Refusal to refer

Local No. 136, Plumbers (B. F. Shaw Company) **280 NLRB No. 099**
[GC has burden of proving that job referral applicants were treated differently or discriminatorily by U's application of criteria in determining order of job referrals by U]

2850-1195 General Counsel's burden in establishing *prima facie* showing of violation in 8(b)(4) case

Local Union No. 501, Electrical Workers v. N.L.R.B. **756 F.2d 888 (C.A.D.C., Apr. 1985)**
(Bd's conclusion that U indicated unlawful secondary intent by picketing neutral gate, not based on substantial evidence, since GC and Charging Party bear burden of proving secondary boycott violation, and presumably bore burden of demonstrating that U failed to avail itself of reasonable and appropriate picketing location other than neutral gate where primary reserved gate located on dead end alley, thus its location denied U opportunity to convey message to public)

2850-1196 In proceeding on application for fees under EAJA

Shrewsbury Motors, Inc. **281 NLRB No. 081**
[legislative history reveals that in ULP cases which did not make it to hearing to determine whether government's position substantially justified, ct or adjudicative officer will look at record which will consist of pleadings, affidavits and supporting documents filed by parties in both fee producing and case on merits. Thus substantial justification determination will not involve additional evidentiary proceedings or discovery of agency files, solely for EAJA purposes]

Shrewsbury Motors, Inc. **281 NLRB No. 081**
[while Congress intended to bar discovery in EAJA proceedings, it did not intend that agency be permitted to shield entirely facts or basis for its action. Agency must produce sufficient material from its files to meet burden of showing substantial justification. If GC decides to file nothing or little, Bd may decide GC's burden has not been met]

Landmark Industries, Inc. **278 NLRB No. 129**
[*Burden of establishing substantial justification is on government, and test of whether or not governmental action justified is one of reasonableness. Government to defeat award, must establish that its position had reasonable basis in fact and law*]

Tajon, Inc. **277 NLRB No. 184**
[Section 102.144(a) of Bd's R&R puts burden on GC to show substantially justified in issuing complaint]

2850-1199 Other

D & D Development Co., Inc. d/b/a Anaheim Town and Country Inn **282 NLRB No. 034**
[burden of proof with regard to individual's supervisory status alleged by E held to rest on E and not GC]

2850-1700 Burden on party seeking to overturn results of election

Bekins Moving & Storage Co. **279 NLRB No. 109**
[*even though hearing on objections investigative in nature, objecting party nevertheless has burden to bring forth evidence which will sustain allegations. Absent meeting such burden objections are to be overruled*]

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. **758 F.2d 308 (C.A. 8, Mar. 1985)**
(party objecting to election has burden of proof and must show that misconduct interfered with Ees' exercise of free choice to such extent that it materially affected election results)

2850-1700—Cont.

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(party objecting to election must prove by specific evidence that election results did not reflect unimpeded choice of Ees)

2850-1900 Burden on party seeking to overturn results of arbitration decision

United Parcel Service, Inc. 274 NLRB No. 066

(burden of proof upon party advocating rejection of deferral)

United Parcel Service, Inc. 274 NLRB No. 066

(C dismissed where GC's evidence which augmented that (ULP evidence) presented to arbitration panel, is not of such probative value as to necessitate conclusion that arbitration panel did not have before it essential facts as to issues (Ee's discharge etc.) litigated. GC failed to carry his burden of proof for rejection of arbitration decision)

Timothy Nevins v. N.L.R.B. 796 F.2d 14 (C.A. 2, June 1986)

[burden is on party requesting Bd to ignore earlier arbitration decision to establish inadequacy of that proceeding]

2850-2200 Failure to sustain burden justifies adverse inference

2850-2233 Nonproduction of material evidence in one's possession raises adverse inference

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center 280 NLRB No. 007

[although ALJ may draw adverse inference from E's refusal to produce subpoenaed documents, here employment applications, that documents unfavorable to E's position, ALJ's specific finding that Ees hired were less qualified than predecessor's Ees was improper use of adverse inference rule since it is not proper to draw such specific conclusions from employment applications which might give rise to more than one inference regarding their substantive content]

Local 3, Electrical Workers (Mike G. Electric Corp.) 279 NLRB No. 072

[hearing officer did not abuse discretion in excluding wage and efficiency evidence about E's operation which was unrelated to job site where dispute arose, which was elicited to compare efficiency of Ees represented by Us claiming disputed work since exclusion of elicited evidence consistent with adjudicative accuracy and efficiency, where proponent U declined to come forward with either its own witnesses or other data concerning its own wage rates to substantiate comparison]

Phil Smidt & Son, Inc. JD-482-84

(where discriminatee claimed deductions from her self-employed business, E has right to documentary proof of deductions and discriminatee must produce proof or reason why proof unavailable)

2850-2267 Nonproduction of material witness

Kokomo Tube Company 280 NLRB No. 035

[E's failure to produce or explain absence from witness stand of E's owner, who had best knowledge of reason unlawful wage increase was granted, while producing other *weak* evidence of why increase granted, warrants inference that owners *strong* evidence of why increase granted would have been adverse; further, evidence produced could not be relied on since it was owner who granted increases, and thus E has failed to carry burden of proving increase was not tied to U activities]

Southern Maryland Hospital Center 276 NLRB No. 153

(where allegations of discrimination against Ees are sustained by the record, the testimony of the alleged discriminatee is not a *sine qua non* for relief)

Sheet Metal Workers, Local Union No. 162 (Enterprise Mechanical, Inc.) JD-(SF)-114-85

(unexplained failure to provide corroboration by witness, present at hearing, to relevant facts warranted drawing adverse inference from testimony, since it was apparent attempt to obfuscate inaccuracy of testimony of E)

2850-4400 Shifts to respondent union or employer to establish affirmative defense

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132

[in order to trigger 10(b) period, notice to Charging Party is required. Notice whether actual or constructive, must be clear and unambiguous and burden of showing such notice is on party raising affirmative defense of Section 10(b)]

Uniglass Industries, Div. United Merchants & Mfrs. 276 NLRB No. 035

(Section 10(b) is subject to equity principals and is tolled where Respondent has fraudulently concealed unlawful conduct and person adversely affected by Respondent's actions is not put on notice of such actions. 6-month period of limitations runs from time discriminatees were put on notice, actual or constructive, of E's anti-nepotism rule which precluded their rehire. As 10(b) is affirmative defense, burden is on Respondent to establish facts that defense rests upon)

Carpenters, Millwright Local 1412 (Oscar J. Boldt Construction Co.) JD-284-85

(violation, where bypass of Ees on out of work list gave rise to *prima facie* case of unlawful discrimination, thus shifting burden to U to show that preference accorded Ees beneath bypassed Ees on list was pursuant to legitimate, objective, hiring hall criteria which U failed to do)

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) 788 F.2d 1412 (C.A. 9, May 1986)

[general no-strike clause waives Ees' statutory right to engage in sympathy strikes absent extinsic evidence that parties intended otherwise; rule is not substantive, and, rather than establishing irrebuttable presumption that broad no-strike rule bars sympathy strikes, shifts burden of proof to party making that claim and requires consideration of available evidence such as contract's other terms, negotiation of no-strike clause, and parties' bargaining history and past practices]

2850-5500 Shifts to respondent where prima facie case established

American Bakeries Company and Local Union No. 51, Teamsters (Local No. 326, Bakery Workers) 280 NLRB No. 160

[while *ultimate burden* of persuasion of elements of an ULP and to show appropriateness of bargaining unit by a *preponderance of the testimony taken* (Section 10(b)) never shifts from GC, satisfaction of this burden may be accomplished by establishing an *unrebutted prima facie* case. *An unrebutted prima facie case necessarily amounts to proof by a preponderance of the evidence*]

Herrick & Smith v. N.L.R.B. 802 F.2d 565 (C.A. 1, Sept. 1986)

[Bd's initial burden is to make prima facie showing that Ee's protected conduct was substantial or motivating factor for discharge, after which burden of going forward shifts to E; amd Bd's showing must stand if supported by substantial evidence on the record, viewed as a whole]

2850-5550 Nondiscriminatory motive must be affirmatively shown by Employer where General Counsel's evidence permits inference of discrimination

Kokomo Tube Company 280 NLRB No. 035

[E's failure to produce or explain absence from witness stand of E's owner, who had best knowledge of reason unlawful wage increase was granted, while producing other *weak* evidence of why increase granted, warrants inference that owners *strong* evidence of why increase granted would have been adverse; further, evidence produced could not be relied on since it was owner who granted increases, and thus E has failed to carry burden of proving increase was not tied to U activities]

Garrison Valley Center, Inc. 277 NLRB No. 164

(discharge of Ee who was most active Ee on behalf of U during U's organizing campaign allegedly because Ee left patient at E's nursing home unattended while performing other work, violative, since E failed to meet burden of establishing that E would have discharged Ee even in absence of her U activities. Record evidence demonstrated that E had tolerated brief absences for work-related reasons and would discharge an Ee *only* when serious injury or death resulted from Ee's conduct)

2850-5575 Same disciplinary action would have taken place in absence of protected conduct

ARA Leisure Services, Inc. v. N.L.R.B. 782 F.2d 456 (C.A. 4, Jan. 1986)

[*GC bears burden throughout to demonstrate that E's anti-U animus contributed to its decision to discharge Ees. He must demonstrate that Ees were engaged in protected activity, that E was aware of activity in that such activity was substantial or motivating reason for E's action. E faced with such evidence may then prove by preponderant evidence that worker would have been fired even in absence of U activity*]

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)

[*where discharged Ee alleges that his discharge constitutes ULP, GC bears burden of proving Ee's exercise of protected activity was motivating factor in termination. As affirmative defense, E may show by preponderance of evidence that it would have terminated Ee despite protected activity*]

2850-7000 Employer has burden of establishing existence of objective considerations on which good faith doubt of union's majority is based

Manhattan Eye, Ear and Throat Hospital 280 NLRB No. 011

[testimony of only 4 Ees out of complement of approximately 100 Ees sufficient to carry burden that supervisor's conduct was unlawful. Nor does it satisfy E's burden of establishing that its asserted objective considerations

2850-7000—Cont.

arose in atmosphere free from coercion in support of its affirmative defense of good-faith doubt of U's majority support]

Wilder Construction **276 NLRB No. 104**
(proof that economic strikers permanently severed their employment relationship or abandoned their strikers' status must be unequivocal in relation to time of withdrawal or recognition)

Louis Pappas' Homosassa Springs Restaurant, Inc. **275 NLRB No. 213**
(burden of proof upon Respondent (successor E in instant proceeding) to prove good faith doubt of (U's) majority status)

Bay Area-Los Angeles Express, Inc. **275 NLRB No. 152**
]where E engages in conduct reasonably calculated to cause Ees to repudiate U and shortly thereafter majority of Ees, after learning of E's misconduct, in fact repudiate U, E must show that intended effect of his misconduct was not proximate cause of Ees' decision to repudiate U)

2850-7700 On employer to show replacement of economic strikers for legitimate business reasons

Medallion Kitchens, Inc. v. N.L.R.B. **806 F.2d 185 (C.A. 8, Nov. 1986)**
[mtn to strike GC's brief and to reopen record on basis that Respondent E not given notice that permanent status of strike replacements in issue, denied, where violation alleged was that E failed to reinstate economic strikers, since status of Ees who replaced economic strikers need not be pleaded by GC inasmuch as permanent status of replacements affirmative defense to be raised by E]

Medallion Kitchens, Inc. v. N.L.R.B. **806 F.2d 185 (C.A. 8, Nov. 1986)**
[E who refused to reinstate economic strikers violates Act unless he shows that his action was based on legitimate and substantial business justifications. Burden of proof is on E]

2850-7900 Burden is on union to show relevance of information that is not presumptively relevant (See also 530-6067-6001-0000)

Washington Materials, Inc., t/a Buffalo Concrete; et al. **276 NLRB No. 040**
(some information is presumed relevant such as information concerning the terms and conditions of employment of Ees represented by the U, however, this presumption of relevance does not apply to information concerning financial data and the relevance of that type of information must be established by the U)

2850-8000 Burden on employer to establish affirmative defense of unavailability of jobs preventing reinstatement of strikers

Radio Electric Service Company **278 NLRB No. 078**

2850-8800 To show gross amount of backpay due

Arthur Briggs, Inc. **281 NLRB No. 114**
[since it is GC's sole burden to establish gross backpay, it is therefore GC's burden to establish that Ees were paid for holidays, absences and snow day closures]

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[GC met burden notwithstanding claimants were discharged in 1977 and Bd failed to solicit information from discriminatees until 1982 which made it difficult for individual discriminatees to list with specificity and accuracy details of their job search and led to last minute disclosures and recollections since no showing of willful concealment. Claimants not penalized solely because of poor record keeping or uncertain memories]

Hacienda Hotel and Casino **279 NLRB No. 084**
[finding of ULP is presumptive proof that some backpay is owed, and in backpay proceeding sole burden of GC is to show gross amounts of backpay due which is amount Ees would have received but for E's illegal conduct; once that is established burden is upon E to establish facts that would mitigate such liability]

Hacienda Hotel and Casino **279 NLRB No. 084**
[any backpay formula which approximates what discriminatees would have earned had they not been discriminated against is acceptable if it is not unreasonable or arbitrary in the circumstances; formula should be representative of discriminatee's employment history and take into account intermittency of employment; and where awards may be only close approximations, Bd may adopt formulas reasonably designed to produce such approximations]

Midwest Motel Management Corp. of Birmingham **278 NLRB No. 060**
[while GC has burden to establish reasonableness and accuracy of its calculation of gross backpay amount, burden of proof with respect to E's affirmative defense rests upon it as original wrongdoer to demonstrate affirmatively that discriminatee has failed to make reasonable effort to find interim employment; and discriminatee is held only to reasonable exertion in such regard and not to standard of highest diligence]

Greyhound Taxi Co., Inc. **274 NLRB No. 060**
(when respondent in backpay proceeding meets its burden for tolling of backpay by showing that discriminatee was unavailable for employment, burden shifts to GC to rebut respondent's defense by showing that unavailability was due to respondent's unlawful conduct)

2850-9300 To show net backpay or interim earnings

2850-9300 To show net backpay or interim earnings

Arthur Briggs, Inc. **281 NLRB No. 114**
[E failed to meet its burden of establishing that backpay claimant received higher interim earnings for specified period than was alleged where ground for claiming excess in earnings was based merely on conversation E's private investigator had with claimant]

Boland Marine And Manufacturing Company, Inc. **280 NLRB No. 051**
[in backpay proceeding, unlawfully discharged or suspended Ee is presumed entitled to backpay, and E and not GC, bears burden of establishing facts which would negative or mitigate existence of liability to Ee; adherence to such general allocation of burdens in determining backpay is especially compelling where evidence of E's disciplinary practices relevant to determination of backpay, is peculiarly in possession of E, and it would be inequitable to require GC to ferret out information from sources available to E]

Overseas Motors, Inc. **277 NLRB No. 061**
(no inference that discriminatee who claimed he lived on loans, interim earnings from self employment and unemployment compensation during backpay period was not disclosing interim earnings, notwithstanding large gap between earnings, unemployment compensation and discriminatee's expenses to be filled by loans, absent evidence of failure to disclose earnings; burden on Respondent is not merely to litigate question of existence or non existence of loans, but to show that there were other interim earnings)

Truck Drivers Union Local 164, Teamsters (Evelyn McCann, an Individual, etc.) **274 NLRB No. 134**
(E's implication that discriminatee was not forthright in her testimony about efforts to obtain interim employment in order to mitigate backpay losses held endeavor to shift burden to discriminatee who over 4 years later is asked to describe details of her search for employment; uncertainties arising in situation such as here are resolved in favor of discriminatee against E responsible for ULPs)

City-Wide Invalid Service, Inc., a/w/a City-Wide Ambulette, Inc. **JD-(NY)-123-85**
[backpay claimant held entitled to backpay amount set forth in amended specification, where E had burden to establish interim earnings it contended claimant had accumulated during backpay period]

Iron Workers Local 118 (Waldo F. Kusterns) v. N.L.R.B. **804 F.2d 1100 (C.A. 9, Nov. 1986)**
[where Bd has established ULP and amount of back pay due Ee, burden is on respondent to produce evidence to mitigate its liability; this burden may be satisfied by establishing that Ee has received other earnings or that Ee has willfully incurred losses by, e.g., taking himself out of labor market]

2850-9500 To show lack of knowledge of predecessor employer's unfair labor practices

Creley Coal Corporation and South Harlan Coal Co., Inc. **280 NLRB No. 104**
[successor E liable to remedy predecessor's unfair labor practices, where successor did not prove lack of knowledge of ULPs and such knowledge was inferred from fact that local newspaper carried front page articles about Ees' picketing of and filing charges against predecessor, location of two of successor's business in close proximity to site of picketing, and successor's admission that he had heard talk about the strike]

4200 SUFFICIENCY UPON REVIEW

4233 ALJ DECISION IS RECOMMENDATORY ONLY, NOT CONCLUSIVE ON BOARD

4233-2200 Credibility of witnesses, however, primarily for ALJ

4233-2233 *Demeanor* evidence (See also 737-5650-1800)

Pullman Power Products Corporation **278 NLRB No. 112**
(Bd reversed ALJ, notwithstanding assertion that reversal turned on ALJ's demeanor credibility findings, since Bd, to same extent as ALJ, is free to draw its own inferences from record so long as demeanor is not involved)

4267 PRESUMPTIONS AND INFERENCES

4267-0100 Generally

Glaziers Local Union 558 v. N.L.R.B. **787 F.2d 1406 (C.A. 10, Mar. 1986)**
[Bd has authority to apply general presumptions as part of its responsibility to formulate rules to fill interstices of broad statutory provisions of the Act; however, only if presumption is rational and consistent with the Act and its

4267-0100—Cont.

application is supported by substantial evidence on the record as a whole will an order of the Bd be enforced]

4267-0150 Board can draw permissible inferences from credible testimony

United Scenic Artists, Local 829, Painters (Theatre Techniques, Inc.) **278 NLRB No. 046**

[no violation found by Bd, applying law of case on remand, in U's coercion of neutral E lacking control of disputed work, where there was no *new credible evidence* to support inference that U knew that E other than neutral E contractually controlled disputed work]

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. **801 F.2d 636 (C.A. 3, Sept. 1986)**

[reasonable inferences are entitled to acceptance on review is rule, notwithstanding E's contention that, based on law of another circuit, factual inferences drawn by ALJ and Bd should not be granted same high level of deference applied to findings based on direct evidence and credibility determinations]

N.L.R.B. v. Health Care Logistics, Inc. **784 F.2d 232 (C.A. 6, Feb. 1986)**

[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and inadequate, and new Ees were hired two months after discharges]

N.L.R.B. v. L & B Cooling, Inc. **757 F.2d 236 (C.A. 10, Mar. 1985)**

(NLRB is empowered to draw permissable inferences from credible testimony)

4267-2000 Where uncertainty exists as to merits of action, issue resolved against party creating uncertainty

The Hearst Corporation, San Antonio Light Division **281 NLRB No. 113**

[where E was found to have unlawfully tainted decertification ptn by various 8(a)(1) conduct including specific remarks made to some Ees to undermine support for U, it was no defense that E produced Ee witnesses that had never heard E's unlawful remarks since it was fair to presume some of E's remarks were disseminated among Ees; E is a wrongdoer who must bear responsibility for consequences that flow from unlawful conduct and bears the burden of disentangling consequences from which it is chargeable from those which it is not]

4267-2200 Failure to produce evidence peculiarly within party's knowledge raises adverse inference

Local 3, Electrical Workers (Mike G. Electric Corp.) **279 NLRB No. 072**

[hearing officer did not abuse discretion in excluding wage and efficiency evidence about E's operation which was unrelated to job site where dispute arose, which was elicited to compare efficiency of Ees represented by Us claiming disputed work since exclusion of elicited evidence consistent with adjudicative accuracy and efficiency, where proponent U declined to come forward with either its own witnesses or other data concerning its own wage rates to substantiate comparison]

Leeward Nursing Home **278 NLRB No. 157**

[adverse inference drawn that GC had knowledge of pre-settlement conduct that would bar post settlement allegations that conduct was unlawful, where GC did not make matter of record when regional office knew about pre-settlement matters, since GC presumed to be uniquely possessed of these facts, no Bd rule prohibits agent of GC giving testimony regarding such matters, (only procedural prerequisites) GC is not favored litigant before Bd and is not entitled to any privileges not accorded to any other litigant]

Ryder/P.I.E. Nationwide, Inc. **278 NLRB No. 109**

[supervisors' efforts to conceal their knowledge that Ee had prevailed in many grievances costly to E supported inference that E was aware of and hostile to Ee's grievance activity]

Safeway Stores, Inc. **276 NLRB No. 099**

(ALJ drew adverse inferences from failure to produce results of U card check conducted by neutral party, since no weight was assigned to card check because of lack of foundation and its hearsay nature, where there was no showing how neutral party arrived at conclusion U had majority; number of cards given to neutral party and number of names on Ee list had not been proven; and since GC at no time conceded validity of card check, GC's challenge thereto was continuing and pervasive)

Van Gas, Inc. **JD-(SF)-33-85**

(adverse inference drawn where E failed to produce leave records, which were solely w/i its control, to support claim that there was abuse of sick leave justifying change in sick leave policy; *failure to subpoena evidence in no way diminished impact of adverse inference rule*)

4267-2700 Failure to comply with subpena or to obtain subpenaed records raises adverse inference

The Standard Products Company, Rocky Mount Division **281 NLRB No. 013**

[refusal of Ee to appear in spite of GC's subpoena held not to raise adverse inference that Ee's testimony would have been adverse to GC; adverse interest will be drawn against party only when that party has testimony or documentary evidence available to it which it fails to offer w/o sufficient justification; adverse inference is not warranted where GC has taken reasonable steps to make evidence available at trial by having witness subpoenaed]

Allied Lettercraft Company, Inc. **280 NLRB No. 113**

[E's contention that backpay claimant's failure to obtain state records concerning his unemployment benefits, after GC had refused to enforce E's subpoena to obtain them from agency, should lead to adverse inference regarding claimant's alleged search for interim work, rejected; as a rule, Bd quashes subpoenas served on other governmental agencies where disclosure is prohibited, as here, under applicable state law; and claimant had authorized state agency to release records to Regional Office which turned over to E all such records in its possession]

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center **280 NLRB No. 007**

[although ALJ may draw adverse inference from E's refusal to produce subpoenaed documents, here employment applications, that documents unfavorable to E's position, ALJ's specific finding that Ees hired were less qualified than predecessor's Ees was improper use of adverse inference rule since it is not proper to draw such specific conclusions from employment applications which might give rise to more than one inference regarding their substantive content]

Electronic Data Systems International Corporation **278 NLRB No. 014**

[denial of mtns to delay start of hearing and of continuance of hearing did not impair Respondent's ability to comply with subpoena duces tecum and E responsible for any resulting adverse evidentiary rulings since Respondent made no good faith effort to comply]

4267-3300 Failure to produce material witness raises adverse inference

Carpenters, Local Union No. 1243 (Northern Alaska Associated General Contractors) **281 NLRB No. 015**

[no inference drawn where witnesses were available to both parties]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**

[adverse inference drawn against E which had burden of showing loss of majority support for U, where E failed to call as witnesses Ees with whom E allegedly had conversations showing dissatisfaction with U]

Electronic Data Systems International Corporation **278 NLRB No. 014 U activities by joining U supporters and finding out who U leader was so that supervisor could *cut his head* unlawful]**

Greg Construction Co. **277 NLRB No. 163**

(GC's failure to call witness led to adverse inference that witness' testimony would have been adverse to GC's case)

United Technologies Corporation **277 NLRB No. 070**

(failure by party to call knowledgeable persons as witnesses)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**

(E's failure to question its official about negotiations with U held not to warrant inference that had official testified truthfully he would not have corroborated another official's testimony; such adverse inference was improper because nontestifying official was available to all parties or GC could have called him to testify about matters in question)

Consolidated Dress Carriers, Inc., et al. **JD-(NY)-68-86**

[although it would have been appropriate for ALJ in backpay proceeding to draw adverse inference from E's failure to call supervisor intimately connected with crucial events and evidence in case, ALJ found it unnecessary to do so and found it sufficient to conclude that in context of case, with such heavy burden on E to prove its contention that backpay claimant was not discriminatee, E's unexplained failure to call supervisor could not be countenanced nor excused]

Statewide Industrial Catering, Inc. **JD-(NY)-139-85**

[lack of testimony by two supervisors who were key to case raised adverse inference]

4267-3300—Cont.

Sheet Metal Workers, Local Union No. 162 (Enterprise Mechanical, Inc.) JD-(SF)-114-85
(unexplained failure to provide corroboration by witness, present at hearing, to relevant facts warranted drawing adverse inference from testimony, since it was apparent attempt to obfuscate inaccuracy of testimony of E)

4267-3400 Replacements support union in same ratio as those employees replaced

Wilder Construction 276 NLRB No. 104
(presumption rebutted where there is conflict of interest between strikers and their replacements (lawfully discharged strikers and their replacements))

Wilder Construction 276 NLRB No. 104
]*violence on picket line* one factor that could be considered with regard to rebutting presumption)

4267-3600 Presumption of delivery where document given over to common carrier or postal service

E.B. Manning & Son, Inc. 281 NLRB No. 152
[GC did not meet its burden of rebutting presumption that U received E's cover letter with contract draft enclosed, since letter properly addressed, stamped and mailed, as here, is presumed to have been duly delivered to addressee; U agent's testimony of not receiving letter did not rebut presumption that letter was delivered to U, nor could agent acknowledge that letter had not been received by other U agents none of whom testified at hearing]

General Teamsters Local No. 439, etc. (Tracy American Ready Mix Co., Inc.) 281 NLRB No. 164
[in cases of U members' resignations deposited in regular mails Bd assumes, absent evidence to contrary, that resignation was received day after mailing, and when an Ee returns to work same day resignation is deemed received it is presumed, absent evidence to contrary, that resignation was received an hour before Ee crossed picket line]

Telephone Traffic Union, Upstate Local 212, T.I.U. (New York Telephone Co.) 278 NLRB No. 144

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) 277 NLRB No. 020
(U's fining members for crossing picket line, assertedly because U had not received members' various letters reducing U membership obligation to *financial core*, violative, since members had sent letters through both regular and certified mail to U prior to crossing picket line and there is presumption, not herein rebutted, that mail correctly addressed, with sufficient postage, is received)

Communications Workers, Local 9201 (Pacific Northwest Bell) 275 NLRB No. 214
(proof of mailing of letter by certified and/or registered mail with proper address and postage raises rebuttable presumption of addressee's receipt thereof in ordinary course of delivery of such mail)

Local Lodge No. D192, Cement Workers Division of Boilermakers (Riverside Cement/A Gifford-Hill Company) JD-(SF)-77-86
[member did not effectively resign from U when he mailed resignation letter to U, since U overcame rebuttable presumption of receipt of letter properly mailed by its testimony that letter was never received]

Iron Workers Local 118 (B & A Electric Company) JD-(SF)-221-84
(same rebuttable presumption of delivery applies for mailgram as for letter. Must be prepaid and correctly addressed)

4267-3800 Offering spurious defense

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(inference of unlawful motivation may be drawn from presentation of spurious defense)

Herrick & Smith 275 NLRB No. 062
(where reason for poor evaluation and subsequent discharge (poor work performance and attitude) by supervisor found pretextual, and that evaluation based on only 1 week's work permits inference to be drawn that supervisor was trying to build case for Ee'sdischarge in retaliation for Ee organizing meeting with managing partner and other Ees in which complaints against supervisor were aired)

4267-3900 Refusal to refer qualified employees under exclusive hiring hall arrangement

Carpenters Union Local No. 25 v. N.L.R.B. 769 F.2d 574 (C.A. 9, Aug. 1985)
(even single instance of discriminatory treatment will support finding of ULP when hiring hall rules are not followed)

4267-4400 Failure to testify concerning crucial point raises adverse inference

Jack Nyhiel, A Sole Proprietorship, d/b/a Joey's Steaks 279 NLRB No. 097
[failure of E, present at bargaining sessions with U, to testify in support of its consultant engaged in negotiating with U held not to have adversely affected E's case, where E was not active participant in bargaining and much of the time was present *pro forma*; consequently, E's failure to testify in support of consultant's testimony merely represented gaps in E's awareness of what occurred at bargaining sessions]

4267-5500 High percentage of union members among discharges justifies inference of discrimination

Med West Health Care Management Corporation, d/b/a Cedar Falls Health Care Center, Successor, and Nationwide Management, Inc., d/b/a Cedar Falls Health Care Center 276 NLRB No. 146
(where substantial majority of Ees not rehired were U leaders, strong circumstantial evidence of U animus is present, though evidence probative and not dispositive, notwithstanding successor retained some U Ees)

4267-6600 Loss of majority due to ULP

Ryder System, Inc.; Ryder Distribution Systems, Inc.; and DPD, Inc. 280 NLRB No. 118
[successor E's refusal to bargain with U, on grounds U did not enjoy majority support, violative, notwithstanding U did not have actual majority support of Ees hired where, but for E's discrimminatory refusal to hire predecessor's Ees, U would have enjoyed majority support; U's majority support in such instance is presumed as a matter of law]

4267-7100 Animus as motive for action

Sewell-Allen Big Star, Inc., No. 3 d/b/a Sewell-Allen Big Star No. 52 280 NLRB No. 137
[no inference of U animus or unlawful motivation on E's part held to exist as result of prior decision in which E's other facilities were individually found to have engaged in ULPs; while evidence from prior ULP proceeding may be used as evidence of present U animus, there was no evidence herein that E engaged in any ULP remotely similar to those found in prior decision; and even if some U animus was found in present case, there would still be no basis for finding violation herein]

Ryder/P.I.E. Nationwide, Inc. 278 NLRB No. 109
[supervisors' efforts to conceal their knowledge that Ee had prevailed in many grievances costly to E supported inference that E was aware of and hostile to Ee's grievance activity]

Caamano Bros., Inc. 275 NLRB No. 119
(E's U animus found as reason for discharge of other Ees in another Bd decision relied upon for finding U animus behind discharge of Ees in instant case)

Warehouse Supermarkets of Arizona, Inc., d/b/a Warehouse Foods JD-(SF)-101-86
[absent direct evidence, trier of fact may infer from total circumstances that motive for discharge was desire to eliminate U adherents; if stated motive is found false, inference is that there is another motive E desires to conceal and that such motive is unlawful]

Workroom For Designers, Inc. and Sidney H. Sisselman, an Individual JD-98-85
(discriminatory intent may be inferred not only from direct evidence but from record as a whole)

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)
[inference of improper conduct on part of E *not* established where E, in instant case, withheld Christmas bonus from its Ees and such bonus was not shown to be an established practice of E. Statements made by assistant supervisor and E's comptroller regarding bonus as well as E's Chief Executive Officer's general anti-U animus and his silence concerning (year-end) bonus was insufficient evidence to show type of coercive and manipulative motivation necessary for violation of Act]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)
[E's knowledge of Ees' U activities and anti-U animus based on small plant doctrine, properly inferred where Ees openly discussed U representation in main room of small facility in presence of management and supervisors, decision to terminate Ees was made evening after one Ee told other Ees that U representative would visit plant later in week, reasons for discharges were inconsistent and insadequate, and new Ees were hired two months after discharges]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)
[operations manager's statements that he would run any U representative out and that e had threatened to close facility in face of unionization could be viewed as one element supporting GC's case of unlawful discharge notwithstanding they were isolated and made five months before discharge]

Turnbull Cone Baking Company of Tennesser v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)
[anti-U motivation may reasonably be inferred from variety of factors, such as E's expressed hostility towards unionization together with knowledge of

4267-7100—Cont.

Ees' U activities, proximity in time between Ees' U activities and their discharges, inconsistencies between proffered reason and other actions of E, and disparate treatment of certain Ees compared to other Ees with similar work records or offenses]

4267-7200 Union causing discharge of employee or preventing his hire raises presumption that union acted unlawfully

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[Bd's inference of illegal motive, from U efforts to replace *permit* men who were temporary Ees, with journeymen from U's hiring hall, rejected, since encouragement of U membership is not consequence that *inescapably flows* from U's action such that U is presumed to have intended it, where long-standing practice of E was to seek journeymen from U and in traditional operation of U's referral system, *permit* men were considered temporary Ees with no expectation of permanent employment]

4267-7500 Employee's intent to authorize union to represent him presumed from signature on authorization card

Limpert Brothers, Inc. 276 NLRB No. 037

(card which was printed in Spanish held valid since signator was literate in Spanish and it is presumed he knew and understood contents and purpose of card)

4267-7600 Extending superseniority of stewards to areas other than recall or layoff, presumptively unlawful

Laborers Local Union No. 380 (Mautz & Oren, Inc.) 275 NLRB No. 147

(superseniority clause is presumptively unlawful, since it is not limited to layoff and recall of stewards, but extends by contract interpretation of arbitrator to overtime work and wage benefits for stewards on Saturday. Incumbent on Respondents to rebut presumption of unlawfulness, by demonstrating that Saturday overtime work for stewards serves legitimate statutory purpose other than impermissable one of giving stewards additional benefits to exclusion of nonsteward unit Ees)

Laborers Local Union No. 380 (Mautz & Oren, Inc.) 275 NLRB No. 147

]*superseniority clause* in contract unlawful where Respondents did *not* demonstrate that payment for Saturday overtime work at date of time and one-half to steward would promote administration of collective-bargaining agreement beyond incidental and side benefits of having steward on job to police unit work)

4267-8200 Solicitation of grievances raises inference of corrective action

Clark Equipment Company 278 NLRB No. 085

[distributing survey questionnaire to Ees, not violation, since there was no express promise to remedy grievances, and no promise could be implied where E had practice of conducting surveys, however different from survey herein, and survey was made eleven months after election when nothing but instant litigation was pending]

Clark Equipment Company 278 NLRB No. 085

[promise to remedy grievances disclosed by E's solicitation of grievances may be implied when there has been no previous solicitation, and solicitation occurs in context of organizational campaign]

4267-8800 Miscellaneous

Northwind Maintenance and Painting Co., Inc. 281 NLRB No. 048

[factual interference that E engaged new hires to replace Ees laid off in violation of 8(a)(3) supported by E's payroll records]

Heavy and Highway Construction Workers' Local Union No. 158 (Contractors' Association of Eastern Pennsylvania and Worthy Brothers Pipeline Corp.) 280 NLRB No. 124

[general atmosphere of tension created by intra-U politics not sufficient to support reasonable inference that U had requested E to lay off Ee whom U business manager had rebuked for voting with dissident faction and replaced as U steward six years before]

Local 87 Service Employees (Pacific Telephone and Telegraph Company) 279 NLRB No. 025

[failure to comply with *Moore Dry Dock* standards does not establish *per se* violation; it does, however, create a strong but rebuttable presumption that picketing had an unlawful secondary purpose]

Ryder/P.I.E. Nationwide, Inc. 278 NLRB No. 109

[supervisors' efforts to conceal their knowledge that Ee had prevailed in many grievances costly to E supported inference that E was aware of and hostile to Ee's grievance activity]

Activ Industries, Inc. 277 NLRB No. 040

(direct evidence of discriminatory motivation is not necessary to support finding of discrimination and such intent may be inferred from record as a whole)

Local Union No. 1464, Electrical Workers (Kansas City Power & Light Company) 275 NLRB No. 219

(where for past 30 years parties' contracts printed by outside contractors had contained a U bug, and E, when asked by U if current contract, which was to be printed in-house, would include a U bug, replied, *No problem*, it was reasonable to infer that E assented to inclusion of U bug on current contract and that U understood his remark as assent)

Edgar Mantha and Kathleen Mantha, A Partnership, d/b/a Hopkins Hardware; et al. JD-(SF)-127-86

[Bd presumes that when an E goes completely out of business and terminates its Ees, and there is no evidence that it closed for illegal reasons or that its operations were transferred elsewhere or that it operated at other locations, that Ees discharged for illegal reasons prior to its closure would have been terminated at time of closure and that such presumption pretermits their entitlement to backpay]

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)

[small plant doctrine does not give rise to presumption of knowledge that E must rebut to prevent establishment of prima facie case but rather permits inference of E knowledge only if Bd establishes by other evidence, direct or circumstantial, E had reason to notice U activities; other evidence necessary to permit inference of E knowledge is often same as that allowing inference that E was motivated by anti-U animus, such as (1) open discussions about U on premises during work hours, (2) timing of discharge, (3) adequacy of E's reasons for discharge, and (4) hiring replacement after discharge for asserted economic reasons]

N.L.R.B. v. Allcoast Transfer, Inc. and Ward Moving and Storage, Inc. 780 F.2d 576 (C.A. 6, Jan. 1986)

[moving and storage company held alter ego of company that organized it where two enterprises had identical management and supervision, centralized control of operational and labor relations policies, substantially identical business purpose and operations as well as substantially identical equipment and Ees; circumstances so strongly supported finding of alter ego status that Bd could infer that E intended to avoid U obligations w/o further inquiry into E intent]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) 788 F.2d 1412 (C.A. 9, May 1986)

[general no-strike clause waives Ees' statutory right to engage in sympathy strikes absent extinsic evidence that parties intended otherwise; rule is not substantive, and, rather than establishing irrebuttable presumption that broad no-strike rule bars sympathy strikes, shifts burden of proof to party making that claim and requires consideration of available evidence such as contract's other terms, negotiation of no-strike clause, and parties' bargaining history and past practices]

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(because of its expertise, Bd has broad discretion in conducting elections and resolving R matters; and there is presumption that ballots cast under specific safeguards provided by Bd procedures reflect Ees' true desires)

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[whether particular E conduct caused by U actually encourages U membership need not be proved by direct evidence but may be presumed as *an inherent effect of certain discrimination*]

5600 WITNESSES

5601 GENERALLY

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

[E's contention that ALJ erred in crediting testimony of single interested party, an Ee, over testimony of supervisors, rejected; while reliability of uncorroborated testimony of interested witness is open to question where it is directly contradicted by testimony of disinterested witness, there was no basis herein for overturning ALJ's credibility determinations, since management personnel may not have been completely disinterested, and ALJ's credibility findings were consistent with reasonable reading of record]

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(ALJ's finding of *proclivity* on part of E to attempt to influence testimony of witnesses which was introduced as collateral charge in refusal to bargain proceeding, which E claimed made up core of ALJ's credibility findings, held not denial of due process to E, since *proclivity* finding was not essential

5601—Cont.

element of ALJ's findings, where ALJ was merely discounting E's explanation for witness' hesitancy in testifying and was referring to allegation of threat of violence by pro-U Ee which was refuted by implausible and inconsistent testimony)

5601-3300 Foreign language witness

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[testimony of GC's Spanish-speaking witnesses held not too untrustworthy to constitute substantial evidence supporting Bd's findings; while ct may disregard ALJ's credibility determinations where found unreasonably self-contradictory or based on inadequate reasoning, such was not case herein where, although testimony of witnesses in Spanish was taken through interpreter, and language barrier complicated hearing process, ALJ very carefully monitored translation process to ensure accurate interpretation]

5601-5800 Board agent

Washington Beef Producers JD-(SF)-86

[in backpay specification proceeding ALJ considered memo to file prepared by Bd agent in conjunction with filling out backpay claimant's compliance form as being portion of relevant admitted document, and as proper substitute testimony of Bd agent concerning conduct of claimant; and since GC is party in backpay proceeding, GC agent's statements are admissions of party opponent, falling w/i Rule 801(d)(2) of FRCP, which defines as *not hearsay* admissions of party opponent]

5601-8300 Writing used to refresh memory

Embossing Printers, Inc. JD-19-85

(failure to produce notes, reviewed by GC's witness prior to witness testifying at hearing, factor weighed in assessing credibility of witness)

5650 CREDIBILITY

5650-0100 Generally

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164

(ALJ's uniformly crediting GC's witnesses over those of respondent, assertedly demonstrating inadequacy of his credibility resolutions, held not improper, since total rejection of one point of view does not, of itself, constitute basis for overturning ALJ's credibility resolutions)

Bronx Metal Polishing Co., Inc. 276 NLRB No. 031

(witness's obstruction of proceedings by threatening to leave the stand has bearing on his credibility)

Abramo Fish Co. Ltd. JD-222-85

(where no documentary evidence was proffered regarding E's unchallenged testimony that he paid Ees' wages and payroll taxes, and since credibility attack on E's testimony was launched by GC, it was GC's burden to produce documentary evidence; under the circumstances, attack was considered based upon surmise and speculation)

Herrick & Smith v. N.L.R.B. 802 F.2d 565 (C.A. 1, Sept. 1986)

[disbelief of testimony does not warrant affirmative finding to the contrary; otherwise, any plaintiff could prove any case by simply calling his opponent and getting him to deny it, and then arguing he was a liar]

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

[E's contention that ALJ erred in crediting testimony of single interested party, an Ee, over testimony of supervisors, rejected; while reliability of uncorroborated testimony of interested witness is open to question where it is directly contradicted by testimony of disinterested witness, there was no basis herein for overturning ALJ's credibility determinations, since management personnel may not have been completely disinterested, and ALJ's credibility findings were consistent with reasonable reading of record]

5650-0900 Corroboration

Zartic, Inc. 277 NLRB No. 171

[GC's mtn to strike testimony of E's personnel director, excepting admissions against interest, for alleged violation of sequestration rule by reading transcript of another witness's testimony before testifying and speaking with E's Ees overnight between two days of testifying, denied as unwarranted; rather, personnel director's testimony not credited to extent it was not corroborated by credible evidence]

SCA Services of Georgia, Inc. 275 NLRB No. 120

(testimony of pro U witness not corroborated by GC's witnesses where chief corroborating witness's testimony was ambiguous and conclusionary, and other corroborating witnesses were not asked to give their own account of events in question)

SCA Services of Georgia, Inc. 275 NLRB No. 120

(chief U witness's testimony that checkoff was issue keeping parties from agreement eroded, rather than corroborated, by failure of U's letter to E addressing issues and U picket signs to refer to checkoff issue)

Sheet Metal Workers, Local Union No. 162 (Enterprise Mechanical, Inc.) JD-(SF)-114-85

(unexplained failure to provide corroboration by witness, present at hearing, to relevant facts warranted drawing adverse inference from testimony, since it was apparent attempt to obfuscate inaccuracy of testimony of E)

5650-1500 Uncontradicted testimony

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center 280 NLRB No. 130

[self serving statements of E, or of Ee, are not to be accepted merely because they are uncontradicted where record as a whole casts doubt on those statements]

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center 280 NLRB No. 130

[where E denied making alleged statements to supervisor, and E's denial was uncontroverted since supervisor did not testify, ALJ nevertheless held that E did make alleged statements to supervisor, since E's entire testimony was too self serving, always showing that E's intentions were virtuous and that others misinterpreted E's meaning]

Abramo Fish Co. Ltd. JD-222-85

(where no documentary evidence was proffered regarding E's unchallenged testimony that he paid Ees' wages and payroll taxes, and since credibility attack on E's testimony was launched by GC, it was GC's burden to produce documentary evidence; under the circumstances, attack was considered based upon surmise and speculation)

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[Bd in error when it refused to take *undisputed* evidence into account--newspaper ads showing jobs were available during backpay period]

5650-1800 Demeanor

5650-1833 Credibility based on demeanor within discretion of ALJ

SCA Services of Georgia, Inc. 275 NLRB No. 120

(ALJ's crediting of testimony of U witness based on factors other than demeanor rejected where witness was conficted of crimes involving making of false statements, and testimony was not, contrary to ALJ, corroborated by GC's witnesses)

5650-2400 Employment relationship not sufficient to disregard testimony

Lassen Community Hospital, A Division of Eskaton Health Corporation, Division of Eskaton 278 NLRB No. 053

[in resolving credibility between two seemingly equal witnesses, fact that one witness was E's supervisor with direct interest in outcome and other witness was completely disinterested and not working for E, was sufficient to *tip the scales* in favor of crediting latter witness]

5650-3700 Failure to credit some testimony does not justify rejection of witness' entire testimony

Dorothy Shamrock Coal Company 279 NLRB No. 174

[erroneous testimony does not preclude ALJ from relying on other portions of what ALJ believes to be credible testimony]

Genwal Coal Co., Inc. 275 NLRB No. 077

5650-4900 Impeachment

5650-4910 For criminal activity

5650-4910-2500 Only for felony or misdemeanor convictions involving deceit or falsification

Georjan, Inc. and/or Fort Mason Enterprises, Inc. and/or Latrobe Speedway 281 NLRB No. 129

[evidence that witness was convicted of income tax evasion is admissable for purposes of assessing credibility]

Craley Coal Corporation and South Harlan Coal Co., Inc. 280 NLRB No. 104

[statement of E's president in prehearing Bd affidavit is party admission, rather than hearsay, and is credited over inconsistent statements made on witness stand in view of his conviction of a felony, evasiveness, lack of recall of important business events, and some impossible testimony]

SCA Services of Georgia, Inc. 275 NLRB No. 120

(veracity of chief U witness found highly questionable in light of his conviction for federal crimes involving making of false and fictitious statements intended and likely to deceive obtaining and transporting firearms and explosives, and maliciously damaging E's property, all of which occurred during strike against E)

5650-4910-5000 Convictions before hearing

Iron Workers, Local 601 (Papco, Inc.) **276 NLRB No. 142**
(for fraud and embezzlement)

5650-4940 Contradictory statements

Croley Coal Corporation and South Harlan Coal Co., Inc. **280 NLRB No. 104**
[statement of E's president in prehearing Bd affidavit is party admission, rather than hearsay, and is credited over inconsistent statements made on witness stand in view of his conviction of a felony, evasiveness, lack of recall of important business events, and some impossible testimony]

Zartic, Inc. **277 NLRB No. 171**
[two challenged ballots, not counted, where voters could not be located, and testimony of individual claiming to be one voter discredited due to discrepancies between it and known facts about voter, and only testimony about other voter was by discredited witnesses]

Genwal Coal Co., Inc. **275 NLRB No. 077**
]*what a prospective witness will tell a prehearing investigator will often depend upon how searching the questions of the investigator are*)

5650-4970 On collateral issue to alleged ULP

N.L.R.B. v. IDAB, Inc. **770 F.2d 991 (C.A. 11, Sep. 1985)**
(ALJ's finding of *proclivity* on part of E to attempt to influence testimony of witnesses which was introduced as collateral charge in refusal to bargain proceeding, which E claimed made up core of ALJ's credibility findings, held not denial of due process to E, since *proclivity* finding was not essential element of ALJ's findings, where ALJ was merely discounting E's explanation for witness' hesitancy in testifying and was referring to allegation of threat of violence by pro-U Ee which was refuted by implausible and inconsistent testimony)

5650-5500 Miscellaneous reasons for crediting or discrediting testimony

Airport Distributors, Inc. **280 NLRB No. 091**
[E's contention that Ee should be discredited as witness because of admission that he had pleaded guilty to assault and battery charge, rejected, since admission enhanced witness' credibility in that it was spontaneously offered as to why he related alleged coercive conversation with E to particular date, i.e., date concurrent with assault incident; and Ee gave impression of being extremely candid witness]

Grunco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 166**
(while ALJ did not explicitly state that he was making credibility resolutions where conflict in testimony occurred, Bd held ALJ implicitly credited witnesses whose versions he accepted, since in those instances he found events took place in a way consistent with only one of the versions of conflicting testimony)

Bell Halter, Inc. **276 NLRB No. 136**
(where E's former supervisor, resident of another state, testified as E's witness prior to GC's case pursuant to parties' agreement, so that he could return home after first day of hearing, and GC's failure to deliver subpoena properly prevented E from enforcing supervisor's extended attendance at hearing, Bd held admission of Ee's specific testimony, in face of supervisor's general denial of interrogating Ees, that supervisor had interrogated him, did not prejudice E, and ALJ properly credited Ee's testimony because of his general persuasiveness)

Genwal Coal Co., Inc. **275 NLRB No. 077**
]*what a prospective witness will tell a prehearing investigator will often depend upon how searching the questions of the investigator are*)

5650-5550 Leading questions

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) **274 NLRB No. 006**
(alleged statement by U official to Ee at settlement conference that if matter at hand were litigated, Ee would never work in industry again, not unlawful, since Ee's prehearing affidavit could not be relied upon particularly in view of Ee's uncontradicted testimony that his recollection required refreshing by way of leading questions by GC's counsel less than 1 hour after statement was allegedly made)

5650-6900 Self-serving nature of testimony affects credibility

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. **281 NLRB No. 068**
[self-serving statements need not be treated as conclusive even if not contradicted by direct evidence]

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**
[self serving statements of E, or of Ee, are not to be accepted merely because they are uncontradicted where record as a whole casts doubt on those statements]

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center **280 NLRB No. 130**
[where E denied making alleged statements to supervisor, and E's denial was uncontroverted since supervisor did not testify, ALJ nevertheless held that E did make alleged statements to supervisor, since E's entire testimony was too self serving, always showing that E's intentions were virtuous and that others misinterpreted E's meaning]

Lauren Community Hospital, A Division of Eskaton Health Corporation, Division of Eskaton **278 NLRB No. 053**
[in resolving credibility between two seemingly equal witnesses, fact that one witness was E's supervisor with direct interest in outcome and other witness was completely disinterested and not working for E, was sufficient to *tip the scales* in favor of crediting latter witness]

Embossing Printers, Inc. **JD-19-85**
(failure to produce notes, reviewed by GC's witness prior to witness testifying at hearing, factor weighed in assessing credibility of witness)

5650-7400 Testimony of witnesses where sequestration violated

Zartic, Inc. **277 NLRB No. 171**
[GC's mtn to strike testimony of E's personnel director, excepting admissions against interest, for alleged violation of sequestration rule by reading transcript of another witness's testimony before testifying and speaking with E's Ees overnight between two days of testifying, denied as unwarranted; rather, personnel director's testimony not credited to extent it was not corroborated by credible evidence]

Boldemann Chocolate Company, Inc. a wholly-owned subsidiary of Blommer Chocolate Company, Inc. **JD-(SF)-99-86**
[GC's mtn to strike testimony of one of E's witnesses who violated sequestration rule by discussing testimony of other witnesses who had already testified, denied and less severe remedy of scrutinizing testimony with great care held appropriate where there was no evidence that counsel had participated in violation of the sequestration order]

5650-7800 Testimony against employer by employee while in employ of employer not likely false

Molded Acoustical Products, Inc. **280 NLRB No. 163**

Resistance Technology, Inc. **280 NLRB No. 117**

Midwestern Mining & Reclamation, Inc., A Subsidiary of Midwestern Fuels Systems, Inc., etc. **277 NLRB No. 001**
(where ALJ based credibility findings on fact that number of Ee witnesses were currently working for E and testifying against their employment interests, Bd noted that other Ee witnesses, who were on layoff status, also testified against their own employment interests)

Safeway Stores, Inc. **JD-(SF)-119-86**

Carbo Fuel Oil; Gibraltar Heat Corp.; Concord Oil Corp. **JD-(NY)-24-85**

5650-7900 Testimony of witness may be credited in part

Genwal Coal Co., Inc. **275 NLRB No. 077**

Herrick & Smith **275 NLRB No. 062**

East Central Communications, Inc. **JD-116-86**
[it is not unusual for ALJ to credit parts of certain witnesses' testimony while rejecting parts of same testimony for *nothing is more common in all kinds of judicial decisions than to believe some and not all*]

Embossing Printers, Inc. **JD-19-85**

Carrier Corporation v. N.L.R.B. **768 F.2d 778 (C.A. 6, July 1985)**

5650-8100 Testimony of biased witness may be disregarded

Airport Distributors, Inc. **280 NLRB No. 091**
[E's contention that witness who was no longer employed as its manager must be credited as disinterested party, rejected; former managerial Ee cannot be presumed to be free of bias in favor of his former E particularly where, as here, his own conduct is entwined in litigation; and it was in his interest to maintain good will of E who, as work reference, had potential influence on his future employment]

Airport Distributors, Inc. **280 NLRB No. 091**
[E's contention that discharged Ee should be discredited as disgruntled Ee biased against E, rejected, where witness had equal reason to be disgruntled with GC who had found ULP, alleging witness' discharge as discriminatory, not meritorious; witness will derive no personal gain from instant litigation; and, on balance, he was found to be more convincing witness than E's witness]

5650-8700 Testimony of witnesses found unreliable as to one issue may be disregarded as to other issues

5650-8700—Cont.

Zartic, Inc. 277 NLRB No. 171
[two challenged ballots, not counted, where voters could not be located, and testimony of individual claiming to be one voter discredited due to discrepancies between it and known facts about voter, and only testimony about other voter was by discredited witnesses]

6300 WEIGHT AND SUFFICIENCY

6301 GENERALLY

Bronx Metal Polishing Co., Inc. 276 NLRB No. 031
(GC's request that ALJ take *judicial notice* of prior Bd decision involving same parties and similar issues, granted, but such proof of E's prior misconduct not given dispositive weight)

N.L.R.B. v. Health Care Logistics, Inc. 784 F.2d 232 (C.A. 6, Feb. 1986)
[operations manager's statements that he would run any U representative out and that e had threatened to close facility in face of unionization could be viewed as one element supporting GC's case of unlawful discharge notwithstanding they were isolated and made five months before discharge]

6325 SUSPICION, CONJECTURE OR BELIEF

Tri-State Culvert Manufacturing, Inc. 280 NLRB No. 087
[while circumstances might well prompt suspicion or evoke suggestion of misdeeds, such sentiments are no substitute for proof, the vital element necessary for finding of unlawful activity]

Robins Federal Credit Union 273 NLRB No. 165
(although sequence of events, particularly timing of discharge of Ee on eve of election and method by which Ee was summarily dismissed gave rise to suspicion as to whether E terminated Ee because of her U activities, mere suspicion is not sufficient to support finding of violation)

Stewart-Warner Corporation/Thor Power Tool Company JD-(ATL)-62-86
[suspicion raised by Ee's U activities, E's knowledge thereof, and limited evidence of E's U animus held not proof of unlawful motivation in discharge of active U adherent]

Quality Rolls, Inc. JD-189-86
[suspicion generated by evidence that E was not above use of discharge in its effort to weaken newly certified U held not to outweigh evidence that alleged discriminatee would have been terminated even if he had not engaged in U activity]

6350 EFFECT OF CORROBORATION

Plateau Coal Sales, Inc. 279 NLRB No. 156
[witness's (superintendant) uncoroborated testimony, concerning Ee's reinstatement not waiver of Ee's reinstatement, since there was no showing that Ee was offered employment and/or asked to report to work after his examination]

Plateau Coal Sales, Inc. 279 NLRB No. 156
[no waiver of reinstatement by discriminatee where uncorroborated testimony by superintendent who testified he phoned discriminatee to confirm rumor that he wasn't returning to work and later told him it was true, since no showing that discriminatee was offered employment and/or asked to report to work]

7000 SPECIFIC KINDS OF EVIDENCE

7006 ADMISSIONS

Hotel & Restaurant Employees, Local 19 (Vicorp Restaurants, Inc. d/b/a Sansons Restaurant) 277 NLRB No. 090
(E's original charges and documents certifying that copies of the charges were sent postage paid by certified mail to U, post office documents showing U's receipt, and admission by U's counsel in answer that charges were filed and served held sufficient proof thereof, notwithstanding U's denial)

7006-0100 Generally

Local Union No. 3, Electrical Workers (Burroughs Corp.) 281 NLRB No. 147)
[statements by counsel in course of their representational duties held attributable to client as admission against interest]

Greg Construction Co. 277 NLRB No. 163
(E's alleged admission against interest, that it discharged nonmembers pursuant to U demand, not binding on U and diminished in persuasiveness by E's contention in its brief that it should not be required to remedy any ULPs because it was victim of U coercion)

Royal Vending Service, Ltd. 275 NLRB No. 173
(Ee turnover not valid basis of assertion of doubt of U majority status by successor E where it admitted that it did not consider this factor in determining Ees' support for U)

7006-1200 Oral or written communication

Ryder/P.I.E. Nationwide, Inc. 278 NLRB No. 109
[E's telling another Ee that discharged driver's grievances *got him* constituted not only admission but unlawful statement that driver's grievances were the reason for his discharge]

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(Ee's testimony that the foreman had told him that the foreman had not told E's vice president that Ee had stolen a CB radio admissable as admission by a party opponent rather than hearsay, since foreman was an admitted supervisor and agent of E)

Robert W. Wise, d/b/a Robert W. Wise Cabinetry JD-(SF)-157-85
(E's statement that he had gotten rid of troublemakers and telling Ees that other Ees had been discharged for their U activities constituted *confession* of unlawful reason for discharges)

7006-2500 By conduct

East Central Communications, Inc. JD-116-86
[supervisor's affirmative nod made in agreement with Ee's statement that discharge of terminated Ee was because of his U activity held statement by E's agent concerning matter w/i scope of his agency, since it was made during discharge interview with terminated Ee, reason for which was known to supervisor, and was, as matter of law, admission by E]

7006-3700 By affidavit

Croley Coal Corporation and South Harlan Coal Co., Inc. 280 NLRB No. 104
[statement of E's president in prehearing Bd affidavit is party admission, rather than hearsay, and is credited over inconsistent statements made on witness stand in view of his conviction of a felony, evasiveness, lack of recall of important business events, and some impossible testimony]

7012 AFFIDAVITS

Moving Picture Projectionists Local No. 150, Stage Employees IATSE (Dynasty Theater, Inc. d/b/a Garfield Theater) 274 NLRB No. 006
(alleged statement by U official to Ee at settlement conference that if matter at hand were litigated, Ee would never work in industry again, not unlawful, since Ee's prehearing affidavit could not be relied upon particularly in view of Ee's uncontradicted testimony that his recollection required refreshing by way of leading questions by GC's counsel less than 1 hour after statement was allegedly made)

7012-2500 Of witnesses who did not testify

Arizona Public Company 273 NLRB No. 210
(rejection of affidavit of Ee who did not testify submitted by E after hearing before ALJ, proper, since E's posthearing document was neither newly discovered nor was it unavailable at time of hearing)

7012-7500 Repudiation by affiant

Middletown Hospital Association 282 NLRB No. 079
[Ee's conflicting representations at trial and in pre-trial affidavit whether or not it appeared to him supervisor engaged in threatening conduct held immaterial and not relied on in finding unlawful coercion]

Salem Leasing Corporation v. N.L.R.B. 774 F.2d 85 (C.A. 4, Oct. 1985)
[in affirming Bd's decision, ct does not rely on affidavit, made prior to Bd hearing, of testifying witness, since though ALJ admitted affidavit under Sec. 801(d)(1) of F.R. Evid. notwithstanding affiant stated he was drunk when he gave affidavit and didn't remember doing it, Bd declined to rely on affidavit]

7015 BUSINESS RECORDS

Benmit Division, U.S. Tubular, Inc. 280 NLRB No. 083
[E's records of Ees' tardiness and absences, not reliable, probative evidence as to whether an Ee had called regarding work attendance where the only call recorded was one by an Ee whose father had died, and several Ees testified that they had called in, although their calls were not recorded]

Inland Container Corporation 273 NLRB No. 236
(in case where Bd reopened record and remanded case involving allegations that successor-E employed discriminatory hiring practices, U was precluded from introducing E's training manual to prove U animus since manual was in existence at time of original ULP hearing and there was no showing it was concealed from U)

7016 UNION RECORDS

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)
(Bd's award of make-whole remedy to all nonmembers and traveler applicants injured by U's discriminatory operation of hiring hall as well as to named complainants found consistent with precedent for making such awards where specific evidence established a class of unnamed injured discriminatees; such class was established herein by introducing U's referral books, one for local U members and one for travelers and nonmembers, and

7016—Cont.

testimony of U's assistant business agent and others supporting conclusion of actual discrimination against such class)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(although GC's statistical evidence herein was not as sophisticated or revealing as that in case relied on as precedent for awarding make-whole remedy to a class injured by U's discriminatory operation of hiring hall, it was sufficient to justify Bd in finding that precedent controlling; U's use of two *out-of-work books*, one for local U members and one for travelers and nonmembers, U's members-only sign outside hiring hall, its official's testimony about actual job assignments, and its award of emergency work to few travelers or nonmembers substantially supported finding of an injured class)

7018 CIRCUMSTANTIAL EVIDENCE

7018-3300 Direct evidence of purpose to violate statute seldom obtainable

N.L.R.B. v. Horizon Air Service, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(concerning precondition to bargaining order)

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)

(improper motivation need not be demonstrated by direct evidence but may be inferred from all circumstances and must be upheld if it is reasonable in light of proven facts)

7018-6700 Sufficient in light of absence of rebuttal

Ironworkers Local 433, a/w Ironworkers (United Steel) 280 NLRB No. 152

7021 EXHIBITS

Bennit Division, U.S. Tubular, Inc. 280 NLRB No. 083

[E's exhibit of its speech received in evidence with express qualification that it not be shown as full and complete document prepared and in existence at time it was given at meeting where E failed to reveal copy of speech to Bd investigator at time of investigation, since such failure reputed exhibit's reliability and validity as true copy of a document in existence and contemporaneous with delivery of speech]

Hotel & Restaurant Employees, Local 19 (Vicorp Restaurants, Inc. d/b/a Seasons Restaurant) 277 NLRB No. 090

(E's original charges and documents certifying that copies of the charges were sent postage paid by certified mail to U, post office documents showing U's receipt, and admission by U's counsel in answer that charges were filed and served held sufficient proof thereof, notwithstanding U's denial)

7024 EVIDENCE RELATING TO PARTICULAR EVENTS OR FACTS

7024-1700 Commerce data

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(U's argument that it was not proper to permit assistant manager for major supplier to Es to testify regarding interstate shipments on grounds that supplier's bills of lading that were basis of his testimony were prepared in state of origin of shipment and not by him or under his direction and control, rejected since assistant manager's testimony, based in part on his knowledge of documents, and; in part on his general performance of duties was admissible pursuant to Federal Rules of Evidence 406 (Habits; Routine Practice))

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(general information brochure that was sales tool to acquaint people with supplies, was properly admitted, to permit witness to testify, as to origin of product, as business record pursuant to Federal Rules of Evidence 803(6), since it was report or record of supplier's business activities kept in regular course of its business activity)

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(testimony held admissible to prove volume of house sales to persons residing outside of state where testimony had sufficient characteristics of trustworthiness, and it related to standard business custom and practice (Federal Rules of Evidence 406, Habits; Routine Practice))

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(evidence of interstate commerce based on conversations with representative of trucking company and examination of documents not produced at hearing, held properly admitted for jurisdictional purposes, pursuant to Federal Rules of Evidence 406)

7024-2100 District Court records

Inland Container Corporation 273 NLRB No. 226

(record reopened and case remanded to ALJ where U presented evidence in form of an E-ans to interrogatory in a federal district ct proceeding under ADEA, which constituted newly discovered evidence concerning material fact raised at prior ULP hearing, raised a substantial question whether key E witness had committed perjury and Bd's original D/O, which dismissed C, was issued in reliance on testimony of key E witness)

7024-2200 State and local courts records and decisions

Catalytic, Inc. 275 NLRB No. 016

(illegal anonymous phone call under state criminal law (such as in case at bar) not dispositive of issues raised under Act, since it is Bd's burden to evaluate striker's conduct under NLRA rather than under state criminal law)

Local 796, Electronic Workers IUE (Michael P. Barrow, an Individual) JD-162-86

[decision of state ct dismissing charging party's complaint against U president for assault and battery, not dispositive of whether U president's actions were violative of Act, since criminal standard more exacting than civil one applicable in ULP procedure; further, ct's decision based on holding that action was accompanied by legitimate revocation of charging party's license to be on U's premises, but under Act such revocation not lawful since discriminatorily motivated]

7024-3000 Job application forms

Dasal Caring Centers, Inc., d/b/a Lemay Caring Center and Dasal Caring Centers, Inc., d/b/a Walton Caring Center 280 NLRB No. 007

[although ALJ may draw adverse inference from E's refusal to produce subpoenaed documents, here employment applications, that documents unfavorable to E's position, ALJ's specific finding that Ees hired were less qualified than predecessor's Ees was improper use of adverse inference rule since it is not proper to draw such specific conclusions from employment applications which might give rise to more than one inference regarding their substantive content]

7024-3300 Events occurring before ULP alleged in complaint may be given weight

Lamar Industrial Plastics Co. 281 NLRB No. 080

[where E disciplined Ees for solicitation for U during worktime, and policy remains in effect, and GC's theory of case is one of selective enforcement, it is relevant to show that E permitted non-U solicitations both before and after incident Ees disciplined for]

Photo Plastics Company 275 NLRB No. 188

(facts adduced at hearing which could have been violations of the Act but for Section 10(b), may be considered as backgound evidence and relied on to shed light on timely allegations of C)

7024-4200 Offers of settlement or compromise

Goodman Holding Company, Inc., and Its Wholly-Owned Subsidiaries, Goodman Manufacturing Corp., etc. 276 NLRB No. 098

(E's contention that C allegations of unlawful surveillance should be dismissed and evidence of allegation be disregarded because GC insisted, as precondition to settlement, that she be allowed to present evidence of settled charge in ongoing ULP case involving same parties, rejected, since such issues are proper for background purposes to prove other allegations in C)

Conte Sand and Gravel Company, Inc. and its alter egos Calan Concrete Corp. and Tycon, Inc. 274 NLRB No. 082

(GC's offer of proof regarding contracts that E allegedly unlawfully refused to execute after having agreed during settlement negotiations to execute said contracts, properly rejected, since alleged contract agreement was so intertwined with ULPs under discussion at settlement negotiations as to be inseparable from them and not admissible under FRE 408 excluding conduct or statements made during compromise or settlement negotiations)

7024-5000 Facts established at hearing before other agencies

7024-5033 Arbitration tribunal

Save Mart of Modesto, Inc. JD-(SF)-25-85

(mtns by GC and U to reopen record to admit arbitrator's opinion and award in case concerning different Butchers' Local and Respondent denied, since arbitrator's opinion is not relevant to this proceeding. Opinion did not involve store located w/i territorial jurisdiction of charging party U, nor was U party to contract before arbitrator, and arbitrator's interpretation of article in contract before him was based upon Respondent's past practice w/ i other Local's jurisdiction)

7024-8067 Unemployment compensation agency

D.H. Martin Petroleum Co. 280 NLRB No. 058

[mtn by E to reopen record to receive in evidence decision of State Employment Security Board of Review concerning Ee's departure from work and

7024-5067—Cont.

his eligibility to receive unemployment benefits, granted, since Board of Review's decision constituted previously unavailable evidence. Decision of State Board of Review. *not controlling* because State agency's determinative rendercd under statute with different definitions, policies, and purposes from NLRA

Garrison Valley Center, Inc. **277 NLRB No. 164**
(state agency's decision (Maryland Dept. of Employment and Training Board of Appeals) which found Ee guilty of gross misconduct, not controlling (on Bd), since determination rendered under statute with different definitions, policies, and purpose from NLRA; Bd decision, as well as that of ALJ *must be based upon independent consideration and evaluation of the evidence received in this ULP proceeding*)

Rayglo Corporation d/b/a The Dirt Digger, Inc. **274 NLRB No. 157**
(decision of state unemployment compensation agency involving same work stoppage to protest change in working conditions involved in alleged ULP admitted in evidence, but decision not controlling as to whether Ees quit for purpose of NLRA)

Supershade Corporation **JD-(NY)-67-85**
(state unemployment agency's decision denying Ee benefits and finding after hearing that Ee voluntarily left work held admissible into evidence; while such decisions are not controlling as to findings of fact or conclusions of law, they do have some probative value)

7024-6700 Facts established at hearing in other Board cases

7024-6742 10(k) proceeding

Local 3, Electrical Workers (Mike G. Electric Corp.) **279 NLRB No. 072**
[hearing officer did not err in admitting evidence concerning E's membership in multi-E bargaining association since relevant to determining viability of E's bargaining agreement with one of Us claiming work]

7024-6783 Where present parties were parties to earlier proceedings

Ducane Heating Corporation **273 NLRB No. 175**
(previously determined animus from prior Bd hearing tends to establish that respondent's conduct in instant case was unlawfully motivated)

7024-7500 Interim employment during backpay period

Louton, Inc., t/a/ The Original Oyster House **281 NLRB No. 154**
[mtn to strike discriminatee's testimony concerning earnings because she attempted to shield herself against discrepancy between her testimony and income reported on her income tax returns by invoking fifth amendment as to her tax returns, denied where discriminatee subsequently signed form permitting E to obtain her tax returns, and E thus was not prejudiced by her original stance]

Allied Lettercraft Company, Inc. **280 NLRB No. 113**
[report from private investigative company that its surveillance of backpay claimant for one week showed he had not been seen to leave his apartment to look for work rejected as hearsay, notwithstanding claim that report constituted business record under FRE, where report was not offered through persons who engaged in surveillance but rather through agency's official who wrote report based on his Ees' observations; and since report was made for purpose of litigation, it lacked necessary trustworthiness required by FRE so as to enable its introduction by party responsible for report's preparation]

Consolidated Dress Carriers, Inc., et al. **JD-(NY)-68-86**
[in order to mitigate its backpay liability, E has burden of proving that Ee willfully concealed his interim earnings for quarters during which he was self employed, and such burden must be met by introduction of probative evidence and not by mere speculation and inference]

Washington Beef Producers **JD-(SF)-86**
[compliance form questionnaire evidence regarding backpay claimants' search for interim employment viewed with skepticism by ALJ where claimant witnesses produced indirect answers to examination by E, who asked if entries they made on questionnaire constituted all Es they recalled contacting but were not asked how many Es they contacted on daily, weekly, or monthly basis]

Washington Beef Producers **JD-(SF)-86**
[memo to file prepared by Bd agent in conjunction with filling out backpay claimant's compliance form received into evidence by ALJ in backpay specification proceeding, where GC supplied memo to E, and compliance forms filled out by Bd agent incorporated by reference memo at issue, and thus converted it from purported confidential document to essential portion of relevant, admitted document]

7024-8500 Majority status of union

N.L.R.B. v. L & B Cooling, Inc. **757 F.2d 236 (C.A. 10, Mar. 1985)**
(majority status (of Ee bargaining representative) can be established by means other than NLRB-conducted election such as *informal-election* in instant case where with E present and consent, Ees secretly marked ballot *yes* or *no* and put ballot in hat)

7024-8700 Texts of pre-election speeches

Bennit Division, U.S. Tubular, Inc. **280 NLRB No. 083**
[E's exhibit of its speech received in evidence with express qualification that it not be shown as full and complete document prepared and in existence at time it was given at meeting where E failed to reveal copy of speech to Bd investigator at time of investigation, since such failure reputed exhibit's reliability and validity as true copy of a document in existence and contemporaneous with delivery of speech]

Central Broadcast Company **280 NLRB No. 056**
[E's failure to object to introduction of its letter and copy of its president's speech, which it had supplied to GC, found to constitute waiver of formal notice in C where letter and speech were not alleged as violative in C but were fully litigated]

7024-9900 Other

Mine Workers (Bronzite Mining Company, Inc.) **280 NLRB No. 068**
[in finding U responsible for picket line activity through its strike coordinator acting as its agent, Bd held that, although coordinator denied U's involvement in picketing activity at jobsite and that U sent him to picketing site only to *evaluate situation*, contrary to other witness' testimony, such conflict in testimony did not prevent Bd from proceeding under 10(k), since Bd is charged only with determining that reasonable cause exists for finding violation of 8(b)(4)(D), not that violation occurred]

7025 IDENTIFICATION EVIDENCE

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**
[where telephone caller identified himself as individual known to be business agent, conversation admitted as admission and is not hearsay since *substance of a telephone conversation may itself be enough to make prima facie proof of the identity of the caller, based on circumstantial evidence* in order to establish GC's *prima facie* case]

7027 VERIFICATION OF HANDWRITING

Western Medical Enterprises, Inc., d/b/a ARA Living Center, Verdugo Vista Convalescent Hospital **JD-(SF)-54-85**
(testimony of handwriting expert admitted to verify supervisor's handwritting on decertification ptn, where individual had 25 years experience in field of examining questioned documents and had testified close to 1000 times as expert examiner in both civil and criminal proceedings for both government and private clients)

7030 EXPERT TESTIMONY

Western Medical Enterprises, Inc., d/b/a ARA Living Center, Verdugo Vista Convalescent Hospital **JD-(SF)-54-85**
(testimony of handwriting expert admitted to verify supervisor's handwritting on decertification ptn, where individual had 25 years experience in field of examining questioned documents and had testified close to 1000 times as expert examiner in both civil and criminal proceedings for both government and private clients)

7036 EXPERT KNOWLEDGE OF BOARD

N.L.R.B. v. Horizon Air Services, inc. **761 F.2d 22 (C.A. 1, Apr. 1985)**
(ct respects Bd's special competence and expertise in fashioning remedies)

7042 HEARSAY

7042-0100 Generally

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) **275 NLRB No. 164**
(U's claim that it was prejudiced by admission of improper hearsay evidence, on grounds that facts of instant case do not show *proper circumstance* to admit evidence, rejected where evidence in issue was properly admitted either because Bd was not strictly bound by Federal Rules of Evidence or because evidence was exception to hearsay rule)

7042-0120 What constitutes hearsay

Ironworkers Local 433, a/w Ironworkers (United Steel) **280 NLRB No. 152**
[where telephone caller identified himself as individual known to be business agent, conversation admitted as admission and is not hearsay since *substance of a telephone conversation may itself be enough to make prima facie proof of the identity of the caller, based on circumstantial evidence* in order to establish GC's *prima facie* case]

7042-0120—Cont.

Shore Pointe Associates, Inc., d/b/a Americare Convalescent Center 280 NLRB No. 130
[testimony of Ees concerning statements made by E to supervisor who relayed E's statements to Ees held hearsay evidence admissible only as proof that supervisor made statements to Ees and not as proof that statements were true]

Croley Coal Corporation and South Harlan Coal Co., Inc. 280 NLRB No. 104
[statement of E's president in prehearing Bd affidavit is party admission, rather than hearsay, and is credited over inconsistent statements made on witness stand in view of his conviction of a felony, evasiveness, lack of recall of important business events, and some impossible testimony]

Donald Dean d/b/a D.C. Construction Company 276 NLRB No. 097
(although E's unlawful denial of reemployment to Ee after layoff created strong suspicion implicating U in conspiratorial effort to prefer U members for employment, and it may seem anomolous that U herein be exonerated as having failed to make request, ALJ held that supervisor's testimony that E's action was taken on U's demand, while primary and probative evidence as to E's intent, was hearsay and incompetent evidence as far as U was concerned)

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. JD-25-86
[ALJ did not rely on U official's testimony regarding omission of E from E association's list of E members submitted to U, thereby purportedly evidencing omitted E's intention not to be bound by multi-E bargaining, where U official's testimony described what he had been told concerning alleged occurrences by association's president who was out of ct declarant whose credibility could not therefore be put to test of examination on stand in respect to such attribution so that U official's testimony was totally unreliable hearsay]

Best Cast, Inc. JD-(NY)-1-86
[E's summary of Ees' comments to E and supervisors about U excluded, since it was hearsay and, in addition, not reliable]

Walter N. Yoder & Sons, Inc. 754 F.2d 531 (C.A. 4, Feb. 1985)
(E's challenge of much of testimony of local U's president as hearsay on grounds it concerned reports made to him by others, rejected where testimony concerning reports as to relationship between 2 entities was not hearsay inasmuch as evidence of reports was offered not to establish proof of E's alter ego status, but rather to establish that request for information by president of local U was not totally unfounded)

7042-0140 District Court rules of evidence applicable

Allied Lettercraft Company, Inc. 280 NLRB No. 113
[report from private investigative company that its surveillance of backpay claimant for one week showed he had not been seen to leave his apartment to look for work rejected as hearsay, notwithstanding claim that report constituted business record under FRE, where report was not offered through persons who engaged in surveillance but rather through agency's official who wrote report based on his Ees' observations; and since report was made for purpose of litigation, it lacked necessary trustworthiness required by FRE so as to enable its introduction by party responsible for report's preparation]

7042-0160 Hearsay may be excluded

Safeway Stores, Inc. 276 NLRB No. 099
(ALJ drew adverse inferences from failure to produce results of U card check conducted by neutral party, since no weight was assigned to card check because of lack of foundation and its hearsay nature, where there was no showing how neutral party arrived at conclusion U had majority; number of cards given to neutral party and number of names on Ee list had not been proven; and since GC at no time conceded validity of card check, GC's challenge thereto was continuing and pervasive)

Bombay Palace of Westchester, Inc. JD-(NY)-81-85

Best Cast, Inc. JD-(NY)-1-86
[E's summary of Ees' comments to E and supervisors about U excluded, since it was hearsay and, in addition, not reliable]

7042-0180 Hearsay may be given weight

7042-0180-2500 Where admitted without objection

Bombay Palace of Westchester, Inc. JD-(NY)-81-85

Supershade Corporation JD-(NY)-67-85
(in assessing credibility of various witnesses, ALJ relied on hearsay evidence which is not per se inadmissible in Bd proceeding and can be relied upon if not objected to; even where appropriate objection is made to receipt of hearsay evidence, it can still be admitted if rationally probative and if corroborated by something more than the slightest amount of other evidence; and Bd has discretion to rely on hearsay testimony in proper circumstances)

7042-0180-5000 Where corroborated

Local 3, Electrical Workers (Mike G. Electric Corp.) 279 NLRB No. 072
[hearing officer did not err in admitting hearsay testimony since hearsay corroborated nor double hearsay which solely supported finding of reasonable cause to believe Section 8(b)(4)(D) of Act violated]

Bombay Palace of Westchester, Inc. JD-(NY)-81-85
[hearsay evidence not excluded where it was not objected to and was rationally probative and corroborative of credited direct testimony]

Supershade Corporation JD-(NY)-67-85
(in assessing credibility of various witnesses, ALJ relied on hearsay evidence which is not per se inadmissible in Bd proceeding and can be relied upon if not objected to; even where appropriate objection is made to receipt of hearsay evidence, it can still be admitted if rationally probative and if corroborated by something more than the slightest amount of other evidence; and Bd has discretion to rely on hearsay testimony in proper circumstances)

7042-0180-8700 Res gestae

Felbro, Inc. 274 NLRB No. 186
(evidence of member's vote on ratification of contract, admissable as *res gestae*, since evidence was not offered for its truth of how they felt about ratifying contract but that they did, in fact, accept contract)

7042-0190 Exceptions to the hearsay rule

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008
(charging party Ee's testimony concerning his conversation with management official held admissible since it was received into evidence not for truth of matter asserted by official and therefore was not hearsay under FRE)

7042-0190-7500 Record of regularly conducted activity or absence of entry therein

Pacific Coast Metal Trades District Council 282 NLRB No. 041
[records maintained by charging party E concerning both attendances and discussions during bargaining sessions, and offered as substantial evidence falling w/i exception to hearsay rule incorporated in FRE 803(6) admitted into evidence]

7042-2500 Admission against interest not within hearsay rule

Croley Coal Corporation and South Harlan Coal Co., Inc. 280 NLRB No. 104
[statement of E's president in prehearing Bd affidavit is party admission, rather than hearsay, and is credited over inconsistent statements made on witness stand in view of his conviction of a felony, evasiveness, lack of recall of important business events, and some impossible testimony]

Yaohan of California, Inc. 280 NLRB No. 032
[Ee's testimony concerning supervisor's statement to him concerning fellow Ee's discharge held not hearsay, since remarks attributed to supervisor constituted admission which linked discharge of Ee with U organizing activities]

Southern Illinois Petrol, Inc. 277 NLRB No. 017
(Ee's testimony that the foreman had told him that the foreman had not told E's vice president that Ee had stolen a CB radio admissable as admission by a party opponent rather than hearsay, since foreman was an admitted supervisor and agent of E)

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(supervisor's statement to Ee that E had to discharge another Ee because of his U activities held not admission against interest by E where there was no proof that supervisor was privy to reasons for discharge or that he was offering more than surmise; however, statement reasonably reflected understanding by E's agent that E might, and probably did, fire Ee for his U activities and, as such, statement has some relevance and weight reflecting E's state of mind with respect to discharges for U activities)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 008
(charging party Ee's testimony concerning his conversation with management official held admissible into evidence under FRE as admissions by E who was party-opponent to GC)

Richard Burgett, A Sole Proprietor, d/b/a Burgett & Son Masonry and its Alter Ego Consumers Energy Savings System, Inc. JD-25-86
[list of E-members of E association submitted to U by E acting as official of association and constituting out of ct declarant, which included E's own company held exception to hearsay rule, since such was admission by E that his company was thereby bound by multi-E bargaining]

Washington Beef Producers JD-(SF)-86
[in backpay specification proceeding ALJ considered memo to file prepared by Bd agent in conjunction with filling out backpay claimant's compliance form as being portion of relevant admitted document, and as proper substitute testimony of Bd agent concerning conduct of claimant; and since GC is

7042-2500—Cont.

party in backpay proceeding, GC agent's statements are admissions of party opponent, falling w/i Rule 801(d)(2) of FRCP, which defines as *not hearsay* admissions of party opponent]

7042-5000 Business entries

Allied Lettercraft Company, Inc. **280 NLRB No. 113**
[report from private investigative company that its surveillance of backpay claimant for one week showed he had not been seen to leave his apartment to look for work rejected as hearsay, notwithstanding claim that report constituted business record under FRE, where report was not offered through persons who engaged in surveillance but rather through agency's official who wrote report based on his Ees' observations; and since report was made for purpose of litigation, it lacked necessary trustworthiness required by FRE so as to enable its introduction by party responsible for report's preparation]

7045 BEST EVIDENCE

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos **278 NLRB No. 091**
[Bd has not historically taken a dim view of personnel who tape record meetings with their E because Bd has sometimes found tape recordings of Ee meetings to be the best evidence of what was said]

7048 INCOMPETENT EVIDENCE

Donald Dean d/b/a D.C. Construction Company **276 NLRB No. 097**
(although E's unlawful denial of reemployment to Ee after layoff created strong suspicion implicating U in conspiratorial effort to prefer U members for employment, and it may seem anomolous that U herein be exonerated as having failed to make request, ALJ held that supervisor's testimony that E's action was taken on U's demand, while primary and probative evidence as to E's intent, was hearsay and incompetent evidence as far as U was concerned)

Local 259, Auto Workers (Atherton Cadillac, Inc.) **276 NLRB No. 030**
(on remand Respondent U's mtn to dismiss C and vacate Bd's order, based on contention that at original hearing GC knowingly introduced forged document, purportedly letter from E to Charging Party stating Respondent had coerced E into discharging Charging Party, into record and suppressed information in Regional Office files concerning doubts regarding letter's authenticity, denied, since Respondent did not meet burden of showing letter was forgery or had been altered by Charging Party)

7051 IMMATERIAL OR IRRELEVANT EVIDENCE

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat **281 NLRB No. 030**
[contention that U was exercising countering tactic of harassing E by filing *innumerable* grievances, rejected on ground of insufficient materiality to key issue of who may be U representative at grievance meeting, since E's position would be subject to same test regardless of number of grievances filed where statutory right was involved]

Dorothy Shamrock Coal Company **279 NLRB No. 174**
[refusal to admit into evidence newspaper article about financially troubled trucking industry, proper, as article published after layoff of Ees, therefore, it could not have played role in decision by E]

Hoschton Garment Company, A Subsidiary of Spencer Industries, Inc. **279 NLRB No. 081**
[ALJ's refusal to enforce E's subpoena duces tecum to Ee to produce records to show that child whom she was granted leave to take care of was under doctor's care and subpoena ad testificandum of Ee's husband regarding his ability to stay home with child, proper where evidence was immaterial to issue of whether Ee was suspended for violatin leave of absence or for U activities]

Sahara Datsun, Inc. **278 NLRB No. 148**
[GC's mtn to strike portion of E's brief pertaining to post-hearing misconduct of U organizer and officer by entering E's premises and injuring E's officers, for which he was arrested, granted and E's mtn to reopen hearing to take additional evidence on issue, denied, since conduct was immaterial where ALJ had concluded that U organizer was not entitled to reinstatement or to deal with E as U representative]

Pottsville Bleaching and Dyeing Company **275 NLRB No. 175**
(ALJ's failure to include certain testimony not prejudicial where testimony failed to contradict ALJ's conclusion and was thus irrelevant)

7054 OFFER OF PROOF

Holiday Radio, Inc., d/b/a KSLM–AM and KSD–FM **275 NLRB No. 184**
(where discriminatee quit interim employment because of *political and philosophical* problems with interim E, Bd held it was error for ALJ to refuse to admit testimony offered by GC regarding nature of Ee's interim employment, where GC made offer of proof that Ee would testify she resigned because interim E required her to engage in political activities on her own time and thus, such testimony was relevant to issue of whether Ee failed to mitigate loss of earnings by leaving interim E)

7054-8100 Generally

Bertolucci's Fender and Body Shop, Inc. **JD-(SF)-143-85**
(E's mtn to dismiss the case because of GC's alleged *serious breach of ethics* by describing in a footnote of brief an offer of proof concerning relevance of evidence GC sought to adduce, denied, since E was not prejudiced by inappropriate inclusion of material)

7054-5000 Failure to make

Regency Electronics, Inc. **276 NLRB No. 002**
(de novo hearing denied notwithstanding ALJ erroneously prevented counsel from questioning witness about conversation where counsel failed to make offer of proof at hearing as to what witness would testify to, and in posthearing breif counsel makes vague assertions as to precise nature of testimony that would be given)

Electrical Workers Local Union #46 (PAC, Inc.) **273 NLRB No. 167**
(U's request for remand to consider alter ego status of 2 Es denied where ALJ excluded evidence of such relationship at hearing of alleged violation of Sec. 8(b)(1)(B) and U failed to make offer of proof that charging party held financial interest in 1 E which would make him E at other E rather than E representative)

N.L.R.B. v. Electrical Workers Local Union #46 **793 F.2d 1026 (C.A. 9, July 1986)**
[where U failed to make offer of proof regarding alter ego evidence excluded at hearing, on which it based its defense in 8(b)(1)(B) proceeding for disciplining individual assertedly for operating non-U E as alter ego of U-E, and now attempted to excuse its failure to do so assertedly because of ALJ's broad ruling, ct agreed with Bd that U, having failed to make offer of proof concerning individual's financial interest in non-U E, cannot now claim prejudicial error if it is asserting evidence of such interest]

7066 TESTIMONY OF PRESENT OR FORMER BOARD AGENTS

Local 814, a/w Teamsters (Beth Israel Medical Center) **281 NLRB No. 153**
[U respondent's contention that Bd agent's testimony concerning conversations with U's agents prior to time any charge had been filed should be excluded, rejected, since Bd agent was only attempting to help Ee resolve problem with U before any charge was filed and U's agents at no time requested the presence of counsel nor did counsel show that their presence would have altered the U's conduct]

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. **277 NLRB No. 032**
(on remand pursuant to ct instructions to allow testimony of Bd agent, who had presided over conference leading to stipulation for certification upon consent election, as to whether parties had orally agreed to exclude individuals from unit, Bd adhered to previous finding that parties did not reach such agreement inasmuch as Bd agent could not testify with certainty that parties had orally agreed to exclude individuals)

7069 EVIDENCE AS TO STATE OF MIND

Granco, Inc., d/b/a Thriftway Supermarket; et al. **276 NLRB No. 164**
(supervisor's statement to Ee that E had to discharge another Ee because of his U activities held not admission against interest by E where there was no proof that supervisor was privy to reasons for discharge or that he was offering more than surmise; however, statement reasonably reflected understanding by E's agent that E might, and probably did, fire Ee for his U activities and, as such, statement has some relevance and weight reflecting E's state of mind with respect to discharges for U activities)

7072 SELF-SERVING STATEMENTS

Polymer Prints Ltd. Formerly Known as Subliflex, Inc. **281 NLRB No. 068**
[self-serving statements need not be treated as conclusive even if not contradicted by direct evidence]

Eskaton Sunrise Community **279 NLRB No. 013**
[self-serving declarations need not be treated as conclusive, even if not contradicted by any direct testimony]

7078 STIPULATIONS

7078-5000 Effect of stipulation on stipulating parties

The Commissary of The Great Race Pizza Shoppes, Inc. **277 NLRB No. 130**
(settlement stipulation which contained admission that parties were single E is conclusive and binding in all further litigation bearing on issue notwithstanding E alleged that admission made only to provide Bd with jurisdiction in underlying settlement agreement)

7078-5000—Cont.

AAL, Inc., d/b/a River Oaks Nursing Home 275 NLRB No. 012
(GC's mtn to strike E's brief because it sets forth *facts* not included in parties' stipulation, denied, since Bd relied solely on stipulated facts)

Alpine Vending, Inc. JD-(SF)-99-85
(where E stipulated that U is exclusive representative of unit, it could not in post submission brief argue that E's failure to bargain is justified by U's lack of majority status)

7080 STATEMENTS OF PARTY'S COUNSEL

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(GC's exhibit constituting position statement by E's counsel in response to ULP charge and assertedly containing admissions with respect to job evaluation of allegedly unlawfully discharged Ee received into evidence on basis of *Steve Alvi Ford, Inc.* 179 NLRB 229, and *Warren L. Rose Castings, Inc.*, 231 NLRB 912)

Retail Delivery Systems, Inc. JD-(NY)-15-86
[letter by E's counsel to filed examiner setting forth E's position statement with respect to charges filed, admissable]

7084 STATEMENTS OF WITNESSES TO COUNSEL OR BOARD AGENT IN PREPARATION OF TRIAL

7084-8400 Affidavits of employees not involved in hearing - confidential and privileged matter

Affiliated Midwest Hospital Inc. d/b/a Riveredge Hospital 274 NLRB No. 124
(Bd *excludes from record investigatory affidavits of witnesses who have not testified at a hearing* in order to protect their *confidentiality* But see Bd's R/R Section 102.69(g)(3) concerning parties' opportunity to supplement record before Bd with documents including affidavits, previously submitted to RD which have not been forwarded to Bd)

7087 STATISTICAL DATA

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)
(although GC's statistical evidence herein was not as sophisticated or revealing as that in case relied on as precedent for awarding make-whole remedy to a class injured by U's discriminatory operation of hiring hall, it was sufficient to justify Bd in finding that precedent controlling; U's use of two *out-of-work books*, one for local U members and one for travelers and nonmembers, U's members-only sign outside hiring hall, its official's testimony about actual job assignments, and its award of emergency work to few travelers or nonmembers substantially supported finding of an injured class)

7090 TELEPHONE CONVERSATION

Ironworkers Local 433, a/w Ironworkers (United Steel) 280 NLRB No. 152
[where telephone caller identified himself as individual known to be business agent, conversation admitted as admission and is not hearsay since *substance of a telephone conversation may itself be enough to make prima facie proof of the identity of the caller, based on circumstantial evidence* in order to establish GC's *prima facie* case]

7096 TAPE RECORDINGS

McAllister Brothers Inc. and Outreach Marine Corporation, Alter Egos 278 NLRB No. 091
[Bd has not historically taken a dim view of personnel who tape record meetings with their E because Bd has sometimes found tape recordings of Ee meetings to be the best evidence of what was said]

Collins Industries, Inc. JD-33-86
[transcript of 2 cassette tapes, offered into evidence by E, of its preelection speech received into evidence, even though 1 tape was incomplete for which there was no explanation and portions of it were inaudible; and there was no indication that second tape, inaudible unless reproduced on special equipment, was so processed and submitted to GC, and there was no explanation why that was not done; however, transcript was offered by E and although incomplete, it demonstrated E's unlawful and objectionable conduct]

Local 1, Utility Workers (Consolidated Edison Company of New York Inc.) JD-(NY)-136-85
[tape recordings of conversations between agents of U and charging party and their transcriptions admitted into evidence]

7099 OTHER

Quality Rolls, Inc. JD-189-86
[evidence developed in course of undercover investigation of Ees designed to develop facts to support discharges which would weaken U's strength among remaining workforce cannot be used to exonerate E from charge of unlawful discrimination]

8400 ADMISSIBILITY

8401 GENERALLY

8401-1600 Effect of form and order of evidence offered

United Artists Communications, Inc., Operating Capri Theatre 280 NLRB No. 119
[reports on alleged misbehavior of Ees discharged properly not admitted into evidence, where reports did not identify Ees but only gave descriptions, and sponsoring witness for introducing reports unable to identify unnamed Ees]

Bell Halter, Inc. 276 NLRB No. 136
(where E's former supervisor, resident of another state, testified as E's witness prior to GC's case pursuant to parties' agreement, so that he could return home after first day of hearing, and GC's failure to deliver subpoena properly prevented E from enforcing supervisor's extended attendance at hearing, Bd held admission of Ee's specific testimony, in face of supervisor's general denial of interrogating Ees, that supervisor had interrogated him, did not prejudice E, and ALJ properly credited Ee's testimony because of his general persuasiveness)

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164
(U's argument that it was not proper to permit assistant manager for major supplier to Es to testify regarding interstate shipments on grounds that supplier's bills of lading that were basis of his testimony were prepared in state of origin of shipment and not by him or under his direction and control, rejected since assistant manager's testimony, based in part on his knowledge of documents, and; in part on his general performance of duties was admissible pursuant to Federal Rules of Evidence 406 (Habits; Routine Practice))

Collins Industries, Inc. JD-33-86
[transcript of 2 cassette tapes, offered into evidence by E, of its preelection speech received into evidence, even though 1 tape was incomplete for which there was no explanation and portions of it were inaudible; and there was no indication that second tape, inaudible unless reproduced on special equipment, was so processed and submitted to GC, and there was no explanation why that was not done; however, transcript was offered by E and although incomplete, it demonstrated E's unlawful and objectionable conduct]

Washington Beef Producers JD-(SF)-86
[memo to file prepared by Bd agent in conjunction with filling out backpay claimant's compliance form received into evidence by ALJ in backpay specification proceeding, where GC supplied memo to E, and compliance forms filled out by Bd agent incorporated by reference memo at issue, and thus converted it from purported confidential document to essential portion of relevant, admitted document]

8401-5600 Illegally obtained evidence

Local 814, a/w Teamsters (Beth Israel Medical Center) 281 NLRB No. 153
[U respondent's contention that Bd agent's testimony concerning conversations with U's agents prior to time any charge had been filed should be excluded, rejected, since Bd agent was only attempting to help Ee resolve problem with U before any charge was filed and U's agents at no time requested the presence of counsel nor did counsel show that their presence would have altered the U's conduct]

8401-6600 Parol evidence

N.L.R.B. (Steven R. Lovell, etc.) v. Electrical Workers, Local 11 772 F.2d 571 (C.A. 9, Sep. 1985)
(where contractual provisions are unambiguous, NLRB need not consider extrinsic evidence. Parol evidence is therefore not only unnecessary but irrelevant)

8401-8000 Respondent's statement of position

Granco, Inc., d/b/a Thriftway Supermarket; et al. 276 NLRB No. 164
(GC's exhibit constituting position statement by E's counsel in response to ULP charge and assertedly containing admissions with respect to job evaluation of allegedly unlawfully discharged Ee received into evidence on basis of *Steve Alvi Ford, Inc.* 179 NLRB 229, and *Warren L. Rose Castings, Inc.*, 231 NLRB 912)

Retail Delivery Systems, Inc. JD-(NY)-15-86
[letter by E's counsel to field examiner setting forth E's position statement with respect to charges filed, admissable]

8401-8200 Evidence contained in newspaper article

Dorothy Shamrock Coal Company 279 NLRB No. 174
[refusal to admit into evidence newspaper article about financially troubled trucking industry, proper, as article published after layoff of Ees, theefore, it could not have played role in decision by E]

8401-8200—Cont.

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[Bd in error when it refused to take *undisputed* evidence into account--newspaper ads showing jobs were available during backpay period]

8401-8400 Affidavit of decedent

Rainey Security Agency, Inc. 274 NLRB No. 041

(affidavit of now deceased president of 1 of 2 respondent Es, purportedly constituting joint E, received into evidence as admission by party-opponent pursuant to FRE Rule 801(d)(2) and possible applicability of Rule 804(b)(3); Bd has approved practice of receiving affidavits made by since deceased persons)

8401-8500 Affidavit of unavailable witness

Construction and General Labors Union, Local No. 1334 (Western Sign Corp.) 281 NLRB No. 029

Malta Construction Company 276 NLRB No. 171

(statement of fellow Ee of alleged discriminatee who did not testify at trial, held inadmissible under FRE 804(a) where there was no showing that E was unable to produce fellow Ee as witness; Bd precedent establishes that requirements of rule 804(a) must be met for affidavits of unavailable witness to be admissable)

8401-9900 Other

Road Sprinkler Fitters Local Union No. 669 a/w Plumbers v. N.L.R.B. 778 F.2d 292 (C.A. D.C., Dec. 1985)

[in case involving discharge of non-U Ee allegedly unlawfully caused by U, ct held that fact that no charge of unlawful refusal to permit Ee to join U was filed did not render evidence to that effect not admissible for its probative value with regard to charged offense]

8433 EXCLUSION OF EVIDENCE

8433-1700 Privileged evidence

Asarco, Incorporated, Tennessee Mines Division 276 NLRB No. 155

(refusal to provide U with E's internal report concerning fatal accident to Ee, sought by U for further investigation of accident and prevention of recurrences, unlawful, where report, not prepared by attorney or with attorney's assistance, did not qualify for exemption from disclosure on basis of attorney-client privilege or attorney work product)

8433-5000 State of mind of union members

Bay Area-Los Angeles Express, Inc. 275 NLRB No. 152

(evidence submitted as to motivation of Ee for signing of anti-U ptn, rejected, since S.Ct ct had held evidence of this nature should be rejected inasmuch as it requires probe of Ee's subjective motivation; further, even if reliable such testimony insufficient to establish motivation of other Ees' signing ptn)

8433-6700 Subjects properly excluded

8433-6724 Hearsay

Orange Belt District Council of Painters and Allied Trades No. 48, et al. (Ghianni Drywall Construction, Inc., et al.) 275 NLRB No. 164

(U's claim that it was prejudiced by admission of improper hearsay evidence, on grounds that facts of instant case do not show *proper circumstance* to admit evidence, rejected where evidence in issue was properly admitted either because Bd was not strictly bound by Federal Rules of Evidence or because evidence was exception to hearsay rule)

8433-6727 Subjective evidence concerning prior state of mind

Felbro, Inc. 274 NLRB No. 186

(evidence of member's vote on ratification of contract, admissable as *res gestae*, since evidence was not offered for its truth of how they felt about ratifying contract but that they did, in fact, accept contract)

8433-6755 Character of preliminary investigation

Pacific Coast Metal Trades District Council 282 NLRB No. 041

[ALJ disallowed GC's attempt to show that respondent U had not cooperated with GC during investigation of 8(b)(3) case and had not presented any defense until after prosecution rested, thereby making defense arguably more suspect than identical defense raised during investigation; Bd practice prohibits consideration or even introduction of such evidence into record since cooperation by respondent with government during investigation is voluntary, and drawing of adverse inference against respondent for failure to participate in investigation would substantially degrade concept of *voluntary* participation]

8433-6762 Records and testimony of Board representative

Drukker Communications, Inc., and Its Wholly Owned Subsidiary The Daily Advance, Inc. 277 NLRB No. 032

(on remand pursuant to ct instructions to allow testimony of Bd agent, who had presided over conference leading to stipulation for certification upon consent election, as to whether parties had orally agreed to exclude individuals from unit, Bd adhered to previous finding that parties did not reach such agreement inasmuch as Bd agent could not testify with certainty that parties had orally agreed to exclude individuals)

8433-6788 Evidence in settled case involving same parties

Over-The-Road, City Transfer, Inside Employees, Local Union No. 544, a/w Teamsters (Better Home Deliveries, Inc.) 274 NLRB No. 034

(ALJ rejected evidence proferred by E where C alleged only 8(b)(7)(C) violation and rejected evidence would have been basis for 8(b)(1)(A) and 8(b)(4)(B) charges which had already been unilaterally settled. Further, offers of proof rejected also on grounds that evidence of another object proscribed by Act, such as secondary object, did not show object prohibited by 8(b)(7)(C) and conduct relevant to 8(b)(1)(A) C, such as violence, did not tend to establish recognitioned or organizational object)

8433-6796 Refusal to produce evidence under subpoena bars party's own use of it

Communications Workers, Local 1101 (New York Telephone Company) 281 NLRB No. 064

[ALJ admitted E's exhibit into evidence, notwithstanding GC's contention that it should not be admitted because document was not made available to GC pursuant to subpoena duces tecum; determination as to whether evidence, which party failed to produce pursuant to subpoena, should be excluded is matter of discretion; and exhibit had previously been made available to GC]

Ironworkers Local 433, a/w Ironworkers (United Steel) 280 NLRB No. 152

8467 EVIDENCE RELATING TO EVENTS BARRED BY 6-MONTH LIMITATION

8467-3300 Admissible for background purposes

Boilermakers, Local Lodge No. 60 (Henry Valencia, an Individual) JD-13-85

(events *anterior* to limitation period (10(b)) admissable to illuminate motivation for Respondent's conduct during limitation period)

750 RES JUDICATA

0100 GENERALLY

Steelworkers, Local 15063 (Geraldine Shanks, an individual) — 281 NLRB No. 169

[U cannot relitigate in backpay proceeding its contentions raised in underlying ULP proceeding that it was not liable for discharged Ee's losses because, allegedly, the E had right to discharge Ee under contract, Ee's grievance was untimely and E had refused to arbitrate, since Bd had determined in ULP proceeding that Ee's losses were due to U's unlawful failure to fairly represent her]

Western Temporary Services, Inc. and The Classic Company, Inc. — 278 NLRB No. 073

[ALJ's granting GC's mtn to strike certain of Es' denials from their individual answers, granting mtn for summary judgment, and deciding certain issues were res judicata because previously determined by Bd in underlying R proceeding, proper, notwithstanding Es' contention that they were denied due process in R proceedings for lack of adequate notice of amendment to ptn naming them as joint Es, where GC issued C alleging them as joint Es over two weeks before R ptn amendment and hearing, one E admitted joint E status in its answer, and other E presented evidence of their relationship at R hearing]

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. — 773 F.2d 77 (C.A. 6, Sep. 1985)

(factual finding which is necessary to support judgment in prior proceeding will bar relitigation on that issue in subsequent proceeding involving same parties)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. — 773 F.2d 77 (C.A. 6, Sep. 1985)

(issue preclusion should only be applied where identical issue sought to be relitigated was determined in prior proceeding in which litigant against whom doctrine is asserted had full and fair opportunity to litigate issue; factual issue is *necessarily decided* if its determination was necessary to support judgment entered in prior proceeding)

0150 PRIOR COURT OR AGENCY DECISION

Consolidated Dress Carriers, Inc., et al. — JD-(NY)-68-86

[in backpay proceeding, E's contention that issue whether economic striker, refused reinstatement upon unconditional offer to return to work, had been terminated prior to strike, was not *litigated*, rejected; E could have and should have raised such affirmative defense before ALJ; records introduced herein were in E's possession and/or available to it when trying underlying case; issue was peculiarly w/i E's knowledge and control with no explanation offered why it did not raise issue at appropriate time; and res judicata bars all claims and defenses that were or could have been raised]

Local 796, Electronic Workers IUE (Michael P. Burrow, an Individual) — JD-162-86

[decision of state ct dismissing charging party's complaint against U president for assault and battery, not dispositive of whether U president's actions were violative of Act, since criminal standard more exacting than civil one applicable in ULP procedure; further, ct's decision based on holding that action was accompanied by legitimate revocation of charging party's license to be on U's premises, but under Act such revocation not lawful since discriminatorily motivated]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeland Local Union No. 38 — 748 F.2d 1001 (C.A. 5, Dec. 1984)

[U's contention that discriminatees had failed to mitigate backpay by failure to accept its referrals, rejected, since Bd affirmed by another circuit ct had found U's referrals discriminatory as to these Ees in ULP proceeding]

N.L.R.B. v. Laborers' International Union of North America, AFL-CIO; and Pipeline Local Union No. 38 — 748 F.2d 1001 (C.A. 5, Dec. 1984)

(U's contention that discriminatees had failed to mitigate backpay by failure to accept its referrals, rejected, since Bd affirmed by another circuit ct had found U's referrals discriminatory as to these Ees in ULP proceeding)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. — 773 F.2d 77 (C.A. 6, Sep. 1985)

(findings of agencies made in course of proceedings which are judicial in nature should be given same preclusive effect as findings made by courts)

2500 FORMS OF APPLICATION

2533 COLLATERAL ESTOPPEL--SUBSEQUENT PROCEEDING BASED ON DIFFERENT CAUSE OF ACTION

Springfield Transit Management, Inc. — 281 NLRB No. 017

[subcontractor hired by state agency collaterally estopped from asserting that it was not contractually bound by agreement between U and state agency hiring it to operate transit system where question had been litigated and decided adversely to it in superior ct case]

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) — 279 NLRB No. 096

[even though U's 8(a)(2) and (5) charges were dismissed in prior ULP cases involving same parties as those herein, such dismissals do not collaterally estop U from raising those grounds here (in instant case) as defenses]

Alamo Cement Company — 277 NLRB No. 034

]*res judicata* principle foreclosed adjudication of supervisory status of certain individuals in instant case where they had been found nonsupervisory in prior Bd case, and, with one exception, all material evidence was available and could have been litigated in prior proceeding)

N.L.R.B. v. Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. — 785 F.2d 46 (C.A. 2, Mar. 1986)

[Bd not collaterally estopped from finding that buyer assumed U contract because New York S.Ct found buyer did not expresly agree to adopt seller's contract with U, since collateral estoppel does not apply to issues not *essential to the judgment;* here New York cts, relying on cases requiring express agreement to arbitrate, merely determined that buyer was not bound by arbitration provision of seller's contract, not whether it was bound by other provisions of labor contract]

Plumbers, Local No. 198 v. N.L.R.B. — 747 F.2d 326 (C.A. 5, Nov. 1985)

(collateral estoppel found not to apply to prior complaints, since they were voluntarily withdrawn and lacked finality, there was little provity between prior complainants and present class of discriminatees, and present action involved more than discrimination against prior complainants)

Frye v. Steelworkers — 767 F.2d 1216 (C.A. 7, July 1985)

(issues underlying member's allegation that U violated his rights under Title I of LMRDA were fully and fairly litigated in earlier NLRB proceeding, and judgment on those issues was reached in a manner that would not have affected decision; thus, collateral estoppel precluded relitigation of issues where allegations made by GC in NLRB action were same as made by member in LMRDA action, ALJ in NLRB action reviewed all claims of procedural error raised in LMRA claim, as well as claims based on merit, or alleged lack thereof of charges and rendered decision no different than one that would be rendered by district ct in suit under LMRDA)

2533—Cont.

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

(in determining whether collateral estoppel should apply, while it is true actions based on one statute should not automatically be given preclusive effect in actions based on another statute, it is also true considerations of fairness can make application of collateral estoppel inappropriate for a number of reasons; however, *when all factors required for collateral estoppel are present, it is party opposing preclusion who must demonstrate that applying collateral estoppel in specific case would result in particularized unfairness*)

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

(in order for agency decision to be given collateral estoppel effect by ct, original action must have been properly before agency, same disputed issues of fact must have been before agency as before ct, agency must have acted in judicial capacity, and parties had adequate opportunity to litigate issues before agency)

2550 COLLATERAL ESTOPPEL--SUBSEQUENT PROCEEDING BASED ON SAME CAUSE OF ACTION

Bryan Memorial Hospital 282 NLRB No. 032

[mtn for summary judgment granted and E held to have violated Section 8(a)(5) by failing to bargain before making changes in benefits and working conditions, where issue of whether E had properly withdrawn recognition from U was raised in previous case, is res judicata, and may not herein be raised or litigated, nor does pendency of appeal of prior proceeding in federal ct necessitate dismissal of C. Since E is not entitled to refuse to bargain with certified U while it litigates validity of certification in ct of appeals]

Overseas Motors, Inc. 277 NLRB No. 061

(where Respondent E's defense was litigated in underlying ULP case and decided adversely to E, E now not merely collaterally estopped from raising these defenses in backpay proceeding under collateral estoppel or res judicata, but barred from raising these defenses under doctrine of *law of the case* since backpay proceeding merely continuation of or supplement to ULP proceeding)

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. 766 F.2d 812 (C.A. 3, July 1985)

(E's contention that collateral estoppel precluded Bd from making findings different than that of district ct as to E-Ee relationship in prior Sec. 301 action involving same parties, rejected, since prior 301 action was improperly removed from state ct to district ct because district ct had no original jurisdiction and therefore any *findings* made by district ct are w/o collateral estoppel effect)

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(U's contention that it was denied due process due to lack of reasonable notice of an identifiable or recognizable group of alleged discriminatees for whom redress was sought, rejected, where C alleged broad discrimination in hiring hall operations generally, not just as to named parties; also, Bd's relegating determination of discriminatees to compliance stage let U contest individual awards and compliance procedures, whereas, if finding of general discrimination were established but redress given only named individuals, collateral estoppel might bar U from relitigating discrimination issue as to unnamed members of the class)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)

(factual finding which is necessary to support judgment in prior proceeding will bar relitigation on that issue in subsequent proceeding involving same parties)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)

(issue preclusion should only be applied where identical issue sought to be relitigated was determined in prior proceeding in which litigant against whom doctrine is asserted had full and fair opportunity to litigate issue; factual issue is *necessarily decided* if its determination was necessary to support judgment entered in prior proceeding)

2567 DIRECT ESTOPPEL - SUBSEQUENT PROCEEDING BASED ON SAME CAUSE OF ACTION

Searle Auto Glass, Inc. d/b/a Best Glass Company 280 NLRB No. 159

[contention that discriminatee was not entitled to backpay, because he would have been discharged anyway, rejected where Bd's finding that claim of legitimate reason for discharge was pretext was *res judicata*]

Evans Plumbing Co. 278 NLRB No. 089

[mtn to strike defense of alleged offer of reinstatement and supporting testimony, granted, since it was barred by res judicata where failure to reinstate had been raised as issue in C, admitted in answer, and implicity found in ALJ's decision]

5000 EFFECTS OF APPLICATION

5016 FINDINGS IN PRIOR BOARD DECISION OR SETTLEMENT AGREEMENT NOT APPLICABLE TO LATER CASE INVOLVING DIFFERENT UNFAIR LABOR PRACTICES AND DIFFERENT CONDITIONS

American Model & Pattern, Inc. 277 NLRB No. 018

(in case involving factual question of whether E had ever observed seniority for purposes of layoff and recall, ALJ was bound by collateral estoppel in finding that E in fact did observe seniority since that factual issue had been fully litigated and resolved against E in prior ULP case involving same parties)

5025 NOT CONCLUSIVE AS TO QUESTIONS OF FACT NOT ACTUALLY LITIGATED

Staff Officers Association of America (Delta Steamship Lines) 277 NLRB No. 125

(contention that charge was identical in substance and form to charge withdrawn with RD's approval, rejected, since charge herein concerns events subsequent to filing of prior charge and were not considered in investigating it; further, disposition of prior charge by RD is not res judicata as to subsequent charge filed by same charging party covering identical subject matter)

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)

(issue preclusion should only be applied where identical issue sought to be relitigated was determined in prior proceeding in which litigant against whom doctrine is asserted had full and fair opportunity to litigate issue; factual issue is *necessarily decided* if its determination was necessary to support judgment entered in prior proceeding)

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

(issues underlying member's allegation that U violated his rights under Title I of LMRDA were fully and fairly litigated in earlier NLRB proceeding, and judgment on those issues was reached in a manner that would not have affected decision; thus, collateral estoppel precluded relitigation of issues where allegations made by GC in NLRB action were same as made by member in LMRDA action, ALJ in NLRB action reviewed all claims of procedural error raised in LMRA claim, as well as claims based on merit, or alleged lack thereof of charges and rendered decision no different than one that would be rendered by district ct in suit under LMRDA)

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

(express finding of fact or finding of law in earlier judgment is sufficient to give it collateral estoppel preclusive effect if that finding was necessary and essential in earlier judgment. Therefore, it is not similarity between types of litigation or actions involved but between factual issues and their roles in respective actions that is important)

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

(in order for agency decision to be given collateral estoppel effect by ct, original action must have been properly before agency, same disputed issues of fact must have been before agency as before ct, agency must have acted in judicial capacity, and parties had adequate opportunity to litigate issues before agency)

5037 NOT OPERATIVE WHERE PRIOR DETERMINATION NOT NECESSARY TO DECISION

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)

(determination of whether plant shutdown should cut off back pay awards belonged in backpay proceeding, where, notwithstanding ALJ's finding in ULP proceeding that back pay awards should continue past point of plant shutdown, such finding was not necessary to support his order or Bd's order and therefore finding did not bar relitigation on that issue)

5037—Cont.

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

(express finding of fact or finding of law in earlier judgment is sufficient to give it collateral estoppel preclusive effect if that finding was necessary and essential in earlier judgment. Therefore, it is not similarity between types of litigation or actions involved but between factual issues and their roles in respective actions that is important)

5043 NOT OPERATIVE WHERE NON-8(a)(5) CASE INVOLVES PRIOR REPRESENTATION CASE FINDINGS

Programming & Systems, Inc. 275 NLRB No. 157

(status of U as labor organization held res judicata where issue litigated in prior R case proceeding)

5075 BURDEN OF PROOF ON PERSON WHO WANTS JUDGMENT IN FIRST ACTION TO BE ADJUDGED CONCLUSIVE

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

]*when all factors required for collateral estoppel are present, it is party opposing preclusion who must demonstrate that applying collateral estoppel in specific case would result in particularized unfairness)*

5087 OPERATIVE ONLY AGAINST SAME PARTY INVOLVED IN PRIOR CASE

Lockheed Shipbuilding and Construction Company 278 NLRB No. 006

[discharge of Ees pursuant to policy of testing Ees for medical fitness for particular job assignments, assertedly because OSHA required such medical tests, violative, where Bd had rejected this defense in previous ULP case involving same parties and E had expressly agreed by contract that such testing would not adversely affect Ees' employment]

American Model & Pattern, Inc. 277 NLRB No. 018

(in case involving factual question of whether E had ever observed seniority for purposes of layoff and recall, ALJ was bound by collateral estoppel in finding that E in fact did observe seniority since that factual issue had been fully litigated and resolved against E in prior ULP case involving same parties)

Programming & Systems, Inc. 275 NLRB No. 157

(status of U as labor organization held res judicata where issue litigated in prior R case proceeding)

6200 APPLICATION INAPPROPRIATE

Dependable Building Maintenance Company; et al. 276 NLRB No. 007

(on remand of case for consideration of additional issues, GC's mtn to strike Es' exception to part of ALJ's order as untimely because Bd had affirmed this part of the order in its original decision, so that res judicata applied, denied, since this issue was not reached in Bd's original disposition of the case)

N.L.R.B. v. Chaim Babad, Bernard Steinmetz and Emanuel Steinmetz, A Co-Partnership d/b/a J.R.R. Realty Co. 785 F.2d 46 (C.A. 2, Mar. 1986)

[Bd not collaterally estopped from finding that buyer assumed U contract because New York S.Ct found buyer did not expressly agree to adopt seller's contract with U, since collateral estoppel does not apply to issues not *essential to the judgment;* here New York cts, relying on cases requiring express agreement to arbitrate, merely determined that buyer was not bound by arbitration provision of seller's contract, not whether it was bound by other provisions of labor contract]

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

(express finding of fact or finding of law in earlier judgment is sufficient to give it collateral estoppel preclusive effect if that finding was necessary and essential in earlier judgment. Therefore, it is not similarity between types of litigation or actions involved but between factual issues and their roles in respective actions that is important)

Frye v. Steelworkers 767 F.2d 1216 (C.A. 7, July 1985)

(in determining whether collateral estoppel should apply, while it is true actions based on one statute should not automatically be given preclusive effect in actions based on another statute, it is also true considerations of fairness can make application of collateral estoppel inappropriate for a number of reasons; however, *when all factors required for collateral estoppel are present, it is party opposing preclusion who must demonstrate that applying collateral estoppel in specific case would result in particularized unfairness)*

7500 FINDINGS OF OTHER TRIBUNALS BASED ON SAME EVIDENCE NOT BINDING ON BOARD

Local 796, Electronic Workers IUE (Michael P. Burrow, an Individual) JD-162-86

[decision of state ct dismissing charging party's complaint against U president for assault and battery, not dispositive of whether U president's actions were violative of Act, since criminal standard more exacting than civil one applicable in ULP procedure; further, ct's decision based on holding that action was accompanied by legitimate revocation of charging party's license to be on U's premises, but under Act such revocation not lawful since discriminatorily motivated]

Graves Trucking, Inc. JD-34-85

(fact that discriminatee received worker's compensation benefits and filed state ct action against E, which was ultimately dismissed, based on same facts underlying ULP case held not *res judicata*, since Section 10(a) of the Act provides that Bd's power in ULP cases *shall not be affected by any other means of adjustment...established...by law*)

762 LACHES

0100 GENERALLY

2000 ELEMENTS OF LACHES

2025 PARTY MUST BE UNREASONABLE IN HIS DELAY AFTER LEARNING FACTS

Communications Workers, Local 11500 (American Telephone & Telegraph Company) **JD-(SF)-40-86**
[charge of unlawful fining by U for crossing picket line during strike barred by Section 10(b) where Ee was aware of U's efforts to discipline her for crossing picket line 18 months prior to filing charge]

4000 POSSIBLE EXCUSES FOR DELAY

6000 COMPLAINANT NORMALLY WOULD BE BARRED IF APPLICABLE STATUTE OF LIMITATIONS IN ANALOGOUS SITUATIONS HAS RUN

8000 NOT AVAILABLE AGAINST BOARD

Armour and Company **280 NLRB No. 096**
[dismissal of complaint on basis of laches not required by Bd's extended processing matter over nearly 26 month period from filing of charge to hearing, where Respondent not substantially prejudiced]

Rainbow Tours, Inc., d/b/a Rainbow Coaches **280 NLRB No. 017**
[Bd rejected E's contention that time it took from original decision adjudicating issue of discrimination until start of backpay hearing--over 4 years--was so great as to render accumulation of information sufficient to sustain the burden of proving mitigation an impossibility as Board is not required to place consequences of its own delay, even if inordinate, upon wronged Ees to the benefit of wrongdoing E]

Evans Plumbing Co. **278 NLRB No. 009**
[delay between entry of Bd's enforcement order and filing of backpay proceeding not available as defense to extinguish discriminatee's claim to Bd awarded backpay]

Smyth Manufacturing Co., Inc.; Beacon Industries **277 NLRB No. 066**
(laches rejected as defense where E argued that it should not be required to pay interest on backpay awards because of Bd's delay, since, even assuming that Bd was responsible for 5 year delay, it is not required to place consequences of its own delay, even if inordinate, upon wronged Ees, to benefit of wrong doing employers)

775 WAIVER

0100 GENERALLY

1200 MAY BE VERBAL OR IN WRITING

2500 MAY RESULT FROM IMPLICATION OR USAGE

Ventura County Star-Free Press **279 NLRB No. 064**

[E estopped from challenging and found to have waived right to challenge U's affiliation with international U on basis that it failed to meet due process requirements where E's spokesman demanded, received, and accepted U's proof of its status as Ees' bargaining representative before commencing negotiations and negotiated with it thereafter]

3700 ASSENT MUST BE CLEAR, IT WILL NOT BE INFERRED FROM DOUBTFUL LANGUAGE OR FACTS

Operating Engineers Local 501 (Summa corp. d/b/a Desert Inn Hotel, et al.) **281 NLRB No. 065**

[expelling supervisor, who is also representative of E, from U membership for crossing a U picket line to perform his regular supervisory duties, including adjustment of grievances, held violative, since it is clear that E did *not* clearly and unmistakably waive its right under Sec. 8(b)(1)(B) of Act to be free from Respondent's restraint or coercion in selecting Assistant Chief Engineer as its representative for either collective bargaining or grievance adjustment purposes notwithstanding that under contract supervisor included in bargaining unit]

Ne Di Construction Co., Inc. **279 NLRB No. 071**

[no waiver by U of its right to receive notice of E's termination of agreement to be bound by master contract where, upon receipt of E's letter *tendering notice of union cancellation,* U immediately sought explanation, consistently and forcefully resisted E's apparent attempt to withdraw recognition, and resisted E's announcement of unilateral changes by demanding immediate compliance with master contract]

Beckley Belt Service, Inc., d/b/a Beckley Belt Services & Roofing Co., Inc. **279 NLRB No. 066**

[Ee's failure to protest E's alleged payment of wage rate comparable to that in the trade rather than contract not waiver of latter, since E's contractual obligation was to U, rather than Ees]

Boise Cascade Corp., Paper Group **279 NLRB No. 074**

[E's contention U had waived right to information regarding surveys used to formulate maintenance improvement program at one of its facilities which would combine some duties of Ees, reduce number of craft classifications, and change wage structure, by provision in contract which stated in part that before substantial change made in job content or in size of crew, E must discuss with U changes and similar jobs in oother mills, to be set forth in survey of 5 competitive mills, rejected, and E furnishing U 5 mill study not sufficient, where no express, unambiguous waiver in agreement, and parties, past practice did not constitute clear waiver]

Boise Cascade Corp., Paper Group **279 NLRB No. 074**

[*National labor policy disfavors waivers of statutory rights by Us and thus U's intention to waive right must be clear before claim of waiver can succeed. Waivers can occur in any of three ways: by express provision in bargaining agreement, by conduct of parties (including past practices, bargaining history, and action or inaction), or by combination of two. Lanugage of bargaining agreement will effectuate waiver only if it is unmistakable in waiving statutory right*]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**

[contract provision stating that U *warrants, represents and agrees* that it represented a majority of unit Ees not clear and unmistakable waiver of U's right to benefit from presumption of majority status after expiration of contract]

KBMS, Inc., A Subsidiary of Century Broadcasting Corporation **278 NLRB No. 118**

[unilateral cessation of pension and welfare fund contributions violation, notwithstanding contract expiration and E's reliance on provision in Trust Fund agreement stating that E should continue to pay fund contributions as long as E was obligated pursuant to collective bargaining agreement, where provision was not clear and unmistakable waiver of Ees' right to receive contributions and U's right to bargain over E's ceasing to make them on expiration of contract, since section did not deal with termination of E's obligation to contribute, and under Bd law E's obligation survived contract]

Clinchfield Coal Company **275 NLRB No. 189**

(contractual language not clear and unmistakable waiver of U's right to request information where language concerning grievance procedure spoke of complaints filed by Ees, not U; mine committee's duties were confined to adjusting disputes arising out of contract that E and Ees, not U, had failed to adjust; and where *full-disclosure* provision obligated parties to disclose facts and contractual provisions relied on after grievance was filed but did not mention situations where, as here, a party sought to police the contract and obtain information to determine if a violation had occurred)

Everett Yacht Club **JD-(SF)-115-85**

(although U representative heard rumors and received phone calls that E would cease its restaurant and bar business by a certain day, record devoid of *clear and unambiguous evidence* that U waived its right to bargain about effects of E's decision, thus E's decision violative)

My Buddy Products, A Division of S&T Industries, Inc. **JD-114-85**

(U did not waive right to bargain over Ee health insurance contributions notwithstanding E raised issue during negotiations for new contract, since after some discussion, no agreement reached. W/o insisting upon express reservation to take such action and w/o zipper clause in contract, it would appear E conceded it had no right to take unilateral action. No waiver can be found unless issue was fully discussed, conscientiously explored and conscientiously yielded by U during negotiations)

5000 WAIVER OF PROCEDURAL PROVISIONS

5012 UNFAIR LABOR PRACTICES

Central Broadcast Company **280 NLRB No. 056**

[E's failure to object to introduction of its letter and copy of its president's speech, which it had supplied to GC, found to constitute waiver of formal notice in C where letter and speech were not alleged as violative in C but were fully litigated]

Local No. 136, Plumbers (B. F. Shaw Company) **280 NLRB No. 099**

[U's contention that job referral applicant waived his rights to hiring hall information by filing charge against U, rejected, since waiver would result in depriving charging party of vested rights because he pursued those rights through use of Bd processes, and Bd would undermine its own existence if it punished charging parties for filing charges]

Manhattan Eye, Ear and Throat Hospital **280 NLRB No. 011**

[where allegation in charge timely, inclusion of allegation in amended C after failing to do so in original C, proper, as initial failure to include does not constitute dismissal by RD, and its subsequent inclusion in amended C does not constitute *revival* of charge already found insupportable in evidence or law. Neither does failure by Charging Party to appeal dropping of allegation in original C constitute waiver]

Reichhold Chemicals, Inc. **277 NLRB No. 073**

(E's seeking waiver of Ees' right to engage in ULP strikes, as part of no-strike clause, and right to seek redress from Bd or other tribunal for discipline imposed under clause on replaced strikers, not unlawful, since Act does not prohibit Us from waiving Ees' right to strike over ULPs; and proposed waiver of replaced strikers right to Bd's processes, absent other evidence, read as permitting only non-discriminatory application, and does not extend to appeals to Bd on other matters; since this waiver merely derivative of waiver of right to strike a mandatory subject of bargaining, it too is mandatory, thus E could insist to impasse on dual waiver)

5025 RIGHT TO OBJECT TO ELECTION

Monarch Building Supply **276 NLRB No. 016**

(E's objection to election that U had chosen a supervisor as an election observor overruled, since E had waived the objection and was estopped from raising the issue for the first time in postelection objections by its failure to comment or protest when U announced at the preelection confer-

5025—Cont.

ence that it would use as an observor an individual whom it considered a supervisor)

Redway Carriers, Inc./Cardinal Leasing, Inc., A Joint Employer **274 NLRB No. 198**

(U's written request to proceed with election notwithstanding pending 8(a)(3) charge held not waiver of such allegation as grounds for objecting to election, where parties were aware of charge at time of hearing and no 8(a)(2) or 8(a)(5) conduct was involved; Bd policy enables nonoffending party to proceed with election knowing that in event of adverse result, it could nevertheless object to election on basis of unlawful interference, regardless of prior knowledge of such conduct and regardless of whether ULP charges were filed)

5060 RIGHT TO SEC.10(b) DEFENSE

Pennsylvania Energy Corporation **274 NLRB No. 174**

(U did not waive its right to bargain over E's subcontracting agreement with contractor to do bargaining unit work, activity of E's of which U had no knowledge; otherwise, U repeatedly pursued meetings with E whenever it became aware of suspicious activity; these actions were consistent with attempts to preserve rights of laid off Ees and could not be considered to be indicative of any abandonment of those rights)

6200 APPLICABILITY TO BOARD

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. **802 F.2d 280 (C.A. 7, Sept. 1986)**

[ct rejected Bd's conclusion below and argument before ct that E *waived* objection to appropriateness since 9(b) imposes nondelegable duty on Bd to determine appropriateness]

7500 ELECTION OF REMEDIES (ANALOGOUS TO WAIVER)

8700 WAIVER OF PROTECTED RIGHTS

8701 GENERALLY

Challenge-Cook Brothers of Ohio, Inc. **282 NLRB No. 002**

[absent express language in contract waiving parties' bargaining obligations, Bd examines totality of circumstances surrounding making of contract, including prior bargaining history, to determine whether waiver may be implied; here, parties engaged in no discussion bearing on effects of relocation of unit work, and U's silence may not be construed as waiver; in absence of express language or unambiguous bargaining history, forfeiture of important right, such as bargaining over effects of decision to relocate Ees' work, will not be implied]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers **777 F.2d 1131 (C.A. 6, Dec. 1985)**

[contention that Ees' right to be free of U officials' superseniority's burden on their seniority rights contained in superseniority clause is economic right subject to waiver, rejected, since it is not related to right to engage in concerted activity for economic advantage, but right to be free of discrimination that encourages U membership]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) **797 F.2d 1027 (C.A. D.C., Aug. 1986)**

[while U may bargain away its members' economic rights, it may not surrender rights that impair Ees' choice of their bargaining representative; thus, right to solicit support for or against bargaining representative is nonwaivable]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) **797 F.2d 1027 (C.A. D.C., Aug. 1986)**

[standards governing question whether contract *waives* statutory rights and provides defense to ULP charge do not differ from those cts apply in Sec. 301 breach of contract suits; it is not appropriate in either context to interpret agreements in vacuum; rather, they must be read in light of realities of labor relations and federal labor policy; *clear and unmistakable* test dictates that waiver of statutory rights may not be inferred casually, but it also cannot be applied woodenly; whether rights have been waived depends on circumstances of each case]

8712 RIGHT TO OBSERVE PICKET LINE

Metropolitan Edison Company **279 NLRB No. 047**

[threatening discipline, including suspension, for refusing to cross stranger picket line, not violation where broad no-strike clause waived Ee's right to honor stranger picket line, in absence of any evidence in bargaining history or past practice demonstrating that parties expresaly excluded sympathy strikes from no-strike clause coverage]

Arizona Public Company **273 NLRB No. 210**

(issuing 3-day suspensions to 8 Ees because they refused to cross a stranger picket line thus refusing to perform assigned work of removing overhead lines at municipal building complex, not violative, since E's contract with U permitted E to discipline Ees who *engage in any unauthorized stoppage, strike, intentional slowdown, or suspension of work*, and U, by letter, stated that it *had not authorized stoppage, strike, slowdown or suspension of work* at involved work site. Absent extrinsic evidence that parties intended otherwise, and general no-strike clause waives the Ees' right to engage in sympathy strikes)

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) **788 F.2d 1412 (C.A. 9, May 1986)**

[general no-strike clause waives Ees' statutory right to engage in sympathy strikes absent extinsic evidence that parties intended otherwise; rule is not substantive, and, rather than establishing irrebuttable presumption that broad no-strike rule bars sympathy strikes, shifts burden of proof to party making that claim and requires consideration of available evidence such as contract's other terms, negotiation of no-strike clause, and parties' bargaining history and past practices]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) **797 F.2d 1027 (C.A. D.C., Aug. 1986)**

[Ees' right under Sec. 7 to observe lawful picket lines that they encounter in course of their duties may be waived by them in bargaining agreements, but waiver of right to engage in sympathy strikes, like waiver of other rights under Act, must be *clear and unmistakable*]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) **797 F.2d 1027 (C.A. D.C., Aug. 1986)**

[ct rejected U's contention that Bd's treatment of sympathy strikes as matter of contract interpretation of no-strike clause was inconsistent with *clear and unmistakable* standard which is addressed to Ee's subjective intention to give up a statutory right rather than to objectively reasonable construction of contract that binds Ee; S.Ct has held that general no-strike clause which turns upon proper interpretation of contract, and relevant cases do not support proposition that waiver hinges upon Ee's subjective intent rather than mutual consent reflected in contract]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) **797 F.2d 1027 (C.A. D.C., Aug. 1986)**

[rejecting U's contention that Bd's treatment of waiver of sympathy strikes as matter of contract interpretation of no-strike clause was inconsistent with *clear and unmistakable* standard addressed to Ees' subjective intent to give up statutory right, ct held federal labor policy is more threatened by interposition of artificial rules of construction upon parties' mutual intent when *waiver* of sympathy strikes is at stake, than by Bd's giving effect to clear impact of contractual language]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) **797 F.2d 1027 (C.A. D.C., Aug. 1986)**

[Bd or ct is not prevented by Act from finding waiver of right to honor picket lines in contractual no-strike clause of sufficient breadth; in assessing whether broad no-strike clause covers sympathy strikes, however, unexpressed reservations of Ees cannot be treated as dispositive, and ct's task is simply to interpret parties' manifestation of mutual consent; and in determining meaning of general no-strike clause, ct is guided by S.Ct's holding that sympathy strike was w/i purview of general no-strike clause, which S.Ct based primarily on language of clause itself]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) **797 F.2d 1027 (C.A. D.C., Aug. 1986)**

[U's contention that it was entitled to Bd's prior approach in *Davis-Mckee* (238 NLRB 652), that sympathy strike was not covered by no-strike clause, rejected, since at time no-strike clause was drafted Bd was willing to find that no-strike clause waived right to honor picket line; in effect U's argument was that parties, in later ratifying pre-existing contractual language, necessarily intended to incorporate changes in law *sub silentio*; even if such speculation was appropriate, *Davis-Mckee* was not *the law* in circuit where agreement was entered]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) **797 F.2d 1027 (C.A. D.C., Aug. 1986)**

[U's contention that it was entitled to Bd's prior approach in *Davis-Mckee* (238 NLRB 652), that sympathy strike was not covered by no-strike clause, rejected; it is simply wrong to assume that *the law* to which parties refer in entering bargaining agreement's is exclusively, or even primarily, Bd law; such agreements are interpreted by arbitrators and cts as well, and cts must give broad, and virtually complete, deference to arbitrator's interpretation of agreement]

8718 RIGHT TO REINSTATEMENT BACKPAY OR REIMBURSEMENT

8718—Cont.

Arrow Sash and Door Company **281 NLRB No. 149**
[E not ordered to make contributions to pension funds for period it unlawfully failed to make contributions, since U waived Ees' right to contributions for that period by virture of subsequent bargaining agreement terminating any pension coverage retroactive to date E ceased making contributions]

Plateau Coal Sales, Inc. **279 NLRB No. 156**
[witness's (superintendant) uncoroborated testimony, concerning Ee's reinstatement not waiver of Ee's reinstatement, since there was no showing that Ee was offered employment and/or asked to report to work after his examination]

Plateau Coal Sales, Inc. **279 NLRB No. 156**
[no waiver of reinstatement by discriminatee where uncorroborated testimony by superintendent who testified he phoned discriminatee to confirm rumor that he wasn't returning to work and later told him it was true, since no showing that discriminatee was offered employment and/or asked to report to work.]

Jones Plumbing Co., Inc.; et al. d/b/a Instant Plumbing Company **277 NLRB No. 047**
(fact Ee received pay for time of unlawful layoff and signed release did not constitute waiver of public remedies of backpay, reinstatement, and notice posting, where record insufficient to determine whether payment constituted full payment of backpay under Bd law, release executed when other discriminatory acts against Ee had not been remedied, nor was charging U involved in execution)

Murbro Parking, Inc. **276 NLRB No. 009**
(no waiver of his right to reinstatement where discriminatee wrote on reverse of NLRB *Search for Work* form *I wouldn't go back to E for twice the hourly wage*, since statement was written prior to valid offer of reinstatement, thus answer was to hypothetical question, and was made in anger)

8725 RIGHT TO STRIKE AGAINST ULP MAY BE WAIVED BY EXPLICIT CONTRACTUAL PROVISION

Reichhold Chemicals, Inc. **277 NLRB No. 073**
(E's seeking waiver of Ees' right to engage in ULP strikes, as part of no-strike clause, and right to seek redress from Bd or other tribunal for discipline imposed under clause on replaced strikers, not unlawful, since Act does not prohibit Us from waiving Ees' right to strike over ULPs; and proposed waiver of replaced strikers right to Bd's processes, absent other evidence, read as permitting only non-discriminatory application, and does not extend to appeals to Bd on other matters; since this waiver merely derivative of waiver of right to strike a mandatory subject of bargaining, it too is mandatory, thus E could insist to impasse on dual waiver)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(in finding no violation where E imposed more severe disciplinary suspensions on U stewards for violating no-strike provision, Bd considered S.Ct's *Metropolitan Edison* decision from standpoint of U's waiver of U officials' Sec. 7 rights to extent they have affirmative duty to prevent illegal work stoppages, U's lawful bargaining away of statutory protection accorded U officials, insufficiency of general no-strike clause to constitute waiver, relevance of arbitration decisions in establishing waiver, and establishment of waiver by circumstances surrounding bargaining relationship as well as by language of agreement itself)

Indiana & Michigan Electric Company **273 NLRB No. 193**
(imposition of disparate disciplinary suspensions on U stewards for violating no-strike provision, not unlawful, where U assumed duty to prevent unlawful strikes and thereby waived steward's statutory rights; while S.Ct in *Metropolitan Edison* found affirmative action cannot be required unless such requirement is bargained for, it merely held general *no-strike* clause was not enough to constitute waiver and left open what contractual language would suffice; here, contract unequivocally imposed duty to end unlawful strike, and stewards did not fulfill their contractual obligations even under most narrow construction of contract)

International Molders and Allied Workers Union, Local No. 164 v. N.L.R.B. **765 F.2d 858 (C.A. 9, July 1985)**
absent explicit agreement to contrary, no-strike obligation clause is limited to disputes over arbitrable issues)

International Molders and Allied Workers Union, Local No. 164 v. N.L.R.B. **765 F.2d 858 (C.A. 9, July 1985)**
(blanket no-strike clause held waiver of right to strike during both arbitration proceeding and judicial review of arbitration decision, since no-strike clause presumed coterminous with arbitration process, and judicial review is part of final and binding arbitration process; contention waiver not clear and unmistakable, as required by Bd rule, as no evidence parties contemplated question of whether no-strike clause would apply to pending judicial review of arbitration award, thus clause applies only to contingencies individually identified previously as being w/i its coverage, rejected)

8731 RIGHT TO BARGAIN OVER MANDATORY SUBJECTS

Rappazzo Electric Co., Inc. **281 NLRB No. 075**
[U did not waive its right to bargain over decrease in wages and benefits and to protest E's actions, where U consistently took position that terms of bargaining agreement were in full force and effect; moreover E could not show that U had clear notice of E's intent to institute changes sufficiently in adherence of actual implementation nor did E demonstrate that U failed to make timely bargaining request before changes were implemented]

Whirlpool Corporation **281 NLRB No. 007**
[no violation since U waived right to bargain over alleged unilateral change in suspension hearing procedure by writing to E and requesting witness to be present at hearing w/o subsequently requesting bargaining]

Whirlpool Corporation **281 NLRB No. 007**
[U waives right to oppose unilateral change where it is aware of projected change in sufficient time to bargain before change is implemented and fails to request bargaining; U must prosecute its right, not merely protest the change or file ULP charge]

Handy Spot, Inc. **279 NLRB No. 177**
[E's failure to bargain with U over effects of its decision to subcontract its delivery routes in metropolitan area to independent contractors resulting in layoff or termination of its Ees unlawful notwithstanding E's contention that U waived its right to bargain, where E never advised U of sale of any of E's routes until well after sales had taken place]

EPI Corporation d/b/a Rockford Manor Intermediate Care Facility **279 NLRB No. 170**
[U waived its interest in bargaining with respect to carrier induced changes in health benefit plan, notwithstanding parties did not specifically address issue of mid-term adjustment in health program during their contract deliberations where it was clear that they negotiated complete agreement, and it was also clear that parties desired to commit unresolved issues to management prerogatives as they existed upon entry of agreement]

Ventura County Star-Free Press **279 NLRB No. 064**
[unilaterally withholding step increases from eligible Ees not unlawful where U failed to timely demand bargaining and merely protested]

BASF Wyandotte Corporation **278 NLRB No. 028**
[unilateral implementation of respirator seal rule that had effect of prohibiting wearing of facial hair by Ees whose jobs necessitated their wearing respiratory protective equipment, not violation where U waived right to bargain over rule by agreeing to management rights clause allowing E to make and enforce rules deemed necessary or proper for conduct of Ees and operation of plant]

American Stores Packing Company, A Division of Acme Markets, Inc. **277 NLRB No. 190**
[refusal to provide U with information requested for bargaining about E's decision to close plant and subcontract unit work, not violative where U had waived right to bargain over such decision; U also had no right to requested information for bargaining about new contract or about effects of decision to close plant because once E had decided to close plant and lay off all unit Ees, E had no further duty to bargain about new contract and U never stated that it was requesting information for effects bargaining]

Suffolk Child Development Center, Inc. **277 NLRB No. 158**
(no waiver of right to bargain over change in health insurance plan by U's failing to object to prior changes or agreeing to contract which did not set out plan's specifics, where Ee handbook did, to management rights clause, which did not mention it, or to zipper clause, which was not intended to *wipe slate clean*)

Clinchfield Coal Company **275 NLRB No. 189**
(contractual language not clear and unmistakable waiver of U's right to request information where language concerning grievance procedure spoke of complaints filed by Ees, not U; mine committee's duties were confined to adjusting disputes arising out of contract that E and Ees, not U, had failed to adjust; and where *full-disclosure* provision obligated parties to disclose facts and contractual provisions relied on after grievance was filed but did not mention situations where, as here, a party sought to police the contract and obtain information to determine if a violation had occurred)

Georgia Pacific Corporation **275 NLRB No. 017**
(no waiver of U's right to bargain regarding change in shift schedules by management rights clause which provided E retained right *to manage-plant and direct working forces, including right to hire, suspend, discharge, promote, or transfer Ees, providing that such power vested in company shall not be used in violation of terms of this agreement*, since change in shift schedule conflicted with work week provision of agreement, and potentially with overtime provision that was based on seniority)

Continental Telephone Company of California **274 NLRB No. 210**
(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-

8731—Cont.

rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

Continental Telephone Company of California — 274 NLRB No. 210
(any claimed waiver of right to bargain concerning mandatory subjects of bargaining must be based upon evidence that is clear and unmistakable)

Kohler Company — 273 NLRB No. 195
(E's proposal to transfer unit work to another of E's plants if acceptable wage rates were not negotiated, not unlawful threat to remove unit work, as alleged, where by agreeing to broad management rights clause in contract U had waived its right to bargain over such unilateral removal)

The Setterlin Company — JD-56-86
[U's failure to demand negotiations after receiving notice of E's intent to implement unilateral changes after impasse constituted waiver of right]

Roadway Express, Inc. — JD-(SF)-78-85
(U did not clearly and unmistakably waive its presumptive statutory right to receive photocopies of supervisory reports relevant to processing grievances; contract reference to U's right to *examine* was not unmistakable indication that U consciously intended to relinquish rights to obtain photocopies of them)

My Buddy Products, A Division of S&T Industries, Inc. — JD-114-85
(U did not waive right to bargain over Ee health insurance contributions notwithstanding E raised issue during negotiations for new contract, since after some discussion, no agreement reached. W/o insisting upon express reservation to take such action and w/o zipper clause in contract, it would appear E conceded it had no right to take unilateral action. No waiver can be found unless issue was fully discussed, conscientiously explored and conscientiously yielded by U during negotiations)

Embossing Printers, Inc. — JD-19-85
(E's duty to bargain over helath insurance changes (non-contributory to contributory), suspended, where U explicitly rejected opportunity to seek bargaining over changes after receiving adequate notice that changes contemplated (6 months) and also waited 11 months to either request bargaining or protest changes)

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) — 802 F.2d 949 (C.A. 7, Oct. 1986)
[ct held Bd improperly found that E did not unlawfully refuse to bargain over relocation of operations because U waived its statutory right to bargain over move, since Bd incorrectly assumed that contractual relocation provision supplanted statutory right to bargain over relocation decision based at least in part on labor costs; Bd omitted mention of traditionally stringent test for waiver of statutory right, and disregarded evidence pertinent to construing wording of applicable contract provision; and Bd failed to consider parol evidence rule and evidence favoring its own position]

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. — 795 F.2d 705 (C.A. 9, July 1986)
[E's failure to bargain regarding layoffs, unlawful; contentions that U had waived right to bargain regarding layoffs where it received notice of impending layoffs from other sources but did not request bargaining, and that layoffs did not constitute unilateral change as in accordance with past practice, rejected, since U's information received prior to actual layoffs was conjecture and formal notice required, and E's layoff policy was ad hoc and highly discretionary]

Southwestern Steel & Supply, Inc. v. N.L.R.B. — 806 F.2d 111 (C.A. D.C., Dec. 1986)>119[U did not waive right to bargain over payments to welfare plan and pension trust after expiration of bargaining agreement by provision in payment agreement between E and fund trustees prescribing how and when revocation was permissible between E and trustees, since provision was no more than right of E to terminate agreement w/ trustees subject to obligati on to give timely notice. That qualified right to terminate can be construed as coming into play after E has complied with duty to bargain. Such provision not clear and unmistakable waiver especially where U not party to document containing alleged waiver]

Kobell v. Thorsen Tool Co. — F.Supp.———(DC M.D. PA, Dec. 1982)
[bargaining agreement provision that laid off Ees would have right of preferential hiring if E moved any or all work at specified plant did not constitute clear and unequivocal waiver of U's right to object to E's unilateral relocation of unit work]

Kobell v. Thorsen Tool Co. — F.Supp.———(DC M.D. PA, Dec. 1982)
[management rights clause that stated *company retains sole right to manage its business including but not limited to right to decide on method and place of manufacturing* did not constitute waiver by U of right to bargain regarding transfer of work, and preclude finding of reasonable cause to believe Act violated and issuance of Section 10(j) inj when E unilaterally decided to transfer work since clause might not be interpreted as waiver by Bd, where clause does not specifically reserve to E right to move part of operation to another facility in order to avoid high labor costs imposed by agreement]

8736 WAIVER IMPAIRING EMPLOYEES' RIGHTS TO CHOOSE GRIEVANCE REPRESENTATIVE

Union Carbide Corporation, Nuclear Division — 275 NLRB No. 037
(E's contention that U waived right to be present at adjustment of grievances by *ad hoc* committee formed to review problems in a section of E's plant because E told U official that committee was being formed to look into the general situation, rejected, where E did not tell U that committee would include unit Ees or that committee would interview unit Ees and E did not offer U opportunity to participate on committee; U cannot be said to have received actual notice of committee's planned membership or operations)

Local 1384, Auto Workers v. N.L.R.B. — 756 F.2d 482 (C.A. 7, Feb. 1985)
(contention that U has waived Ee rights Bd seeks to vindicate under *Gulton* rule restricting U officers' superseniority to that necessary for on-the-job contract administration, rejected; Bd is protecting, not Ees' economic right, but their right to be free of discrimination that encourages U activism, and U cannot waive it through bargaining, since its purpose is to protect Ees from U conduct that benefits U at expense of Ees' Sec. 7 rights, and waiver would impair Ees' choice of U by enabling incumbent to encourage Ees' support through lure of employment benefits tied to U positions)

8737 RIGHT TO SOLICIT OR DISTRIBUTE

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)
[while U may bargain away its members' economic rights, it may not surrender rights that impair Ees' choice of their bargaining representative; thus, right to solicit support for or against bargaining representative is non-waivable]

8740 RIGHT TO ENGAGE IN PROTECTED CONCERTED ACTIVITY

8740—Cont.

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. ——U.S.—— (U.S. SCT, June 1985)

[members of U who resigned during strike in violation of U's constitution did not waive their Sec. 7 right to abandon strike by participating in strike vote]

8743 STRIKERS' RIGHTS

Pattern Makers' League of North America, AFL-CIO v. N.L.R.B. ——U.S.—— (U.S. SCT, June 1985)

[members of U who resigned during strike in violation of U's constitution did not waive their Sec. 7 right to abandon strike by participating in strike vote]

Government Employees (Office Employees, Local No. 2) 278 NLRB No. 055

[U did not waive striking Ees' rights to be reimbursed for unlawfully withheld annual leave benefits by raising issue in final phase of negotiations and then signing contract w/o any provision covering *lost* leave, where E gave no consideration to U's proposal that annual leave be restored]

Reichhold Chemicals, Inc. 277 NLRB No. 073

(E's seeking waiver of Ees' right to engage in ULP strikes, as part of no-strike clause, and right to seek redress from Bd or other tribunal for discipline imposed under clause on replaced strikers, not unlawful, since Act does not prohibit Us from waiving Ees' right to strike over ULPs; and proposed waiver of replaced strikers right to Bd's processes, absent other evidence, read as permitting only non-discriminatory application, and does not extend to appeals to Bd on other matters; since this waiver merely derivative of waiver of right to strike a mandatory subject of bargaining, it too is mandatory, thus E could insist to impasse on dual waiver)

Alpha Beta Company 273 NLRB No. 194

(deferral to grievance settlement agreement over issue of discharge of sympathy strikers, appropriate, where proceedings fair and regular, all parties agreed to be bound, including Ees, and though themselves not involved in negotiations, Ees authorized Us to accept settlement on their behalf knowing it contained no backpay, settlement not *palpably wrong* under law, particularly since it resulted from negotiations, U could waive Ees statutory rights here, and result not repugnant to Act notwithstanding Ees authorized acceptance of settlement solely because they wished to pursue backpay issue before Bd)

Local Union 1392, Electrical Workers v. N.L.R.B. (Indiana & Michigan Electric Co.) 786 F.2d 733 (C.A. 6, Mar. 1986)

[where E imposing more severe disciplinary suspensions on U stewards for violating no-strike provision, not unlawful where contractual language showed U intent for its officials to attempt to prevent unauthorized work stoppages, and this language constituted *clear and unmistakable waiver* of officials right to be free from selective discipline]

8753 UNION'S FAILURE TO OBJECT TO E'S PAST UNILATERAL CHANGES NOT WAIVER AS TO PRESENT CHANGES

Continental Telephone Company of California 274 NLRB No. 210

(E's unilaterally instituting new *Positive Discipline* program to deal with Ees' infractionsof its rules, including attendance rules, not violative where U *waived its right* to bargain concerning such policy through management-rights clause in parties' contract; neither U nor its representatives contested E's right to issue unilaterally new rules nor did they request bargaining)

Kobell v. Thorsen Tool Co. ——F.Supp.—— (DC M.D. PA, Dec. 1982)

[E's past failure to object to transfer of work did not constitute waiver of right to bargain regarding transfer of work where prior transfer of work did not results in layoffs or terminations]

8770 PROTEST NOT ENOUGH WITHOUT REQUEST FOR BARGAINING

Ventura County Star-Free Press 279 NLRB No. 064

[unilaterally withholding step increases from eligible Ees not unlawful where U failed to timely demand bargaining and merely protested]

My Buddy Products, A Division of S&T Industries, Inc. JD-114-85

(U did not waive right to bargain over Ee health insurance contributions when U, when presented with notice of increase, grieved, and E's response to grievance was that E could not afford increased premiums and had to pass them on to Ees; thus, U presented with fait accompli rendering demand for bargaining futile gesture)

8775 CONTRACT WAIVER OF RIGHTS TO BARGAIN CONCERNING MATTERS NOT COVERED

Challenge-Cook Brothers of Ohio, Inc. 282 NLRB No. 002

[management rights clause, authorizing E to relocate work from one plant to another at will, held not waiver of U's right to bargain about consequences resulting from such work transfer; while management rights clause conferred upon E exclusive decision-making authority regarding relocation of unit work, contract was silent over consequences of such decision; and contract's broad management rights clause, in absence of specific waiver language, did not waive U's right to bargain over effects of E's relocation decision]

Suffolk Child Development Center, Inc. 277 NLRB No. 158

(no waiver of right to bargain over health insurance plan by contract's lack of specificity about it where specifics were set out in Ee handbook)

My Buddy Products, A Division of S&T Industries, Inc. JD-114-85

(U did not waive right to bargain over Ee health insurance contributions notwithstanding E raised issue during negotiations for new contract, since after some discussion, no agreement reached. W/o insisting upon express reservation to take such action and w/o zipper clause in contract, it would appear E conceded it had no right to take unilateral action. No waiver can be found unless issue was fully discussed, conscientiously explored and conscientiously yielded U during negotiations)

International Molders and Allied Workers Union, Local No. 164 v. N.L.R.B. 765 F.2d 888 (C.A. 9, July 1985)

(blanket no-strike clause held waiver of right to strike during both arbitration proceeding and judicial review of arbitration decision, since no-strike clause presumed coterminous with arbitration process, and judicial review is part of final and binding arbitration process; contention waiver not clear and unmistakable, as required by Bd rule, as no evidence parties contemplated question of whether no-strike clause would apply to pending judicial review of arbitration award, thus clause applies only to contingencies individually identified previously as being w/i its coverage, rejected)

Electrical Workers Local 1466 v. N.L.R.B. (Columbus and Southern Ohio Electric Co.) 795 F.2d 150

[no unilateral change in wages and no requirement that E must bargain when E discontinued its past practice of 40 years of paying Christmas bonus where contract contained zipper clause that stated... contract...*shall be the sole source of all rights or claims which may be asserted in arbitration hereunder or otherwise*.... and contract silent as to Christmas bonus]

8780 RIGHT TO REPRESENT UNIT EMPLOYEES

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat 281 NLRB No. 030

[right of international U's representative to attend grievance step 2 meeting not waived where U expressly stated that its participation in grievance procedure after E's implementation of its last proposal following impasse was w/o prejudice to its rights, parties' last contract contained oblique reference to international U's representative but was not waiver of his right to be present at step 2, U's language during negotiations about grievance procedure was silent as to representative's right, and E's implementation of last offer did not constitute waiver of rights by U]

American Television & Communications Corporation d/b/a Austin Cablevision 279 NLRB No. 075

[certified unit of cablevision clericals, renamed customer service representatives, clarified to find no historical or contractual exclusion of salesclerks or waiver of right to represent them by failing to secure inclusion in contract, where E created and staffed position during strike w/o informing U, U treated them as members by enrolling discussing work-related problems with, and filing grievances on behalf of them, U did not agree to split clerical unit or acquiesce in E's position that they were excluded throught neglect or inaction, and they shared community of interest with unit Ees]

8787 RIGHT TO ASSISTANCE OF UNION REPRESENTATIVE AT INVESTIGATORY INTERVIEW

Prudential Insurance Company of America 275 NLRB No. 030

(although *Weingarten* right is triggered only by Ee's request and although that Ee alone may have an immediate stake in outcome of interview, U's duty of fair representation allows for flexibility in collective bargaining negotiations and *Weingarten* right, like right to strike, is subject to being waived by U)

Prudential Insurance Company of America 275 NLRB No. 030

(contract provision which provides tnat neither U nor its members shall interfere with E's right *to interview any Ee with respect to any phase of his work without the grievance committee being present*, held waiver of unit Ees' *Weingarten* rights, notwithstanding arguments that clause predated S.Ct's *Weingarten* decision and referred to grievance committee rather than a representative, and that U had sought removal of clause from contract; if clause did not waive *Weingarten* rights, then it would have no meaning at all)

8799 CONTRACTUAL PROVISIONS

Teamsters Local 42, a/w Teamsters (J.W. Daly, Inc.) 281 NLRB No. 132
[waiver of seniority rights may not be permissable when obtained to reward others for being *good active U members*]

Ne Di Construction Co., Inc. 279 NLRB No. 071
[no waiver by U of its right to receive notice of E's termination of agreement to be bound by master contract where, upon receipt of E's letter *tendering notice of union cancellation*, U immediately sought explanation, consistently and forcefully resisted E's apparent attempt to withdraw recognition, and resisted E's announcement of unilateral changes by demanding immediate compliance with master contract]

BASF Wyandotte Corporation 278 NLRB No. 028
[unilateral implementation of respirator seal rule that had effect of prohibiting wearing of facial hair by Ees whose jobs necessitated their wearing respiratory protective equipment, not violation where U waived right to bargain over rule by agreeing to management rights clause allowing E to make and enforce rules deemed necessary or proper for conduct of Ees and operation of plant]

National Metalcrafters, Inc. and National Lock Corp. and Keystone Consolidated Industries, Inc. 276 NLRB No. 014
(U, by contract language, waived its right to bargain over department relocation decision)

Teledyne Wisconsin Motor, A Division of Teledyne Industries, Inc. 275 NLRB No. 076
(no violation by e's unilateral subcontracting piston production for engines where U contractually waived its right to bargain over E's decision to contract out production work when doing the work on E's premises cost substantially more than having an outside contractor do it, as here)

Tulsa Typographical Union No. 403 (Pennwell Printing Company) 274 NLRB No. 201
(E's 8(b)(1)(B) right to have its shift foreman, who were Sec 2(11) supervisors and handled Ee grievances, free from U coercion by attempting to enforce U security clause against them, not waived by cont ract clause permitting U membership of supervisors and foreman)

General Tire & Rubber Company 274 NLRB No. 083
(E's unilaterally ceasing payments for supplemental agreement benefits for unit Ees 90 days after expiration of supplemental agreement, violative, notwithstanding provision in agreement that benefits shall be provided for 90 days following termination of agreement, where nowhere in contract provision is there mention of what is to occur to benefits after 90 days have expired; thus, there was no clear and unmistakable waiver of right to bargain over supplemental benefits after 90-day period)

N.L.R.B. v. General Tire and Rubber Company 795 F.2d 585 (C.A. 6, July 1986)
[in case involving issue of waiver of U's right to bargain over E's unilateral termination of contractual benefits, ct held waiver of collective bargaining right may only be established by *clear and unmistakable* evidence that party intentionally yielded its right; equivocal, ambiguous language in bargaining agreement is insufficient to demonstrate waiver]

N.L.R.B. v. General Tire and Rubber Company 795 F.2d 585 (C.A. 6, July 1986)
[E's unilateral discontinuance of benefits, following expiration of 90-day period after contract's termination during which benefits were to be continued, unlawful, where contract was silent on treatment of benefits after 90-day period, and neither contractual language nor prior conduct of parties demonstrated *clear and unmistakable* intent to waive U's right to bargain over payment of benefits]

N.L.R.B. v. General Tire and Rubber Company 795 F.2d 585 (C.A. 6, July 1986)
[E's unilateral discontinuance of benefits, unlawful, notwithstanding E's contention that U waived its right to bargain over benefits by failing to demand bargaining on issue following E's announcement of its intent to terminate benefits, where E did not raise waiver issue until it moved for reconsideration by Bd, which Bd properly denied since E improperly attempted to rely on new theory and on asserted facts not in stipulation entered into by parties]

N.L.R.B. v. Local 1131, Local 1161, Auto Workers 777 F.2d 1131 (C.A. 6, Dec. 1985)
[contention that Ees' right to be free of U officials' superseniority's burden on their seniority rights contained in superseniority clause is economic right subject to waiver, rejected, since it is not related to right to engage in concerted activity for economic advantage, but right to be free of discrimination that encourages U membership]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) 788 F.2d 1412 (C.A. 9, May 1986)
[whether contract waives Ees' right to strike turns upon the proper interpretation of particular contract. It must be read as a whole and in light of the law relating to it when made. Other relevant considerations include bargaining history, context in which contract was negotiated, interpretation of contract by the parties, and conduct of the parties bearing upon its meaning]

Southwestern Steel & Supply, Inc. v. N.L.R.B. 806 F.2d 111 (C.A. D.C., Dec. 1986)>119[U did not waive right to bargain over payments to welfare plan and pension trust after expiration of bargaining agreement by provision in payment agreement between E and fund trustees prescribing how and when revocation was permissible between E and trustees, since provision was no more than right of E to terminate agreement w/ trustees subject to obligati on to give timely notice. That qualified right to terminate can be construed as coming into play after E has complied with duty to bargain. Such provision not clear and unmistakable waiver especially where U not party to document containing alleged waiver]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)
[standards governing question whether contract *waives* statutory rights and provides defense to ULP charge do not differ from those cts apply in Sec. 301 breach of contract suits; it is not appropriate in either context to interpret agreements in vacuum; rather, they must be read in light of realities of labor relations and federal labor policy; *clear and unmistakable* test dictates that waiver of statutory rights may not be inferred casually, but it also cannot be applied woodenly; whether rights have been waived depends on circumstances of each case]

9000 CONTRACT DEFENSES

Educational Broadcasting Corporation d/b/a WNET/Thirteen JD-(NY)-125-85
[U contract waiving Ee's right to relitigate arbitration results did not waive Ee's right to file ULP charge alleging discrimination for filing grievance]

American Federation of State, County & Municipal Employees JD-131-85
(Ees' waiver of rights under arbitration award achieved by E's unlawfully bargaining individually with grievants not effective or defense)

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)
[standards governing question whether contract *waives* statutory rights and provides defense to ULP charge do not differ from those cts apply in Sec. 301 breach of contract suits; it is not appropriate in either context to interpret agreements in vacuum; rather, they must be read in light of realities of labor relations and federal labor policy; *clear and unmistakable* test dictates that waiver of statutory rights may not be inferred casually, but it also cannot be applied woodenly; whether rights have been waived depends on circumstances of each case]

787 ESTOPPEL

0100 GENERALLY

United States v. Stauffer Chemical Co. ——U.S.—— (U.S. S.CT, Jan. 1984)

[*doctrine of collateral estoppel can apply to preclude relitigation of both issues of law and issues of fact if those issues were conclusively determined in a prior action*]

United States v. Mendoza ——U.S.—— (U.S. S.CT, Jan. 1984)

[*United States may not be collaterally estopped on an issue adjudicated against it in an earlier lawsuit brought by a different party*]

2000 ELEMENTS OF ESTOPPEL

2033 INTENTIONALLY CAUSING PARTY TO BELIEVE FACTS TO BE OTHER THAN WHAT THEY REALLY ARE

ABS Industries, Inc. 275 NLRB No. 145

[company which participated with its division in negotiations with U for new contract estopped from asserting it was not responsible for contract where company never notified U it was withdrawing from negotiations and would not be a party to the contract but instead sent U president a letter of congratulations on *our committees* which have reached a meeting of minds, leading U to believe it had contract with both company and division]

2067 KNOWING OF SUCH BELIEF AND OF POSSIBLE CHANGE IN POSITION IN RELIANCE THEREON, REASONABLE STEPS TO NOTIFY PARTY OF TRUE STATE OF FACTS WERE NOT TAKEN

Southern Lumber Company, Inc. 279 NLRB No. 027

[E held estopped to deny representative status of U agents, or to assert that it was being asked to negotiate with any labor organization other than certified U where E's prior actions demonstrated that it had no doubt about representative status of U agents or chartered subordinate of international U; E's asserted doubts first surfaced in its post-hearing brief]

4000 TYPES OF ESTOPPEL

4025 ESTOPPEL BY SILENCE

ABS Industries, Inc. 275 NLRB No. 145

[company which participated with its division in negotiations with U for new contract estopped from asserting it was not responsible for contract where company never notified U it was withdrawing from negotiations and would not be a party to the contract but instead sent U president a letter of congratulations on *our committees* which have reached a meeting of minds, leading U to believe it had contract with both company and division]

Ventura County Star-Free Press 279 NLRB No. 064

[E estopped from challenging and found to have waived right to challenge U's affiliation with international U on basis that it failed to meet due process requirements where E's spokesman demanded, received, and accepted U's proof of its status as Ees' bargaining representative before commencing negotiations and negotiated with it thereafter]

Monarch Building Supply 276 NLRB No. 016

(E's objection to election that U had chosen a supervisor as an election observor overruled, since E had waived the objection and was estopped from raising the issue for the first time in postelection objections by its failure to comment or protest when U announced at the preelection conference that it would use as an observor an individual whom it considered a supervisor)

4050 PROMISSORY ESTOPPEL

Sonat Marine, Inc., Interstate Oil Transportation Co., Mariner Towing Co., IBC Co. 281 NLRB No. 020

[no *promissory estoppel* in instant case because U negotiator made no promise at all during contract negotiations with E, and E had no reasonable cause to construe U's failure to agree or disagree (to E's implementations of its contract proposals) as acquiesence in view of U negotiator's contemporaneous rejection of proffered consideration for promise, said being list of E's protected Ees not to be included in unit]

6000 ESTOPPEL OF BOARD

6005 ADVICE OF BOARD AGENT

Allied Lettercraft Company, Inc. 280 NLRB No. 113

[Bd held not estopped from granting backpay to claimant because of purported representation made by Regional Office personnel to E's counsel, since Bd is not bound by informal or impersonal advice received by parties respondent from Bd agents, especially when Ee rights are violated pursuant to that advice]

6012 GENERAL COUNSEL'S RULINGS OR OTHER ACTIONS

National Gypsum Company, Inc. Gold Bond Building Products Division 281 NLRB No. 096

[*Bd not bound by GC's decision not to issue complaint on prior occasion even in cases involving identical conduct by same parties*]

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) 279 NLRB No. 096

[even though U's 8(a)(2) and (5) charges were dismissed in prior ULP cases involving same parties as those herein, such dismissals do not collaterally estop U from raising those grounds here (in instant case) as defenses]

6050 PRIOR COMPLAINT PROCEEDING

Tom Wignall, Jr. and Billie Williams d/b/a Lovilia Coal Company 275 NLRB No. 186

(E held estopped from arguing that settlement agreement in prior proceeding never existed because GC failed to place original agreement in record and, having failed to do so, offered no proof that such agreement ever existed, where in its answer E admitted its existence)

San Francisco Lodge No. 68, Machinists (Holmestic, Inc.) 274 NLRB No. 108

(U's argument that mutual defensive collateral estoppel bars litigation of issues involving U's rules restricting resignations because of 9th Circuit's decision in *Dalmo Victor*, rejected since instant U was not a *party* to litigation involved in *Dalmo Victor*)

6050-5000 Effect of settlement agreement

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(collateral estoppel found not to apply to prior complaints, since they were voluntarily withdrawn and lacked finality, there was little provity between prior complainants and present class of discriminatees, and present action involved more than discrimination against prior complainants)

6062 PRIOR REPRESENTATION PROCEEDING

Benjamin Pontiac Inc. JD-(NY)-82-85

(fining by RD in decertification ptn case that individual who circulated ptn was agent of E not binding in ULP proceeding)

6075 RETROACTIVE APPLICATION OF CHANGED POLICY

6075-6700 Proper

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(whether to give effect to new agency adjudicated rule while balancing rule's desireability against possible unfairness to litigant, ct has considered: (1) whether case is of first impression, (2) whether new rule is abrupt departure from well established practice or merely attempts to fill void in

6075-6700—Cont.

unsettled area of law, (3) extent to which party against whom new rule is applied relied on former rule, (4) degree of burden which retroactive order imposes on party, and (5) statutory interest in applying new rule despite party's reliance on old rule)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(Bd properly retroactively applied its *Gulton* decision setting forth new rule pertaining to superseniority, where instant case was not of first impression nor abrupt departure from well established practice and, instead, resolved uncertainty created by Bd's earlier decisions; there was no reliance by parties on old rule and given uncertainty created by following cases, reliance thereon would have been calculated risk, and so there was nothing to oppose *statutory interest* in applying new rule; nor was it shown retroactive order will work inordinate hardship upon them)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[*generally, decision which changes existing law or policy is given retroactive effect unless retroactive application would cause manifest injustice. This ct has looked at three factors in deciding under what circumstances nonconstitutional decision will be given prospective effect only: reliance of parties on pre-existing law; effect of retroactivity on accomplishing purposes of law; and any injustice arising from retroactive application*]

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 776 F.2d 745 (C.A. 7, Nov. 1985)

[ct upheld Bd's retroactive application of new rule since the balancing test: the desirable effects of the new rule against possible unfairness by litigants, comes out in *favor* of upholding retroactive application of Bd's new rule on superseniority]

6075-6725 Reversal of definitely established policy must be involved

N.L.R.B. v. Ensign Electric Division of Harvey Hubbell, Inc., and Steelworkers, Local 5925 (Center on National Labor Policy, Inc.) 767 F.2d 1100 (C.A. 4, July 1985)

(retroactive application of change in Bd law making application of superseniority in layoff of recording secretary and treasurer unlawful, found not unjust, since law was not settled and change therein not suprising as shown by number of cases with vocal dissents in which question was debated)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[retroactive application of *Midland National Life Insurance Co.*, 263 NLRB 127, which held misrepresentations including those regarding Bd actions do not of themselves require setting aside of elections, not improper herein; nor was case deemed w/i *Masey Manufacturing Co. v. NLRB*, 701 F.2d 601, exception to *Midland* since did not involve changed rule on appeal following agency decision based on former policy, but rather policy change declared in *Midland* prior to NLRB's decision in this case and expansion of rule in present case, nor did E rely detrimentally on prior law

6075-6775 Where old rule not relied on by parties

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[retroactive application of *Midland National Life Insurance Co.*, 263 NLRB 127, which held misrepresentations including those regarding Bd actions do not of themselves require setting aside of elections, not improper herein; nor was case deemed w/i *Masey Manufacturing Co. v. NLRB*, 701 F.2d 601, exception to *Midland* since did not involve changed rule on appeal following agency decision based on former policy, but rather policy change declared in *Midland* prior to NLRB's decision in this case and expansion of rule in present case, nor did E rely detrimentally on prior law

6087 REGIONAL DIRECTOR'S RULINGS

Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees, Local Union No. 710, a/w Teamsters (The Santa Fe Trail Transportation Company) 279 NLRB No. 096

[even though U's 8(a)(2) and (5) charges were dismissed in prior ULP cases involving same parties as those herein, such dismissals do not collaterally estop U from raising those grounds here (in instant case) as defenses]

6097 ANCILLARY COURT LITIGATION

Allbritton Communications Co., The News Printing Co., Inc. and The Hudson Dispatch v. N.L.R.B. 766 F.2d 812 (C.A. 3, July 1985)

(E's contention that collateral estoppel precluded Bd from making findings different than that of district ct as to E-Ee relationship in prior Sec. 301 action involving same parties, rejected, since prior 301 action was improperly removed from state ct to district ct because district ct had no original jurisdiction and therefore any *findings* made by district ct are w/o collateral estoppel effect)

8000 ESTOPPEL OF PARTIES

United States v. Stauffer Chemical Co. ———U.S.——— (U.S. S.Ct, Jan. 1984)

[doctrine of mutual defensive collateral estoppel is applicable against the United States Government to preclude relitigation of the same issue already litigated against the same party in another case involving virtually identical facts]

United States v. Stauffer Chemical Co. ———U.S.——— (U.S. S.Ct, Jan. 1984)

[EPA was collaterally estopped from relitigating issues in Sixth Circuit which had been previously decided by Tenth Circuit in cases involving the same parties, same facts and same legal issue since doctrine of mutual defensive collateral estoppel applies to preclude relitigation of issue conclusively determined in a prior action]

United States v. Mendoza ———U.S.——— (U.S. S.Ct, Jan. 1984)

[*offensive use of collateral estoppel occurs when a plaintiff seeks to foreclose a defendant from relitigating an issue the defendant has previously litigated unsuccessfully in another action against the same or a different party. Defensive use of collateral estoppel occurs when a defendant seeks to prevent a plaintiff from relitigating an issue the plaintiff has previously litigated unsuccessfully in another action against the same or a different party*]

United States v. Mendoza ———U.S.——— (U.S. S.Ct, Jan. 1984)

[nonmutual offensive collateral estoppel does not apply against U.S. government in such a way as to preclude relitigation of issues previously decided adversely to the government where prior case involved different parties but same legal issues; U.S. government is not the same as a private litigant both because of the geographic breadth of government litigation and most importantly, because of the nature of the issues the government litigates, frequently involving legal questions of substantial public importance]

Kawasaki Motors Corporation, U.S.A. 282 NLRB No. 028

[GC amendment to backpay specification allowed since E's objection was untimely, not having been made before ALJ]

Arizona Portland Cement Company, A Division of California Portland Cement Company, A Division of Calmat 281 NLRB No. 030

[U not estopped from objecting to exclusion of international representative from step 2 grievance discussion because it had used grievance and arbitration proceedings available under E's last proposal implemented following impasse; E's argument that it had reasonably fixed requirement that only plant level representatives of local were entitled to represent Ees at step 2, rejected]

Carpenters, Local 743, et al. (Longs Drug Stores, Inc.) 278 NLRB No. 063

[in finding E not in construction industry w/i meaning of first proviso to 8(e), ALJ rejected Us' contention that E, having entered into agreement to hire only U contractors, should be estopped from contesting its status as E in construction industry, particularly since U's in reliance upon E's contractual commitments over years, furnished carpenters to E through their various hiring halls; such contention was unavailing particularly since there was no showing that contracts were entered with mutual understanding that E would act as its own general contractor or would hire only U general contractors]

Carpenters Local 470, and Tacoma District Council of Carpenters (Tacoma Boatbuilding Company) 277 NLRB No. 020

(U was estopped to deny receipt of members' letters reducing U membership obligation to financial core where U consistently refused to accept communications from Ees crossing picket line by refusing to accept hand-delivered letters or letters sent by regular or certified mail)

James Nederlander d/b/a Ned West, Inc., d/b/a Pacific Amphitheatre 276 NLRB No. 089

(E's estoppel contention that Ee should be precluded from pursuing ULP charges alleging unlawfulness of E's contract with U because Ee had asked U negotiator to get certain concessions in contract, rejected where at the time E had already recognized U and verbal agreement had been reached; under the circumstances, Ee was presented with a *fait accompli* situation; he subsequently showed he did not want U to negotiate on his behalf; and in any event, public rights set forth in Act as distinguished from private rights must prevail)

8000—Cont.

Monarch Building Supply 276 NLRB No. 016

(E's objection to election that U had chosen a supervisor as an election observor overruled, since E had waived the objection and was estopped from raising the issue for the first time in postelection objections by its failure to comment or protest when U announced at the preelection conference that it would use as an observor an individual whom it considered a supervisor)

The May Department Stores Company JD-(SF)-13-85

(U was estopped from denying that Ee, found herein to be an agent of U, had committed acts of misconduct where Ee's misconduct was subject of prior ULP hearing brought to contest her discharge and ALJ in prior case, found that Ee had in fact engaged in misconduct which was sufficient to deny her the protection of the Act; fully litigated findings in prior case which were *pro forma* adopted by the Bd, constitute *final determinations*, and are therefore binding)

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) 755 F.2d 5 (C.A. 2, Feb. 1985)

(contention that, after E had voluntarily recognized local U representing guards and nonguards, including E's guards, E's contract with local had expired, and local had rejected E's final offer, E was precluded from withdrawing recognition from said local, rejected; statutory policy considerations override theory that E is estopped, since local U here is uncertifiable, and recognition after expiration of contract must be voluntary in view of Sec 9(b)(3))

Plumbers, Local No. 198 v. N.L.R.B. 747 F.2d 326 (C.A. 5, Nov. 1985)

(U's contention that it was denied due process due to lack of reasonable notice of an identifiable or recognizable group of alleged discriminatees for whom redress was sought, rejected, where C alleged broad discrimination in hiring hall operations generally, not just as to named parties; also, Bd's relegating determination of discriminatees to compliance stage let U contest individual awards and compliance procedures, whereas, if finding of general discrimination were established but redress given only named individuals, collateral estoppel might bar U from relitigating discrimination issue as to unnamed members of the class)

817 PROCEEDINGS FOR ENFORCEMENT OR REVIEW OF BOARD DECISIONS AND ORDERS

0100 GENERALLY

0500 JURISDICTION

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)

[circuit ct, and not bankruptcy ct, has jurisdiction to determine whether automatic stay of judicial proceedings under 362(a)(1) of Bankruptcy Act applies to Bd enforcement proceedings, since applicability of automatic stay to ULP proceeding is issue of law w/i competency of ct as recognized by ct decisions, and E's reliance on this ct's prior decision, assertedly contrary to ct's holding herein, was misplaced]

0501 GENERALLY

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1459 (C.A. 10, July 1985)

[ct held it has jurisdiction to consider E's supplemental ptn for review and application for enlargement of mandate in case in which Bd issued supplemental c/d order against respondent U deleting reference to *or any other E*; notwithstanding U's contention that ct is w/o jurisdiction because E did not ptn Bd for rehearing or reconsideration after Bd issued its supplemental order, where E satisfied 10(e) requirement by filing with Bd memorandum in opposition to U's mtn for clarification of Bd's supplemental order which raised issues now before ct]

0550 ORDER REVIEWED MUST BE 'FINAL ORDER' UNDER SECTION 10(c)

0550-0100 Generally

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1459 (C.A. 10, July 1985)

[ct held it has jurisdiction to consider E's supplemental ptn for review and application for enlargement of mandate in case in which Bd issued supplemental c/d order against respondent U deleting reference to *or any other E*; ct rejected Bd's contention of lack of jurisdiction on grounds Bd's *future intentions* are not reviewable final orders under 10(f), and that no case or controversy exists with respect to such future intentions]

0550-3300 Not final orders

0550-3337 Direction of election, certification, *unit clarification,* etc.

Lemon Drop Inn, Inc. v. N.L.R.B. 752 F.2d 323 (C.A. 8, Jan. 1985)

(notwithstanding nineteen month procedural dealy in case and workforce changes, Bd's provision of ULP remedies, Bd's continuation of R case not inappropriate where order provided that if Ee's disputed ballot is opened and U receives majority, U will be certified; but if U does not receive majority, results will be set aside and new election held; such a conditional order is not ripe for review as final order)

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[while election certification does not constitute appealable final order ct here had jurisdiction to review single E and appropriateness of unit issues, where E refused to bargain in order to obtain review of those issues through appeal from bargaining order following ULP proceedings and properly preserved its objection to designation of unit]

0550-3375 Refusal to issue complaint

Worcester Steel Erectors v. N.L.R.B. ———F.2d——— (C.A. 1, Jan. 1986)

[decision not to issue C is unreviewable by cts]

Worcester Steel Erectors v. N.L.R.B. ———F.2d——— (C.A. 1, Jan. 1986)

[decision not to issue C is unreviewable by cts]

0550-3379 Withdrawal of complaint before hearing

Miles T. Jackman v. N.L.R.B. 784 F.2d 759 (C.A. 6, Mar. 1986)

[dismissal of C found nonreviewable discretionary prosecutorial act of GC rather than *final order* of Bd, since Sec. 3(d) vested GC with final authority to issue and prosecure Cs, and informal settlements of Cs, unlike formal settlements, do not require approval of Bd as well as GC and are not Bd *final orders*]

Miles T. Jackman v. N.L.R.B. 784 F.2d 759 (C.A. 6, Mar. 1986)

[ptn for review of GC's withdrawal of C and entry into informal settlement, denied, since ct lacked jurisdiction to do so where Sec. 3(d) vests GC with final authority to issue and prosecute Cs, which is unreviewable and must include power to drop C incapable of successful prosecution, and Bd regulations allowing informal settlements, which do not require Bd approval and are not Bd *final orders*, are reasonable and not in conflict with purposes of Act or congressional intent; also settlements are *lifeblood of the administrative process*, and GC's unreviewable power to negotiate them a desirable objective of the Act]

0550-6700 Final orders

0550-6750 Order dismissing complaint

Miles T. Jackman v. N.L.R.B. 784 F.2d 759 (C.A. 6, Mar. 1986)

[formal settlements whereby parties agree that Bd may issue order w/o hearing require approval of Bd as well as GC and constitute *final orders* subject to appellate review]

0900 VENUE

1400 STAY OF BOARD ORDER

2300 PARTIES

2380 PERSON *AGGRIEVED*

2380-5000 Party not 'aggrieved' by favorable order

Great Southern Construction, Inc. v. N.L.R.B. F.2d (C.A. 10, Jan. 1986)

[ptn for review dismissed where petitioner was not aggrieved by Bd's order dismissing all portions of C relating to bargaining agreement to which petitioner was a party; moreover, petitioner at no time objected or asserted that bargaining agreement which it now challenges was illegal or otherwise invalid and ct, therefore, lacks jurisdiction to consider any objection that has not been presented to Bd]

2700 INTERVENTION

2750 PERSONS ENTITLED TO INTERVENE

2750-4000 Where order entered

2750-4050 Charging party

N.L.R.B. v. Harvstone Manufacturing Corp., Duray Fluorescent Manufacturing Co., American Fluorescent Corp. and House-O-Lite Corp. 785 F.2d 570 (C.A. 7, Mar. 1986)

[Es' contention that U was not properly before ct, relying on 10(f) which provides that only those persons *aggrieved by final order of Bd... may obtain review of such order,* and since U received all relief it sought, it was not *aggrieved* party, and should not be allowed to intervene, rejected; E's failed to distinguish between right to *ptn* for review and right to *intervene* in proceeding; 10(f) governs only right to ptn ct for review and accordingly U was proper party]

3200 PLEADINGS

3217 WITHDRAWAL OF PETITION SUBJECT TO APPROVAL OF COURT

3217—Cont.

Communication Workers, Local 5008 v. N.L.R.B. (Illinois Bell Telephone Co.) 784 F.2d 847 (C.A. 7, Mar. 1986)

[Bd's application for leave for Bd to apply new policy on remand held unnecessary since appellate cts would either grant requests automatically or be impelled into premature consideration of merits of proposed new rule]

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)

(Bd not barred from seeking enforcement of order because it entered into stipulated dismissal, since dismissal that ct approved was *without prejudice*)

3283 TIMELINESS OF PETITION

3283-5000 Board orders do not become stale and are enforceable at any time

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)

(enforcement of Bd's order, which issued 22 months ago, not barred by doctrine of laches, where Bd's original ptn for enforcement was voluntarily dismissed w/o prejudice pending S.Ct's disposition of two cases relevant to this action and Bd filed ptn herein 5 months after S.Ct's decision, and Bd, by its delay, did not gain any advantage and respondent suffered no prejudice)

3283-7500 Delay in filing petition for review

3283-7550 Doctrine of laches applicable

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)

(enforcement of Bd's order, which issued 22 months ago, not barred by doctrine of laches, where Bd's original ptn for enforcement was voluntarily dismissed w/o prejudice pending S.Ct's disposition of two cases relevant to this action and Bd filed ptn herein 5 months after S.Ct's decision, and Bd, by its delay, did not gain any advantage and respondent suffered no prejudice)

3600 CONSOLIDATION OF PROCEEDINGS

4100 RECORD

4500 BRIEFS AND ORAL ARGUMENT

5000 DEFAULT JUDGMENT

5400 SUMMARY ENFORCEMENT

5425 FAILURE TO FILE TIMELY BRIEF

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. 753 F.2d 313 (C.A. 3, Jan. 1985)

(E's mtn for remand to Bd, concerning issue of E moving its facility and Ee turnover, denied, since ct found that there were no reasonable grounds for E's failure to apprise Bd of its *additional evidence* as required for remand. E offered no excuse for waiting almost 5 months, after all briefs were filed, to move for remand when E knew it was moving even before Bd issued its bargaining order. Delay in filing briefs was abuse of ct's and Bd's processes)

5900 SCOPE OF JUDICIAL REVIEW

5901 GENERALLY

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[where Bd offered ct several *post hoc* explanations for its decision and that of ALJ, ct noted that these arguments made after initial decision and in support of application for enforcement were inherently suspect and did not merit cts consideration; administrative agency's decisions cannot be sustained on ground appearing in record to which agency made no reference; to contrary, Bd's decision stands or falls on its express findings and reasoning]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[Congress narrowed ct review of Bd decisions by conferring on Bd authority to implement and interpret Act; ct must sustain Bd's position so long as its explication of a rule is not *inadequate, irrational, or arbitrary*, but ct must not make its review so deferential as to become mere *rubber stamp* of Bd's decisions]

Salt River Valley Water Users' Association v. N.L.R.B. 769 F.2d 639 (C.A. 9, Aug. 1985)

(ct adopted *deferential* standard of review-giving *great weight* to decision of Bd--rather than *plenary* standard of review in case involving question of providing relevant information to process grievance where *privacy* defense raised)

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[ct must uphold Bd if it correctly applied law and its findings are supported by substantial evidence on record as a whole, even though ct might reach different conclusion based on same evidence]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[reviewing ct may reverse decision of the Bd when it cannot concientiously find that evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to Bd's view]

Iron Workers, Local No. 111 v. N.L.R.B. 792 F.2d 241 (C.A. D.C., June 1986)

[in finding that Bd failed to meet APA requirement that agency's decision include its reasons or basis for its conclusions, ct held case herein was not one where legal issue raised is not substantial, e.g., there is no apparent conflict in earlier cases or reasons for departure therefrom are clear so that issue would not be *material* w/i meaning of APA, or failure to address it would come w/i meaning of APA's exemption of harmless error]

5901-5000 Reviewable *final* agency action

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[Bd's contention that judicial review of its remedial order premature and that issue of backpay rights should await litigation of those rights in Bd compliance hearing, rejected, since application of doctrine of administrative exhaustion not appropriate where issue is underlying legal basis for remedial order rather than factual issues which relate to details of remedy such as amount of backpay]

5901-6700 Enforcement mandatory where Board has acted properly

The Lawson Company v. N.L.R.B. 753 F.2d (C.A. 6, Jan. 1985)

(harsh language (of ALJ) of itself does not establish prejudice. Ct does not, in instant case, approve such statements; ct took evidence adduced at open public hearing where both sides were given equal opportunity to present whatever evidence they felt appropriate; given above facts, there is substantial evidence to uphold decision of Bd)

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers 794 F.2d 1474 (C.A. 9, July 1986)

[Bd is entitled to enforcement of its order if it correctly applied the law and its findings are supported by substantial evidence in the record as a whole; ct accords considerable deference to Bd's interpretation and application of Act and will affirm its reasonable conclusions even though they may differ from those of ct]

5901-8300 Where Board overturns prior line of cases

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(however ct might have decided superseniority matter at issue herein, Bd's formulation of new superseniority rule in its *Gulton* decision, after reconsidering *Limpco* line of cases was reasonable in allowing superseniority for layoff purposes only if U officials needed to be present at workplace; Bd is entitled to change its mind, so long as new general standard is applicable to all litigants)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(whether to give effect to new agency adjudicated rule while balancing rule's desireability against possible unfairness to litigant, ct has considered: (1) whether case is of first impression, (2) whether new rule is abrupt departure from well established practice or merely attempts to fill void in unsettled area of law, (3) extent to which party against whom new rule is applied relied on former rule, (4) degree of burden which retroactive order imposes on party, and (5) statutory interest in applying new rule despite party's reliance on old rule)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[*generally, decision which changes existing law or policy is given retroactive effect unless retroactive application would cause manifest injustice. This ct has looked at three factors in deciding under what circumstances nonconstitutional decision will be given prospective effect only: reliance of parties on pre-existing law; effect of retroactivity on accomplishing purposes of law; and any injustice arising from retroactive application*]

Local 1384, Auto Workers v. N.L.R.B. 756 F.2d 482 (C.A. 7, Feb. 1985)

(ct cannot upset Bd's *Gulton* rule restricting superseniority of U officers to those necessary for contract administration on the job where Bd determina-

5901-8300—Cont.

tion is not irrational or contrary to the Act; further Bd's previous decisions do not bind it in later proceedings with same force as doctrine of stare decisis binds cts and Bd is free to change its mind on matters of law w/i its competence to determine, provided its gives a reasoned analysis in support of the change)

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[in reviewing Bd's orders, cts customarily defer to Bd's exercise of its *special function of applying the general principles of industrial life*; and such deference is not withheld simply because Bd has departed from a prior policy]

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(it is not responsibility of cts to second-guess lawful judgments of Bd which has been granted broad authority to construe Act in light of its expertise and, in appropriate circumstances, Bd may even elect to abandon or modify established precedent; however, judicial deference is not accorded Bd decision when it acts pursuant to erroneous view of law and, as a consequence, fails to exercise discretion delegated to it by Congress)

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(since Bd is entrusted with responsibility to adapt Act to changing patterns of industrial life, Bd's reasonable construction of Act is entitled to considerable deference; as stated by S.Ct in *Chenery Corp.* 318 U.S. 80, 95, agency decision cannot be sustained, however, where based not on agency's own judgment but on erroneous view of law, and process of reveiw requires that grounds upon which agency acted be clearly disclosed and adequately stated)

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

]*Myers Industries* 268 NLRB 493, in which Bd enunciated new restrictive definition of *concerted activities* and overruled *Alleluia Cushion* remanded to Bd for reconsideration since Bd's decision, which was contrary to S.Ct's intervening *City Disposal* decision, stands on faulty legal premise and w/o adequate rationale where it wrongly concluded that its adoption of narrow test for *concerted activities* was both mandated by Act and was merely return to stand on which Bd and cts relied before *Alleluia* was decided)

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(in remanding Bd decision announcing new restrictive test for *concerted activities* for reconsideration because it was contrary to S.Ct's intervening *City Disposal* decision, 104 S.Ct 1505, ct held it could not say Bd's error clearly had no bearing on result reached; some of Bd's and ct's variety of definitions of concerted activities might grant relief to Ee-petitioner herein; moreover, case result often turns both on governing standard and on manner in which it is applied, which may be influenced by whether Bd believes standard is dictated by Act or adopted as policy matter)

5901-8400 Standard of review of Board decision announcing altered interpretation of Act

Westvaco, Virginia, Folding Box Division v. N.L.R.B. 795 F.2d 1171 (C.A. 4, July 1986)

[Bd abused its discretion when it held Ees to be accretion to existing unit, and departed from its existing standard for accretion of *overwhelming community of interests* w/o stating its reasons for change. Record revealed no similarity of working conditions, working area, status of Ees, methods of compensation, or fringe benefits]

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) 802 F.2d 969 (C.A. 7, Oct. 1986)

[where Bd made no mention of rule that waiver of statutory right must be clear and unmistakable, but there was evidence in Bd's decision that it wanted to abandon or dilute waiver rule, ct held Bd failed to follow rule that administrative agency is not allowed to change direction w/o some explanation; Bd, while not bound by *stare decisis*, can jettison its precedents only if it has adequately explicated basis of its new interpretation; and citation of previous Bd decision did not satisfy duty to explicate]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[agency may change its interpretation of statute entrusted to its administration and, when intent of Congress is unclear, cts must uphold agency's interpretation of it if it is based on *reasonable accomodation of conflicting policies*; however, when intent of Congress is clear, ct must give effect to intent of Congress, regardless of agency's opinion]

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(in remanding Bd's decision announcing new restrictive test for *concerted activities* for reconsideration because it was contrary to S.Ct's intervening *City Disposal* decision, ct did not find it necessary to consider validity of any test of concerted activity nor express any opinion on such issue but deemed it could not sustain agency decision as *harmless error* where agency failed to exercise its lawful discretion and provided no rational basis for its determination)

5901-9000 Standard of review of Board decisions involving application of Board policy (abuse of discretion)

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[*It is well settled that direct judicial review of Bd decision to certify bargaining representation on basis of election is extremely limited. We may assume soundness of election is not business of reviewing ct. Substantial evidence on record as whole standard applied to factual determinations should also apply to application of Bd's election rules to facts of given case. Abuse of discretion* standard applies only to applications of Bd policy and not to application of law to facts]

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[E has heavy burden establishing grounds for not enforcing Bd's bargaining order. In order to challenge Bd's policies directly, as opposed to application of these policies, movant must establish Bd's interpretation of law is unreasonable; i.e., E must establish that there is substantial evidence supporting conclusion that *any election irregularities or misconduct so impaired integrity of ballot result that invalidation of election is necessary*]

5907 FINDINGS OF FACT

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[Bd is free to substitute its own view of evidence for that of ALJ, and ct must respect Bd's findings of fact if supported by substantial evidence; but ct may not *presume* that Bd made findings of fact necessary to definable decision where Bd did not explain, or even recognize, any departure from ALJ's view of evidence; accordingly, Bd's decision reversed and case remanded to Bd for further proceedings]

5907-2000 Reviewable as to whether supported by *substantial evidence on the record considered as a whole*

Herrick & Smith v. N.L.R.B. 802 F.2d 565 (C.A. 1, Sept. 1986)

[Bd's initial burden is to make prima facie showing that Ee's protected conduct was substantial or motivating factor for discharge, after which burden of going forward shifts to E; amd Bd's showing must stand if supported by substantial evidence on the record, viewed as a whole]

N.L.R.B. v. Henry Miller Spring & Manufacturing Company, Inc. ———F.2d——— (C.A. 3, June 1986)

[ct must uphold Bd's conclusions that there was no bargaining impasse and that E committed ULP, if Bd's finding are supported by substantial evidence on record as a whole]

N.L.R.B. v. Krolicki Wholesale Meats, Inc. — ——F.2d——— (C.A. 6, June 1985)

[ct's function is limited to determining whether there is substantial evidence on record as whole to support Bd's finding]

Birch Run Welding & Fabricating, Inc. v. N.L.R.B. 761 F.2d 1175 (C.A. 6, May, 1985)

(as E motivation is factual question, Bd's conclusion concerning motivation must be upheld if supported by substantial evidence)

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)

[Bd's findings of fact are conclusive if supported by substantial evidence which consists of such relevant evidence as reasonable mind might accept as adequate to support conclusion]

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[Bd's conclusion regarding community of interest of Ees providing for segregation of parts and service department Ees was not supported by record where ALJ did not receive evidence about E's parts department that would permit ruling on parts department Ees and Bd refused to reopen record]

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[ALJ's credibility determinations based on witnesses' testimony, states of memory, biases found not shocking to conscience and findings of facts based on them thus supported by substantial evidence]

5907-2000—Cont.

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

Food & Commercial Workers, Local No. 304A v. N.L.R.B. 772 F.2d 421 (C.A. 8, Aug. 1985)

International Guards Union of America, Local 69 v. N.L.R.B. 789 F.2d 1465 (C.A. 10, May 1986)

[standard of review not altered simply because ALJ and Bd have reached contrary conclusions]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[enforcement of Bd's order should be granted if Bd correctly applied the law and if its findings are supported by substantial evidence on the record as a whole; standard of review is not altered where ALJ and Bd reach contrary conclusions; however, findings of ALJ, whether contrary or supportive of Bd's determination, are part of record to be fully considered by reviewing ct]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[Bd has authority to apply general presumptions as part of its responsibility to formulate rules to fill interstices of broad statutory provisions of the Act; however, only if presumption is rational and consistent with the Act and its application is supported by substantial evidence on the record as a whole will an order of the Bd be enforced]

5907-2001 Generally

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[whether offer to return to work was conditional or unconditional is question of fact for Bd to determine. Bd's finding deemed *conclusive* if *supported by substantial evidence on the record as a whole*]

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)

[substantial evidence is more than mere scintilla; it means such relevant evidence as reasonable mind might accept as adequate to support conclusion; it must be enough to justify, if trial were to jury, refusal to direct verdict when conclusion sought to be drawn from it is one of fact for jury; it frees reviewing cts of timeconsuming and difficult task of weighing evidence; it gives proper respect to expertise of administrative tribunal and it helps promote uniform application of statute]

Local 259, Auto Workers v. N.L.R.B. 776 F.2d 23 (C.A. 2, Oct. 1985)

[ct's right of review is limited one. *even as to matters not requiring expertise, a ct may [not(displace the Bd's choice between two fairly conflicting views, even though the ct would justifiably have made a different choice had the matter been before it de novo]*

D & D Distribution Company, A Division of D & D Sewing Company v. N.L.R.B. 801 F.2d 636 (C.A. 3, Sept. 1986)

[reasonable inferences are entitled to acceptance on review is rule, notwithstanding E's contention that, based on law of another circuit, factual inferences drawn by ALJ and Bd should not be granted same high level of deference applied to findings based on direct evidence and credibility determinations]

N.L.R.B. v. Oberle-Jordre Company, Division of The Bishopric Products Company 777 F.2d 1119 (C.A. 6, Nov. 1985)

[*substantial evidence* is more than a mere scintilla and is generally accepted to mean such evidence as a reasonable mind might accept as adequate proof to support a conclusion]

John Morrison, et al. (Carriage Ford, Inc.) v. N.L.R.B. 772 F.2d 283 (C.A. 6, Sept. 1985)

[while there was evidence in record that Ees were discharged and had not voluntarily quit as found by Bd, ct held Bd's findings were supported by substantial evidence in view of testimony of witnesses concerning occurrence resulting in separation of Ees from employment; and under standard of substantial evidence ct is required to uphold Bd's findings of fact if so supported]

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. 773 F.2d 77 (C.A. 6, Sep. 1985)

(Bd's conclusion as to whether E's asserted defenses against liability have been successfully established will be overturned on appeal only if record, considered in its entirety, does not disclose substantial evidence to support Bd's findings)

N.L.R.B. v. Browning-Ferris Industries of Louisville, Inc. 803 F.2d 345 (C.A. 7, Oct. 1986)

[*Our review of Bd's decision to certify collective bargaining representative following election is extremely limited. We will defer to Bd's selection of rules and policies to govern particular election so long as those rules are reasonable*]

N.L.R.B. v. Local 139, Operating Engineers 796 F.2d 985 (C.A. 7, July 1986)

[on ptn for enforcement of Bd order ct upholds findings of fact if they are supported by substantial evidence in record as a whole; and ct substantially defers to Bd's interpretation and application of Act because of its *special competence* in field of labor relations]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[factual findings supported by substantial evidence in record as a whole are conclusive; and substantial evidence means more than mere scintilla and refers to such relevant evidence as a reasonable mind might accept as adequate to support a conclusion]

Operating Engineers, Local 150 v. N.L.R.B. 755 F.2d 78 (C.A. 7, Jan. 1985)

(judicial review of agency action is quite limited. Bd's interpretation of the NLRA will be upheld as long as it has *a reasonable basis in law*)

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[in conducting its review, ct will, in light of special expertise of Bd, defer to reasonable derivative inferences drawn by Bd from credited evidence]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[ct held that, under deferential substantial evidence standard, it may not reverse Bd simply because it disagreed with Bd's evaluation of facts, but only if ct found that Bd's evaluation was not supported by substantial evidence]

N.L.R.B. v. Electrical Workers Local Union #46 793 F.2d 1026 (C.A. 9, July 1986)

[Bd order will be enforced if Bd's findings of fact are supported by substantial evidence in record and if Bd correctly applied law, even if ct might have reached different conclusion based on same evidence]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[Bd order must be enforced if Bd correctly applied the law and its findings of facts are supported by substantial evidence on record viewed as a whole]

N.L.R.B. v. Best Products Co., Inc. 768 F.2d 903 (C.A. 9, July 1985)

(substantial evidence means *such relevant evidence as a reasonable mind might accept as adequate to support a conclusion)*

Janet Eichelberger v. N.L.R.B. 768 F.2d 851 (C.A. 9, July 1985)

[ct must uphold Bd if it correctly applied law and its findings are supported by substantial evidence on record as a whole, even though ct might reach different conclusion based on same evidence]

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)

[in reviewing 10(k) orders, as implemented by 8(b)(4)(D) proceedings, ct performs limited inquiry; to extent that Bd decisions reflect conclusions as to factual matters, for which there is *substantial evidence on the record considered as a whole,* ct must defer to Bd's conclusion; to extent that Bd decisions reflect legal conclusion, ct must determine whether decisions were *arbitrary and capricious*]

5907-4000 Court determines sufficiency of evidence supporting admitted or uncontested findings

Operating Engineers, Local 150 v. N.L.R.B. 755 F.2d 78 (C.A. 7, Jan. 1985)

(substantial evidence exists if record contains such relevant evidence as a reasonable mind might accept as adequate to support a conclusion)

5907-8000 Court may not encroach upon fact-finding prerogatives of Board

N.L.R.B. v. Preterm, Inc. 784 F.2d 426 (C.A. 1, Feb. 1986)

[whether offer to return to work was conditional or unconditional is question of fact for Bd to determine. Bd's finding deemed *conclusive* if *supported by substantial evidence on the record as a whole*]

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)

[where choice is between two conflicting views, even though ct might justifiably have reached different conclusion if case were before it *de novo,* Bd's decision may not be set aside]

5907-8000—Cont.

Southern Maryland Hospital Center v. N.L.R.B. 801 F.2d 666 (C.A. 4, Sept. 1986)

[Bd's interpretation of wording of advertisement is not finding of fact to which ct must defer, as courts may engage in legal interpretation of written word]

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

[ct may not disturb Bd's findings of fact where there is substantial evidence on record considered as a whole to support Bd's findings which, however, may be set aside when record demonstrates that Bd's decision is not justified by fair estimate of worth of testimony of witnesses or by Bd's informed judgment on matters w/i its special competence, or both]

N.L.R.B. v. Dane County Dairy, et al. 795 F.2d 1313 (C.A. 7, July 1986)

[since ct review of Bd decisions is deferential, Bd's finding that affiliated companies are alter ego of E must be upheld if it is reasonable and supported by substantial evidence on record as a whole; ct may not displace Bd's choice between 2 fairly conflicting views, even though ct would justifiably had made different choice had matter been before it *de novo*]

Food & Commercial Workers, Local No. 304A v. N.L.R.B. 772 F.2d 421 (C.A. 8, Aug. 1985)

(existence or nonexistence of collective bargaining agreement is question of fact for Bd, substantial evidence supported Bd's finding that parties did not reach agreement)

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[ct held that, under deferential substantial evidence standard, it may not reverse Bd simply because it disagreed with Bd's evaluation of facts, but only if ct found that Bd's evaluation was not supported by substantial evidence]

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[while ct might draw different conclusions from testimony, resolving conflicting interpretations of particular facts is not w/i province of ct, for inferences to be drawn from evidence are matters for trial examiner and Bd]

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)

(where issue is E's motive in discharging Ee, ct *must be mindful that the determination of motive is particularly within the purview of the NLRB*)

5907-8500 Weight given findings of ALJ or Hearing Officer

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

]*much weight* must be given to ALJ's credibility determinations)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)

[standard for review is not altered because hearing officer and Bd disagree on some findings, but evidence that Bd uses to support conclusion may be less substantial when impartial, experienced examiner who has observed witnesses has drawn conclusions different from Bd's than when he has reached same conclusion]

N.L.R.B. v. Lancer Corporation 759 F.2d 458 (C.A. 5, May 1985)

(where E essentially attacked Bd's ruling that discharge was unlawful as not founded on substantial evidence by claiming Bd error in its failure to accord weight to ALJ's contrary finding, substituting its own judgment for E's business judgment, and failing to accept ALJ's findings of fact, ct affirmed Bd's finding of anti-U animus as sole motivation for Ee's discharge since substantial evidence supported such finding)

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

[when there is conflict in testimony it is Bd's function to resolve questions of fact and credibility, and thus, ct ordinarily will not disturb credibility evaluations by ALJ who observed witnesses' demeanor]

Commercial Honing of Detroit, Ltd. v. N.L.R.B. 770 F.2d 76 (C.A. 6, Aug. 1985)

(in affirming ALJ's credibility findings which were basis for finding violations adopted by Bd, ct held it is required to review case on the record and it may not substitute its judgment for that of Bd on basis of suspicion, conjecture, and theoretical speculation, rather than applying substantial evidence standard of review)

N.L.R.B. v. Jarm Enterprises, Inc., d/b/a Blu-Fountain Manor 785 F.2d 195 (C.A. 7, Mar. 1986)

[role of appellate ct is not to reevaluate the evidence and weight that should be given testimonial evidence, rather, these types of credibility determinations will not be overturned absent extraordinary circumstances]

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[ct must not exclude from its consideration evidence contradicting Bd's conclusions, and such standard does not change when Bd disagrees with prior ALJ findings; in that case, latter are simply part of record to be weighed against other evidence supporting Bd]

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)

(Bd's order will be enforced if its findings of fact are supported on record as whole; standard does not change when Bd and ALJ make contrary findings; deference accorded fact findings runs in favor of Bd but ct still considers ALJ's findings, as part of record, and weighs them along with other opposing evidence)

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)

(ct will give weight to ALJ's credibility because ALJ *sees the witnesses and hears them testify)*

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[enforcement of Bd's order should be granted if Bd correctly applied the law and if its findings are supported by substantial evidence on the record as a whole; standard of review is not altered where ALJ and Bd reach contrary conclusions; however, findings of ALJ, whether contrary or supportive of Bd's determination, are part of record to be fully considered by reviewing ct]

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(ct's standard of review does not change even through Bd disagrees with findings of ALJ)

5911 CREDIBILITY RESOLUTIONS

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

]*much weight* must be given to ALJ's credibility determinations)

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(unless such determination (concerning credibility of witness) was unreasonable, we (reviewing ct) should defer to his (ALJ's) credibility judgments)

N.L.R.B. v. J. Coty Messenger Service, Inc. ———F.2d——— (C.A. 2, May 1985)

[credibility findings made by ALJ and accepted by Bd cannot be overturned unless they are *hopelessly incredible* or they *flatly contradict* either *law of nature* or *undisputed documentary testimony*]

N.L.R.B. v. Longshoremen's, etc., Local 333 (Rukert Terminals Corporation, etc.) 764 F.2d 234 (C.A. 4, June 1985)

(it is w/i Bd's province to resolve conflicts in testimony)

JMC Transport, Inc. v. N.L.R.B. 776 F.2d 612 (C.A. 6, Nov. 1985)

[ALJ's credibility determination adverse to E based on his having observed witnesses' demeanor and on having analyzed circumstantial evidence held supported by substantial evidence in absence of *unusual facts* which were present in ct's *Krispy Kreme Donut Corp. v. N.L.R.B.*, 732 F.2d 1288 (6th Cir. 1984), case on which E relied in challenging ALJ's determination]

Commercial Honing of Detroit, Ltd. v. N.L.R.B. 770 F.2d 76 (C.A. 6, Aug. 1985)

(Bd's order enforced notwithstanding E's claim that ALJ made egregiously erroneous credibility findings by crediting testimony of GC's witness and discrediting testimony of E's witness, where there was significant amount of other evidence to support ALJ's findings which Bd adopted; ALJ explained his reasons for his credibility findings; and E's failure to produce witnesses allegedly present when violations occurred permitted damaging testimony by GC's witness to go uncontradicted)

Commercial Honing of Detroit, Ltd. v. N.L.R.B. 770 F.2d 76 (C.A. 6, Aug. 1985)

(in affirming ALJ's credibility findings which were basis for finding violations adopted by Bd, ct held it is required to review case on the record and it may not substitute its judgment for that of Bd on basis of suspicion, conjecture, and theoretical speculation, rather than applying substantial evidence standard of review)

5911—Cont.

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[there is no basis for finding that bias and partiality existed merely because ALJ resolved important factual conflicts in favor of GC's witnesses; nor is there anything inherently arbitrary in believing one side's witnesses and not the other's; and law in instant circuit has been that ct must accept Bd's credibility findings unless party challenging credibility determinations establishes *exceptional circumstances*]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[testimony of GC's Spanish-speaking witnesses held not too untrustworthy to constitute substantial evidence supporting Bd's findings; while ct may disregard ALJ's credibility determinations where found unreasonably self-contradictory or based on inadequate reasoning, such was not case herein where, although testimony of witnesses in Spanish was taken through interpreter, and language barrier complicated hearing process, ALJ very carefully monitored translation process to ensure accurate interpretation]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[ALJ, having opportunity to hear testimony and observe witnesses' demeanor, held best suited to assess credibility and to resolve conflicts in testimony]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[minor conflicts between testimony at hearing and affidavits held substantially overcome by balance of testimony and consideration of language problem arising from fact that most witnesses spoke only Spanish and such language barrier complicated hearing process]

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[ALJ's credibility determinations based on witnesses' testimony, states of memory, biases found not shocking to conscience and findings of facts based on them thus supported by substantial evidence]

Lemon Drop Inn, Inc. v. N.L.R.B. 752 F.2d 323 (C.A. 8, Jan. 1985)

(specific findings of credibility confirmed if supported on record as a whole)

General Teamsters Local No. 162 v. N.L.R.B. (Western Pacific Construction Materials Co.) 782 F.2d 839 (C.A. 9, Feb. 1986)

[upon review of decision of Bd, ct gives special weight to credibility determinations made by ALJ, since ALJ is in best position to evaluate which witness is recalling facts most accurately, and reviewing ct cannot conduct de novo review of testimony to make different credibility determinations]

N.L.R.B. v. Searle Auto Glass, Inc., d/b/a Best Glass Company 762 F.2d 769 (C.A. 9, June 1985)

(ct will give weight to ALJ's credibility because ALJ *sees the witnesses and hears them testify)*

N.L.R.B. v. IDAB, Inc. 770 F.2d 991 (C.A. 11, Sep. 1985)

(where evidence is conflicting and Bd's determination rests on credibility choices, ct is bound by Bd's credibility determinations unless they are inherently unreasonable or self-contradictory; and here Bd accepted most of ALJ's factual determinations based on numerous credibility judgments which were neither unreasonable nor contradictory and were supported by adequate reasons)

5914 CONCLUSIONS OF LAW

5914-0100 Generally

Black Grievance Committee v. N.L.R.B. 749 F.2d 1072 (C.A. 3, Dec. 1984)

(ct bears ultimate responsibility to decide and enforce applicable legal standards)

Vokas Provision Co., d/b/a The Rich Plan of Western v. N.L.R.B. 796 F.2d 864 (C.A. 6, July 1986)

[reviewing Bd's interpretation and application of Act, ct's primary function is to determine whether Bd's conclusions are rational and whether they are consistent with underlying policies of Act as well as with prior precedent; although Bd's determinations are subject to limited judicial review, this does not mean that they are immunized from judicial scrutiny]

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

[Bd's application of law to particular facts is reviewed under substantial evidence standard, and Bd's reasonable inferences may not be displaced on review even though ct might justifiably have reached different conclusion had matter been before it de novo]

Turnbull Cone Baking Company of Tennessee v. N.L.R.B. 778 F.2d 8 (C.A. 6, Dec. 1985)

[in application of law to particular facts, evidence is considered substantial if it is adequate, in a reasonable mind, to uphold the decision; and ct should consider evidence contrary to Bd's conclusions, but may not conduct de novo review of record; however, if Bd errs in determining proper legal standard, ct may refuse enforcement on ground that order has *no reasonable basis in law*]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Crescent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[Bd's legal conclusions must be upheld unless they are arbitrary or capricious]

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)

(whether Bd order has *reasonable basis in law* depends on whether Bd has acted w/i area of regulation committed to it by Congress and whether it has properly applied the correct legal standard)

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[ct must uphold Bd if it correctly applied law and its findings are supported by substantial evidence on record as a whole, even though ct might reach different conclusion based on same evidence]

Hotel & Restaurant Employees, Local 11 v. N.L.R.B. (Rossmore House Hotel) 760 F.2d 1006 (C.A. 9, May 1985)

(ct held Bd acted w/i its province in returning to flexible all-the-circumstances test which recognizes that E's questioning of Ee's U views is not necessarily coercive and may arise during casual conversation; standard is realistic approach to enforcement of 8(a)(1) and is consistent with Act because Bd and ALJs can determine, on case-by-case basis, whether all facts demonstrate coercive behavior)

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)

[in reviewing 10(k) orders, as implemented by 8(b)(4)(D) proceedings, ct performs limited inquiry; to extent that Bd decisions reflect conclusions as to factual matters, for which there is *substantial evidence on the record considered as a whole,* ct must defer to Bd's conclusion; to extent that Bd decisions reflect legal conclusion, ct must determine whether decisions were *arbitrary and capricious*]

5914-1200 Application of intervening change in law while case is on appeal

Communication Workers, Local 5008 v. N.L.R.B. (Illinois Bell Telephone Co.) 784 F.2d 847 (C.A. 7, Mar. 1986)

[Bd's application for leave for Bd to apply new policy on remand held unnecessary since appellate cts would either grant requests automatically or be impelled into premature consideration of merits of proposed new rule]

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(upon ct remand ALJ properly applied principles of *Hollywood Ceramics* in assesing impact on election results of U's misstatement of law in pre-election flyer, which Bd subsequently had abandoned as standard in evaluating misrepresentation of fact or law in context of R elections, since present case was initially considered by ct under principles enunciated in *Hollywood Ceramics*)

5914-2500 Weight given ALJ conclusions

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

]*much weight* must be given to ALJ's credibility determinations)

Local 259, Auto Workers v. N.L.R.B. 776 F.2d 23 (C.A. 2, Oct. 1985)

[Congress has instructed *this ct* (C.A. 2) to review decisions of Bd, *not* those of ALJ]

Janet Eichelberger v. N.L.R.B. 765 F.2d 851 (C.A. 9, July 1985)

[ct must not exclude from its consideration evidence contradicting Bd's conclusions, and such standard does not change when Bd disagrees with prior ALJ findings; in that case, latter are simply part of record to be weighed against other evidence supporting Bd]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[enforcement of Bd's order should be granted if Bd correctly applied the law and if its findings are supported by substantial evidence on the record as a whole; standard of review is not altered where ALJ and Bd reach contrary conclusions; however, findings of ALJ, whether contrary or supportive of

5914-2500—Cont.

Bd's determination, are part of record to be fully considered by reviewing ct]

5914-5000 Experienced judgment of Board entitled to great weight

N.L.R.B. v. Insulfab Plastics, Inc., New England Division 789 F.2d 961 (C.A. 1, Apr. 1986)

[where substantial evidence supported Bd's finding that affiliation of independent U with international did not raise qcr, ct held that, since Congress has entrusted Bd with authority to interpret and implement Act, ct has generally allowed Bd wide latitude to construe its provisions and to determine how best to effectuate Act's policies, especially in areas implicating, as here, agency expertise; and thus such Bd decision should be sustained as long as it is not irrational or inconsistent with Act]

N.L.R.B. v. Preterm, Inc. 784 F.2d 436 (C.A. 1, Feb. 1986)

[whether offer to return to work was conditional or unconditional is question of fact for Bd to determine. Bd's finding deemed *conclusive* if *supported by substantial evidence on the record as a whole*]

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(ct respects Bd's special competence and expertise in fashioning remedies)

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)

[Bd determination may only be vacated when reviewing ct cannot conscientously conclude–after looking at record as whole, including evidence opposed to Bd's view–that evidence supporting Bd's decision is substantial]

Local 259, Auto Workers v. N.L.R.B. 776 F.2d 23 (C.A. 2, Oct. 1985)

[ct's right of review is limited one. *even as to matters not requiring expertise, a ct may [not(displace the Bd's choice between two fairly conflicting views, even though the ct would justifiably have made a different choice had the matter been before it de novo*]

N.L.R.B. v. St. Joseph's Hospital 755 F.2d 260 (C.A. 2, Feb. 1985)

(in good faith bargaining issue, *scope of ct's review is somewhat limited. Although findings of fact shall be conclusive if supported by substantial evidence on the record, what constitutes failure to bargain in good faith is question of mixed law and fact. Where issues are not purely factual, Act does not explicitly direct cts to exercise particular measure of review. Manifestly, however, measure of cts; oversight increases as Bd's determination approaches the purely legal. Nevertheless determining whether party's conduct evidences lack of good faith is elusive inquirey, and ct should not lightly disregard appraisal by NLRB)*

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers 746 F.2d 143 (C.A. 2, Oct. 1984)

(given Bd's experience, it is ordinarily better equipped than ct to determine what circumstances constitute adequate justification for discrimination inherent in granting of superseniority for layoff purposes to U officials; and ct will defer to Bd's conclusion that particular conduct *adversely affects protected Ee interests*, unless that conclusion is not reasonably defensible)

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. 753 F.2d 313 (C.A. 3, Jan. 1985)

(scope of ct review of Bd bargaining order is particularly limited, since Bd, in choosing such remedy draws on fund of knowledge and expertise all its own and its choice of remedy must therefore be given special respect by reviewing cts)

Vokas Provision Co., d/b/a The Rich Plan of Western v. N.L.R.B. 796 F.2d 864 (C.A. 6, July 1986)

[because of Bd's *special competence* in field of labor relations, its interpretation of Act is entitled to substantial deference; nor should ct reject ruling merely because it might prefer another view of statute]

Vokas Provision Co., d/b/a The Rich Plan of Western v. N.L.R.B. 796 F.2d 864 (C.A. 6, July 1986)

[reviewing ct should be particularly hesitant to disturb Bd's conclusions where ultimate problem is balancing of conflicting legitimate interests]

Local Union 1392, Electrical Workers v. N.L.R.B. (Indiana & Michigan Electric Co.) 786 F.2d 733 (C.A. 6, Mar. 1986)

[Bd's interpretation of bargaining agreement is entitled to deference if it is reasonable and consistent with policies of Act]

N.L.R.B. v. Millwrights Local 1102, Carpenters 779 F.2d 349 (C.A. 6, Dec. 1985)

[10(k) defines no standards to guide Bd in resolving jurisdictional disputes and S.Ct has mandated Bd to use its own special expertise and common sense in disposing of similar controversies]

N.L.R.B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, a/w Teamsters 773 F.2d 921 (C.A. 7, Sep. 1985)

(ct will accord weight to *the Bd's interpretation of the Act and the Bd's application of it in doubtful situations)*

Hospital & Service Employees Union, Local 399, Service Employees v. N.L.R.B. 798 F.2d 1245 (C.A. 9, Aug. 1986)

[Bd's interpretation of Act is entitled to deference and will be upheld if its interpretation is reasonably defensible]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[in conducting its review, ct will, in light of special expertise of Bd, defer to reasonable derivative inferences drawn by Bd from credited evidence]

General Teamsters Local No. 162 v. N.L.R.B. (Western Pacific Construction Materials Co.) 782 F.2d 839 (C.A. 9, Feb. 1986)

[Bd's interpretation and application of Act is entitled to considerable deference]

Salt River Valley Water Users' Association v. N.L.R.B. 769 F.2d 639 (C.A. 9, Aug. 1985)

(ct adopted *deferential* standard of review-giving *great weight* to decision of Bd–rather than *plenary* standard of review in case involving question of providing relevant information to process grievance where *privacy* defense raised)

George C. Foss Company v. N.L.R.B. 752 F.2d 1407 (C.A. 9, Jan. 1985)

(judicial deference to Bd's expertise in making subtle and complex distinctions between supervisors and Ees is particularly strong)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1486 (C.A. 10, Mar. 1986)

[while considerable deference is due Bd's expertise in weighing Ee interests against legitimate business justifications, balance struck between competing interests is not immune from judicial review and reversal]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[in reviewing Bd's orders cts customarily defer to Bd's exercise of its *special function of applying the general principles of industrial life*; and such deference is not withheld simply because Bd has departed from a prior policy]

5914-7500 Consideration may be given to fact Board and ALJ reached different results

N.L.R.B. v. Pratt & Whitney Air Craft Division, United Technologies Corporation (Machinist, District 91) 789 F.2d 121 (C.A. 2, Apr. 1986)

[standard for review is not altered because hearing officer and Bd disagree on some findings, but evidence that Bd uses to support conclusion may be less substantial when impartial, experienced examiner who has observed witnesses has drawn conclusions different from Bd's than when he has reached same conclusion]

Local 259, Auto Workers v. N.L.R.B. 776 F.2d 23 (C.A. 2, Oct. 1985)

[Congress has instructed *this ct* (C.A. 2) to review decisions of Bd, *not* those of ALJ]

N.L.R.B. v. Lancer Corporation 759 F.2d 458 (C.A. 5, May 1985)

(although Bd's overall judgment in finding, contrary to ALJ and w/o disturbing his credibility evaluations, discriminatory motive for discharge, which differed from that of ALJ as to proper inferences to be drawn from largely undisputed evidence concerning salient ultimate fact, ct held that on judicial review issue is, nevertheless, whether Bd's determination is supported by substantial record evidence, not whether ALJ's noncredibility inferences might be considered by ct equally as reasonable as Bd's)

John Morrison, et al. (Carriage Ford, Inc.) v. N.L.R.B. 772 F.2d 283 (C.A. 6, Sept. 1985)

[where Bd, contrary to ALJ, found that Ees had voluntarily quit after dispute over working hours and were not unlawfully discharged, Ct held Bd's findings were supported by substantial evidence and it explicated rational basis for disagreement with ALJ]

5914-7500—Cont.

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) 802 F.2d 969 (C.A. 7, Oct. 1986)

[where Bd reversed ALJ's decision which contained errors, omissions, and suspect credibility findings, ct held case was not one where strong initial decision opposite to Bd's decision required ct to consider evidentiary and analytical basis of Bd's decision with special care]

N.L.R.B. v. Del Rey Tortilleria, Inc. 787 F.2d 1118 (C.A. 7, Apr. 1986)

[in determining whether there is substantial evidence in support of Bd's position, ct must be satisfied, based on its independent review of record, that result is justified by fair estimate of worth of testimony of witnesses or Bd's informed judgment on matters w/i its special competence]

N.L.R.B. v. Ironworkers Local Union No. 505, a/w Ironworkers 794 F.2d 1474 (C.A. 9, July 1986)

[Bd's disagreement with ALJ's finding of no violation by U in connection with operation of its hiring hall in no way heightened ct's level of its scrutiny, since ALJ's findings were simply part of record to be weighed against other evidence supporting Bd]

Stanley A. Dash, Jr. v. N.L.R.B. (Lawyers Co-Operative Publishing Co.) 793 F.2d 1062 (C.A. 9, July 1986)

[*when Bd and ALJ make contrary findings, we give deference to Bd, but we still consider ALJ's findings, however, and weigh them with other evidence opposing Bd's decision*]

International Guards Union of America, Local 69 v. N.L.R.B. 789 F.2d 1465 (C.A. 10, May 1986)

[standard of review not altered simply because ALJ and Bd have reached contrary conclusions]

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[enforcement of Bd's order should be granted if Bd correctly applied the law and if its findings are supported by substantial evidence on the record as a whole; standard of review is not altered where ALJ and Bd reach contrary conclusions; however, findings of ALJ, whether contrary or supportive of Bd's determination, are part of record to be fully considered by reviewing ct]

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(ct's standard of review does not change even through Bd disagrees with findings of ALJ)

Food and Commercial Workers, Local 152 v. N.L.R.B. 768 F.2d 1463 (C.A. D.C., July 1985)

5921 MIXED QUESTIONS OF LAW AND FACT

N.L.R.B. v. St. Joseph's Hospital 755 F.2d 260 (C.A. 2, Feb. 1985)

(in good faith bargaining issue, *scope of ct's review is somewhat limited. Although findings of fact shall be conclusive if supported by substantial evidence on the record, what constitutes failure to bargain in good faith is question of mixed law and fact. Where issues are not purely factual, Act does not explicitly direct cts to exercise particular measure of review. Manifestly, however, measure of ct; oversight increases as Bd's determination approaches the purely legal. Nevertheless determining whether party's conduct evidences lack of good faith is elusive inquiry, and ct should not lightly disregard appraisal by NLRB)*

5928 DISCRETION IN EXERCISE OF JURISDICTION

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) 786 F.2d 1516 (C.A. 11, Apr. 1986)

[ct vacated and remanded to Bd its decision which held that GC had not met its burden of affirmatively demonstrating that ULP had not received adequate consideration by arbitration committee; remand required Bd to reconsider its decision in light of ct's disapproval of Bd's standard for deferral under *Olin Corp.*, 268 NLRB 573]

5932 PROTECTED NATURE AND/OR CONCERTEDNESS OF ACTIVITY

Robert T. Ewing, an individual v. N.L.R.B. 768 F.2d 51 (C.A. 2, July 1985)

(in view of S.Ct's *City Disposal* decision stating that Bd is not required to read phrase *concerted activities* according to its dictionary definition, ct declined Bd's and E's requests to apply retroactively Bd's *Meyers* decision, in which it adopted literal definition of *concerted activities*, to instant case in which Bd found that E did not violate 8(a)(1) by failing to recall laid-off Ee, acting as individual, for filing complaint with OSHA)

5935 UNIT DETERMINATIONS

N.L.R.B. v. Action Automotive, Inc. ———U.S.——— (U.S. S.CT, Feb. 1985)

[Bd's discretion in determining appropriate unit under authority vested in it by Sec. 9(b) is broad, reflecting Congress' recognition of need for flexibility in shaping unit to particular case; in defining bargaining units, Bd's focus is on whether Ees share *community of interest;* cohesive unit, which is relatively free of conflicts of interest, serves Act's purpose of collective bargaining and prevents minority interest group from being submerged in overly large unit]

N.L.R.B. v. Action Automotive, Inc. ———U.S.——— (U.S. S.CT, Feb. 1985)

[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held Bd's decision to exclude some family members is not inconsistent with fundamental structure or policies of Act; Congress has limited Bd's discretion to define bargaining units as it has done under Sec. 9(c)(5) making extent to which Ees have organized not controlling; but there is no express direction in Act that Bd define units only by reference to job-related benefits to Ee-relatives; and ct is not authorized to bind Bd in ways not mandated by Congress]

5935-0100 Generally

N.L.R.B. v. Action Automotive, Inc. ———U.S——— (U.S. S.CT, Feb. 1985)

[where issue was whether Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held its review was limited to whether Bd's practice of excluding some close relatives who do not enjoy special job-related benefits has *reasonable basis in law;* in reviewing Bd decisions ct consistently yields to Bd's reasonable interpretations and applications of Act; and Bd's orders defining bargaining units are rarely to be disturbed]

Maccabees Mutual Life Insurance Company v. N.L.R.B. 757 F.2d 767 (C.A. 6, Mar. 1985)

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[until Bd expressly modifies or repudiates rule that Ees in dealership's parts and service departments should be in *same* bargaining unit, *unless* there is affirmative showing that there is no substantial community of interest between 2 groups of Ees, Bd is bound by such rule]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[ct will not overturn Bd's unit designation unless its decision is arbitrary and capricious and, consequently, Bd's decision is rarely disturbed on appeal]

5935-2500 Scope

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research 793 F.2d 503 (C.A. 2, June 1986)

[ct found part-time faculty unit appropriate, based on Bd's findings and to avoid further delay, notwithstanding it refused to enforce order that E bargain with U representing part-time faculty, since latter might not have voted for U had they been told that unit of all faculty, for which election was noticed, might be modified after election, pursuant to pre-election grant of request for review, and only part-time faculty's votes, which had been segregated, counted]

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

[Bd's conclusion regarding community of interest of Ees providing for segregation of parts and service department Ees was not supported by record where ALJ did not receive evidence about E's parts department that would permit ruling on parts department Ees and Bd refused to reopen record]

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(Bd's conclusion that *extras* hired by E engaged in lettuce cooling business in prior growing season were not included in bargaining unit, is supported by substantial evidence in record even if E shows that another unit might be more appropriate)

5935-5000 Supervisory status of employee

George C. Foss Company v. N.L.R.B. 752 F.2d 1407 (C.A. 9, Jan. 1985)

(judicial deference to Bd's expertise in making subtle and complex distinctions between supervisors and Ees is particularly strong)

5935-8700 Managerial status

5935-8700—Cont.

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— (U.S. S.CT, Feb. 1985)

[Bd considers variety of factors in deciding whether Ee's familial ties are sufficient to align his interests with management and thus warrant his exclusion from unit; for instance, Ee who resides with or is financially dependent on relative who owns or manages business is typically excluded; and the greater the family involvement in ownership or management, the more likely Ee-relative will be viewed as aligned with management and hence excluded]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— (U.S. S.CT, Feb. 1985)

[in deciding whether Ee's familial ties are sufficient to align his interests with management and thus warrant his exclusion, Bd is always concerned with whether Ee receives special job-related benefits such as high wages or favorable working conditions; when other criteria satisfy Bd that Ee-relative's interests are aligned with management, however, he may be excluded even though he enjoys no special job-related benefits]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— (U.S. S.CT, Feb. 1985)

[where issue was whether Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held its review was limited to whether Bd's practice of excluding some close relatives who do not enjoy special job-related benefits has *reasonable basis in law*; in reviewing Bd decisions ct consistently yields to Bd's reasonable interpretations and applications of Act; and Bd's orders defining bargaining units are rarely to be disturbed]

N.L.R.B. v. Action Automotive, Inc. ——U.S.—— (U.S. S.CT, Feb. 1985)

[where Bd found that Ee-relatives should be excluded from unit because their interests were aligned with those of management, ct held it does not make labor policy under Sec. 9(b) which vested that authority in Bd whose extensive experience in administration of Act is brought to bear on question of unit determinations; ct does not require mathematical precision and is not prepared to second-guess Bd's informed judgment that unit's community of interest may be diluted by circumstances other than job-related benefits granted to Ee-relatives of management]

5942 CONDUCT OF ELECTIONS AND CERTIFICATION OF UNIONS

5942-0100 Generally

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research 793 F.2d 503 (C.A. 2, June 1986)

[case remanded to Bd to conduct election in part-time faculty unit, notwithstanding Bd's post election modification from all-faculty to part-time faculty unit reduced scope only 10 percent, and only part-time faculty votes were counted, since election was close, and part-time faculty might have voted differently had they known of modification in unit's scope and character for fear of insufficient strength, desire for representation of unified workforce only, and intention to rely on full-time faculty for significant amount of U work]

N.L.R.B. v. Engineers Constructors, Inc. 756 F.2d 464 (C.A. 6, Mar. 1985)

(Bd determinations whether and when election should be held are reviewable for abuse of discretion)

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) 774 F.2d 782 (C.A. 7, Oct. 1985)

[in holding that Bd's conclusion that merger election is not solely internal U affair was rational, consistent with Act, and not arbitrary, ct sustained Bd's determination that all unit members must vote before it will sanction results of merger election]

N.L.R.B. v. Monark Boat Company 800 F.2d 191 (C.A. 8, Aug. 1986)

[on review of Bd's certification determination, standard is whether Bd reasonably exercised wide degree of discretion vested in it by Congress regarding representation matters]

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)

(control of election proceeding and determination of steps necessary to conduct that election are matters which Congress entrusted to Bd alone)

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)

(NLRB has wide discretion to determine R matters and questions arising during election proceedings, and reasoned interpretations of an act by agency charged with administering it are entitled to deference)

5942-3000 Mechanics of election

N.L.R.B. v. Tom Wood Datsun, Inc., and Tom Wood Subaru, Inc. 767 F.2d 350 (C.A. 7, July 1985)

(direct judicial review of Bd decision to certify representative on basis of election is extremely imited. This requisite deference extends to Bd's selection of rules and policies to govern elections and its application of these rules. Soundness of election rule is not the business of reviewing ct because source of Bd's authority to issue such rules are 2 statutory provisions lacking specific standards which authorize Bd to conduct representation elections)

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(majority status (of Ee bargaining representative) can be established by means other than NLRB-conducted election such as *informal-election* in instant case where with E present and consent, Ees secretly marked ballot *yes* or *no* and put ballot in hat)

5942-4000 Counting of ballots

Smith and Smith Aircraft Company v. N.L.R.B. ——F.2d—— (C.A. 10, May 1984)

[ballots of eligible voters must be counted notwithstanding names inadvertenly left off *Norris-Thermador* list where names were included in Excelsior list, U knew of omission more than 3 weeks before election, and objected to their inclusion on Excelsior list as mistake discovered in sufficient time and right to vote is important right]

5942-8000 Rulings on objections

N.L.R.B. v. Rhone-Poulenc, Inc. 789 F.2d 188 (C.A. 3, Apr. 1986)

[*Rules with respect to filing objection to election conduct and mentod of investigating them, are all Bd made rules.. Bd has discretion to interpret those rules as requiring strict compliance. NLRA confers on Bd. not on cts. responsibility for supervising choice of bargaining representative*]

Kusan Manufacturing Company, a division of Kusan, Inc. v. N.L.R.B. 749 F.2d 362 (C.A. 6, Dec. 1984)

(delay of 3-1/2 years between conduct of election and hearing held on E's objection, not prejudicial, as E presented no evidence to support claim of prejudice; furthermore, in every instance that U prevails in election, economic burden caused by any delay is borne by U and its Ees, not E)

N.L.R.B. v. Browning-Ferris Industries of Louisville, Inc. 803 F.2d 345 (C.A. 7, Oct. 1986)

[*Our review of Bd's decision to certify collective bargaining representative following election is extremely limited. We will defer to Bd's selection of rules and policies to govern particular election so long as those rules are reasonable*]

Wright Memorial Hospital v. N.L.R.B. 771 F.2d 400 (C.A. 8, Aug. 1985)

(contention that cummulative effect of pro-U activities of supervisors together with other activities required that election be overturned, rejected, since inferences drawn from facts by Bd were reasonable)

Bauer Welding and Metal Fabricators, Inc. v. N.L.R.B. 758 F.2d 308 (C.A. 8, Mar. 1985)

(although deploring U's prominent use of pre-election flyer containing misstatement of law and Bd document that easily could be understood as supporting misstatement, ct held that, since its role as reviewing ct was not to say what it would have decided had it been Bd, and since Bd's conclusions that flyer did not warrant setting aside election had support in record and reasonable basis in law, ct was constrained not to disturb them)

N.L.R.B. v. Island Film Processing Co., Inc., d/b/a Kahala Kai Photo Service 784 F.2d 1446 (C.A. 9, Mar. 1986)

[ct's standard for judging supervisory pro-U conduct that requires election to be set aside is whether solicitation contains *seeds for potential reprisal, punishment, or intimidation*]

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)

(ct deferred to Bd's decision to affect change in policy regarding misrepresentations in Bd elections, since there was *reasonable basis in law* for Bd's change)

N.L.R.B. v. Hudson Oxygen Therapy Sales Company 764 F.2d 729 (C.A. 9, June 1985)

(E's contention that Bd's rule prohibiting electioneering only after polls open is irrational, rejected since Bd, by announcing per se rules which establish categories of permitted and prohibited conduct, provides predictability for participants in election; rule permits voting to take place in atmosphere permitting sober reflection and calm deliberation)

5942-9000 Orders in representation proceedings

§942-9000—Cont.

N.L.R.B. v. Mississippi Power & Light Company 769 F.2d 276 (C.A. 5, July 1985)

(contract bar rule is reviewable for consistency with Act and for rationality, and if it satisfies those criteria, Bd's application of rule, if supported by substantial evidence, must be enforced)

§944 DETERMINATIONS AS TO EFFECTS OF ULPS ON REPRESENTATION ELECTIONS

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(bargaining order, rather than election, is most salutary response by Bd where record exhibited occurrence of serious coercive practices, reasonably likely to have severe and lasting effects -threats of plant closure star chamber interrogation tactics, written admonitions, withholding of overtime, loss of employment, grant of benefits, reassignment and discharge- even in absence of direct proof of probability of recurrence)

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(concerning precondition to bargaining order)

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(ct respects Bd's special competence and expertise in fashioning remedies)

N.L.R.B. v. Hawaiian Flour Mill, Inc. 792 F.2d 1459 (C.A. 9, June 1986)

[Bd has broad discretion to establish safeguards and procedures necessary to conduct R elections]

§949 JURISDICTIONAL DISPUTE DETERMINATIONS

N.L.R.B. v. Longshoremen's, etc., Local 333 (Ruhert Terminals Corporation, etc.) 764 F.2d 234 (C.A. 4, June 1985)

(ct found no basis for U's contention that Es should be considered joint E of crane operators, since one E did not exercise any control over Ees of other E operating crane and operations of the Es were not functionally integrated)

Operating Engineers, Local 150 v. N.L.R.B. 755 F.2d 78 (C.A. 7, Jan. 1985)

(Bd's determination of work jurisdiction of two competing local U claimants pursuant to Section 10(k) of Act *enforced* where neither U claimant's agreement with E concerning work jurisdiction is giving way to the other)

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)

[in reviewing 10(k) orders, as implemented by 8(b)(4)(D) proceedings, ct performs limited inquiry; to extent that Bd decisions reflect conclusions as to factual matters, for which there is *substantial evidence on the record considered as a whole*, ct must defer to Bd's conclusion; to extent that Bd decisions reflect legal conclusion, ct must determine whether decisions were *arbitrary and capricious*]

Longshoremen's, Local 62-B v. N.L.R.B. 781 F.2d 919 (C.A. D.C., Jan. 1986)

[essence of dispute in 8(b)(4)(D) and 10(k) sense is existence of dispute between 2 or more groups of Ees over which is entitled to do certain work for E and, in most instances, dispute is of so little interest to E that he is willing to assign work to either Ee group; consequently characteristics of problem that 8(b)(4)(D) and 10(k) aim to solve are that, first, E faces jurisdictional dispute that is not of his own making and, two, dispute is between 2 Ee groups]

§953 SECONDARY BOYCOTT DETERMINATIONS

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ———F.2d——— (C.A. 9, Oct. 1984)

[where Bd found U's handbilling and newspaper ads directed at secondary E coercive because U thereby imposed economic pressure against secondary E designed to inflict economic injury, ct declined to review coercion issue since parties did not produce, and Bd did not require, evidence regarding economic pressure; Bd's cursory treatment and resulting ambiguity made it difficult to surmise whether handbilling and ads fit w/i S.Ct's definition of *coercion* as that which encourages consumer boycott of secondary E or that which threatens neutral parties with ruin or substantial loss]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ———F.2d——— (C.A. 9, Oct. 1984)

[ct declined to examine First Amendment issue as to U's handbills and newspaper ads directed at secondary E; ct must first address preliminary issue of coercion, resolution of which must await Bd's clarification of issue on remand; constitutional issues here are novel and complex, involving use of handbilling; constitutionality of restriction on handbills is more suspect than restraint on picketing which involves elements of conduct as well as communication of ideas; and application of 8(b)(4) to facts herein may infringe on other constitutional guarantees, freedom of press and freedom of association]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. 796 F.2d 1328 (C.A. 11, Aug. 1986)

[handbilling is protected by First Amendment even when designed to pressure others to act, but government has interest in certain forms of economic regulations, e.g. secondary boycotts and picketing, notwithstanding effects on rights of speech and association, as part of Congress' striking delicate balance between U's freedom of expression and neutral Es', Ees', and consumers' freedom from coerced participation in industrial strife]

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[where Bd erroneously found U unlawfully picketed general contractors on behalf of independent contractors for better leasing agreement terms, ct held Bd's definition of *secondary* was erroneous even under relatively deferential standard that agency's interpretation of statute need only be *permissible construction* that reflects *reasonable accomodation of law's conflicting policies;* such standard requires ct to determine whether agency's interpretation is arguably consistent with statutory scheme and whether issue is adequately reasoned]

§956 REMEDIAL ORDER PROVISIONS

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[circuit ct's decision ordering Bd to provide minimum backpay for constructively discharged illegal alien Ees w/o regard to their actual losses or legal availability for work after they had left the country rather than be deported reversed, since ct order imposing minimum back pay award which was speculative in absence of evidence of Ees' individual circumstances exceeded unit ct's reviewing authority and compelled Bd to take action not w/i Bd's powers; case remanded to circuit ct with instructions to remand it to Bd for formulation of remedial order consistent with this opn]

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[circuit ct decision modifying Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees who had left the country rather than be deported be drafted in Spanish and their receipt be verified, reversed, since modification requirement exceeded ct's limited authority of judicial review; appropriate course was to remand case for reconsideration to Bd with its broad powers to fashion remedies to effectuate national labor policy and superior expertise and long experience in doing so; case remanded to ct for remand to Bd for formulation of remedial order consistent with this opn]

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(ct respects Bd's special competence and expertise in fashioning remedies)

Vitek Electronics, Inc. v. N.L.R.B. 763 F.2d 561 (C.A. 3, June 1985)

(fact that E closed down plant and bargaining unit no longer exists did not render bargaining order moot or futile even through bargaining order did not order *effects* bargaining since it did order E to bargain concerning rates of pay, wages, hours and other terms and conditions of employment and S.Ct held in *First National Maintenance*, 452 U.S. 666, that this language mandates bargaining over effects of plant closing)

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. 753 F.2d 313 (C.A. 3, Jan. 1985)

(scope of ct review of Bd bargaining order is particularly limited, since Bd, in choosing such remedy draws on fund of knowledge and expertise all its own and its choice of remedy must therefore be given special respect by reviewing cts)

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. 753 F.2d 313 (C.A. 3, Jan. 1985)

(ct's *narrow scope of review* of Bd's R/Os exceeded if ct required Bd to independently articulate its reasons for imposing a bargaining order. S.Ct admonished lower cts to allow agencies to fashion their own rules of procedure)

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. 753 F.2d 313 (C.A. 3, Jan. 1985)

(requirement of a reasoned analysis setting forth factors justifying imposition of bargaining order was meant neither to burden Bd nor to limit issuance of bargaining orders whenever necessary. Sufficient for Bd to provide extensive list giving rise to recommendation that bargaining order be issued)

5956—Cont.

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company **808 F.2d 1155 (C.A. 6, Dec. 1986)**

[Bd Order enforced that required E to reimburse providers of medical treatment for discriminatee even though those charges might now be subject to statute of limitations defense--discriminatee never paid providers--as Order is consistent with S.Ct's holding that *make whole* remedial power of Bd is *broad discretionary one subject to limited judicial review*]

N.L.R.B. v. Master Slack and/or Master Trousers Corp., et al. **773 F.2d 77 (C.A. 6, Sep. 1985)**

(Bd's discretion to fashion appropriate remedies for violations of Act is quite broad and its choice of remedies should be set aside only if it can be shown that order is patent attempt to achieve ends other than those which can be fairly said to effectuate policies of Act)

The Lawson Company v. N.L.R.B. **753 F.2d (C.A. 6, Jan. 1985)**

(Bd's disestablishment order enforced only with respect to stores of E which U has sought to organize and in which GC has challenged validity of E's Sales Assistant Committee)

N.L.R.B. v. Local 139, Operating Engineers **796 F.2d 985 (C.A. 7, July 1986)**

[Bd has broad authority to fashion appropriate remedial orders, and unless Bd's order is patent attempt to achieve ends other than those which can fairly be said to effectuate policies of Act, ct will not disturb Bd's award]

Food & Commercial Workers, Local No. 304A v. N.L.R.B. **772 F.2d 421 (C.A. 8, Aug. 1985)**

(Bd possesses broad discretion to fashion appropriate remedies once ULP is established, and authority of ct of appeals to review remedial provisions of Bd's order is limited)

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. **795 F.2d 705 (C.A. 9, July 1986)**

[*NLRB has broad discretion in fashioning remedies that will effectuate policies of Act. Ct will defer to NLRB's broad authority to construe NLRA unless NLRB's decision is irrational or inconsistent with Act. However, we must not allow our deference to NLRB to slip into judicial inertia which results in unauthorized assumption of major policy decisions properly made by Congress*]

General Teamsters Local No. 162 v. N.L.R.B. (Western Pacific Construction Materials Co.) **782 F.2d 839 (C.A. 9, Feb. 1986)**

[scope of review of Bd's remedial orders is narrower and Bd's choice of remedies will not be disturbed on review in absence of clear abuse of discretion]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company **774 F.2d 1376 (C.A. 9, Oct. 1985)**

[ct held Bd abused its discretion by ordering E to comply with bargaining agreement rectroactively to date E unlawfully refused to sign agreement, rather than from date agreement became effective, since Bd has traditionally granted relief in similar cases retroactive to inception of contract, and absent explanation for doing so Bd cannot impose different remedies; further, if make whole relief for whole period of contract not ordered then status quo not restored]

N.L.R.B. v. L & B Cooling, Inc. **757 F.2d 236 (C.A. 10, Mar. 1985)**

(----*bargaining rights conferred upon U are limited to its representation of production unit at Center,* since Bd order identifies L & B (the E) as *L & B Cooling, Inc.*, Center, Colorado and directs posting of remedial notice only at E's cooling facility in Colorado)

Food and Commercial Workers, Local 152 v. N.L.R.B. **768 F.2d 1463 (C.A. D.C., July 1985)**

(ct, remanded to Bd to fashion remedy although agreeing ALJ's recommended remedy would provide more effective relief than that of Bd, since any enlargement of remedial order should not be undertaken unilaterally by cts, but undertaken by Bd on remand)

5963 BACKPAY DETERMINATIONS

N.L.R.B. v. Ironworkers, Local 480 **———U.S.——— (U.S. S.CT, May 1984)**

[ct of appeals' decision modifying Bd's backpay order by limiting class of Ees to whom backpay may be awarded and prohibiting Bd from amending its backpay specification permitted by Bd regulations, reversed and remanded, since ct of appeals may not refuse to enforce backpay order merely because of Bd's delay subsequent to that order in formulating backpay specification; *Rutter-Rex* principles remain applicable, and by restricting beneficiaries of Bd's order for determining amount of backpay, ct of appeals' order punishes Ees for Bd's nonfeasance, which is forbidden by *Rutter-Rex*]

N.L.R.B. v. Ironworkers, Local 480 **———U.S.——— (U.S. S.CT, May 1984)**

[in reversing and remanding ct of appeals' decision modifying Bd's backpay order by limiting class of Ees to whom backpay may be awarded and prohibiting Bd from amending its backpay specification, ct did not consider whether ct of appeals may modify its original order enforcing Bd's order on grounds that Bd's long delay in formulating backpay specification demonstrated futility of identifying discriminatees and in performing claculations required by Bd's backpay formula, and that Bd's order was *punitive* and *confiscatory*; nor did ct foreclose challenges that might be raised in supplemental backpay proceedings]

N.L.R.B. v. Sumco Manufacturing Co., Inc., and Summit Grinding Company **746 F.2d 1189 (C.A. 6, Nov. 1984)**

[enforcement of Bd order determining amount of backpay due 16 named discriminatees granted where Respondent, while denying appropriateness of backpay formula and computation, presented no alternative formula or figures. Argument advanced by Respondent appears to reargue ULP case which had previously been finally decided against companies concerned]

San Francisco Web Pressmen and Platemakers' Union No. 4 v. N.L.R.B. (Michael Tenorio and Gil Fowler) **794 F.2d 420 (C.A. 9, July 1986)**

[Bd has broad discretion in fashioning backpay remedy, and remedy should stand unless it is attempt to achieve ends not w/i policies of NLRA]

5970 INTERPRETATION OF STATUTES

Robert T. Ewing, an individual v. N.L.R.B. **768 F.2d 51 (C.A. 2, July 1985)**

(in reversing and remanding to Bd because of Bd's mistaken view that it was required to interpret *concerted activities* literally because mandated by Act, ct recognized that administrative agency is not disqualified from changing its mind; and when it does, cts still sit in review of administrative decision and should not approach statutory construction issue *de novo* and w/o regard to administrative understanding of statutes; hence, ct expressed no view on what is correct interpretation of *concerted activities* as applied to instant case involving Ee's layoff for complaining to OSHA)

Hospital & Service Employees Union, Local 399 v. N.L.R.B. **743 F.2d 1417 (C.A. 9, Oct. 1984)**

[if Bd's construction of statute is reasonably defensible, it should not be rejected because ct might prefer another view of the statute]

5970-5000 NLRA

Allis-Chalmers Corp. v. Lueck **———U.S.——— (U.S. S.CT, Apr. 1985)**

[Sec. 301 (of NLRA) does not grant parties to collective-bargaining agreement ability to contract for what is illegal under state law; questions of contract interpretation, therefore underlie any finding of tort liability, regardless that state ct may choose to define tort as *independent* of any contract question; Congress has mandated that *federal law govern meaning given contract terms* in order to have unified federal body of labor-contract law]

Truck Drivers Local Union No. 807, Teamsters v. N.L.R.B. (Wells Fargo Armored Service Corp.) **755 F.2d 5 (C.A. 2, Feb. 1985)**

(Sec. 10(f) provides limited review of Bd decisions, and Bd's interpretation should be disturbed only if fundamentally inconsistent with structure of NLRA and attempt to usurp major policy decisions properly made by Congress; Bd's interpretation of Sec. 9(b)(3) found reasonable)

N.L.R.B. v. Niagara Machine & Tool Works and Local 508, Automobile Workers **746 F.2d 143 (C.A. 2, Oct. 1984)**

(under its quite narrow standard of review, ct must enforce Bd's construction of Act if it is reasonably defensible, even it ct might prefer a different interpretation; Bd's order should be reversed only if it has no reasonable basis in law, is fundamentally inconsistent with structure of Act, or moves into new area of regulation which Congress had not committed to it)

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) **774 F.2d 752 (C.A. 7, Oct. 1985)**

[Act confers upon Bd authority to implement and interpret Act and as long as Bd's explication of rule is not inadequate, irrational or arbitrary, ct must sustain Bd's position]

United Retail Workers Union Local 881 v. N.L.R.B. (May Department Stores Company, Venture Stores Division) **774 F.2d 752 (C.A. 7, Oct. 1985)**

[in holding that Bd's conclusion that merger election is not solely internal U affair was rational, consistent with Act, and not arbitrary, ct sustained Bd's

5970-5000—Cont.

determination that all unit members must vote before it will sanction results of merger election]

N.L.R.B. v. Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, a/w Teamsters — 773 F.2d 921 (C.A. 7, Sep. 1985)

(ct will accord weight to *the Bd's interpretation of the Act and the Bd's application of it in doubtful situations)*

Operating Engineers, Local 150 v. N.L.R.B. — 755 F.2d 78 (C.A. 7, Jan. 1985)

(judicial review of agency action is quite limited. Bd's interpretation of the NLRA will be upheld as long as it has *a reasonable basis in law*)

Veronica Lewis v. N.L.R.B. — 800 F.2d 818 (C.A. 8, Sept. 1986)

[Ct reviews Bd decisions under abuse of discretion standard and yields to Bd's reasonable interpretations and applications of Act]

N.L.R.B. v. Electrical Workers Local Union #46 — 793 F.2d 1026 (C.A. 9, July 1986)

[Bd's interpretation of Act is entitled to ct deference, and ct will uphold it if it is reasonably defensible; however, ct will not rubber-stamp administrative decisions it deems inconsistent with statutory mandate or that frustrates Congressional policy underlying statute]

Florida Gulf Coast Building and Construction Trades Council v. N.L.R.B. — 796 F.2d 1328 (C.A. 11, Aug. 1986)

[federal statutes are to be construed to avoid doubt of their constitutionality, and, if statutory interpretations proposed by Bd would give rise to serious constitutional questions, the *affirmative intention of Congress clearly expressed must first be identified*]

5977 INTERPRETATION OF ADMINISTRATIVE REGULATIONS

N.L.R.B. v. Rhone-Poulenc, Inc. — 789 F.2d 188 (C.A. 3, Apr. 1986)

[*Rules with respect to filing objection to election conduct and mentod of investigating them, are all Bd made rules.. Bd has discretion to interpret those rules as requiring strict compliance. NLRA confers on Bd, not on cts, responsibility for supervising choice of bargaining representative*]

N.L.R.B. v. Dane County Dairy, et al. — 795 F.2d 1313 (C.A. 7, July 1986)

[in light of Congress' authorization of Bd to make such rules as may be necessary to carry out provisions of Act, and Bd's power to construe its own rules free from judicial review unless its construction is so arbitrary as to defeat justice, ct held that Bd's determination of what constitutes *good cause* excusing failure to file timely answer must be upheld unless its construction of good cause standard is so arbitrary as to defeat justice]

N.L.R.B. v. Tom Wood Datsun, Inc., and Tom Wood Subaru, Inc. — 767 F.2d 350 (C.A. 7, July 1985)

(direct judicial review of Bd decision to certify representative on basis of election is extremely imited. This requisite deference extends to Bd's selection of rules and policies to govern elections and its application of these rules. Soundness of election rule is not the business of reviewing ct because source of Bd's authority to issue such rules are 2 statutory provisions lacking specific standards which authorize Bd to conduct representation elections)

5984 DISCRETIONARY ADMINISTRATIVE POLICIES

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 — 772 F.2d 571 (C.A. 9, Sep. 1985)

(Bd has considerable, though not unlimited, discretion to respect or disregard an arbitration decision. In exercising its discretion, Bd must balance policy in favor of settling labor disputes by arbitration with its statutory duty and authority to prevent ULPs)

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 — 772 F.2d 571 (C.A. 9, Sep. 1985)

(Bd may decline to defer to an arbitration decision *in which there is an apparent conflict of interest between the Ee and the U representing him)*

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 — 772 F.2d 571 (C.A. 9, Sep. 1985)

(while cts generally defer to arbitration decisions, our review here is not so limited because we are reviewing not an arbitration decision but NLRB's refusal to enforce such a decision)

N.L.R.B. (Steven R. Loveall, etc.) v. Electrical Workers, Local 11 — 772 F.2d 571 (C.A. 9, Sep. 1985)

(Bd did not abuse its discretion by failing to defer to arbitration decision where there was conflict of interest between Ees and U)

Marie E. Darr v. N.L.R.B. (Cone Mills Corp.) — 801 F.2d 1404 (C.A. D.C., Sept. 1986)

[ct remanded case to Bd to articulate its policy and reasons thereof on deferrals where arbitrator held that under contract Ee was fired w/o *just cause* for taking unscheduled break and engaging in protest, but Ee also guilty of insubordination in not leaving plant when ordered; under NLRA, discharge was unlawful as primary cause of discharge was her protected activity of protesting E's conduct; therefore, arbitrator ordered reinstatement but w/o backpay which is contrary to Bd's practice]

5991 CONTRACT CONSTRUCTION

Allis-Chalmers Corp. v. Lueck — ———U.S.——— (U.S. S.CT, Apr. 1985)

[Sec. 301 (of NLRA) does not grant parties to collective-bargaining agreement ability to contract for what is illegal under state law; questions of contract interpretation, therefore underlie any finding of tort liability, regardless that state ct may choose to define tort as *independent* of any contract question; Congress has mandated that *federal law govern meaning given contract terms* in order to have unified federal body of labor-contract law]

Allis-Chalmers Corp. v. Lueck — ———U.S.——— (U.S. S.CT, Apr. 1985)

[when resolution of state-law claim is substantially dependent upon analysis of terms of agreement made between parties in labor contract, that claim must either be treated as Section 301 claim, or dismissed as pre-empted by federal labor-contract law, complaint in instant case (tort action for breach of duty to act in good faith brought in state ct) should have been dismissed for failure to make use of greivance procedure established in collective-bargaining agreement]

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers — 778 F.2d 284 (C.A. 6, Dec. 1985)

[Bd's interpretation of collective bargaining agreement is entitled to deference where it is reasonable and consistent with policies of Act]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) — 788 F.2d 1412 (C.A. 9, May 1986)

[whether contract waives Ees' right to strike turns upon the proper interpretation of particular contract. It must be read as a whole and in light of the law relating to it when made. Other relevant considerations include bargaining history, context in which contract was negotiated, interpretation of contract by the parties, and conduct of the parties bearing upon its meaning]

N.L.R.B. v. Americana Healthcare Center — 782 F.2d 941 (C.A. 11, Feb. 1986)

[Bd order enforced where E and U duly negotiated contract for unit Ees which negotiations, inter alia, included Ee sick leave benefits were omitted from parties' written contract by inadvertence and mutual mistake, substantial evidence supported Bd's determination that parties agreed to continue sick leave benefits according to previous practice]

N.L.R.B. v. Americana Healthcare Center — 782 F.2d 941 (C.A. 11, Feb. 1986)

[*zipper* clause in instant case must be read with implied exception that it has no application to agreement negotiated (by parties) pursuant to ct order but ommitted from written contract by inadvertence and mistake. Ct's reading of *zipper* clause leaves it ample scope for application, where it will not nullify statutory policy]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[while Bd may interpret bargaining agreements when they are raised as defenses in ULP proceedings, ct's approach is to extend deference to Bd's factual findings on matters bearing on intent of parties, but not to ultimate legal conclusions attached to parties' words and conduct]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) — 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[Bd's interpretation of contractual provisions is entitled to no particular deference; if deference were afforded Bd's intrepretation of bargaining agreements, it would be free to apply different standards of interpretation than those applied by cts in Sec. 301 suits, thereby undermining voluntary bargaining process and exerting disruptive influence upon both negotiation and administration of collective agreements]

6300 ADDUCTION OF ADDITIONAL EVIDENCE

6325 EXISTENCE AND MATERIALITY OF PROFERRED EVIDENCE MUST BE SHOWN

6325—Cont.

N.L.R.B. v. Auburn Foundry, Inc. 791 F.2d 619 (C.A. 7, May 1986)

[appellate ct has authority to order NLRB to review new facts that impact on whether remedy ordered by Bd should be enforced. However, claims that go to need for remedy at all distinguished from claims that relate to details of appropriate remedy. Materiality of evidence must be determined with reference to scope of proceedings before NLRB. Appellate ct cannot declare *material* factual matters which under NLRB procedings are irrelevant. Thus, ct will not consider arguments concerning details of backpay. However, ct may refuse to enforce Bd order where there is unconsidered evidence that may be material to need for remedies]

6350 REASONABLE GROUNDS FOR FAILURE TO ADDUCE BEFORE BOARD

N.L.R.B. v. Atlas Microfilming, Division of Sertafilm, Inc. 753 F.2d 313 (C.A. 3, Jan. 1985)

(E's mtn for remand to Bd, concerning issue of E moving its facility and Ee turnover, denied, since ct found that there were no reasonable grounds for E's failure to apprise Bd of its *additional evidence* as required for remand. E offered no excuse for waiting almost 5 months, after all briefs were filed, to move for remand when E knew it was moving even before Bd issued its bargaining order. Delay in filing briefs was abuse of ct's and Bd's processes)

N.L.R.B. v. Auburn Foundry, Inc. 791 F.2d 619 (C.A. 7, May 1986)

[Sec. 10(e) of Act provides that no objection not urged before Bd shall be considered by ct, unless failure to urge such objection was due to extraordinary circumstances... If either party shall apply to ct for leave to adduce additional evidence and show that evidence material and that there were reasonable grounds for failure to adduce such evidence before Bd, ct may order such evidence taken... This provision does not distinguish evidence relating to remedy from that which relates to merits, thus precluding adoption of NLRB's position that new evidence relating to appropriateness of remedy be defered to compliance stage]

6375 EVIDENCE WHICH MAY NOT BE ADDUCED

6375-5000 Events subsequent to Board order

6375-5083 Union's loss of representative status

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1459 (C.A. 10, July 1985)

[ct held that under established precedents enforcement action was not moot, notwithstanding factual assertions, which ct did not accept because not developed in record, that respondent U no longer represents Ees of E who no longer operates facility at which U was bargaining representative and with whom U has had no bargaining negotiations for several years, and E's assertion that it will remain in business and be dealing with U directly when it begins operations again]

6375-7500 Evidence not shown to have been unavailable at hearing

N.L.R.B. v. Auburn Foundry, Inc. 791 F.2d 619 (C.A. 7, May 1986)

[ct did not refuse to enforce Bd order mandating reinstatement for all aggrieved Ees even though E claimed to have newly discovered evidence which allegedly undermined basis for reinstatement of one discriminatee, where E was aware of such subsequent to Bd hearing but two years prior to Bd's final decision, absent evidence that E was unable to draw Bd's attention to such evidence through some form of written submission or that, following Bd's decision E made any attempt to reopen or request reconsideration]

6800 CONTENTIONS NOT RAISED BEFORE BOARD OR COURTS

6817 ISSUES NOT RAISED BEFORE BOARD WILL NOT BE CONSIDERED BY COURT

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)

[ct rejected Bd's contention that ct should not review E's claim that discharge in bankruptcy of individual who was partner in firm found to be alter ego of E barred enforcement of order against partnership, because E failed to present such claim as required by 10(e); issue was presented to Bd sufficient to meet 10(e) standard when E filed *plea in abatement due to bankruptcy* which Bd disregarded when it determined its proceeding was excepted from automatic stay under Bankrutpcy Act]

N.L.R.B. v. Auburn Foundry, Inc. 791 F.2d 619 (C.A. 7, May 1986)

[Sec. 10(e) of Act provides that no objection not urged before Bd shall be considered by ct, unless failure to urge such objection was due to extraordinary circumstances... If either party shall apply to ct for leave to adduce additional evidence and show that evidence material and that there were reasonable grounds for failure to adduce such evidence before Bd, ct may order such evidence taken... This provision does not distinguish evidence relating to remedy from that which relates to merits, thus precluding adoption of NLRB's position that new evidence relating to appropriateness of remedy be defered to compliance stage]

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 776 F.2d 745 (C.A. 7, Nov. 1985)

[Sec. 10(e) of Act does not foreclose issue of superseniority by cts notwithstanding parties did not ask Bd for reconsideration under R/R 102.48(d) when it announced new rule since there are 2 purposes of 10(e): 1) notice function ensures that Bd has opportunity to resolve all issues w/i its jurisdiction; 2) ensures against repetitive appeals to cts. In circumstances found here, neither policies would be served by deferral of issues to another time]

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[where Bd sustained challenge to Ee's ballot on ground she was *casual Ee*, but E claimed stipulation established her eligibility, ct held that, in view of broad scope of stipulation and E's failure to raise significant allegations before RD regarding U's understanding that Ee was to be included in stipulation by reference to *all Ees*, no material and substantial issue was raised below regarding parties' understanding and, therefore, no hearing was required on issue, and it was too late to raise potential fact questions on appeal]

Wright Memorial Hospital v. N.L.R.B. 771 F.2d 400 (C.A. 8, Aug. 1985)

Hospital & Service Employees Union, Local 399, Service Employees v. N.L.R.B. 798 F.2d 1243 (C.A. 9, Aug. 1986)

[issue of whether E had actual notice of charges w/i 6 months required under 10(b) could be considered by ct, notwithstanding Bd's argument that ct may not consider actual notice issue because it was not presented to Bd on appeal where GC argued issue of actual-notice before ALJ and included issue in its request for review and exceptions before Bd; indeed, Bd addressed question of actual notice in its decision]

N.L.R.B. v. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company 774 F.2d 1376 (C.A. 9, Oct. 1985)

[ct declined to consider allegation of unlawful refusal by E to sign contract where not alleged as violation in complaint and raised for first time on appeal. Complaint only alleged E failed to abide by contract]

N.L.R.B. v. Electrical Workers, Local 952 758 F.2d 486 (C.A. 9, Apr. 1985)

(ct was unable to reach U's claim that its conduct was protected under proviso to 8(b)(1)(A) since 10(e) foreclosed judicial consideration of claim where U did not properly preserve issue for judicial review by raising issue before Bd)

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[Bd's contention ct was w/o jurisdiction to consider U's challenge to validity and application of presumption Bd used because U failed to raise issue before Bd, rejected, where operation of presumption did not become an issue until Bd relied on it in its decision and ALJ made only collateral reference to it w/o relying thereon]

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(ct cannot consider contention of E not properly before it for review, since any contentions advanced before ALJ which are not preserved for review in exceptions or cross-exceptions are deemed waived in absence of extraordinary circumstances; *(n)o matter not included in exceptions or cross-exceptions may thereafter be argued before Bd, or in any further proceeding* 29 C.F.R. Section 102.46(h) (1978))

6825 THEORY OF CASE NOT RELIED UPON BY BOARD WILL NOT BE CONSIDERED BY COURT

Roberto Sanchez and Elva Rodriguez v. N.L.R.B. 785 F.2d 409 (C.A. 2, Mar. 1986)

[an agency's action must be upheld on basis articulated by agency itself; ptn to review Bd's dismissal of C, granted]

N.L.R.B. v. Carson Cable TV; et al. 795 F.2d 879 (C.A. 9, July 1986)

[where RD, in his decision determining appropriateness of unit, had not relied on factor proposed by Bd's counsel for finding unit appropriate, ct held it must affirm Bd upon actual ground stated in its decision, since

6825—Cont.

integrity of administrative process requires that cts may not accept appellate counsel's *post hoc* rationalizations for agency action]

6833 OBJECTIONS NOT URGED BEFORE BOARD MAY NOT BE CONSIDERED

N.L.R.B. v. Island Film Processing Co., Inc., d/b/a Kahala Kai Photo Service 784 F.2d 1446 (C.A. 9, Mar. 1986)

[E's objection to Bd's finding that individual was not supervisor, adequately preserved for ct review of ULP case, notwithstanding Bd's grant of summary judgment therein because E had simply *reiterated* objections, where Bd had discussed issue of individual's supervisory status in underlying R case in response to E's objection to supervisory involvement in election]

6833-1400 10(e) provision applicable also to 10(f) proceeding

N.L.R.B. v. Best Products Co., Inc. 765 F.2d 903 (C.A. 9, July 1985)

(E's statement in ULP proceeding that it incorporated by reference its objections to election in R case proceeding sufficient to satisfy requirements of Sec. 10(e) and preserve objection for appellate review; also Bd's decision on ULP charges showed that it had actual notice of E's attempt to press its objections in ULP proceeding)

6833-2800 Failure to except to proposed findings and order conclusive

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 776 F.2d 745 (C.A. 7, Nov. 1985)

[Sec. 10(e) of Act does not foreclose issue of superseniority by cts notwithstanding parties did not ask Bd for reconsideration under R/R 102.48(d) when it announced new rule since there are 2 purposes of 10(e): 1) notice function ensures that Bd has opportunity to resolve all issues w/i its jurisdiction; 2) ensures against repetitive appeals to cts. In circumstances found here, neither policies would be served by deferral of issues to another time]

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(ct cannot consider contention of E not properly before it for review, since any contentions advanced before ALJ which are not preserved for review in exceptions or cross-exceptions are deemed waived in absence of extraordinary circumstances; *(n)o matter not included in exceptions or cross-exceptions may thereafter be argued before Bd, or in any further proceeding* 29 C.F.R. Section 102.46(h) (1978))

6833-2825 Except where Board enlarges order

Glaziers Local Union 558 v. N.L.R.B. 787 F.2d 1406 (C.A. 10, Mar. 1986)

[Bd's contention ct was w/o jurisdiction to consider U's challenge to validity and application of presumption Bd used because U failed to raise issue before Bd, rejected, where operation of presumption did not become an issue until Bd relied on it in its decision and ALJ made only collateral reference to it w/o relying thereon]

6833-2875 Objections raised by motion for reconsideration or other pleading

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[E deemed to have waived issue that Bd did not have before it on second remand of R case record compiled by RD pursuant to first remand, where it did not raise issue until mtn for reconsideration of bargaining order issued in enforcement proceeding, since E did not raise issue at first oportunity and has given no reason why it did not raise issue in enforcement proceeding until mtn for reconsideration, even assuming justification for not raising in certification proceeding]

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1489 (C.A. 10, July 1985)

[ct held it has jurisdiction to consider E's supplemental ptn for review and application for enlargement of mandate in case in which Bd issued supplemental c/d order against respondent U deleting reference to *or any other E*; notwithstanding U's contention that ct is w/o juriadiction because E did not ptn Bd for rehearing or reconsideration after Bd issued its supplemental order, where E satisfied 10(e) requirement by filing with Bd memorandum in opposition to U's mtn for clarification of Bd's supplemental order which raised issues now before ct]

6833-8000 Unless failure to object excused because of extraordinary circumstances

N.L.R.B. v. Auburn Foundry, Inc. 791 F.2d 619 (C.A. 7, May 1986)

[Sec. 10(e) of Act provides that no objection not urged before Bd shall be considered by ct, unless failure to urge such objection was due to extraordinary circumstances... If either party shall apply to ct for leave to adduce additional evidence and show that evidence material and that there were reasonable grounds for failure to adduce such evidence before Bd, ct may order such evidence taken... This provision does not distinguish evidence relating to remedy from that which relates to merits, thus precluding adoption of NLRB's position that new evidence relating to appropriateness of remedy be defered to compliance stage]

N.L.R.B. v. Speedway Petroleum, Division of Emro Marketing Company 768 F.2d 151 (C.A. 7, July 1985)

[ct refused to consider E's argument that Bd erred in R proceeding by failing to review all evidence relied on by RD in finding challenged Ee ineligible to vote, since E waived its argument by failing to raise it at Bd ULP proceeding in either its answer or in its response to GC's mtn for summary judgment, and no extraordinary circumstances excused its failure to do so]

N.L.R.B. v. L & B Cooling, Inc. 757 F.2d 236 (C.A. 10, Mar. 1985)

(ct cannot consider contention of E not properly before it for review, since any contentions advanced before ALJ which are not preserved for review in exceptions or cross-exceptions are deemed waived in absence of extraordinary circumstances; *(n)o matter not included in exceptions or cross-exceptions may thereafter be argued before Bd, or in any further proceeding* 29 C.F.R. Section 102.46(h) (1978))

6833-5600 Objections must be specific

Hospital & Service Employees Union, Local 399 v. N.L.R.B. 743 F.2d 1417 (C.A. 9, Oct. 1984)

[where U's brief before ct raised First Amendment issue as to its handbilling and newspaper advertisements directed at secondary E, but parties had not fully asserted predicate 8(b)(4) statutory issue of *coercion*, and Bd maintained 10(e) precluded review of issue, ct held U's exceptions to ALJ's decision were sufficiently specific to put Bd on notice that question of *coercion* was an issue; legislative purpose of 10(e) persuaded ct that concerns of statute were satisfied; and Bd had opportunity to bring its labor relations expertise to bear on problem]

6833-7000 Issues not seen to be important until controlling--decision in another case issued

N.L.R.B. v. Wayne Transportation, A Division of Wayne Corporation, and Auto Workers, UAW Local 721 776 F.2d 745 (C.A. 7, Nov. 1985)

[Sec. 10(e) of Act does not foreclose issue of superseniority by cts notwithstanding parties did not ask Bd for reconsideration under R/R 102.48(d) when it announced new rule since there are 2 purposes of 10(e): 1) notice function ensures that Bd has opportunity to resolve all issues w/i its jurisdiction; 2) ensures against repetitive appeals to cts. In circumstances found here, neither policies would be served by deferral of issues to another time]

6833-8400 Objections concerning orders

N.L.R.B. v. Auburn Foundry, Inc. 791 F.2d 619 (C.A. 7, May 1986)

[Sec. 10(e) of Act provides that no objection not urged before Bd shall be considered by ct, unless failure to urge such objection was due to extraordinary circumstances... If either party shall apply to ct for leave to adduce additional evidence and show that evidence material and that there were reasonable grounds for failure to adduce such evidence before Bd, ct may order such evidence taken... This provision does not distinguish evidence relating to remedy from that which relates to merits, thus precluding adoption of NLRB's position that new evidence relating to appropriateness of remedy be defered to compliance stage]

N.L.R.B. v. Auburn Foundry, Inc. 791 F.2d 619 (C.A. 7, May 1986)

[appellate ct has authority to order NLRB to review new facts that impact on whether remedy ordered by Bd should be enforced. However, claims that go to need for remedy at all distinguished from claims that relate to details of appropriate remedy. Materiality of evidence must be determined with reference to scope of proceedings before NLRB. Appellate ct cannot declare *material* factual matters which under NLRB procedings are irrelevant. Thus, ct will not consider arguments concerning details of backpay. However, ct may refuse to enforce Bd order where there is unconsidered evidence that may be material to need for remedies]

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[E deemed to have waived issue that Bd did not have before it on second remand of R case record compiled by RD pursuant to first remand, where it did not raise issue until mtn for reconsideration of bargaining order issued in enforcement proceeding, since E did not raise issue at first oportunity and has given no reason why it did not raise issue in enforcement proceeding

6833-8400—Cont.

until mtn for reconsideration, even assuming justification for not raising in certification proceeding]

Purolator Armored, Inc. v. N.L.R.B. 764 F.2d 1423 (C.A. 7, July 1985)

(remedies of backpay and reinstatement objected to for first time before court, rejected, as court is w/o jurisdiction to consider such obligations)

Local 512, Warehouse and Office Workers' Union, Ladies Garment Workers v. N.L.R.B. 795 F.2d 705 (C.A. 9, July 1986)

[ct's jurisdiction to consider legal basis of R/O order not barred by Section 10(e) requirement that no objection not urged before Bd shall be considered by ct unless failure to urge objection excused by extraordinary circumstances where no party filed mtn for reconsideration of backpay order on issuance of S.Ct case bearing on issues raised in instant case, since one of E's affirmative defenses to complaint which raised issue of entitlement of undocumented alien workers to any remedy was rejected and exception taken, thus preserving issue for judicial review]

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1459 (C.A. 10, July 1985)

[ct held it has jurisdiction to consider E's supplemental ptn for review and application for enlargement of mandate in case in which Bd issued supplemental c/d order against respondent U deleting reference to *or any other E*; notwithstanding U's contention that ct is w/o jurisdiction because E did not ptn Bd for rehearing or reconsideration after Bd issued its supplemental order, where E satisfied 10(e) requirement by filing with Bd memorandum in opposition to U's mtn for clarification of Bd's supplemental order which raised issues now before ct]

Great Southern Construction, Inc. v. N.L.R.B. F.2d (C.A. 10, Jan. 1984)

[ptn for review dismissed where petitioner was not aggrieved by Bd's order dismissing all portions of C relating to bargaining agreement to which petitioner was a party; moreover, petitioner at no time objected or asserted that bargaining agreement which it now challenges was illegal or otherwise invalid and ct, therefore, lacks jurisdiction to consider any objection that has not been presented to Bd]

6850 MOOTNESS OF ISSUES

Vitek Electronics, Inc. v. N.L.R.B. 763 F.2d 561 (C.A. 3, June 1985)

(fact that E closed down plant and bargaining unit no longer exists did not render bargaining order moot or futile even through bargaining order did not order *effects* bargaining since it did order E to bargain concerning rates of pay, wages, hours and other terms and conditions of employment and S.Ct held in *First National Maintenance*, 452 U.S. 666, that this language mandates bargaining over effects of plant closing)

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1459 (C.A. 10, July 1985)

[U's compliance with Bd's c/d order held not to render cause moot, depriving Bd of opportunity to secure compliance from appropriate ct]

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1459 (C.A. 10, July 1985)

[ct held that under established precedents enforcement action was not moot, notwithstanding factual assertions, which ct did not accept because not developed in record, that respondent U no longer represents Ees of E who no longer operates facility at which U was bargaining representative and with whom U has had no bargaining negotiations for several years, and E's assertion that it will remain in business and be dealing with U directly when it begins operations again]

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1459 (C.A. 10, July 1985)

[contention by respondent U that enforcement action was premature because Bd had not followed its own internal practices which allegedly required Bd to seek voluntary compliance before initiating enforcement action, rejected, since compliance does not render such action moot]

6883 CONTENTIONS AVAILABLE BUT NOT MADE TO COURT ON FIRST HEARING NOT AVAILABLE FOR REHEARING

N.L.R.B. v. Affiliated Midwest Hospital, Inc., d/b/a Riveredge Hospital 789 F.2d 524 (C.A. 7, Apr. 1986)

[E deemed to have waived issue that Bd did not have before it on second remand of R case record compiled by RD pursuant to first remand, where it did not raise issue until mtn for reconsideration of bargaining order issued in enforcement proceeding, since E did not raise issue at first oportunity and has given no reason why it did not raise issue in enforcement proceeding until mtn for reconsideration, even assuming justification for not raising in certification proceeding]

7200 JUDGMENT

7233 ENFORCEMENT OF BOARD ORDER

Great Southern Construction, Inc. v. N.L.R.B. F.2d (C.A. 10, Jan. 1984)

[summary enforcement of Bd's order pertaining to unlawful discharge and surveillance of Ees and prescribing appropriate remedies granted where petitioner has not challenged sufficiency of evidence underlying Bd's order pertaining to ULPs found]

7233-6700 Modification sua sponte by court

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[circuit ct's decision ordering Bd to provide minimum backpay for constructively discharged illegal alien Ees w/o regard to their actual losses or legal availability for work after they had left the country rather than be deported reversed, since ct order imposing minimum back pay award which was speculative in absence of evidence of Ees' individual circumstances exceeded unit ct's reviewing authority and compelled Bd to take action not w/i Bd's powers; case remanded to circuit ct with instructions to remand it to Bd for formulation of remedial order consistent with this opn]

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[circuit ct decision modifying Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees who had left the country rather than be deported be drafted in Spanish and their receipt be verified, reversed, since modification requirement exceeded ct's limited authority of judicial review; appropriate course was to remand case for reconsideration to Bd with its broad powers to fashion remedies to effectuate national labor policy and superior expertise and long experience in doing so; case remanded to ct for remand to Bd for formulation of remedial order consistent with this opn]

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S——— (US S.CT, June 1984)

[circuit ct's modification of Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees, who had left the country rather than be deported, be held open for four years, reversed, since circuit ct had no justifiable basis for displacing Bd's discretionary judgment about proper time period for acceptance of the reinstatement offers; instead, circuit ct was required to remand case to Bd to consider alternative grounds on which ct believed the offers to have been deficient and to decide upon new forms for the reinstatement offers]

7700 REHEARING

8100 REMAND TO BOARD

8101 GENERALLY

N.L.R.B. v. J. Coty Messenger Service, Inc. ———F.2d——— (C.A. 2, May 1985)

[in view of Bd's repeated failure to provide type of analysis ct has repeatedly requested, ct declined to remand bargaining order for further consideration]

8101-3300 Effect of remand

Robert T. Ewing, an individual v. N.L.R.B. 768 F.2d 51 (C.A. 2, July 1985)

(in reversing and remanding to Bd for second time because of Bd's mistaken view that it was required to interpret *concerted activities* literally because mandated by Act, ct held remand would not engage ct and Bd in *ping pong game*; remand, even though it may appear wasteful as regards instant case, was important for proper execution of legislative will, since proceeding on right path may require or at least permit agency to make qualifications and exceptions that the wrong one would not)

8101-3350 *Law of the case* binding on Board

Lone Star Steel Company v. N.L.R.B. 766 F.2d 1459 (C.A. 10, July 1985)

[instant case involving question of enforcement of Bd's supplemental c/d order issued against U pursuant to remand which Bd accpeted as *law of this case* held not proper case for ct to consider Bd's nonacquiescence doctrine whereby Bd reserves to itself authority to decline to follow ct of appeals decisions in future, since situation herein is not one where Bd has refused to follow ct's prior decision; rather, Bd herein expressly followed ct's remand decision]

8150 PURPOSE OF REMAND

8150-1100 Reconsideration in light of court opinion

N.L.R.B. v. Ironworkers, Local 480 ———U.S——— (U.S. S.CT, May 1984)

[ct of appeals' decision modifying Bd's backpay order by limiting class of Ees to whom backpay may be awarded and prohibiting Bd from amending its backpay specification permitted by Bd regulations, reversed and remanded, since ct of appeals may not refuse to enforce backpay order merely because of Bd's delay subsequent to that order in formulating backpay specification; *Rutter-Rex* principles remain applicable, and by restricting beneficiaries of Bd's order for determining amount of backpay, ct of appeals' order punishes Ees for Bd's nonfessance, which is forbidden by *Rutter-Rex*]

8150-1100—Cont.

N.L.R.B. v. Ironworkers, Local 480 ——U.S.—— (U.S. S.CT, May 1984)

[in reversing and remanding ct of appeals' decision modifying Bd's backpay order by limiting class of Ees to whom backpay may be awarded and prohibiting Bd from amending its backpay specification, ct did not consider whether ct of appeals may modify its original order enforcing Bd's order on grounds that Bd's long delay in formulating backpay specification demonstrated futility of identifying discriminatees and in performing claculations required by Bd's backpay formula, and that Bd's order was *punitive* and *confiscatory*; nor did ct foreclose challenges that might be raised in supplemental backpay proceedings]

Timothy Nevins v. N.L.R.B. 796 F.2d 14 (C.A. 2, June 1986)

[case remanded to Bd for findings on ULP issue of constructive discharge where issue was not considered by arbitrator and facts necessary to resolve it were not presented]

Roberto Sanchez and Elva Rodriguez v. N.L.R.B. 785 F.2d 409 (C.A. 2, Mar. 1986)

[ct remanded case for further proceedings concerning Ees who were discharged after going on strike because they believed U steward had been wrongfully discharged and whose 8(a)(3) C was dismissed by Bd; case was remanded in light of ct's decision that U steward was unlawfully discharged as result of his U activities]

Walter J. Slaughter v. N.L.R.B. (E.I. Dupont DeNemours & Co.) 794 F.2d 120 (C.A. 3, June 1986)

[case remanded to Bd where ct rejected rationale that Bd's conclusion that unorganized Ees have no right to have fellow Ee present at investigatory interview was compelled by Act]

Vitek Electronics, Inc. v. N.L.R.B. 763 F.2d 561 (C.A. 3, June 1985)

(despite failure of Bd to follow ct remand and hold R hearing but instead held ULP hearing (Federal Rules of Evidence followed in latter), ct did not order another hearing since such action would have unduly delayed further the certification of representative, and also, no prejudice shown by form of hearing)

Black Grievance Committee v. N.L.R.B. 749 F.2d 1072 (C.A. 3, Dec. 1984)

(where ct held that E violated 8(a)(1) by giving 1 of 2 minority Us preference in use of grievance procedure, ct remanded case to Bd for consideration of E's purported business justification for action, and for appropriate remedy if no such justification exists; on remand, 1 of 3 points Bd should consider is that if disfavored minority U proves its allegation that determining factor in E's decision not to accord disfavored minority U equal privileges to favored minority U was racial composition of disfavored U and membership, E will have committed independent violation of 8(a)(1) for which no business justification exists)

Black Grievance Committee v. N.L.R.B. 749 F.2d 1072 (C.A. 3, Dec. 1984)

(where ct held that E violated 8(a)(1) by giving 1 of 2 minority Us preference in use of grievance procedure, ct remanded to Bd for consideration of E's purported business justification for its action, and for appropriate remedy if no such justification exists; on remand, 1 of 3 points Bd should consider is that any purported business justification offered by E on remand may not relate to E's *preference* for favored minority U as Ee representative, for it is this very preference, and E's failure to accord disfavored minority U and its members similar status, which establishes prima facie violation of 8(a)(1))

Black Grievance Committee v. N.L.R.B. 749 F.2d 1072 (C.A. 3, Dec. 1984)

(where ct held that E violated 8(a)(1) by giving 1 of 2 minority Us preference in use of grievance procedure, ct remanded case to Bd but did not suggest that only appropriate remedies for E's conduct are to either dismantle favored minority's grievance system or to tolerate separate grievance systems for each minority U that requests one; rather, grievance system which accords all Ees, and not just members of privileged group, leverage of group representation for individual grievances will remove unlawful coercion on Ees to either join privileged group or forego group representation for individual grievances)

Baker Manufacturing Company v. N.L.R.B. 759 F.2d 1219 (C.A. 5, May 1985)

(case remanded for determination as to whether coerced reestablishment and maintenance of abolished positions is necessary to effectuate policies of the Act, notwithstanding Bd's authority to so order, or whether they are superfluous; although E abolished positions to eliminate U activists occupying them w/o considering economic factors, it must be afforded opportunity to show that recreating and maintaining them at time former occupants accept reinstatement to them would be economically inefficient, and, if so, less extreme and equally effective remedies, such as equivalent positions, may be available)

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers 778 F.2d 284 (C.A. 6, Dec. 1985)

[finding of violation by U's referring U steward ahead of other applicants reversed and remanded for consideration of whether contract incorporated thirty-year practice of referring U stewards separately where analysis of contract was erroneously confined to its *four corners*, but law of shop could have been shown to govern referral of stewards]

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

Iron Workers Local 118 (Waldo F. Kusterns) v. N.L.R.B. 804 F.2d 1100 (C.A. 9, Nov. 1986)

[ct remanded case for computation of back pay consistent with its opinion, where Bd improperly found that Ee, although wrongfully refused dispatch by U to job outside bargaining unit for failing to pay supplemental dues arrearages, was not entitled to back pay because he failed to mitigate damages by refusing to pay the dues, which refusal lawfully rendered him ineligible for dispatch to jobs w/i unit, thereby taking himself out of labor market; exercise of reasonable diligence to seek comparable employment did not require Ee to take affirmative steps to eliminate all potential liability of U]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) 788 F.2d 1412 (C.A. 9, May 1986)

[strikers' suspension lawful based on new Bd rule that, absentextrinsic evidence of contrary intent, general no-strike clause waived right to engage in such strikes, reversed and remanded; Bd treated rule as establishing irrebuttable presumption that broad no-strike clause barred such strike, rather than as shifting burden of proving whether clause was intended to encompass sympathy strikes. Bd relied on clause and U letter disavowing strike w/o discussing intent, prior rule's impact on contract's meaning, terms, or negotiations, and parties' conduct under it as rule required]

Harold L. Wakefield v. N.L.R.B. 779 F.2d 1437 (C.A. 9, Jan. 1986)

[remand to Bd to reassess backpay due Ee, since Bd failed to apply correct legal standard and find E liable for backpay, not only for period of Ee's physical disability due to E's assault, but also for period of psychological disability resulting therefrom, and failed to base its finding on substantial record evidence that E caused Ee's psychological disability where E committed many ULPs against Ee, and GC's and E's medical witnesses identified them as psychological disability's cause]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ——F.2d—— (C.A. 9, Oct. 1984)

[ct remanded to Bd 8(b)(4) coercion issue arising from U's handbilling of secondary E for clarification, final resolution, and further hearings if necessary, consistent with ct's opn; instant case does not present exceptional situation in which crystal-clear error renders remand an unnecessary formality; instead, remand allows Bd to cast its expertise on full and complete resolution of this important issue, and remand gives proper deference to Bd as steward of nation's labor laws]

Hotel & Restaurant Employees, Local 2 v. N.L.R.B. 735 F.2d 1152 (C.A. 9, June 1984)

[where Bd had found no violation by E's refusal to bargain with local U into which six local Us had been merged, because resulting local was not successor to the six locals involved and thus there was no *continuity of representation*, where members of only one local were shown to have had the opportunity to vote on the merger, ct remanded case to the Bd to focus on significance of fact all six local memberships had voted approval of merger negotiations and consider whether this approval implied approval of the merger itself so as to support finding of successorship and violation]

8150-2200 **Reconsideration in light of intervening decisions of other courts**

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

]*Myers Industries* 268 NLRB 493, in which Bd enunciated new restrictive definition of *concerted activities* and overruled *Alleluia Cushion* remanded to Bd for reconsideration since Bd's decision, which was contrary to S.Ct's intervening *City Disposal* decision, stands on faulty legal premise and w/o adequate rationale where it wrongly concluded that its adoption of narrow test for *concerted activities* was both mandated by Act and was merely return to stand on which Bd and cts relied before *Alleluia* was decided)

Kenneth P. Prill v. N.L.R.B. 755 F.2d 941 (C.A.D.C., Feb. 1984)

(in remanding Bd decision announcing new restrictive test for *concerted activities* for reconsideration because it was contrary to S.Ct's intervening *City Disposal* decision, 104 S.Ct 1505, ct held it could not say Bd's error clearly had no bearing on result reached; some of Bd's and ct's variety of

8150-2200—Cont.

definitions of concerted activities might grant relief to Ee-petitioner herein; moreover, case result often turns both on governing standard and on manner in which it is applied, which may be influenced by whether Bd believes standard is dictated by Act or adopted as policy matter)

Kenneth P. Prill v. N.L.R.B. — 755 F.2d 941 (C.A.D.C., Feb. 1984)

(in remanding Bd decision announcing new restrictive test for *concerted activities* for reconsideration because of Bd's erroneous view of law, ct declined to determine for itself w/o remanding decision whether, applying S.Ct's intervening *City Disposal* decision, Ee's conduct herein was sufficiently related to actions of other Ees that it should be held protected under Sec. 7; such determination is for Bd and not ct, and remand is intended to afford Bd full opportunity to consider issues in light of analysis of Sec. 7 in *City Disposal*)

Kenneth P. Prill v. N.L.R.B. — 755 F.2d 941 (C.A.D.C., Feb. 1984)

(in remanding Bd's decision announcing new restrictive test for *concerted activities* for reconsideration because it was contrary to S.Ct's intervening *City Disposal* decision, ct did not find it necessary to consider validity of any test of concerted activity nor express any opinion on such issue but deemed it could not sustain agency decision as *harmless error* where agency failed to exercise its lawful discretion and provided no rational basis for its determination)

8150-2700 Reconsideration to determine if Board policies would be violated

Veronica Lewis v. N.L.R.B. — 800 F.2d 818 (C.A. 8, Sept. 1986)

[where Bd properly deferred issue concerning Ee's discharge to parties contractual grievance - arbitration procedures and retained jurisdiction for limited purpose of protecting Ee's contractual and statutory rights by making Bd's remedial powers available to rectify any result repugnant or inconsistent with Act, ct remanded to Bd for further consideration whether its retention of jurisdiction, limited by its terms to instances where E resisted or impeded arbitration, applied likewise to U in arbitration proceeding]

8150-3300 Reconsideration in light of subsequent Board decision

Communication Workers, Local 5008 v. N.L.R.B. (Illinois Bell Telephone Co.) — 784 F.2d 847 (C.A. 7, Mar. 1986)

[Bd's application for leave for Bd to apply new policy on remand held unnecessary since appellate cts would either grant requests automatically or be impelled into premature consideration of merits of proposed new rule]

8150-3500 Reconsideration in light of preceding Board decision

Robert T. Ewing, an individual v. N.L.R.B. — 768 F.2d 51 (C.A. 2, July 1985)

(while expressing no view on what is correct interpretation of *concerted activities* on remand to Bd of case in which Bd found no violation in layoff of Ee for complaining to OSHA, ct held Bd's rationale will be examined in light of presumption that old *Alleluia* rule effectuated policies of Act and to ensure that Bd has given a reasoned explanation of why new *Meyers* rule effectuates Act as well as or better than old rule)

Taylor, Melvin D. v. N.L.R.B. (Ryder Truck Lines, Inc.) — 786 F.2d 1516 (C.A. 11, Apr. 1986)

[ct vacated and remanded to Bd its decision which held that GC had not met its burden of affirmatively demonstrating that ULP had not received adequate consideration by arbitration committee; remand required Bd to reconsider its decision in light of ct's disapproval of Bd's standard for deferral under *Olin Corp.*, 268 NLRB 573]

Iron Workers, Local No. 111 v. N.L.R.B. — 792 F.2d 241 (C.A. D.C., June 1986)

[where Bd ordered U, which unlawfully sought to replace travelers employed by E with U's members, to compensate travelers for lost backpay, ct remanded case for further explanation why Bd decided to do so since, under APA, it was incumbent upon Bd to explain why it did not consider its decision departure from principles established in prior cases, or why it considered departure appropriate; thus, Bd failed to provide U with explanation of apparent inconsistency between decision to exercise its authority herein and to refrain from doing so in earlier cases]

8150-4900 Fashion appropriate remedy

Sure-Tan, Inc., et al. v. N.L.R.B. — ———U.S.——— (US S.CT, June 1984)

[circuit ct's decision ordering Bd to provide minimum backpay for constructively discharged illegal alien Ees w/o regard to their actual losses or legal availability for work after they had left the country rather than be deported reversed, since ct order imposing minimum back pay award which was speculative in absence of evidence of Ees' individual circumstances exceeded unit ct's reviewing authority and compelled Bd to take action not w/i Bd's powers; case remanded to circuit ct with instructions to remand it to Bd for formulation of remedial order consistent with this opn]

Sure-Tan, Inc., et al. v. N.L.R.B. — ———U.S.——— (US S.CT, June 1984)

[circuit ct decision modifying Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees who had left the country rather than be deported be drafted in Spanish and their receipt be verified, reversed, since modification requirement exceeded ct's limited authority of judicial review; appropriate course was to remand case for reconsideration to Bd with its broad powers to fashion remedies to effectuate national labor policy and superior expertise and long experience in doing so; case remanded to ct for remand to Bd for formulation of remedial order consistent with this opn]

Sure-Tan, Inc., et al. v. N.L.R.B. — ———U.S.——— (US S.CT, June 1984)

[circuit ct's modification of Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees, who had left the country rather than be deported, be held open for four years, reversed, since circuit ct had no justifiable basis for displacing Bd's discretionary judgment about proper time period for acceptance of the reinstatement offers; instead, circuit ct was required to remand case to Bd to consider alternative grounds on which ct believed the offers to have been deficient and to decide upon new forms for the reinstatement offers]

Black Grievance Committee v. N.L.R.B. — 749 F.2d 1072 (C.A. 3, Dec. 1984)

(where ct held that E violated 8(a)(1) by giving 1 of 2 minority Us preference in use of grievance procedure, ct remanded case to Bd for consideration of E's purported business justification for action, and for appropriate remedy if no such justification exists; on remand, 1 of 3 points Bd should consider is that if disfavored minority U proves its allegation that determining factor in E's decision not to accord disfavored minority U equal privileges to favored minority U was racial composition of disfavored U and membership, E will have committed independent violation of 8(a)(1) for which no business justification exists)

Food and Commercial Workers, Local 152 v. N.L.R.B. — 768 F.2d 1463 (C.A. D.C., July 1985)

(remand to fashion remedy for successor E's unlawful refusal to hire Ees of predecessor E and successor E's unlawful refusal to recognize and bargain with U representing Ees of predecessor, where Bd ordered successor E merely to reconsider applications using non-discriminatory criteria rather than hiring all Ees of predecessor E who had applied, as recommended by ALJ, and where ct had reversed Bd in holding Respondent E was successor and its refusal to recognize and bargain was violative)

8150-6600 Rerun election

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research — 793 F.2d 503 (C.A. 2, June 1986)

[case remanded to Bd to conduct election in part-time faculty unit, notwithstanding Bd's post election modification from all-faculty to part-time faculty unit reduced scope only 10 percent, and only part-time faculty votes were counted, since election was close, and part-time faculty might have voted differently had they known of modification in unit's scope and character for fear of insufficient strength, desire for representation of unified workforce only, and intention to rely on full-time faculty for significant amount of U work]

8150-7700 Additional findings

8150-7710 Objections to election

Monark Boat Company — 276 NLRB No. 121

(ALJ properly refused to expand scope of hearing where circuit ct specifically remanded certain objections for further hearing and consideration by Bd; and such objections, therefore, were only matters before Bd)

8150-7727 Appropriateness of unit

N.L.R.B. v. Parsons School of Design, A Division of The New School for Social Research — 793 F.2d 503 (C.A. 2, June 1986)

[case remanded to Bd to conduct election in part-time faculty unit, notwithstanding Bd's post election modification from all-faculty to part-time faculty unit reduced scope only 10 percent, and only part-time faculty votes were counted, since election was close, and part-time faculty might have voted differently had they known of modification in unit's scope and character for fear of insufficient strength, desire for representation of unified workforce only, and intention to rely on full-time faculty for significant amount of U work]

8150-7727—Cont.

N.L.R.B. v. Indianapolis Mack Sales and Service, Inc. 802 F.2d 280 (C.A. 7, Sept. 1986)

8150-7728 Unilateral change

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) 802 F.2d 969 (C.A. 7, Oct. 1986)

[ct set aside Bd's decision and remanded case to Bd where Bd's decision, that E did not unlawfully refuse to bargain over relocation of operations because U waived its statutory right to bargain over move, did not contain reasoned analysis of law and evidence]

8150-7730 Supervisory status

N.L.R.B. v. Wolff & Munier, Inc. 747 F.2d 156 (C.A. 3, Oct. 1984)

[where Bd assertedly refused to defer to joint committee's findings that dischargees were foremen and could be discharged at will for lack of evidence that the committee considered the ULP issue of whether they were discharged due to E's antiU motivation, ct remanded case to Bd to determine whether the committee findings resolved the statutory issue by deciding that the foremen were supervisors and not protected by the Act and whether the committee's findings were repugnant to the Act]

8150-7735 Determination of impact of employer's unfair labor practices on employees' union adherence or protected activities

Robert T. Ewing, an individual v. N.L.R.B. 768 F.2d 51 (C.A. 2, July 1985)

(in reversing and remanding to Bd case in which Bd incorrectly concluded that Ee activity is *concerted* only if it involves some sort of *group action*, ct left to Bd to determine whether individual Ee's layoff for supposed safety complaint he made to OSHA had *chilling effect* on collective rights of other Ees)

8150-7740 Backpay determination

N.L.R.B. v. Seligman and Associates, Inc., and Its Wholly Owned Division, Scott Management Company 808 F.2d 1155 (C.A. 6, Dec. 1986)

[enforcement of Bd's *backpay* award denied and cause remanded to Bd for recomputation by taking into account ct's determination that discriminatees willfully failed to seek other comparable employment in mitigation of their losses]

Harold L. Wakefield v. N.L.R.B. 779 F.2d 1437 (C.A. 9, Jan. 1986)

[remand to Bd to reassess backpay due Ee, since Bd failed to apply correct legal standard and find E liable for backpay, not only for period of Ee's physical disability due to E's assault, but also for period of psychological disability resulting therefrom, and failed to base its finding on substantial record evidence that E caused Ee's psychological disability where E committed many ULPs against Ee, and GC's and E's medical witnesses identified them as psychological disability's cause]

John Cuneo, Inc. v. N.L.R.B. 792 F.2d 1181 (C.A. D.C., June 1986)

[remand to Bd to decide whether Ee forfeited permanent status with Respondent E, which status would effect his entitlement to backpay, when he deliberately misrepresented to Respondent on employment application that he was unemployed when in fact he was temporarily laid off at another E, and to determine what Respondent E must prove to show it would not have hired Ee had it known his true employment status]

8150-7750 Motivation for respondent's action

International Hat Company v. N.L.R.B. 771 F.2d 1170 (C.A. 8, Sep. 1985)

(remand to consider whether change in pay rate from *per order* to *bulk cutting method* of U adherent who was material cutter at hat manufacturer would have occurred absent his U activities)

M. W. Kellogg Constructors, Inc. v. N.L.R.B. 806 F.2d 1435 (C.A. 9, Dec. 1986)

[ct denies enforcement of Bd decision that found U and E unlawfully preferred local U members over travellers in layoff and overtime decisions, and remands for findings concerning whether statements of supervisors and stewards that locals would receive such preference constituted admissions of unlawful motive or were instead, as Respondents contended, merely descriptions of practical affect of applying lawful 8(f)(4) agreement]

8150-7755 For consideration of appropriate relief

Baker Manufacturing Company v. N.L.R.B. 759 F.2d 1219 (C.A. 5, May 1985)

(case remanded for determination as to whether coerced reestablishment and maintenance of abolished positions is necessary to effectuate policies of the Act, notwithstanding Bd's authority to so order, or whether they are superfluous; although E abolished positions to eliminate U activists occupying them w/o considering economic factors, it must be afforded opportunity to show that recreating and maintaining them at time former occupants accept reinstatement to them would be economically inefficient, and, if so, less extreme and equally effective remedies, such as equivalent positions, may be available)

8150-7777 Explain basis for decision

N.L.R.B. v. Horizon Air Services, Inc. 761 F.2d 22 (C.A. 1, Apr. 1985)

(Bd need not make independent findings or conduct separate analysis of factors prompting order if it specifically adopts findings and reasoning of ALJ)

Robert T. Ewing, an individual v. N.L.R.B. 768 F.2d 51 (C.A. 2, July 1985)

(because Bd mistakenly interpreted *concerted activities* literally in case in which Bd found Ee's layoff for complaining to OSHA not unlawful, ct reversed and remanded to Bd with directions either to provide sustainable basis for its definition of *concerted activities* as applied herein, or to reinstate ALJ's decision that layoff was unlawful)

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) 802 F.2d 969 (C.A. 7, Oct. 1986)

[ct set aside Bd's decision and remanded case to Bd where Bd's decision, that E did not unlawfully refuse to bargain over relocation of operations because U waived its statutory right to bargain over move, did not contain reasoned analysis of law and evidence]

Marie E. Darr v. N.L.R.B. (Cone Mills Corp.) 801 F.2d 1404 (C.A. D.C., Sept. 1986)

[ct remanded case to Bd to articulate its policy and reasons thereof on deferrals where arbitrator held that under contract Ee was fired w/o *just cause* for taking unscheduled break and engaging in protest, but Ee also guilty of insubordination in not leaving plant when ordered; under NLRA, discharge was unlawful as primary cause of discharge was her protected activity of protesting E's conduct; therefore, arbitrator ordered reinstatement but w/o backpay which is contrary to Bd's practice]

Local Union 1395, Electrical Workers v. N.L.R.B. (Indianapolis Power & Light Co.) 797 F.2d 1027 (C.A. D.C., Aug. 1986)

[Bd is free to substitute its own view of evidence for that of ALJ, and ct must respect Bd's findings of fact if supported by substantial evidence; but ct may not *presume* that Bd made findings of fact necessary to definsible decision where Bd did not explain, or even recognize, any departure from ALJ's view of evidence; accordingly, Bd's decision reversed and case remanded to Bd for further proceedings]

8150-7779 Successorship determination

Aquabrom, Division of Great Lakes Chemical Corp., as Successor To Bromine Division, Drug Research, Inc. Tesco Chemicals v. N.L.R.B. 746 F.2d 334 (C.A. 6, Oct. 1984)

[where Bd had ordered present E to bargain based on prior E's refusal to do so w/o deciding whether present E was prior E's successor and asked ct to hold present E in contempt for not complying with ct order enforcing Bd's bargaining order, ct decided that, despite special master's hearing on successorship, Bd was proper forum to determine successorship and remanded case to Bd to determine successorship and whether E's claimed structural changes in operations rendered it not liable as successor]

8150-7780 Successor employer liability

Aquabrom, Division of Great Lakes Chemical Corp., as Successor To Bromine Division, Drug Research, Inc. Tesco Chemicals v. N.L.R.B. 746 F.2d 334 (C.A. 6, Oct. 1984)

[where Bd had ordered present E to bargain based on prior E's refusal to do so w/o deciding whether present E was prior E's successor and asked ct to hold present E in contempt for not complying with ct order enforcing Bd's bargaining order, ct decided that, despite special master's hearing on successorship, Bd was proper forum to determine successorship and remanded case to Bd to determine successorship and whether E's claimed structural changes in operations rendered it not liable as successor]

8150-7785 Primary or secondary objectives of union

Production Workers Union of Chicago and Vicinity, Local 707, et al. v. N.L.R.B. (Checker Taxi Co., et al.) 793 F.2d 323 (C.A. D.C., June 1986)

[in finding that Bd applied wrong standard in determining that U's picketing of general contractors on behalf of independent contractors for better leasing agreement terms was unlawful, ct remanded to Bd so that it may apply correct standard: 8(b)(4) does not exclude U involvement in all picketing by

8150-7785—Cont.

independent contractors; rather, its proscription is limited to picketing against neutral parties]

Local Union No. 501, Electrical Workers v. N.L.R.B. 756 F.2d 888 (C.A.D.C., Apr. 1985)

(remand to Bd to determine if U could have conveyed its grievance to public at site other than neutral gate which U chose to picket in lieu of picketing at primary gate which was located on dead end alley, unused by public, since communicating grievance to members of public is important aspect of area standards picketing)

8150-7790 Fairness of arbitration proceedings

N.L.R.B. v. Wolff & Munier, Inc. 747 F.2d 156 (C.A. 3, Oct. 1984)

[where Bd assertedly refused to defer to joint committee's findings that dischargees were foremen and could be discharged at will for lack of evidence that the committee considered the ULP issue of whether they were discharged due to E's antiU motivation, ct remanded case to Bd to determine whether the committee findings resolved the statutory issue by deciding that the foremen were supervisors and not protected by the Act and whether the committee's findings were repugnant to the Act]

Veronica Lewis v. N.L.R.B. 800 F.2d 818 (C.A. 8, Sept. 1986)

[where Bd properly deferred issue concerning Ee's discharge to parties contractual grievance - arbitration procedures and retained jurisdiction for limited purpose of protecting Ee's contractual and statutory rights by making Bd's remedial powers available to rectify any result repugnant or inconsistent with Act, ct remanded to Bd for further consideration whether its retention of jurisdiction, limited by its terms to instances where E resisted or impeded arbitration, applied likewise to U in arbitration proceeding]

Marie E. Darr v. N.L.R.B. (Cone Mills Corp.) 801 F.2d 1404 (C.A. D.C., Sept. 1986)

[ct remanded case to Bd to articulate its policy and reasons thereof on deferrals where arbitrator held that under contract Ee was fired w/o *just cause* for taking unscheduled break and engaging in protest, but Ee also guilty of insubordination in not leaving plant when ordered; under NLRA, discharge was unlawful as primary cause of discharge was her protected activity of protesting E's conduct; therefore, arbitrator ordered reinstatement but w/o backpay which is contrary to Bd's practice]

8150-7799 Other

Timothy Nevins v. N.L.R.B. 796 F.2d 14 (C.A. 2, June 1986)

[case remanded to Bd for findings on ULP issue of constructive discharge where issue was not considered by arbitrator and facts necessary to resolve it were not presented]

N.L.R.B. v. Construction and General Laborers' Union Local No. 534, Laborers 778 F.2d 284 (C.A. 6, Dec. 1985)

[finding of violation by U's referring U steward ahead of other applicants reversed and remanded for consideration of whether incorporated thirty-year practice of referring U stewards separately where analysis of contract was erroneously confined to its *four corners*, but law of shop could have been shown to govern referral of stewards]

K & I Transfer & Storage, Inc. and City Cartage and Moving, Inc. v. N.L.R.B. 805 F.2d 749 (C.A. 7, Nov. 1986)

[where Bd failed to address E's application for fees incurred in its opposition to GC's mtn to amend C, ct held that, while its scope of review under EAJA was limited, it could not fulfill its responsibilities unless it had before it Bd's determination, and remanded case to Bd to make appropriate findings and conclusions]

Automobile Workers, Local 449 v. N.L.R.B. (National Lock Corp., et al.) 802 F.2d 969 (C.A. 7, Oct. 1986)

[ct set aside Bd's decision and remanded case to Bd where ct would not consider w/o previous determination by Bd E's defense of statute of limitations, which turned on difficult question as to when E refused to bargain]

Electrical Workers, Local 387 v. N.L.R.B. (Arizona Public Service Co.) 788 F.2d 1412 (C.A. 9, May 1986)

[sympathy strikers' suspension lawful based on new Bd rule that, absent extrinsic evidence of contrary intent, general no-strike clause waived right to engage in such strikes, reversed and remanded; Bd treated rule as establishing irrebutable presumption that broad no-strike clause barred such strike, rather than as shifting burden of proving whether clause was intended to encompass sympathy strikes. Bd relied on clause and U letter disavowing strike w/o discussing intent, prior rule's impact on contract's meaning, tterms, or negotiations, and parties; conduct under it as rule required]

Hospital & Service Employees Union, Local 399 v. N.L.R.B. ———F.2d——— (C.A. 9, Oct. 1984)

[ct remanded to Bd 8(b)(4) coercion issue arising from U's handbilling of secondary E for clarification, final resolution, and further hearings if necessary, consistent with ct's opn; instant case does not present exceptional situation in which crystal-clear error renders remand an unnecessary formality; instead, remand allows Bd to cast its expertise on full and complete resolution of this important issue, and remand gives proper deference to Bd as steward of nation's labor laws]

8150-8800 Modification of order

Food and Commercial Workers, Local 152 v. N.L.R.B. 768 F.2d 1463 (C.A. D.C., July 1985)

(ct, remanded to Bd to fashion remedy although agreeing ALJ's recommended remedy would provide more effective relief than that of Bd, since any enlargement of remedial order should not be undertaken unilaterally by cts, but undertaken by Bd on remand)

8600 COSTS AND FEES

Palmas Del Mar Company v. N.L.R.B. 797 F.2d 39 (C.A. 1, July 1986)

[where ptn for review, in light of evidence and findings of Bd, was frivolous, ct assessed petitioner double costs and reasonable attorney's fees in amount of $3,000]

8667 AWARDS UNDER FRAP 38 (Damages for delay)

Herrick & Smith v. N.L.R.B. 802 F.2d 565 (C.A. 1, Sept. 1986)

[costs charged against Bd where ct found case to be burden on its time for review because it involved single question of fact and was most inflated case about minimum matter with extraordinarily voluminous record and lengthy ALJ decision; ct felt justified in saying that, while GC may present any case he wants to, instant case had become gross imposition that Bd, with its supervisory authority over trial counsel and ALJ, should never have inflicted on ct]

9100 CERTIORARI TO SUPREME COURT

9600 SUPREME COURT PROCEDURES

9675 REMAND FROM SUPREME COURT

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[circuit ct's decision ordering Bd to provide minimum backpay for constructively discharged illegal alien Ees w/o regard to their actual losses or legal availability for work after they had left the country rather than be deported reversed, since ct order imposing minimum back pay award which was speculative in absence of evidence of Ees' individual circumstances exceeded unit ct's reviewing authority and compelled Bd to take action not w/i Bd's powers; case remanded to circuit ct with instructions to remand it to Bd for formulation of remedial order consistent with this opn]

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[circuit ct decision modifying Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees who had left the country rather than be deported be drafted in Spanish and their receipt be verified, reversed, since modification requirement exceeded ct's limited authority of judicial review; appropriate course was to remand case for reconsideration to Bd with its broad powers to fashion remedies to effectuate national labor policy and superior expertise and long experience in doing so; case remanded to ct for remand to Bd for formulation of remedial order consistent with this opn]

Sure-Tan, Inc., et al. v. N.L.R.B. ———U.S.——— (US S.CT, June 1984)

[circuit ct's modification of Bd's order to require that reinstatement offers to constructively discharged illegal alien Ees, who had left the country rather than be deported, be held open for four years, reversed, since circuit ct had no justifiable basis for displacing Bd's discretionary judgment about proper time period for acceptance of the reinstatement offers; instead, circuit ct was required to remand case to Bd to consider alternative grounds on which ct believed the offers to have been deficient and to decide upon new forms for the reinstatement offers]

833 PROCEEDINGS ON CONTEMPT OF COURT JUDGMENT

0100 GENERALLY

1700 PROCEDURE

1721 SERVICE OF PROCESS

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(alleged criminal contemnor is entitled to notice that he is criminally charged)

1756 HEARING ON PETITION

1756-8300 Standard of proof

1756-8367 Criminal contempt

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(alleged criminal contemnor is protected by presumption of innocence that can only be overcome by proof beyond reasonable doubt)

1763 ENTITLEMENT TO JURY TRIAL

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(in case of alleged criminal contemnor, right to trial by petit jury may attach)

1785 DECISION BY COURT

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(in deciding whether proceeding before lower ct refers to civil or criminal contempt, appellate ct is required to look to purpose and character of sanctions imposed, rather than to label given to proceeding by ct below)

1792 REMAND

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(ct could not remand civil contempt proceeding to district ct where substantive aspects of master's interrogation of contemnor, and nature of defenses raised thereto, require different outcome; ct could not avoid deciding merits of contemnor's substantive arguments by remand or fine issue because even properly imposed civil fine will fall before valid privilege allegations)

3300 ACTIONS CONSTITUTING CONTEMPT OF JUDGMENTS

5000 TERMS OF PURGATION OF ADJUDICATION IN CONTEMPT

5001 GENERALLY

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(purpose of criminal contempt proceeding is vindication of ct's authority by punishing for past violation of ct order)

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(civil contempt is imposed to coerce present or future compliance with order of ct)

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(sanctions of imprisonment and monetary fines are available in both civil and criminal contempt proceedings; however, imprisonment and/or fine imposed in criminal contempt proceeding is culmination of typical criminal trial in which contemnor is punished by way of sentence; in contrast, civil contempt judgment results in imprisonment or conditional fine to induce purging of contemptuous conduct)

6700 SANCTIONS TO ENFORCE JUDGMENT

6725 FINES

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(civil contempt action is contrary to estalbished civil contempt doctrine where, to begin with, complaining party is Bd, yet fine is payable to ct; this is inconsistent with general rule that punitive fine is paid to aggrieved party to compensate for its losses)

8300 DEFENSES

8338 CONSTITUTIONAL OBJECTIONS

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(privilege against self incrimination does not depend on nature of proceeding in which testimony is used, but rather on purportedly incriminatory nature of the interrogation; to invoke privilege, it is enough if there is reasonable possibility of prosecution, and if testimony, although falling short of proving crime in its entirety, will tend to conviction when combined with evidence from other sources)

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(alleged contemnor held entitled to full protection of fifth amendment against interrogation that was directed towards implicating her, through her own testimony, with acts that could lead, quite realistically, to her own criminal prosecution)

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(fifth amendment protects against compulsory surrender of (1) personal business records, (2) in possession of sole proprietor or practitioner, (3) only with respect to testimonial acts implicit in surrender itself)

In re Martha R. Kave — 760 F.2d 343 (C.A. 1, Mar. 1985)

(sole practioner's refusal to produce personal business records held protected under fifth amendment, where production of records, which were in her possession, could have constituted incriminatory testimonial acts)

850 PROCEEDINGS ANCILLARY TO BOARD PROCEEDING

2000 SUBPOENA ENFORCEMENT PROCEEDINGS

2017 JURISDICTION OF U.S. DISTRICT COURTS

N.L.R.B. v. Brown Transport Corporation **620 F.Supp. 648 (DC N.D. IL, Oct. 1985)**

[E's contention that ALJ's rejection of parts of subpoena operated to revoke entire subpoena and thus ct has no jurisdiction to consider Bd's application for enforcement of subpoena since E has not refused to obey issued subpoena, rejected, inasmuch as partial invalidity of subpoena does not infect remainder]

2029 STANDARD OF REVIEW

N.L.R.B. v. Americana Healthcare Center **782 F.2d 941 (C.A. 11, Feb. 1986)**

[when federal ct is asked for injunctive or other prospective relief, *...the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief in these cases.* Even if U were plaintiff in a civil suit, its negligence (not reading final negotiated contract in instant case) would not bar reformation and enforcement of the contract as reformed]

N.L.R.B. v. Brown Transport Corporation **620 F.Supp. 648 (DC N.D. IL, Oct. 1985)**

[district ct has extremely narrow scope of review of subpoenas issued by Bd in proceedings to enforce such subpoenas, even though ALJ has rejected parts of subpoena but ct may restrict subpoena issued by Bd where it would impose unreasonable or undue burden on party from whom production is sought]

2033 SCOPE OF COURT INQUIRY

2033-4000 Administrative regularity of issuance of subpoena

N.L.R.B. v. Brown Transport Corporation **620 F.Supp. 648 (DC N.D. IL, Oct. 1985)**

[E's contention that ALJ's rejection of parts of subpoena operated to revoke entire subpoena and thus ct has no jurisdiction to consider Bd's application for enforcement of subpoena since E has not refused to obey issued subpoena, rejected, inasmuch as partial invalidity of subpoena does not infect remainder]

2033-8000 Relevance of materials requested or testimony sought to matters under investigation

N.L.R.B. v. Brown Transport Corporation **620 F.Supp. 648 (DC N.D. IL, Oct. 1985)**

[subpoena of names of Ees who were terminated during their probationary period related to allegations of unlawful discharge of allegedly probationary Ee and upheld, since such documents, even those concerning termination procedures at E's facilities other than one at which Ee had been employed, relevant to whether Ee was terminated pursuant to E's termination procedures for probationary Ees rather than for his activities on behalf of competing U]

N.L.R.B. v. Brown Transport Corporation **620 F.Supp. 648 (DC N.D. IL, Oct. 1985)**

[subpoena not overly broad where requested material necessary to examination of E's structual organization since C alleged application of bargaining agreements to Ees outside bargaining unit]

2050 MATERIALS SOUGHT BY SUBPOENA

2050-2000 List of employees and employment data

N.L.R.B. v. Brown Transport Corporation **620 F.Supp. 648 (DC N.D. IL, Oct. 1985)**

[subpoena of names of Ees who were terminated during their probationary period related to allegations of unlawful discharge of allegedly probationary Ee and upheld, since such documents, even those concerning termination procedures at E's facilities other than one at which Ee had been employed, relevant to whether Ee was terminated pursuant to E's termination procedures for probationary Ees rather than for his activities on behalf of competing U]

2083 DEFENSES TO COMPLIANCE

2083-5600 Hardship

N.L.R.B. v. Brown Transport Corporation **620 F.Supp. 648 (DC N.D. IL, Oct. 1985)**

[E's assertion that it would take two people two weeks to review files to produce documents sought, at cost of approximately $5,000, did not establish burdensomeness, absent evidence compliance would threaten E's normal operations and affidavit to support conclusory assertion to that effect]

4000 INJUNCTIVE RELIEF UNDER SECTION 10(j)

4001 GENERALLY

4001-5000 Nature of proceeding

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. **_____ F.Supp._____ (DC NJ, July 1985)**

[in 10(j) proceeding, ct held issues arising in 8(a)(2) cases, especially when assistance to favored U is rendered in connection with organizing drive by rival U, cannot be delegated to arbitration since it would impact on Ees' choice of bargaining representative, a matter exclusively w/i expertise of Bd]

4001-7500 Purpose of proceeding to maintain status quo pending Board determination

N.L.R.B. v. Ona Corporation, a division of Onan Corporation **605 F.Supp. 874 (DC N.D. AL, Mar. 1985)**

]Section 10(j) of Act authorizing RD to apply to district ct for temporary inj in ULP cases to preserve status quo pending NLRB procedures mandates considerable deference by district ct to RD's decision to petition for temporary relief]

4008 COURT PROCEDURE

4008-6000 Parties

Kobell v. Thorsen Tool Co. **_____ F.Supp._____ (DC M.D. PA, Dec. 1982)**

[international U has standing to file ULP charges against E, notwithstanding contention that since bargaining agreement only with local U and thus E need only bargain with local, thus, local would be only party with standing to file charges herein, where several sections of contract, such as provision for grievance procedure, require that international play a role, preamble to contract cites local as affiliated with international, international representative participated in negotiations leading to agreement, and signed contract as agent of international]

4008-8000 Intervention

4008-8067 Persons other than charging party

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. **_____ F.Supp._____ (DC NJ, July 1985)**

[mtn by incumbent U to intervene in 10(j) proceeding arising from rival U's filing of ULP charges against E, granted, where incumbent U was party to Bd proceedings and entitled to intervene under FRCP as matter of right or permissively; while incumbent U's only cognizable interest was representation of E's Ees, it will be impeded in its attempts to represent interest of current Ees whose jobs were jeopardized by Bd's seeking in instant proceeding reinstatement of certain Ees]

4016 TEMPORARY RESTRAINING ORDER

4016-7500 Criteria for granting

4016-7533 Imminent danger of irreparable injury

Joseph H. Solien, RD (NLRB) v. Automotive, Petroleum and Allied Industries Employees Union, Local No. 618, etc. F.Supp.——(DC E.D. MO, Jan. 1984)

[subsequent Bd order would be rendered in effectual as financial strain of strike might pressure E into acceding to Us' allegedly unlawful conditions that E execute area agreement and state riders where E and Us agreed on contract which U asserted was only local addendum to area agreement and state riders which must be agreed to also by E, and economic losses would not be recoverable in actions for damages because alleged ULPs were peaceful in nature]

4032 SCOPE OF COURT INQUIRY

4032-6700 **Reasonable cause to believe unfair labor practice has occurred**

Robert S. Fuchs, RD (NLRB) v. Jet Spray Corporation 725 F.2d 664 (C.A. 1, Oct. 1983)

[in granting temporary inj pursuant to Section 10(j) district ct must make two decisions: that reasonable cause to believe that ULP's have been committed and that requested relief is just and proper]

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 721 F.2d 1076 (C.A. 3, Mar. 1984)

[appellate ct adopted bifurcated standard for reviewing legal and factual issue components of district ct's reasonable cause determination whereby determination of whether there was an explicit or implicit legal theory to support ULP finding was subject to plenary review, and determination of facts and whether facts satisfied legal theory was subject to clearly erroneous standard of review]

Kobell v. Thorsen Tool Co. F.Supp.——(DC M.D. PA, Dec. 1982)

[*reasonable cause to believe violations of Act have occured exists when RD has made out prima facie case of violations by Respondent. Once prima facie case has been shown, injunctive relief appropriate where district ct believes inj is in public interest and would not serve solely to vindicate purely private rights. Of major consideration in this regard is need to preserve status quo*]

Kobell v. Thorsen Tool Co. F.Supp.——(DC M.D. PA, Dec. 1982)

[temporary inj not granted in regard to E's alleged refusal to turn over to U its financial books and records for U to determine profitability of E's plant whose work was being relocated to out-of-state location, but did turn over charts and graphs on which relocation decision based since no reasonable cause to believe Act vidated and inj against further refusals to comply with request for financial records would be unjust and improper]

George Squillacote, RD (NLRB) v. U.S. Marine Corporation, a wholly owned subsidiary of Bayliner Marine Corporation F.Supp.——(DC E.D. WI, May 1984)

[inj granted pending decision by Bd on charge of Sec. 8(a)(5) violation for refusal to furnish information and to bargain by purchaser with U that represented Ees of seller, and interim bargaining order granted in order to prevent irrepable decimation of U's strength among Ees, and protect public interest, since cause to believe Act violated where E's position that it could delay bargaining obligations until full complement of Ees hired had been rejected by circuit ct]

4032-6701 Generally

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. F.Supp.——(DC NJ, July 1985)

[in order to be entitled to 10(j) relief, RD must satisfy ct (1) that there is *reasonable cause* to believe violation of Act has been committed, and (2) that issuance of injunction would be *just and proper* under circumstances presented]

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. F.Supp.——(DC NJ, July 1985)

[under law of circuit, district ct may not deny 10(j) relief for lack of reasonable cause unless it finds (1) that there is no legal theory implicit or explicit in RD's argument that is substantial and not frivolous, or (2) that taking facts in light most favorable to Bd there is insufficent evidence to support any non-frivolous theory appropriate to case; and ct of appeals has characterized this standing as *low threshold of proof* and that such burden faced by RD is *relatively insubstantial*]

Joseph A. Szabo, Acting RD v. Capital Freight Lines, Inc. F.Supp.——(DC W.D. WI, May 1984)

[in determining reasonable cause, district ct must determine only whether there is reasonable cause to believe that elements of a ULP are present and that the RD is proceeding upon a theory that is substantial and not frivolous, drawing all reasonable inference in favor of petitioner, whose burden of proof is *relatively insubstantial*]

4032-6733 On facts

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[district ct's finding of no reasonable cause to believe unlawful refusal by successor E to hire predecessor's Ees had occurred, legally insufficient and erroenous; ct erroneously found that said Ees had not applied for employment, that anti-U animus need not be sole motive for E's action in order for it to be unlawful, and that E's improper behavior was not but-for cause of alleged harm since predecessor's Ees refused to work at successor E's proffered wage rates]

N.L.R.B. v. Ona Corporation, a division of Onan Corporation 605 F.Supp. 874 (DC N.D. AL, Mar. 1985)

]*In determining whether reasonable cause exists to believe that ULPs have been committed district ct need only decide that Bd's theories of law and fact are not insubstantial or frivolous*)

N.L.R.B. v. Ona Corporation, a division of Onan Corporation 605 F.Supp. 874 (DC N.D. AL, Mar. 1985)

]*Section 10(j) of Act authorizing RD to apply to district ct for temporary inj in ULP cases to preserve status quo pending NLRB procedures mandates considerable deference by district ct to RD's decision to petition for temporary relief*)

Glenn A. Zipp, RD (NLRB) v. Trout Express, Inc. F.Supp.——(DC N.D. IL, July 1985)

[reasonable cause existed to believe that newly established E and original E seeking disguised continuation as new E were *alter egos* and single E which will continue to engage in conduct calculated to avoid its bargaining obligation with U and to discriminate against Ees terminated upon original E's announcement, w/o prior notice to U, that it was going out of business, by failing to recognize and bargain with U and by refusing to hire dischharged Ees for discriminatory reasons]

Local 33, Marine and Shipbuilding Workers, and James C. Harmon, Executive Secretary, etc. v. Marine and Shipbuilding Workers F.Supp.——(DC MD, May 1984)

[*when reasonable cause to believe turns on disputed issues of fact, RD may assume these in favor of charge and district ct should sustain him if his choice is w/i range of rationality. If differing inferences may fairly be drawn from facts he has found, he may choose one more favorable to charging party, and this too should be upheld. Even on issues of law, district ct should be hospitable to views of GC, however novel*]

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. F.Supp.——(DC NJ, July 1985)

[in 10(j) case involving incumbent U and charging party rival U seeking representation of E's Ees, ct held that drawing all reasonable inferences in favor of Bd and applying low threshold of proof under *reasonable cause* test, facts of case supported substantial legal theories of violations by E of 8(a)(1), (2), and (3), and that 10(j) relief requested was *right and proper* where facts did not rebut presumption of harm to bargaining process]

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. F.Supp.——(DC NJ, July 1985)

[in 10(j) proceeding, ct held reasonable cause existed for belief that arbitrator's award, finding that suspension and subsequent discharge of Ee, were lawful and not based on Ee's protected activity, did not meet Bd's requirements for deferral]

Joseph A. Szabo, Acting RD v. Capital Freight Lines, Inc. F.Supp.——(DC W.D. WI, May 1984)

[ct found reasonable cause where circumstances suggested Ees were discharged in retaliation for, and to discourage, their organizing in violation of 8(a)(3); asking Ee how he voted and discharging him almost immediately thereafter and telling Ees that certifying U might result in Ees being laid off suggested violation of 8(a)(1); and E's delaying tactics in negotiations, including failure to provide requested information as to its financial condition, suggested violation of 8(a)(5)]

4032-6767 As matter of law

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. **731 F.2d 1076 (C.A. 3, Mar. 1984)**

[district ct's finding of no reasonable cause to believe unlawful refusal by successor E to hire predecessor's Ees had occurred, legally insufficient and erroneous; ct erroneously found that said Ees had not applied for employment, that anti-U animus need not be sole motive for E's action in order for it to be unlawful, and that E's improper behavior was not but-for cause of alleged harm since predecessor's Ees refused to work at successor E's proffered wage rates]

N.L.R.B. v. Ona Corporation, a division of Onan Corporation **605 F.Supp. 874 (DC N.D. AL, Mar. 1985)**

]In determining whether reasonable cause exists to believe that ULPs have been committed district ct need only decide that Bd's theories of law and fact are not unsubstantial or frivolous]

Local 33, Marine and Shipbuilding Workers, and James C. Harmon, Executive Secretary, etc. v. Marine and Shipbuilding Workers **F.Supp.——(DC MD, May 1984)**

[when reasonable cause to believe turns on disputed issues of fact, RD may assume these in favor of charge and district ct should sustain him if his choice is w/i range of rationality. If differing inferences may fairly be drawn from facts he has found, he may choose one more favorable to charging party, and this too should be upheld. Even on issues of law, district ct should be hospitable to views of GC, however novel]

4032-8300 Equitable necessity

Robert S. Fuchs, RD (NLRB) v. Jet Spray Corporation **725 F.2d 664 (C.A. 1, Oct. 1983)**

[in granting temporary inj pursuant to Section 10(j) district ct must make two decisions: that reasonable cause to believe that ULP's have been committed and that requested relief is just and proper]

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. **731 F.2d 1076 (C.A. 3, Mar. 1984)**

[district ct should determine whether failure to grant 10(j) inj would prevent Bd, acting with reasonable expedition, from exercising its ultimate remedial powers because of passage of time due to adjudication; ct's factual findings should not be disturbed under abuse of discretion standard unless clearly erroneous, or its decision reversed unless its undisturbed factual findings do not substantially relate to its conclusions; inj, however, is not substitute for Bd order, and, in determining whether to grant it, ct should give evidentiary weight to any unexplained delay by Bd which allows change in status quo]

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. **731 F.2d 1076 (C.A. 3, Mar. 1984)**

[denial of inj affirmed since, although district ct erred in finding no reasonable cause to believe ULP had occurred, it did not, in absence of contrary factual showing, impermissibly err in holding that, because small and intimate U herein could easily reconstitute itself upon Bd's reinstatement of its members that successor E had allegedly refused to hire, interim reinstatement pursuant to 10(j) inj was not just and proper]

4039 CRITERIA FOR GRANT OF RELIEF

4039-2000 Purpose of Act frustrated absent relief

N.L.R.B. v. Ona Corporation, a division of Onan Corporation **605 F.Supp. 874 (DC N.D. AL, Mar. 1985)**

]Section 10(j) relief is appropriate when Ee or U has committed such egregious ULPs that any final order of Bd will be meaningless or so devoid of force that remedial purposes of Act will be frustrated]

Joseph G. Norton, Acting RD (NLRB) v. New Hope Industries, Inc., and its alter ego and owner, Emil Brandt Thiac **F.Supp.——(DC M.D. LA, June 1985)**

[TRO and inj granted where ct found that acting RD had reasonable cause to believe that Respondent engaged in various ULPs which would give rise to Respondents' liability for backpay to unlawfully discharged strikers and that Respondent threatened to dissipate its assets and close plant, which it did, prior to any Bd backpay remedy]

Joseph H. Solien, RD (NLRB) v. Automotive, Petroleum and Allied Industries Employees Union, Local No. 618, etc. **F.Supp.——(DC E.D. MO, Jan. 1984)**

[subsequent Bd order would be rendered in effectual as financial strain of strike might pressure E into acceding to Us' allegedly unlawful conditions that E execute area agreement and state riders where E and Us agreed on contract which U asserted was only local addendum to area agreement and state riders which must be agreed to also by E, and economic losses would not be recoverable in actions for damages because alleged ULPs were peaceful in nature]

Kobell v. Thorsen Tool Co. **F.Supp.——(DC M.D. PA, Dec. 1982)**

[purpose of Sec. 10(j) proceeding is to preserve or restore status quo and prevent frustration of national labor policy pending resolution of charges before NLRB. Three factors are said to be relevant in determining whether Sec. 10(j) relief is appropriate: (1) traditional equitable considerations such as need to preserve or restore status quo; (2) need to prevent frustration of basic remedial purposes of Act; and (3) degree to which public interest is affected by continuing violation]

Joseph A. Szabo, Acting RD v. Capital Freight Lines, Inc. **F.Supp.——(DC W.D. WI, May 1984)**

[inj to prevent dissipation of E's assets so that any Ees ultimately found to have been wronged would not be w/o remedy held just and proper so as to prevent frustration of national labor policy]

4039-4000 Threat to public interest

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. **F.Supp.——(DC NJ, July 1985)**

[in regard to question of whether 10(j) injunction reinstating discharged Ees is *just and proper*, ct's principal determination is whether, absent 10(j) relief, ultimate remedial power of Bd would be undermined; because in seeking such relief Bd is acting in public interest, neither private interest of discharged Ees nor that of E and its replacement Ees is dispositive of propriety of 10(j) relief]

Kobell v. Thorsen Tool Co. **F.Supp.——(DC M.D. PA, Dec. 1982)**

[purpose of Sec. 10(j) proceeding is to preserve or restore status quo and prevent frustration of national labor policy pending resolution of charges before NLRB. Three factors are said to be relevant in determining whether Sec. 10(j) relief is appropriate: (1) traditional equitable considerations such as need to preserve or restore status quo; (2) need to prevent frustration of basic remedial purposes of Act; and (3) degree to which public interest is affected by continuing violation]

George Squillacote, RD (NLRB) v. U.S. Marine Corporation, a wholly owned subsidiary of Bayliner Marine Corporation **F.Supp.——(DC E.D. WI, May 1984)**

[inj granted pending decision by Bd on charge of Sec. 8(a)(5) violation for refusal to furnish information and to bargain by purchaser with U that represented Ees of seller, and interim bargaining order granted in order to prevent irrepable decimation of U's strength among Ees, and protect public interest, since cause to believe Act violated where E's position that it could delay bargaining obligations until full complement of Ees hired had been rejected by circuit ct]

4039-6000 Imminent danger of irreparable harm

Glenn A. Zipp, RD (NLRB) v. Trout Express, Inc. **F.Supp.——(DC N.D. IL, July 1985)**

[where it could fairly be anticipated that, unless enjoined, E will continue conduct calculated to avoid its bargaining obligation with U and discriminate against terminated Ees by refusing to recognize and bargain with U and by refusing to hire discharged Ees, ct enjoined E from commission or continuation, and repetition of similar acts and conduct for purpose of avoiding substantial irreparable, immediate and continuing injury to Act's policies]

Local 33, Shipbuilders v. Shipbuilders (Louis J. D'Amico, RD, N.L.R.B.) **F.Supp.——(DC MD, Feb. 1985)**

[Respondent's mtn to dissolve 10(j) injunction, on grounds that ALJ had issued decision recommending dismissal of C in its entirety, denied since decision of ALJ is not *final agency action* where, on review, Bd may decide to make *de novo* determination of the facts and is free to draw its own inferences from the record, and Bd may decline to follow ALJ's findings even as to credibility of witnesses (and a number of GC's exceptions in instant case deal with issues of credibility which are not solely dependent for their resolution on demeanor)]

Joseph H. Solien, RD (NLRB) v. Automotive, Petroleum and Allied Industries Employees Union, Local No. 618, etc. **F.Supp.——(DC E.D. MO, Jan. 1984)**

[subsequent Bd order would be rendered in effectual as financial strain of strike might pressure E into acceding to Us' allegedly unlawful conditions that E execute area agreement and state riders where E and Us agreed on

4039-6000—Cont.

contract which U asserted was only local addendum to area agreement and state riders which must be agreed to also by E, and economic losses would not be recoverable in actions for damages because alleged ULPs were peaceful in nature]

Arthur Eisenberg, etc., et al. v. Tuhari, Ltd., Inc.
F.Supp.————(DC NJ, July 1985)

[in ordering reinstatement of discharged supporters of U challenging incumbent U's representation of Ees, ct held unremedied discharge of such Ees risks serious impact on Ee support for rival U; if discharged Ees were not reinstated for many months, rival U would likely lose momentum of its organizing drive, and Bd would be unable to remedy such effects with ultimate reinstatement; consequently, presumption of harm to bargaining process was not rebutted by facts on record, and issuance of 10(j) reinstatement relief would be *just and proper*]

4039-7000 Resumption or continuation of conduct

N.L.R.B. v. Ona Corporation, a division of Onan Corporation
605 F.Supp. 874 (DC N.D. AL, Mar. 1985)

[Section 10(j) relief is appropriate when Ee or U has committed such egregious ULPs that any final order of Bd will be meaningless or so devoid of force that remedial purposes of Act will be frustrated]

Glenn A. Zipp, RD (NLRB) v. Trout Express, Inc.
F.Supp.————(DC N.D. IL, July 1985)

[where it could fairly be anticipated that, unless enjoined, E will continue conduct calculated to avoid its bargaining obligation with U and discriminate against terminated Ees by refusing to recognize and bargain with U and by refusing to hire discharged Ees, ct enjoined E from commission or continuation, and repetition of similar acts and conduct for purpose of avoiding substantial irreparable, immediate and continuing injury to Act's policies]

4039-8000 Maintenance of status quo

Samuel M. Kaynard, RD (NLRB) v. MMIC, Inc.
734 F.2d 980 (C.A. 2, May 1984)

[interim bargaining order rather than c/d order proper relief in instant case under Section 10(j) of Act, c/d order would have effect only of freezing post-election situation; bargaining order restores status quo of conditions as they existed before E's unlawful campaign; namely, E must bargain with majority representative]

Local 33, Shipbuilders v. Shipbuilders (Louis J. D'Amico, RD, N.L.R.B.)
F.Supp.————(DC MD, Feb. 1985)

[Respondent's mtn to dissolve 10(j) injunction, on grounds that ALJ had issued decision recommending dismissal of C in its entirety, denied since decision of ALJ is not *final agency action* where, on review, Bd may decide to make *de novo* determination of the facts and is free to draw its own inferences from the record, and Bd may decline to follow ALJ's findings even as to credibility of witnesses (and a number of GC's exceptions in instant case deal with issues of credibility which are not solely dependent for their resolution on demeanor)]

Arthur Eisenberg, etc., et al. v. Tuhari, Ltd., Inc.
F.Supp.————(DC NJ, July 1985)

[in 10(j) case involving incumbent U and charging party rival U seeking representation of E's Ees, ct held that drawing all reasonable inferences in favor of Bd and applying low threshold of proof under *reasonable cause* test, facts of case supported substantial legal theories of violations by E of 8(a)(1), (2), and (3), and that 10(j) relief requested was *right and proper* where facts did not rebut presumption of harm to bargaining process]

Arthur Eisenberg, etc., et al. v. Tuhari, Ltd., Inc
F.Supp.————(DC NJ, July 1985)

[it is abuse of discretion for district ct to deny 10(j) relief reinstating discharged Ees simply because Bd could order reinstatement with back pay at later date; where Bd, faced with E tactics undermining U support, seeks 10(j) relief, focus should not be on what relief may ultimately be granted Ees but on likelihood of harm to bargaining process in interim; and presumption is that where reasonable cause exists to believe U supporters have been unlawfully discharged, ultimate reinstatement is unlikely adequately to vindicate Bd's remedial powers]

Arthur Eisenberg, etc., et al. v. Tuhari, Ltd., Inc.
F.Supp.————(DC NJ, July 1985)

[in ordering reinstatement of discharged supporters of U challenging incumbent U's representation of Ees, ct held unremedied discharge of such Ees risks serious impact on Ee support for rival U; if discharged Ees were not reinstated for many months, rival U would likely lose momentum of its organizing drive, and Bd would be unable to remedy such effects with ultimate reinstatement; consequently, presumption of harm to bargaining process was not rebutted by facts on record, and issuance of 10(j) reinstatement relief would be *just and proper*]

Kobell v. Thorsen Tool Co.
F.Supp.————(DC M.D. PA, Dec. 1982)

[purpose of Sec. 10(j) proceeding is to preserve or restore status quo and prevent frustration of national labor policy pending resolution of charges before NLRB. Three factors are said to be relevant in determining whether Sec. 10(j) relief is appropriate: (1) traditional equitable considerations such as need to preserve or restore status quo; (2) need to prevent frustration of basic remedial purposes of Act; and (3) degree to which public interest is affected by continuing violation]

4043 CRITERIA FOR DENIAL OF RELIEF

4043-2500 Adequate business reason

Kobell v. Thorsen Tool Co.
F.Supp.————(DC M.D. PA, Dec. 1982)

[inj not granted in regard to lay off of Ees following decision to relocate operations to location in another state, since no reason to believe Act violated, where no showing supporting contention Ees laid off for U activities or as result of E's attempt to avoid reaching agreement with U over relocation; E able to show that layoffs were result of shortage of work]

4043-5000 Delay in seeking injunction

Joseph H. Solien, RD (NLRB) v. Automotive, Petroleum and Allied Industries Employees Union, Local No. 618, etc.
F.Supp.————(DC E.D. MO, Jan. 1984)

[seven-month delay between most recent ULPs alleged by E and Bd's request for relief was excusable because E filed charges more than two months after strike began and 5 month delay between time charges filed and Bd requested relief may not be attributed to Bd and preclude requested relief]

4043-7500 Noncoercive communication

Kobell v. Thorsen Tool Co.
F.Supp.————(DC M.D. PA, Dec. 1982)

[temporary inj enjoining E who had unilaterally decided to relocate bargaining unit work to out of state facility from conducting meetings with Ees to explain move w/o notifying U, denied, absent evidence E acted in coercive manner, since Act does not prohibit es from communicating provisions of bargaining offers directly to Ees in non-coercive manner]

4047 SCOPE OF RELIEF

4047-5000 Persons affected

Glenn A. Zipp, RD (NLRB) v. Trout Express, Inc.
F.Supp.————(DC N.D. IL, July 1985)

[E ordered to offer immediate employment to Ees who were terminated when E announced, w/o prior notice to U, that it was going out of business and then established new E as disguised continuation, or alter ego, of old business in order to avoid its bargaining obligation with U]

4047-8300 Duration

Joseph H. Solien, RD (NLRB) v. Automotive, Petroleum and Allied Industries Employees Union, Local No. 618, etc.
F.Supp.————(DC E.D. MO, Jan. 1984)

[injunctive orders shall remain in effect until Bd or E certified to ct that a) U has resumed bargaining in good faith; or b) date 6 months and 5 days after temporary inj order]

Kobell v. Thorsen Tool Co.
F.Supp.————(DC M.D. PA, Dec. 1982)

[ct of appeals has ruled that Sec. 10(j) inj should include explicit time limitations which do not exceed 6 months. Thus herein inj to restrain E from relocating operations effective for no more than 6 months, which is ample time for NLRB to decide merits of ULP charges; further, in little more than 6 months agreement between E and U will expire, and upon expiration, E may relocate after negotiating to impasse with U. Thus it would be inappropriate to enjoin E from relocating work after expiration of agreement, absent evidence it failed to bargain in good faith]

4055 COURT DECISION

4055-6700 Ultimate relief is for Board

4055-6700—Cont.

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. ——— F.Supp.———(DC NJ, July 1985)

[10(j) was designed to enable Bd to vindicate its ultimate remedial power by affording limited interim relief where failure to grant such relief until case is adjudicated on its merits might dissipate effective exercise of such power; by same token, relief to be granted is only that reasonably necessary to preserve ultimate remedial power of Bd and is not to be substitute for exercise of that power]

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. ——— F.Supp.———(DC NJ, July 1985)

[in regard to question of whether 10(j) injunction reinstating discharged Ees is *just and proper,* ct's principal determination is whether, absent 10(j) relief, ultimate remedial power of Bd would be undermined; because in seeking such relief Bd is acting in public interest, neither private interest of discharged Ees nor that of E and its replacement Ees is dispositive of propriety of 10(j) relief]

4057 COURT OF APPEALS REVIEW

4057-5000 Scope of review

4057-5025 Findings of fact

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[appellate ct adopted bifurcated standard for reviewing legal and factual issue components of district ct's reasonable cause determination whereby determination of whether there was an explicit or implicit legal theory to support ULP finding was subject to plenary review, and determination of facts and whether facts satisfied legal theory was subject to clearly erroneous standard of review]

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[district ct's finding of no reasonable cause to believe unlawful refusal by successor E to hire predecessor's Ees had occurred, legally insufficient and erroenous; ct erroneously found that said Ees had not applied for employment, that anti-U animus need not be sole motive for E's action in order for it to be unlawful, and that E's improper behavior was not but-for cause of alleged harm since predecessor's Ees refused to work at successor E's proffered wage rates]

4057-5050 Legal conclusions

Robert S. Fuchs, RD (NLRB) v. Jet Spray Corporation 725 F.2d 664 (C.A. 1, Oct. 1983)

[ct of appeals review of district ct's grant of temporary Section 10(j) inj is limited: ct of appeals must accept district ct detemination of reasonable cause, existed to believe Act violated unless factual findings clearly erroneous or conclusions of law in error, and that injunctive relief just and proper unless ct abused discretion]

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[appellate ct adopted bifurcated standard for reviewing legal and factual issue components of district ct's reasonable cause determination whereby determination of whether there was an explicit or implicit legal theory to support ULP finding was subject to plenary review, and determination of facts and whether facts satisfied legal theory was subject to clearly erroneous standard of review]

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[district ct's finding of no reasonable cause to believe unlawful refusal by successor E to hire predecessor's Ees had occurred, legally insufficient and erroenous; ct erroneously found that said Ees had not applied for employment, that anti-U animus need not be sole motive for E's action in order for it to be unlawful, and that E's improper behavior was not but-for cause of alleged harm since predecessor's Ees refused to work at successor E's proffered wage rates]

4057-5075 Need for equitable relief

Robert S. Fuchs, RD (NLRB) v. Jet Spray Corporation 725 F.2d 664 (C.A. 1, Oct. 1983)

[ct of appeals review of district ct's grant of temporary Section 10(j) inj is limited: ct of appeals must accept district ct detemination of reasonable cause, existed to believe Act violated unless factual findings clearly erroneous or conclusions of law in error, and that injunctive relief just and proper unless ct abused discretion]

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[district ct should determine whether failure to grant 10(j) inj would prevent Bd, acting with reasonable expedition, from exercising its ultimate remedial powers because of passage of time due to adjudication; ct's factual findings should not be disturbed under abuse of discretion standard unless clearly erroneous, or its decision reversed unless its undisturbed factual findings do not substantially relate to its conclusions; inj, however, is not substitute for Bd order, and, in determining whether to grant it, ct should give evidentiary weight to any unexplained delay by Bd which allows change in status quo]

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[denial of inj affirmed since, although district ct erred in finding no reasonable cause to believe ULP had occurred, it did not, in absence of contrary factual showing, impermissibly err in holding that, because small and intimate U herein could easily reconstitute itself upon Bd's reinstatement of its members that successor E had allegedly refused to hire, interim reinstatement pursuant to 10(j) inj was not just and proper]

4070 EMPLOYER CONDUCT INVOLVED

4070-0800 Assistance to union

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. ——— F.Supp.———(DC NJ, July 1985)

[in 10(j) case involving incumbent U and charging party rival U seeking representation of E's Ees, ct held that drawing all reasonable inferences in favor of Bd and applying low threshold of proof under *reasonable cause* test, facts of case supported substantial legal theories of violations by E of 8(a)(1), (2), and (3), and that 10(j) relief requested was *right and proper* where facts did not rebut presumption of harm to bargaining process]

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. ——— F.Supp.———(DC NJ, July 1985)

[in 10(j) proceeding, ct held issues arising in 8(a)(2) cases, especially when assistance to favored U is rendered in connection with organizing drive by rival U, cannot be delegated to arbitration since it would impact on Ees' choice of bargaining representative, a matter exclusively w/i expertise of Bd]

4070-1700 Discharges

N.L.R.B. v. Ona Corporation, a division of Onan Corporation 605 F.Supp. 874 (DC N.D. AL, Mar. 1985)

(inj ordering immediate reinstatement of U adherent, appropriate, in view of E's previous massive and coercive ULPs committed by Respondent during U's organizing efforts and need for a signal that further U activity will not cause kind of E retaliation that has occurred in past)

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc. ——— F.Supp.———(DC NJ, July 1985)

[in 10(j) case involving incumbent U and charging party rival U seeking representation of E's Ees, ct held that drawing all reasonable inferences in favor of Bd and applying low threshold of proof under *reasonable cause* test, facts of case supported substantial legal theories of violations by E of 8(a)(1), (2), and (3), and that 10(j) relief requested was *right and proper* where facts did not rebut presumption of harm to bargaining process]

4070-4200 Disposal of assets

Joseph G. Norton, Acting RD (NLRB) v. New Hope Industries, Inc., and its alter ego and owner, Enid Brandt Thiac ——— F.Supp.———(DC M.D. LA, June 1985)

[TRO and inj granted where ct found that acting RD had reasonable cause to believe that Respondent engaged in various ULPs which would give rise to Respondents' liability for backpay to unlawfully discharged strikers and that Respondent threatened to dissipate its assets and close plant, which it did, prior to any Bd backpay remedy]

4070-4600 Relocating unit work during midterm of contract

Kobell v. Thorsen Tool Co. ——— F.Supp.———(DC M.D. PA, Dec. 1982)

[inj granted enjoining E for six months from relocating operation to facility in another state w/o prior agreement with U, since there is reasonable cause to believe E's unilateral decision to relocate is violative, and there is need to preserve status quo since relocation would result in lay offs and have strong detrimental effect on Ees' support for U, and once relocation fait accompli Bd order for restoration of status quo might be considered unenforceable]

4070-5000 Refusal to recognize

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[where Bd sought inj to prevent successor Es' alleged unlawful elimination of U representing predecessor's Ees by discriminatorily refusing to hire them, district ct's denial of inj ordering reinstatement of predecessor's Ees held not impermissably erroneous and, in addition, dispositive of Bd's re-

4070-5000—Cont.

quest for order that E bargain with and honor contract with U representing predecessor's Ees and of need to decide issue of predecessor E's joint liability with successor E]

George Squillacote, RD (NLRB) v. U.S. Marine Corporation, a wholly owned subsidiary of Bayliner Marine Corporation

F.Supp.————(DC E.D. WI, May 1984)

[inj granted pending decision by Bd on charge of Sec. 8(a)(5) violation for refusal to furnish information and to bargain by purchaser with U that represented Ees of seller, and interim bargaining order granted in order to prevent irrepable decimation of U's strength among Ees, and protect public interest, since cause to believe Act violated where E's position that it could delay bargaining obligations until full complement of Ees hired had been rejected by circuit ct]

4070-5800 Refusal to honor contract

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[where Bd sought inj to prevent successor Es' alleged unlawful elimination of U representing predecessor's Ees by discriminatorily refusing to hire them, district ct's denial of inj ordering reinstatement of predecessor's Ees held not impermissably erroneous and, in addition, dispositive of Bd's request for order that E bargain with and honor contract with U representing predecessor's Ees and of need to decide issue of predecessor E's joint liability with successor E]

Local 33, Marine and Shipbuilding Workers, and James C. Harmon, Executive Secretary, etc. v. Marine and Shipbuilding Workers

F.Supp.————(DC MD, May 1984)

[Bd has traditionally not deferred to parties' expedited contractual grievance procedures where issue is whether new agreement was properly entered into and, therefore, valid]

4070-6700 Refusal to bargain in good faith

George Squillacote, RD (NLRB) v. U.S. Marine Corporation, a wholly owned subsidiary of Bayliner Marine Corporation

F.Supp.————(DC E.D. WI, May 1984)

[inj granted pending decision by Bd on charge of Sec. 8(a)(5) violation for refusal to furnish information and to bargain by purchaser with U that represented Ees of seller, and interim bargaining order granted in order to prevent irrepable decimation of U's strength among Ees, and protect public interest, since cause to believe Act violated where E's position that it could delay bargaining obligations until full complement of Ees hired had been rejected by circuit ct]

4070-8300 Discriminatory hiring practices

Gerald Kobell, RD (NLRB) v. Suburban Lines, Inc. 731 F.2d 1076 (C.A. 3, Mar. 1984)

[where Bd sought inj to prevent successor Es' alleged unlawful elimination of U representing predecessor's Ees by discriminatorily refusing to hire them, district ct's denial of inj ordering reinstatement of predecessor's Ees held not impermissably erroneous and, in addition, dispositive of Bd's request for order that E bargain with and honor contract with U representing predecessor's Ees and of need to decide issue of predecessor E's joint liability with successor E]

4078 UNION CONDUCT INVOLVED

4078-2800 Strikes

Joseph H. Solien, RD (NLRB) v. Automotive, Petroleum and Allied Industries Employees Union, Local No. 618, etc.

F.Supp.————(DC E.D. MO, Jan. 1984)

[reasonable cause existed to believe that financial strain of strike might pressure E into acceding to U's allegedly unlawful conditions that E execute area agreement and state riders also whereas E agreed on contract which U asserted was only local addendum to area agreement and state riders, and these latter contracts provided for grievance adjustment by representatives not of E's choosing]

4085 RELIEF AGAINST EMPLOYERS

4085-0800 Bargain with majority representative

Samuel M. Kaynard, RD (NLRB) v. MMIC, Inc. 734 F.2d 950 (C.A. 2, May 1984)

[bargaining order just and proper in 10(j) proceeding where election process has been rendered so meaningless by E's coercive ULPs that authorization cards are clearly superior gauge of Ee sentiment]

4085-3300 Reinstate employees

N.L.R.B. v. Ona Corporation, a division of Onan Corporation 605 F.Supp. 874 (DC N.D. AL, Mar. 1985)

(inj ordering immediate reinstatement of U adherent, appropriate, in view of E's previous massive and coercive ULPs committed by Respondent during U's organizing efforts and need for a signal that further U activity will not cause kind of E retaliation that has occurred in past)

Arthur Eisenberg, etc., et al. v. Tubari, Ltd., Inc.

F.Supp.————(DC NJ, July 1985)

[in ordering reinstatement of discharged supporters of U challenging incumbent U's representation of Ees, ct held unremedied discharge of such Ees risks serious impact on Ee support for rival U; if discharged Ees were not reinstated for many months, rival U would likely lose momentum of its organizing drive, and Bd would be unable to remedy such effects with ultimate reinstatement; consequently, presumption of harm to bargaining process was not rebutted by facts on record, and issuance of 10(j) reinstatement relief would be *just and proper*]

4093 RELIEF AGAINST UNIONS

4093-2000 Submit agreement to membership and/or execute agreed upon contract

Joseph H. Solien, RD (NLRB) v. Automotive, Petroleum and Allied Industries Employees Union, Local No. 618, etc.

F.Supp.————(DC E.D. MO, Jan. 1984)

[Us ordered to 1) c/d from insisting to impasse that E execute area agreement and state riders as these terms were not negotiated or agreed to by E and which provide for grievance adjustment by representatives not of E's choosing; 2) striking, picketing, or engaging in any other economic conduct against E; 3) in any other manner either failing or refusing to bargain in good faith or restrain or coerce E in its selection of representatives for collective bargaining or grievance adjustment]

6000 INJUNCTIVE RELIEF UNDER SECTION 10(l)

6001 GENERALLY

6001-6200 Jurisdiction of District Court

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[ct of appeals rejected contention that district ct had no jurisdiction to grant temporary 10(l) inj since may be granted only during preliminary investigation of charges and issues raised herein had been finally adjudicated by Bd in another case, and that application for inj should be made to ct of appeals in which that case on appeal; since instant case involves different local Us and factual context, and ct of appeals could not have jurisdiction pursuant to Sections 10(e) and (f) since Bd has not issued order in this case]

6007 PROCEDURE

6007-1400 Preliminary investigation by Board

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[ct of appeals rejected contention that district ct had no jurisdiction to grant temporary 10(l) inj since may be granted only during preliminary investigation of charges and issues raised herein had been finally adjudicated by Bd in another case, and that application for inj should be made to ct of appeals in which that case on appeal; since instant case involves different local Us and factual context, and ct of appeals could not have jurisdiction pursuant to Sections 10(e) and (f) since Bd has not issued order in this case]

6021 SCOPE OF COURT INQUIRY

6021-5000 Standard of court's inquiry

6021-5072 Reasonable cause to believe Act has been violated

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[ct of appeals affirmed district ct's grant of Sec. 10(l) inj since ct did not abuse discretion in granting temporary inj and ct of appeals not convinced Bd could not find ULPs on underlying Sec. 8(e) and 8(b)(4)(ii)(B) charges, since Bd could reasonably conclude that rule, providing that longshoremen must transport shipping containers destined for short term storage, herein constituted unlawful work acquisition agreement, if work not diverted from pier by containerization, but work of longshoremen, historically duplicated by warehouse Ees, eliminated]

6021-5072—Cont.

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[*in deciding whether to grant Section 10(e) inj. district ct is not to determine whether ULP has in fact been committed but simply to determine whether there is reasonable cause to believe violation of Act has occured. If there is reasonable basis on which RD would be able to sustain his charge before Bd. reasonable cause standard is satisfied*]

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[*in reviewing district ct's finding that reasonable cause exists to believe ULP charges ae true, ct must inquire into substantiality of RD's theories - not their correctness. Only if ct is convinced that Bd could not find ULPs or underlying charges should it reject finding of reasonable cause. This ct has opted for this deferential, nonactive approach in review of grant of preliminary inj under Sec. 10(l) because legal questions are thereby preserved for forum - Bd that Congress has designated as best qualified to pass upon charged violations*]

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[ct of appeals can only reject district ct's finding that there is reasonable cause to believe Act violated if convinced Bd could not find ULPs based on underlying charges. Statute authorizes district ct to grant temporary relief as it deems just and proper. Determination as to whether to grant equitable relief left to discretion of district ct. Ct of Appeals will only reverse grant of relief if it finds abuse of discretion]

6021-5081 Existence of ULP not within court's province

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[*in reviewing district ct's finding that reasonable cause exists to believe ULP charges ae true, ct must inquire into substantiality of RD's theories - not their correctness. Only if ct is convinced that Bd could not find ULPs or underlying charges should it reject finding of reasonable cause. This ct has opted for this deferential, nonactive approach in review of grant of preliminary inj under Sec. 10(l) because legal questions are thereby preserved for forum - Bd that Congress has designated as best qualified to pass upon charged violations*]

6049 GRANT OF RELIEF

6049-3700 Duration of injunction

6049-3767 Until final adjudication of Board

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[Section 10(l) inj proceedings are ancillary to main ULP case and any inj issued thereunder expires when Bd issues its final decision in underlying ULP proceeding]

6063 COURT OF APPEALS REVIEW

6063-6000 Scope of review

6063-6033 Findings of District Court will not be disturbed where not plainly erroneous

Fred A. Lewis, RD (NLRB) v. New Orleans Clerks & Checkers, I.L.A. Local No. 1497, etc., et al. 724 F.2d 1109 (C.A. 5, Jan. 1984)

[ct of appeals can only reject district ct's finding that there is reasonable cause to believe Act violated if convinced Bd could not find ULPs based on underlying charges. Statute authorizes district ct to grant temporary relief as it deems just and proper. Determination as to whether to grant equitable relief left to discretion of district ct. Ct of Appeals will only reverse grant of relief if it finds abuse of discretion]

6091 DEFENSES

6091-3700 Dismissal of complaint by ALJ

Local 33, Shipbuilders v. Shipbuilders (Louis J. D'Amico, RD, N.L.R.B.)

F.Supp.————(DC MD, Feb. 1985)

[Respondent's mtn to dissolve 10(j) injunction, on grounds that ALJ had issued decision recommending dismissal of C in its entirety, denied since decision of ALJ is not *final agency action* where, on review, Bd may decide to make *de novo* determination of the facts and is free to draw its own inferences from the record, and Bd may decline to follow ALJ's findings even as to credibility of witnesses (and a number of GC's exceptions in instant case deal with issues of credibility which are not solely dependent for their resolution on demeanor)]

8000 INJUNCTIVE RELIEF UNDER SECTION 10(e)

867 PROCEEDINGS COLLATERAL TO BOARD PROCEEDINGS

0100 GENERALLY

2500 PROCEEDINGS AGAINST AGENCY

2501 GENERALLY

N.L.R.B. v. Superior Fowarding, Inc. 763 F.2d 695 (C.A. 8, May 1985)

(bankruptcy ct had discretion and authority to enjoin federal regulatory proceedings when those proceedings would threaten debtor's estate, and when ct has jurisdiction over ptn in bankruptcy under 28 U.S.C. Sec. 1471)

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B. F.Supp.——(DC N.D. IL, Mar. 1985)

[district cts generally do not have jurisdiction to enjoin Bd from conducting R or ULP proceedings; exclusive means of obtaining judicial review of Bd rulings is in ct of appeals with only two exceptions to this congressionally mandated procedural route as recognized by US S.CT: (1) plain violations of Act by Bd; and (2) questions of national interest with international implications]

2501-5000 Exhaustion of administrative remedies

Telephone Commerical Employees Union v. Arthur Eisenberg, RD (NLRB) 587 F.Supp. 546 (DC E.D. IL, July 1984)

[plaintiff U's mtn for summary judgment on its requested inj to require RD to hold hearing on unit clarification ptn before Ees can be deprived of plaintiff's representation, denied, as plaintiff has not exhausted administrative remedies since unit clarification ptn still pending and RD may yet order hearing, but if RD grants ptn w/o holding hearing, plaintiff may obtain review by Bd of RD's decision not to hold hearing]

2520 PROCEEDINGS TO ENJOIN OR MANDAMUS BOARD ACTION

2520-0100 Generally

Sheetmetal Workers, Local Union No. 263 v. N.L.R.B. ——F.2d—— (DC N.D. IA, Mar. 1984)

[in district ct, action by U seeking inj restraining Bd from proceeding to hear ULP charge filed by E association against U, dismissed for lack of subject matter jurisdiction, since Bd has sole authority, subject to review in cts of appeals, to administer Act's provisions, and U failed to show that instant case falls w/i any exception to general principle that Bd proceedings are not reviewable in district cts]

2520-6200 Jurisdiction of court

2520-6201 Generally

N.L.R.B. v. Superior Fowarding, Inc. 763 F.2d 695 (C.A. 8, May 1985)

(controversy between parties not rendered moot by settlement agreement where agreement provided unambiguously that ULP charges conditionally withdrawn could be reinstated)

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) ——F.2d—— (DC CO, Mar. 1986)

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

2520-6201-5000 Board actions reviewable under Sections 10(e) and (f)

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B. F.Supp.——(DC N.D. IL, Mar. 1985)

[what remains of *Fay v. Douds* doctrine that claim concerning denial of constitutional right which is not asserted in district ct, transparently frivolous *applies only to situations where party seeking to invoke equity jurisdiction of district ct asserts vested property right with respect to collective bargaining contract where he has no way of ultimately obtaining judicial review;* not where alleged constitutional violation, as here, is hardly *violation of right;* plaintiff will have opportunity to raise constitutional issue before ct of appeals]

Centra, Inc., et al. v. Peter W. Hirsch, RD (NLRB) 606 F.Supp. 530 (DC E.D. PA, Apr. 1985)

[petitioning Es' claim that district ct had jurisdiction under 28 U.S.C. Sec. 1331, which grants it jurisdiction over constitutional questions, to compel Bd to postpone pending ULP hearing and c/d from prosecuting pending 10(j) inj because Bd had denied their due process rights by refusing to postpone ULP hearing, rejected, since district ct cannot exercise jurisdiction under 28 U.S.C. Sec. 1331 whenever constitutional issue is raised; rather Es must exhaust their administrative remedies and can only appeal Bd's final orders, and review of Bd's final orders is vested exclusively in ct of appeals]

Centra, Inc., et al. v. Peter W. Hirsch, RD (NLRB) 606 F.Supp. 530 (DC E.D. PA, Apr. 1985)

[petitioning Es' claim that district ct had jurisdiction under 29 U.S.C. Sec. 144 of NLRA to compel Bd to postpone ULP hearing and c/d from prosecuting pending 10(j) inj because Bd had denied their due process rights by refusing to postpone pending ULP hearing, rejected; S.Ct has held that direct review of Bd's final orders provided by Sec. 10(f) of NLRA exclusive means of judicial review and that district cts are w/o jurisdiction to enjoin Bd during ULP proceeding; even allegation of unconstitutional harm does not warrant district ct's intervention where administrative remedies might make it unnecessary]

2520-6225 No jurisdiction except where constitutional issue or agency action contrary to express statutory provision

2520-6225-0100 Generally

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B. F.Supp.——(DC N.D. IL, Mar. 1985)

[district cts generally do not have jurisdiction to enjoin Bd from conducting R or ULP proceedings; exclusive means of obtaining judicial review of Bd rulings is in ct of appeals with only two exceptions to this congressionally mandated procedural route as recognized by US S.CT: (1) plain violations of Act by Bd; and (2) questions of national interest with international implications]

Local 6, International Federation of Health Professionals, a/w Longshoremen's v. William Lubbers, GC (NLRB) F.Supp.——(DC S.D. NY, July 1984)

[in mandamus action by U to revoke Bd's decertification order, to enjoin GC from harassing U, and to award U monetary damages, ct held it had jurisdiction of matter only if Bd acted in excess of its delegated powers and contrary to specific prohibition of Act; such narrow exception does not permit ct review of Bd certification orders because of Bd's erroneous assessment of facts which led it to conclusion not comporting with law; Congress limited judicial review in such a situation to appeals cts when certification dispute results in ULP finding]

2520-6225-2000 Actions found contrary to express statutory provision

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B.

F.Supp.——(DC N.D. IL, Mar. 1985)

[district cts generally do not have jurisdiction to enjoin Bd from conducting R or ULP proceedings; exclusive means of obtaining judicial review of Bd rulings is in ct of appeals with only two exceptions to this congressionally mandated procedural route as recognized by US S.CT: (1) plain violations of Act by Bd; and (2) questions of national interest with international implications]

2520-6225-4000 Actions found not contrary to express statutory provisions

Paul Hewmastrin, etc. v. Chicago Truck Drivers (NLRB)

F.Supp.——(DC N.D. IL, Feb. 1985)

[Ees' C seeking to mandamus order Bd to immediately process ULP charge blocking processing of their decertification ptn so that decertification proceedings might begin, dismissed for lack of subject matter jurisdiction, since, after Bd affirmed on multiple other grounds, Rd's dismissal of ptn solely on blocking charge grounds, question of whether there was an exception to nonreviewability of representation proceedings due to Bd action in excess of its delegated powers or in violation of unambiguous, mandatory NLRA provision no longer existed]

Armour Oil Company v. N.L.R.B.

F.Supp.——(DC C.D. CA, June 1985)

[in action brought in bankruptcy ct to enjoin ULP hearing on grounds that filing of bankruptcy ptn automatically stays ULP hearing, ct held that Bd is *governmental unit* and ULP proceeding is an action by the Bd to enforce its regulatory power, therefore, Bd's ULP proceeding is not automatically stayed by filing of ptn]

2520-6225-6000 Actions found to raise constitutional questions

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B.

F.Supp.——(DC N.D. IL, Mar. 1985)

[claim of denial of a constitutional right which is not *transparently frivolous* can be asserted in a district ct notwithstanding Section 10 of Act, as means of obtaining judicial review of Bd rulings]

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B.

F.Supp.——(DC N.D. IL, Mar. 1985)

[what remains of *Fay v. Douds* doctrine that claim concerning denial of constitutional right which is not asserted in district ct, transparently frivolous *applies only to situations where party seeking to invoke equity jurisdiction of district ct asserts vested property right with respect to collective bargaining contract where he has no way of ultimately obtaining judicial review;* not where alleged constitutional violation, as here, is hardly *violation of right;* plaintiff will have opportunity to raise constitutional issue before ct of appeals]

Centra, Inc., et al. v. Peter W. Hirsch, RD (NLRB) **606 F.Supp. 530 (DC E.D. PA, Apr. 1985)**

[petitioning Es' claim that district ct had jurisdiction under 28 U.S.C. Sec. 1331, which grants it jurisdiction over constitutional questions, to compel Bd to postpone pending ULP hearing and c/d from prosecuting pending 10(j) inj because Bd had denied their due process rights by refusing to postpone ULP hearing, rejected, since district ct cannot exercise jurisdiction under 28 U.S.C. Sec. 1331 whenever constitutional issue is raised; rather Es must exhaust their administrative remedies and can only appeal Bd's final orders, and review of Bd's final orders is vested exclusively in ct of appeals]

2520-6225-8000 Actions found not to raise constitutional questions

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B.

F.Supp.——(DC N.D. IL, Mar. 1985)

[claim of denial of a constitutional right which is not *transparently frivolous* can be asserted in a district ct notwithstanding Section 10 of Act, as means of obtaining judicial review of Bd rulings]

John J. Fuller v. N.L.R.B.

F.Supp.——(DC MA, Mar. 1986)

[mere conclusionary allegations of charging party whose charge was dismissed after appeal to GC, that GC's refusal to categorize his letter expressing only his own opinion of supervisors as protected activity violated his right to due process and free speech, insufficient to merit ct inquiry as failure of GC to issue C is not denial of constitutional rights]

John J. Fuller v. N.L.R.B.

——F.Supp.—— (DC MA, Mar. 1986)

[mere conclusionary allegations of charging party whose charge was dismissed after appeal to GC, that GC's refusal to categorize his letter expressing only his own opinion of supervisors as protected activity violated his right to due process and free speech, insufficient to merit ct inquiry as failure of GC to issue C is not denial of constitutional rights]

Local 6, International Federation of Health Professionals, a/w Longshoremen's v. William Lubbers, GC (NLRB)

F.Supp.——(DC S.D. NY, July 1984)

[U's mandamus action to revoke Bd's decertification order, to enjoin GC from harassing U, and to award U monetary damages, dismissed, where U's claimed denial of due process flew in face of its failure to exhaust its administrative remedies; U's bare bones accusations of *prejudice* and *irrational animosity,* and unsupported statements about deprivation of property plainly did not rise to level of constitutional violation and constituted patent attempt to bypass prohibition against interlocutory district ct review of Bd determinations]

Centra, Inc., et al. v. Peter W. Hirsch, RD (NLRB) **606 F.Supp. 530 (DC E.D. PA, Apr. 1985)**

[petitioning Es' claim that district ct had jurisdiction under Mandamus Act, 28 U.S.C. Sec. 1361, to compel Bd to postpone hearing and c/d from prosecuring pending 10(j) inj because Bd had denied their due process rights by refusing to postpone pending ULP hearing, rejected; although the ct has jurisdiction to hear claims of violation of due process by failure to hold a hearing, failure to postpone one does not rise to constitutitional level; there was no non-discretionary duty or exhaustion of administrative remedies as Act requires and no irrational exercise of discretion by Bd]

2520-6237 Actions for declaratory judgment

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) ——F.2d—— (DC CO, Mar. 1986)

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) —— F.2d —— (DC CO, Mar. 1986)

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

2520-7500 Board actions sought to be enjoined

2520-7533 Representation proceedings

2520-7533-1400 Processing of petition

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) ——F.2d—— (DC CO, Mar. 1986)

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) —— F.2d —— (DC CO, Mar. 1986)

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

Telephone Commerical Employees Union v. Arthur Eisenberg, RD (NLRB) **587 F.Supp. 546 (DC E.D. IL, July 1984)**

[plaintiff U's mtn for summary judgment on its requested inj to require RD to hold hearing on unit clarification ptn before Ees can be deprived of plaintiff's representation, denied, as plaintiff has not exhausted administrative remedies since unit clarification ptn still pending and RD may yet order hearing, but if RD grants ptn w/o holding hearing, plaintiff may obtain review by Bd of RD's decision not to hold hearing]

2520-7533-8400 Issuance of certification

Adventist Living Centers, Inc. d/b/a River Pines Community Health Center v. N.L.R.B.
F.Supp.——(DC N.D. IL, Mar. 1985)

[what remains of *Fay v. Douds* doctrine that claim concerning denial of constitutioal right which is not asserted in district ct, transparently frivolous *applies only to situations where party seeking to invoke equity jurisdiction of district ct asserts vested property right with respect to collective bargaining contract where he has no way of ultimately obtaining judicial review;* not where alleged constitutional violation, as here, is hardly *violation of right;* plaintiff will have opportunity to raise constitutional issue before ct of appeals]

2520-7567 Unfair labor practice proceeding

2520-7567-3700 10(j) injunction

Centra, Inc., et al. v. Peter W. Hirsch, RD (NLRB) 606 F.Supp. 530 (DC E.D. PA, Apr. 1985)

[E's ptn to district ct to grant inj to compel Bd to c/d from prosecuting pending 10(j) inj allegedly filed in retaliation for E's exercise of due process rights by seeking postponement of ULP hearing, denied; E presented no evidence that Bd filed inj solely in retaliation; if there is such evidence, there is no reason to believe district ct where proceeding is pending would not consider it as defense, and that hearing is adequate and exclusive remedy; if aggrieved by grant of inj, E may appeal to ct of appeals]

2520-7567-5000 Conduct of hearing

Shanrod Construction and John Shane (Debtor)
F.Supp.——(BC W.D. NY, Aug. 1985)

[Bankruptcy Ct (ct) stayed Bd from holding ULP hearing filed against debtor-in-possession (debtor) before debtor filed ptn under Chap. 11, holding that under 11 U.S.C. Sec. 1113 ct and only ct had authority to determine issue of whether debtor could reject collective bargaining agreement, an executory agreement]

Storer Communications, Inc. v. N.L.R.B.
F.Supp.——(DC E.D. OH, Oct. 1984)

[district ct lacks subject matter jurisdiction over E's C alleging due process requires Bd to hold evidentiary hearing. prior to ULP proceeding, concerning allegations that U's counsel should be disqualified under ABA's DR 5-102(A) because E has subpoenaed him to testify about substance of ULP charges, since U's counsel is being called by E *as its* witness, and thus is not proscribed from testifying by DR 5-102(A)]

Storer Communications, Inc. v. N.L.R.B.
F.Supp.——(DC E.D. OH, Oct. 1984)

[district ct lacks subject matter jurisdiction over E's C alleging due process requires Bd to hold evidentiary hearing, prior to ULP proceeding, concerning allegations that U's counsel should be disqualified under ABA's DR 5-102(A) because E has subpoenaed him to testify about substance of ULP charges, since, although testimony did not reveal whether U would call counsel as its witness, due process does not require a hearing on this matter, since E has not shown that qualified right to have opposing counsel disqualified is a property right and E may renew mtn to disqualify should U call counsel as its witness]

Centra, Inc., et al. v. Peter W. Hirsch, RD (NLRB) 606 F.Supp. 530 (DC E.D. PA, Apr. 1985)

[Es' ptn to district ct under 28 U.S.C. Sec. 1331 (federal questions), NLRA, and Mandamus Act for TRO restraining Bd from holding pending ULP hearing because of violation of due process by failing to postpone hearing dismissed for lack of jurisdiction; Es must exhaust administrative remedies, appealing Bd order to ct of appeals, and district ct may not intervene prematurely; also, failure to postpone hearing is not violation of constitutional due process and does not meet Mandamus Act's jurisdictional requirements of non-discretionary duty or irrational exercise of discretion]

Armour Oil Company v. N.L.R.B.
F.Supp.——(BC C.D. CA, June 1985)

[in action brought in bankruptcy ct to enjoin ULP hearing on grounds that filing of bankruptcy ptn automatically stays ULP hearing, ct held that Bd is *governmental unit* and ULP proceeding is an action by the Bd to enforce its regulatory power, therefore, Bd's ULP proceeding is not automatically stayed by filing of ptn]

2520-8700 Board action sought to be mandated

2520-8733 Representation proceedings

2520-8733-1200 Processing of petition

Paul Hovenstein, etc. v. Chicago Truck Drivers (NLRB)
——F.Supp.—— DC N.D. IL, Feb. 1985)

[Ees' C seeking to mandamus order Bd to immediately process ULP charge blocking processing of their decertification ptn so that decertification proceedings might begin, dismissed for lack of subject matter jurisdiction, since, after Bd affirmed on multiple other grounds, Rd's dismissal of ptn solely on blocking charge grounds, question of whether there was an exception to nonreviewability of representation proceedings due to Bd action in excess of its delegated powers or in violation of unambiguous, mandatory NLRA provision no longer existed]

2520-8733-5000 Issuance of certification

Commercial Workers, Local 400 v. Donald R. Dotson, et al. (NLRB) 628 F.Supp. 1 (DC D.C., June 1984)

[district court does not have jurisdiction to mandate that Bd certify results of R election in which Bd found 40% of voters were supervisors; though Bd had previously certified U, subsequent Bd case threw supervisory status of some voters into question, thus case was remanded to RD for new election. Bd has considerable discretion to appraise atmosphere surrounding an election in which supervisors have particupated]

2520-8733-7500 Vacation of certification

Local 6, International Federation of Health Professionals, a/w Longshoremen's v. William Lubbers, GC (NLRB)
F.Supp.——(DC S.D. NY, July 1984)

[U's mandamus action to revoke Bd's decertification order, to enjoin GC from harassing U, and to award U monetary damages, dismissed, where U admitted Bd had neither violated statutory prohibition nor exceeded its delegated authority, and therefore *Kyne* exception to prohibition against interlocutory district ct review of Bd determinations was not applicable; here, U's C did not point to specific violations of Act, but rather proceeded in conclusory fashion to attack nearly every agency action in matter herein over past several years]

2520-8767 Unfair labor practice proceeding

2520-8767-3300 Conduct of hearing

Storer Communications, Inc. v. N.L.R.B.
F.Supp.——(DC E.D. OH, Oct. 1984)

[district ct lacks subject matter jurisdiction over E's C alleging due process requires Bd to hold evidentiary hearing, prior to ULP proceeding, concerning allegations that U's counsel should be disqualified under ABA's DR 5-102(A) because E has subpoenaed him to testify about substance of ULP charges, since U's counsel is being called by E *as its* witness, and thus is not proscribed from testifying by DR 5-102(A)]

Storer Communications, Inc. v. N.L.R.B.
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Centra, Inc., et al. v. Peter W. Hirsch, RD (NLRB) 606 F.Supp. 530 (DC E.D. PA, Apr. 1985)

[Es' ptn to district ct under 28 U.S.C. Sec. 1331 (federal questions), NLRA, and Mandamus Act for mandamus order to compel Bd to postpone ULP hearing because of alleged violation of due process by failing to postpone hearing dismissed for lack of jurisdiction; Es must exhaust administrative remedies, appealing Bd order to ct of appeals, and district ct may not intervene prematurely; further, failure to postpoe hearing is not violation of constitutional due process and does not meet Mandamus Act's jurisdictional requirements of non-discretionary duty or irrational exercise of discretion]

Centra, Inc., et al. v. Peter W. Hirsch, RD (NLRB) 606 F.Supp. 530 (DC E.D. PA, Apr. 1985)

[even if district ct had jurisdiction to grant E's ptn for TRO restraining Bd from holding pending ULP hearing and mandamus order to compel Bd to postpone hearing, they would be denied, since E has not shown likelihood of obtaining final inj on the merits; counsels failed to establish reasons for their alleged lack of time to prepare for ULP hearing, providing no evidence of their alleged other commitments and failing to persuade the ct that no officers with knowledge of ULPs charged were available to assist them]

2540 PROCEEDINGS TO ENJOIN OR MANDATE GENERAL COUNSEL ACTION

2540-5000 Jurisdiction of court

2540-5025 Jurisdiction under APA Section 10, 5 U.S.C. Section 701, et seq.

Mobilab Union, Inc. v. N.L.R.B. **600 F.Supp. 826 (DC NJ, Jan. 1985)**

(U held to have no right to ct review under APA of GC's refusal to issue C in view of fact that under Section 701(a) there is an exception to the Act's presumption of availability of judicial review to the extent that *agency action is committed to agency discretion by law*)

2540-5033 No statutory basis for jurisdiction to review

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) **———F.2d——— (DC CO, Mar. 1986)**

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) **——— F.2d ——— (DC CO, Mar. 1986)**

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

Mobilab Union, Inc. v. N.L.R.B. **600 F.Supp. 826 (DC NJ, Jan. 1985)**

(U held to have no private right under NLRA to mandate GC to issue C or fully explain reason for refusing to do so, since the *final authority* language of Sec. 3(d) has been uniformly construed as precluding judicial review of GC's decision not to issue a C)

2540-5050 Clear error of legal interpretation

Mobilab Union, Inc. v. N.L.R.B. **600 F.Supp. 826 (DC NJ, Jan. 1985)**

(no right to ct review of GC's refusal to issue C as a decision *wholly without basis in law* found, since such an exception to unreviewability of GC's determination has never been recognized by any ct and, where alluded to, has been considered as equivalent to, but not an enlargement of the *Leedom v. Kyne* exception, which U did not plead)

2540-5067 Arbitrary and capricious action constituting denial of constitutional due process

Mobilab Union, Inc. v. N.L.R.B. **600 F.Supp. 826 (DC NJ, Jan. 1985)**

(due process not violated by GC's refusal to issue C; charging party has no right to issuance of a C, in view of Act's limitations, including GC's exercise of discretion; due process rights have been confined to rights to an explanation and to administrative appeal, which have been satisfied here; point-by-point response to each objection seems no more useful or constitutionally mandated for GC than for ct of appeals)

2540-6700 **Action sought to be enjoined**

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(expenses incurred in defending against ULP charges held to constitute threat to assets of debtor's estate given the time and effort of management to defend 52 ULP charges)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(bankruptcy ct can enjoin Bd from filing or processing ULP charges arising from modification of contract since, if Bd can neither file charges against nor find debtor-in-possession guilty of ULP for unilaterally rejecting or modifying contract, certainly it cannot proceed with hearings on ULP charges arising under that contract)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(whether alleged ULP stems from debtor's rejection or modification of bargaining agreement or from debtor's failure to bargain over terms of new contract, is question of contract construction, one of law, to be determined by bankruptcy ct when debtor petitions ct to enjoin Bd proceedings notwithstanding contention that Bd is exclusive forum for determining whether conduct falls *w/i Bildisco* protected conduct)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(ct should deny debtor's mtn to enjoin Bd proceedings on charge if ULP charge stems from debtor's failure to bargain in good faith over terms and conditions of new contract)

N.L.R.B. v. Superior Fowarding, Inc. **762 F.2d 695 (C.A. 8, May 1985)**

(bankruptcy ct may, upon mtn by debtor, enjoin Bd from proceeding with hearings on ULP charges which arise from debtor's unilateral modification or rejection of collective-bargaining agreement, when those proceedings would threaten assets of debtor's estate)

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) **———F.2d——— (DC CO, Mar. 1986)**

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) **——— F.2d ——— (DC CO, Mar. 1986)**

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

Local 6, International Federation of Health Professionals, a/w Longshoremen's v. William Lubbers, GC (NLRB) **———F.Supp.———(DC S.D. NY, July 1984)**

[U's mandamus action to revoke Bd's decertification order, to enjoin GC from harassing U, and to award U monetary damages, dismissed, where U admitted Bd had neither violated statutory prohibition nor exceeded its delegated authority, and therefore *Kyne* exception to prohibition against interlocutory district ct review of Bd determinations was not applicable; here, U's C did not point to specific violations of Act, but rather proceeded in conclusory fashion to attack nearly every agency action in matter herein over past several years]

2540-8300 **Action sought to be mandated**

2540-8367 Issuance and prosecution of complaint

Mobilab Union, Inc. v. N.L.R.B. **600 F.Supp. 826 (DC NJ, Jan. 1985)**

(U held to have no private right under NLRA to mandate GC to issue C or fully explain reason for refusing to do so, since the *final authority* language of Sec. 3(d) has been uniformly construed as precluding judicial review of GC's decision not to issue a C)

2560 SUITS FOR DAMAGES

Local 6, International Federation of Health Professionals, a/w Longshoremen's v. William Lubbers, GC (NLRB) **———F.Supp.———(DC S.D. NY, July 1984)**

[U's mandamus action to revoke Bd's decertification order, to enjoin GC from harassing U, and to award U monetary damages, dismissed, where U admitted Bd had neither violated statutory prohibition nor exceeded its delegated authority, and therefore *Kyne* exception to prohibition against interlocutory district ct review of Bd determinations was not applicable; here, U's C did not point to specific violations of Act, but rather proceeded in conclusory fashion to attack nearly every agency action in matter herein over past several years]

2597 ATTORNEY FEES

Local 6, International Federation of Health Professionals, a/w Longshoremen's v. William Lubbers, GC (NLRB) **———F.Supp.———(DC S.D. NY, July 1984)**

[in dismissing U's mandamus action to revoke Bd's decertification order, to enjoin GC from harassing U, and to award U monetary damages, ct, while finding question a close one, declined to grant U's request for attorney's fees]

5000 PROCEEDINGS BY BOARD TO PROTECT BOARD JURISDICTION

5020 ENJOINING STATE EXERCISE OF JURISDICTION

5020-7500 **Statutory regulation**

5020-7500—Cont.

Baker et al. v. General Motors Corp. et al ——— U.S. ——— (U.S. S.Ct, July 1986)

[state law denying unemployment compensation to laid-off Ees who, by paying U dues, financed strikes at other locations that led to their layoffs, not pre-empted by federal law, notwithstanding right to make such payments is protected by Sec. 7; Ees found to have voluntarily caused own unemployment, as there was meaningful connection between Ees' decision to pay dues, ensuing strikes and their own layoffs, and layoffs were untainted by any unlawful conduct by E; histories of NLRA and Title IX of SSA show that Congress intended to allow such conflict between federal law and state unemployment compensation law]

5060 INTERVENTION IN FEDERAL COURT PROCEEDINGS

5060-3300 Section 301 suits

5060-3350 To enforce arbitration award

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[U's 301 suit against neutral subcontractor to enforce arbitration award granting U *time-in-lieu* payments inconsistent with Bd's 10(k) determination held to constitute secondary coercion of primary E since U may not enforce award when effect is to encourage neutral E to pressure primary E to hire U Ees]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[ct upheld district ct's refusal to confirm arbitration award which conflicted with 10(k) work assignment, notwithstanding U's contention that applicable state statute of limitations precluded E and Bd from raising as defense *supremacy doctrine* barring arbitrator from making award inconsistent with 10(k) determination, because failure to move to vacate arbitration award w/i applicable limitations period did not preclude prior or subsequent 10(k) decision from invalidating contrary award]

Longshoremen's ILA, Local 32 v. Pacific Maritime Association and Cresent City Marine Ways and Drydock Company, Inc. (NLRB) 773 F.2d 1012 (C.A. 9, Oct. 1985)

[there was no reasonable basis in law for U's grievance and Sec. 301 suit, since it is well established that the *supremacy doctrine* bars arbitrator from making award inconsistent with Bd's 10(k) determination]

Sheetmetal Workers, Local Union No. 263 v. N.L.R.B. ——— F.2d ——— (DC N.D. IA, Mar. 1984)

[mtn by Bd and E association to dismiss plaintiff U's action seeking order enforcing arbitration award in attempt to enforce *interest arbitration clause*, granted since under FRCP 12(b)(6) mtn to dismiss should not be granted unless it appears that plaintiff is entitled to no relief under any set of circumstances which could be proved in support of claim; for purposes of mtn, C must be construed in light most favorable to pleader and its allegations taken as true; and interest arbitration clause is unenforceable insofar as it applies, as here, to inclusion of similar clause in new contract]

Sheetmetal Workers, Local Union No. 263 v. N.L.R.B. ——— F.2d ——— (DC N.D. IA, Mar. 1984)

[in granting mtn to dismiss U's action seeking order enforcing arbitration award in attempt to enforce *interest arbitration clause* in current contract to compel inclusion of similar contract in new contract, ct held it was not necessary to vacate interest arbitration provision of arbitrator's award since no action will lie to enforce it]

5060-6700 Bankruptcy proceedings

Martin Arsham Sewing Co., a/k/a Marsco, Inc. 275 NLRB No. 090

(mtn for Determination of Personal Liability, by award or hearing under Bd's backpay order, denied where E filed ptn for voluntary bankruptcy identifying owner of E as sole secured creditor and Bd as unsecured creditor (via its backpay order), since GC made no factual assertion which could warrant finding sole secured creditor perpetrated fraud, dissipated or diverted corporate assets, intermingled personal and corporate assets or otherwise attempted to thwart E's backpay liability)

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)

[Bd's order against E in bankruptcy proceeding held not void because Bd failed to ptn bankruptcy ct for relief from automatic stay under Bankruptcy Act before proceeding against E; governmental unit which determines that its police powers or regulatory proceeding is excepted from automatic stay under 362(b)(4) of Bankruptcy Act is not required to ptn bankruptcy ct for relief from stay prior to continuing its proceeding, and legislative history of Bankruptcy Act evinces congressional intent to such effect]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)

[Bd, acting on belief that its ULP proceeding was excepted from operation of automatic stay under Bankruptcy Act, held to have permissibly proceeded with ULP hearing w/o obtaining relief from stay in bankruptcy ct; however, Bd proceeded at its own risk and, if it was later determined that proceeding was *not* excepted from automatic stay, entire Bd proceeding would be void *ab initio*; nonetheless, exercise of governmental unit's police or regulatory powers is not void merely because used in belief that its action was excepted from automatic stay]

N.L.R.B. v. Edward Cooper Painting, Inc., and Cooper & Cooper Painting, an alter ego 804 F.2d 934 (C.A. 6, Nov. 1986)

[Sec. 362 of Bankruptcy Act does not require that Bd ptn bankruptcy ct for permission to proceed with ULP proceeding, and legislative history of 362 shows that when action is excepted from automatic stay, trustee is required to move ct into action, rather than requiring stayed party to request relief from stay; however, Bankruptcy Act empowers bankruptcy ct to stay proceedings that are excepted from operation of automatic stay if assets of debtor's estate are threatened]

5060-6767 To protect proceeding or order

N.L.R.B. v. Superior Fowarding, Inc. 762 F.2d 695 (C.A. 8, May 1985)

(expenses incurred in defending against ULP charges held to constitute threat to assets of debtor's estate given the time and effort of management to defend 52 ULP charges)

N.L.R.B. v. Superior Fowarding, Inc. 762 F.2d 695 (C.A. 8, May 1985)

(bankruptcy ct can enjoin Bd from filing or processing ULP charges arising from modification of contract since, if Bd can neither file charges against nor find debtor-in-possession guilty of ULP for unilaterally rejecting or modifying contract, certainly it cannot proceed with hearings on ULP charges arising under that contract)

The Rath Packing Company v. N.L.R.B. ——— F.Supp. ——— (BC N.D. IA, Mar. 1984)

[ct refused debtor injunctive relief from U and Bd filing any charges arising out of debtor's rejection of its collective bargaining agreement or debtor's imposition of new terms and conditions after such rejection, as no charges were pending as yet request for injunctive relief was not ripe for judicial resolution]

The Rath Packing Company v. N.L.R.B. ——— F.Supp. ——— (BC N.D. IA, Mar. 1984)

[based on Norris-LaGuardia Act, ct refused to enjoin Bd from holding ULP hearing on C where debtor was respondent]

The Rath Packing Company v. N.L.R.B. ——— F.Supp. ——— (BC N.D. IA, Mar. 1984)

[ct refused to enjoin Bd from holding ULP hearing where debtor was respondent, rejecting claim that automatic stay provision of 11 U.S.C. Section 362(a)(1) applies to Bd]

The Rath Packing Company v. N.L.R.B. ——— F.Supp. ——— (BC N.D. IA, Mar. 1984)

[while ct may have power under 11 U.S.C. Section 105 to issue orders enjoining Bd from holding ULP hearing where debtor is respondent, such stays may be justified only when challenged administrative proceedings *threaten* assets of bankruptcy estate. Threats of litigation expense and discouragement to potential buyers or investors are not sufficient]

Shanrod Construction and John Shane (Debtor) ——— F.Supp. ——— (BC W.D. NY, Aug. 1985)

[Bankruptcy Ct (ct) stayed Bd from holding ULP hearing filed against debtor-in-possession (debtor) before debtor filed ptn under Chap. 11, holding that under 11 U.S.C. Sec. 1113 ct and only ct had authority to determine issue of whether debtor could reject collective bargaining agreement, an executory agreement]

General Highway Express, Inc. v. Teamsters Local Union No. 20 (NLRB) ——— F.2d ——— (BC N.D. OH, Jan. 1985)

[bankruptcy ct refused to enjoin NLRB from hearing ULP C arising out of events that occurred during operation of debtor in possession notwithstanding 11 U.S.C. Sec. 502 (c)(1) arguably authorizes ct to decide U's ULP claims against debtor, since Congress entrusted NLRB to adjudicate ULP claims and S.Ct expressed strong preference for allowing NLRB to do so

5060-6767—Cont.

]*Nathanson v. NLRB*, 344 U.S. 25) unless assets of estate would be threatened if proceedings before NLRB allowed to continue]

Wheeling-Pittsburgh Steel Corporation, et al. v. Pennsylvania Human Relations Commission, et al. ——— F.2d ——— (BC W.D. PA, Aug. 1986)

[injunctive relief to stay proceedings of Bd and other government agencies against debtor in bankruptcy, denied, where proceedings were excepted from automatic stay provisions of Bankruptcy Act since, in investigating and prosecuting alleged violations, agencies acted pursuant to their police powers; and since agencies only wished to enter, but not execute on, money judgments, and to enforce non-monetary judgments, agencies were permitted under Bankruptcy Act to seek to obtain judgments for backpay and back benefits and to enforce back to work orders]

Wheeling-Pittsburgh Steel Corporation, et al. v. Pennsylvania Human Relations Commission, et al. ——— F.2d ——— (BC W.D. PA, Aug. 1986)

[in bankruptcy proceeding, ct held enforcement of back to work order was not tantamount to enforcement of money judgment, as in backpay and benefit orders, which is not enforceable in bankruptcy w/o ct order; back to work order is not intended to provide monetary compensation for past injuries but rather to redress future harm arising from continued unemployment as result of wrongful termination, and is not attempt to enforce money judgment; and payment of money to reinstated Ee is consideration for past-reinstatement work and not compensation for past harm]

Wheeling-Pittsburgh Steel Corporation, et al. v. Pennsylvania Human Relations Commission, et al. ——— F.2d ——— (BC W.D. PA, Aug. 1986)

[in denying injunctive relief to stay proceedings of Bd and other agencies against debtor in bankruptcy, and assuming that costs of defending against agencies' claims, either alone or together with debtor's limited staff problems, jeopardized reorganization, ct held that, absent legal authority to weigh such considerations under Bankruptcy Act, it was unable to override its clear direction that government agencies, acting pursuant to their police powers, be permitted to investigate and prosecute claims to extent provided by Bankruptcy Act's provisions]

5060-6767-5000 Circumstances to be considered by bankruptcy court in rejection of bargaining agreement

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ———U.S.——— (U.S. S.Ct, Feb. 1984)

[before acting on ptn to modify or reject unexpired bargaining agreement, Bankruptcy Ct should be persuaded that reasonable efforts to negotiate voluntary modification have been made and are not likely to produce prompt and satisfactory solution. Ct need not determine that parties have bargained to impasse or make any other determination outside its expertise]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ———U.S.——— (U.S. S.Ct, Feb. 1984)

[debtor-in-possession does not need to comply with mid-term contract modification procedures set forth in Sec. 8(d) because bargaining agreement is not enforceable contract w/i meaning of 8(d); therefore, because modification accomplished by operation of law (Bankuptcy Code) and not by unilateral action of E, it follows that debtor-in-possession need not comply with provisions of Sec. 8(d) prior to seeking Bankruptcy Ct's permission to reject agreement]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ———U.S.——— (U.S. S.Ct, Feb. 1984)

[S.Ct held standard for allowing rejection of unexpired bargaining agreement by debtor-in-possession is stricter than traditional *business judgment* but less than need to demonstrate that reorganization will fail unless rejection of agreement is permitted]

N.L.R.B. v. Bildisco & Bildisco, Debtor-in-Possession, et al. ———U.S.——— (U.S. S.Ct, Feb. 1984)

[debtor-in-possession is E under NLRA and is obligated to bargain collectively with certified representative over terms of new contract pending rejection of existing contract or following formal approval of rejection by Bankruptcy Ct, but no ULP by unilaterally breaching contract before formal Bankruptcy Ct action]

N.L.R.B. v. Superior Fowarding, Inc. 762 F.2d 695 (C.A. 8, May 1985)

(whether alleged ULP stems from debtor's rejection or modification of bargaining agreement or from debtor's failure to bargain over terms of new contract, is question of contract construction, one of law, to be determined by bankruptcy ct when debtor petitions ct to enjoin Bd proceedings notwithstanding contention that Bd is exclusive forum for determining whether conduct falls w/i *Bildisco* protected conduct)

5099 OTHER PROCEEDINGS RELEVANT TO BOARD DETERMINATIONS

Waggoner, et al. v. Dallaire, etc. ———F.2d——— (C.A. 9, July 1985)

[ct of appeals held that it could not reach merits of appellants' argument that district ct's interpretation of parties' short form agreement was erroneous on grounds that it was inconsistent with requirements of Sec. 8(d) of NLRA, since federal cts lack jurisdiction to consider claims based on violation of Sec. 8 of NLRA]

7500 CERTIFICATION OF QUESTIONS TO BOARD BY COURT

8700 AWARDS OF ATTORNEY FEES AND OTHER EXPENSES UNDER EQUAL ACCESS TO JUSTICE ACT (EAJA)

8717 LEGISLATIVE HISTORY

8717-2500 Section 504

Abbott House, Inc. 277 NLRB No. 024

]*substantially justified* means more than mere reasonableness)

Stonehouse Coal Company 276 NLRB No. 140

(Bd held that Congress, in revising EAJA, did not alter, but merely clarified definition of *substantially justified; substantially justified* means more than *mere reasonableness*)

8767 DEFENSES

8767-3300 Position of Agency substantially justified

Abbott House, Inc. 277 NLRB No. 024

(GC's case had reasonable basis in fact and law and was substantially justified where case involved close question of interpretation of settlement stipulation and prior collective bargaining agreements and, in part, credibility determination of witnesses)

Stonehouse Coal Company 276 NLRB No. 140

(GC *substantially justified* where she was prevailing party on two of three issues charged in C; respondent could only claim to have prevailed on one issue that was resolved by arbitrator in its favor, and this was result of change in law less than three weeks before hearing that could not have been anticipated by GC)

American Trucking Associations, Inc. and Tidewater Motor Truck Association v. N.L.R.B. ———F.2d——— (C.A. 4, Oct. 1985)

[application denied since position of United States throughout litigation was substantially justified where governing norms in litigation were not clearly established and result was not clearly dictated by extant law but was crystallization of cogent briefing, elucidating oral argument, development of full factual record, and extensive litigation process before Bd, federal cts and S.Ct]

8767-3301 Generally

Saunders House a/k/a The Old Man's Home of Philadelphia v. N.L.R.B. ———F.2d——— (C.A. 3, Feb. 1984)

[proper standard for award of fees under EAJA is did government act reasonably in pursuing the litigation, not whether government won or lost; and standard does not require government to establish that decision to litigate was based on a substantial probability of prevailing]

8767-3301-1200 Standard of justification

Temp Tech Industries, Inc. 756 F.2d 586 (C.A. 7, Mar. 1985)

(agency's position is substantially justified if it has *reasonable basis in law and fact*)

Prairie Tank Southern, Inc. v. N.L.R.B. ———F.2d——— (C.A. 7, Feb. 1984)

[proper standard for award is did Bd act reasonably in pursuing litigation, not whether Bd won or lost. Government not required to establish that its decision to litigate was based on substantial probability of prevailing. EAJA awards are not appropriate if Bd has adopted reasonable position in litigation]

8767-3301-4800 Clarity of existing law

Prairie Tank Southern, Inc. v. N.L.R.B. ———F.2d——— (C.A. 7, Feb. 1984)

[award of fees denied since GC's position that Respondent had failed to timely raise non-inclusion of affidavits in underlying R case record transmitted to Bd, but waited to raise issue until it filed brief with Bd in support of its cross mtn for summary judgment was not unreasonable, and alleged error of Bd wasnot prejudicial; notwithstnading position rejected by ct based on prior circuit case as Bd made reasonable, though erroenous reading, of rule enunciated in that case]

8767-3301-8400 Consistency with established policy and precedent

Saunders House a/k/a The Old Man's Home of Philadelphia v. N.L.R.B. ——F.2d——
(C.A. 3, Feb. 1984

[GC *substantially justified* in issuing 8(a)(5) C alleging unilateral change in wages before impasse, notwithstanding ct denied enforcement, where GC's *litigation position* based on his perception of facts at time when C issued was not unreasonable under the circumstances and Bd's decision was not w/o any reasonable basis; fact that ct rejected GC's view of facts does not compel conclusion that under the circumstances GC acted unreasonably]

8767-3320 Position of Agency to be justified

8767-3320-3300 Litigation position

Saunders House a/k/a The Old Man's Home of Philadelphia v. N.L.R.B. ——F.2d——
(C.A. 3, Feb. 1984

[GC *substantially justified* in issuing 8(a)(5) C alleging unilateral change in wages before impasse, notwithstanding ct denied enforcement, where GC's *litigation position* based on his perception of facts at time when C issued was not unreasonable under the circumstances and Bd's decision was not w/o any reasonable basis; fact that ct rejected GC's view of facts does not compel conclusion that under the circumstances GC acted unreasonably]

8767-3360 Circumstances sufficient to justify position

8767-3360-3300 Board

Saunders House a/k/a The Old Man's Home of Philadelphia v. N.L.R.B. ——F.2d——
(C.A. 3, Feb. 1984

[GC *substantially justified* in issuing 8(a)(5) C alleging unilateral change in wages before impasse, notwithstanding ct denied enforcement, where GC's *litigation position* based on his perception of facts at time when C issued was not unreasonable under the circumstances and Bd's decision was not w/o any reasonable basis; fact that ct rejected GC's view of facts does not compel conclusion that under the circumstances GC acted unreasonably]

N.L.R.B. v. Sherwood Trucking Company ——F.2d——
(C.A. 6, Feb. 1984)

[E's ptn for attorney's fees denied, notwithstanding ct denied enforcement of Bd order, since Bd's action was essentially reasonable and justified]

8767-3360-3350 Assertion of *Leedom v. Kyne* jurisdictional ba

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) ——F. Supp.——
(DC CO, Mar. 1984)

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

Teamsters Local Union No. 435 v. W. Bruce Gillis, Jr., RD (NLRB & Super Valu Stores, Inc.) ——F. Supp.——
CO, Mar. 1984

[plaintiff's mtn for preliminary inj to prevent R hearing on UC ptn, concerning whether single or two city warehouse unit of Ee's is covered by contract with U, denied, since ct could not say that in scheduling hearing for *unit clarifications,* Regional Director is proceeding in excess of his authority and *contrary to a specific prohibition in the Act.* Preemptive order from the District Ct would be contrary to public policy of limited judicial involvement in disputes arising under NLRA]

8767-3360-6700 General Counsel

Saunders House a/k/a The Old Man's Home of Philadelphia v. N.L.R.B. ——F.2d——
(C.A. 3, Feb. 1984

[GC *substantially justified* in issuing 8(a)(5) C alleging unilateral change in wages before impasse, notwithstanding ct denied enforcement, where GC's *litigation position* based on his perception of facts at time when C issued was not unreasonable under the circumstances and Bd's decision was not w/o any reasonable basis; fact that ct rejected GC's view of facts does not compel conclusion that under the circumstances GC acted unreasonably]

883 PROCEEDINGS UNDER OTHER STATUTES

2500 FREEDOM OF INFORMATION ACT

2501 GENERALLY

2501-3300 Purpose of Act

American Commercial Barge Lines Company v. N.L.R.B — 758 F.2d 1109 (C.A. 6, Apr. 1985)

(prevailing party in FOIA action not entitled to attorney fees, since reasonable basis in law for NLRB's initial withholding of position statement of U in closed ULP proceeding, where party sought information to prepare its defense in related open proceeding; fact document subsequently disclosed w/ i time covered by NLRB's guidelines to establish reasonable basis for withholding did not give rise to inference that agency did not consider document exempt, nor need agencies' grounds for withholding document ultimately be vindicated; further, penalizing agency for disclosure at any stage not in spirit of FOIA)

American Commercial Barge Lines Company v. N.L.R.B — 758 F.2d 1109 (C.A. 6, Apr. 1985)

(agency disclosure of document requested under FOIA does not logically give rise to inference that agency does not consider document exempt from disclosure. FOIA does not prohibit disclosure of documents covered by exemptions. Exemptions are only permissive and mark outer limits of information that may be withheld where agency makes specific determination that public interest and specific circumstances presented dictate that information should be withheld)

American Commercial Barge Line Company v. N.L.R.B. — ——— F.Supp. ——— (DC S.D. IN, April 1986)

[release of requested information for purpose of making report to Congress concerning Bd's abuse in investigation and prosecution of ULP charges, although of benefit to plaintiff to extent it felt discriminated against by Bd, would be of primary benefit to public by holding Bd accountable to its congressional mandate and vindicating FOIA and thus justified award of attorney's fees where plaintiff substantially prevailed by obtaining requested information]

American Commercial Barge Line Company v. N.L.R.B. — ——— F.Supp. ——— (DC S.D. IN, April 1986)

[defense to request for attorney's fees that plaintiff inadequately described information requested, rejected where defendants offered no affidavits or other supporting evidence and failed to explain delay in answering request thereby unnecessarily hindering policy of encouraging public access to government information]

2517 PUBLICLY AVAILABLE DOCUMENTS

2517-4000 Final orders of General Counsel

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[ct holds that none of information contained in withheld documents will be disclosed based on plaintiff's incorporation argument (that withheld documents contain information incorporated into final agency decision, since agency's decision to approve withdrawal of charge in instant case *did not* incorporate information contained in withheld documents, but was instead based on charging parties' request made after disputes had been settled]

2550 PRODUCIBILITY OF DOCUMENTS

2550-0100 Generally

2550-0112 Requirement of adequate identification

American Commercial Barge Line Company v. N.L.R.B. — ——— F.Supp. ——— (DC S.D. IN, April 1986)

[defense to request for attorney's fees that plaintiff inadequately described information requested, rejected where defendants offered no affidavits or other supporting evidence and failed to explain delay in answering request thereby unnecessarily hindering policy of encouraging public access to government information]

2550-0158 Neutralization

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[draft of mailgram enlisting further cooperation from a witness not exempt from disclosure under 7(B) of FOIA, since Bd has not shown that disclosure of mailgram would deprive an individual of a fair trial or impartial adjudication; however, ct ordered redaction of witness' name and address]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[information concerning Ee wage rates, job performance and personnel action that would typically be found in a personnel file exempt under 7(C) as Ees have legitimate privacy interest in this type of information. Such information is not disclosable, since plaintiff has asserted no countervailing public interest in disclosure of this information. Ct directs Bd to *redact the portions of withheld documents concerning above mentioned information*]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[redaction of witness' name and time and place of meeting with Bd agent, as well as detailed descriptions of work invironment, references to the position, responsibilities, actions, and U activity of witness ordered as this information might lead to disclosure of witness' identity]

2550-0175 Incorporation by reference

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[ct holds that none of information contained in withheld documents will be disclosed based on plantiff's incorporation argument (that withheld documents contain information incorporated into final agency decision, since agency's decision to approve withdrawal of charge in instant case *did not* incorporate information contained in withheld documents, but was instead based on charging parties' request made after disputes had been settled]

2550-0700 Agency records

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[*summary reports*, prepared by Bd examiner for RD, which contain summary of relevant evidence gathered during investigation along with recommended course of action, are exempt from disclosure under exemption 5, since these are *predecisional documents* which fall w/i scope of deliberative process privilege as described in *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-151, (1975)]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[draft of mailgram enlisting further cooperation from a witness not exempt from disclosure under 7(B) of FOIA, since Bd has not shown that disclosure of mailgram would deprive an individual of a fair trial or impartial adjudication; however, ct ordered redaction of witness' name and address]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[witness statements contained in Bd's closed case files given under grant of *confidentiality* may remain protected even after investigative file has been closed; *Akron Standard v. Donovan* No. 84-3650 (6th Cir., filed January 8, 1986). Accordingly, in instant case, ct concludes that *identity* of those individuals who provided witness statements under grant of confidentiality fall w/i exemption 7(D) and rejects *potential witness* doctrine]

2550-0700—Cont.

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[ct holds that none of information contained in withheld documents will be disclosed based on plantiff's incorporation argument (that withheld documents contain information incorporated into final agency decision, since agency's decision to approve withdrawal of charge in instant case *did not* incorporate information contained in withheld documents, but was instead based on charging parties' request made after disputes had been settled]

2550-1000 Confidential information

United Technologies Corp. v. N.L.R.B. **777 F.2d 90 (C.A. 2, Nov. 1985)**

[a source is considered *confidential* under Exemption 7(D) if he or she provides information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred]

United Technologies Corp. v. N.L.R.B. **777 F.2d 90 (C.A. 2, Nov. 1985)**

[Bd did not waive protection of Exemption 7(D) by disclosing to U counsel identities of people at Bd pre-hearing meeting with Bd agent at which agent received from Ee unauthorized pre-trial documents of E charged with ULPs; under Exemption 7(D), agency's ability to withhold information, if it so chooses, derives from grant of confidentiality to source of information; such privilege belongs to beneficiary of promise of confidentiality and continues until he or she waives it]

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[highly personal data normally found in Ee's personnel file that would *constitute an unwarranted invasion of personal privacy* is nondisclosable under 7(C) of FOIA. In determining whether disclosure is unwarranted ct must balance individual's privacy interest against public interest in disclosure]

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[in order to establish individual who provides information to an agency is confidential source, agency must show that the information was given either *under an express promise of confidentiality or in circumstances under which such an assurance could be reasonably inferred*]

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[witness statements contained in Bd's closed case files given under grant of *confidentiality* may remain protected even after investigative file has been closed; *Akron Standard v. Donovan* No. 84-3650 (6th Cir., filed January 8, 1986). Accordingly, in instant case, ct concludes that *identity* of those individuals who provided witness statements under grant of confidentiality fall w/i exemption 7(D) and rejects *potential witness* doctrine]

2550-2800 Statements of witnesses

Robert W. Kilroy, et al. v. N.L.R.B., et al. **633 F.Supp. 136 (DC S.D. OH, Dec. 1985)**

[Ee affidavits, statements given to Bd agents and U position statements not protected from disclosure by Exemption 5 since Exemption 5 applies only to internal agency documents or documents prepared by outsiders who have a formal relationship with Bd; further, such documents not covered by executive and work product privileges, since almost all documents contained purely factual matter, were products of closed cases and no further decision making or litigation would result]

Robert W. Kilroy, et al. v. N.L.R.B., et al. **633 F.Supp. 136 (DC S.D. OH, Dec. 1985)**

[Ee affidavits, statements given to Bd agents and U position statements were not protected from disclosure by Exemption 7(A) since all the documents related to closed cases and thus did not qualify for the Exemption]

Robert W. Kilroy, et al. v. N.L.R.B., et al. **633 F.Supp. 136 (DC S.D. OH, Dec. 1985)**

[disclosure of Ee affidavits, statements given to Bd agents and U position statements, held not an unwarranted invasion of privacy, since a charging party may expect that certain facts about his life relevant to the filing of a charge will be exposed and is at liberty to tailor his affidavit or statement to minimize disclosure of private information, however, all documents disclosed should have deleted from them all names, addresses, telephone numbers and social security numbers to protect individual privacy interests]

Robert W. Kilroy, et al. v. N.L.R.B., et al. **633 F.Supp. 136 (DC S.D. OH, Dec. 1985)**

[Ee affidavits, statements given to Bd agents and U position statements were not protected from disclosure by Exemption 7(D) since identity of individuals was a matter of public record where they were charging parties and Bd's guarantee of confidentiality applies only while case is still open and in instant case, all cases were closed]

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[*witness's statements* do not come w/i exemption 5 (work product), even if they are considered to be *memorandums or letters* since Bd had not shown that these are other than objective reporting of facts, and thus do not reflect attorney's theory of the case and his litigation strategy, nor would disclosure under this exemption reveal internal deliberative processes of agency; however, redaction of all identifying information permitted]

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[*witness statements in closed cases not exempt under 7(A) of FOIA since Bd has not shown that disclosure of these statements would interfere with a specific proceeding that is currently pending*; therefore, no risk that witness can be intimidated]

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[in order to establish individual who provides information to an agency is confidential source, agency must show that the information was given either *under an express promise of confidentiality or in circumstances under which such an assurance could be reasonably inferred*]

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[witness statements contained in Bd's closed case files given under grant of *confidentiality* may remain protected even after investigative file has been closed; *Akron Standard v. Donovan* No. 84-3650 (6th Cir., filed January 8, 1986). Accordingly, in instant case, ct concludes that *identity* of those individuals who provided witness statements under grant of confidentiality fall w/i exemption 7(D) and rejects *potential witness* doctrine]

R. Eddie Wayland v. N.L.R.B. **627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)**

[redaction of witness' name and time and place of meeting with Bd agent, as well as detailed descriptions of work invironment, references to the position, responsibilities, actions, and U activity of witness ordered as this information might lead to disclosure of witness' identity]

2550-3200 All correspondence and documents received by NLRB from opposing parties or their attorneys

American Commercial Barge Lines Company v. N.L.R.B **758 F.2d 1109 (C.A. 6, Apr. 1985)**

(prevailing party in FOIA action not entitled to attorney fees, since reasonable basis in law for NLRB's initial withholding of position statement of U in closed ULP proceeding, where party sought information to prepare its defense in related open proceeding; fact document subsequently disclosed w/ i time covered by NLRB's guidelines to establish reasonable basis for withholding did not give rise to inference that agency did not consider document exempt, nor need agencies' grounds for withholding document ultimately be vindicated; further, penalizing agency for disclosure at any stage not in spirit of FOIA)

Robert W. Kilroy, et al. v. N.L.R.B., et al. **633 F.Supp. 136 (DC S.D. OH, Dec. 1985)**

[Ee affidavits, statements given to Bd agents and U position statements not protected from disclosure by Exemption 5 since Exemption 5 applies only to internal agency documents or documents prepared by outsiders who have a formal relationship with Bd; further, such documents not covered by executive and work product privileges, since almost all documents contained purely factual matter, were products of closed cases and no further decision making or litigation would result]

Robert W. Kilroy, et al. v. N.L.R.B., et al. **633 F.Supp. 136 (DC S.D. OH, Dec. 1985)**

[Ee affidavits, statements given to Bd agents and U position statements were not protected from disclosure by Exemption 7(A) since all the documents related to closed cases and thus did not qualify for the Exemption]

Robert W. Kilroy, et al. v. N.L.R.B., et al. **633 F.Supp. 136 (DC S.D. OH, Dec. 1985)**

[disclosure of Ee affidavits, statements given to Bd agents and U position statements, held not an unwarranted invasion of privacy, since a charging party may expect that certain facts about his life relevant to the filing of a charge will be exposed and is at liberty to tailor his affidavit or statement to minimize disclosure of private information; however, all documents disclosed should have deleted from them all names, addresses, telephone numbers and social security numbers to protect individual privacy interests]

Robert W. Kilroy, et al. v. N.L.R.B., et al. **633 F.Supp. 136 (DC S.D. OH, Dec. 1985)**

[Ee affidavits, statements given to Bd agents and U position statements were not protected from disclosure by Exemption 7(D) since identity of individuals was a matter of public record where they were charging parties and Bd's guarantee of confidentiality applies only while case is still open and in instant case, all cases were closed]

2550-4200 Names of witnesses

United Technologies Corp. v. N.L.R.B. **632 F.Supp. 776 (DC CT, Mar. 1985)**

[Bd agent's notes to file containing the names of persons cooperating in investigation who had supplied to Bd agent copies of E's pre-trial work

2550-4200—Cont.

product memoranda and which contained names of Bd's potential witnesses, held wholly exempt from disclosure as work product of Bd agent; further, E's contention that work product privilege should not be used to shield unethical or criminal activity, rejected, since, although it might be unethical for Bd to take advantage of apparent theft of those documents, it is not unethical for Bd not to reveal names of Ees involved in light of likely consequences to those individuals]

United Technologies Corp. v. N.L.R.B. — 632 F.Supp. 776 (DC CT, Mar. 1985)

[Bd agent's notes to file containing the names of persons cooperating in investigation who had supplied to Bd agent copies of E's pre-trial work product memoranda and which contained names of Bd's potential witnesses, held exempt from disclosure under 7(D), notwithstanding ULP charges had been withdrawn, since Ees participating in investigation could reasonably fear retaliation from E in light of bitter dispute instant E had with U; further, Ees had reason to believe Bd would keep identities confidential even if they overstepped bounds of allowable conduct during a labor dispute]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[witness statements contained in Bd's closed case files given under grant of *confidentiality* may remain protected even after investigative file has been closed; *Akron Standard v. Donovan* No. 84-3650 (6th Cir., filed January 8, 1986). Accordingly, in instant case, ct concludes that *identity* of those individuals who provided witness statements under grant of confidentiality fall w/i exemption 7(D) and rejects *potential witness* doctrine]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[redaction of witness' name and time and place of meeting with Bd agent, as well as detailed descriptions of work invironment, references to the position, responsibilities, actions, and U activity of witness ordered as this information might lead to disclosure of witness' identity]

2550-4900 Regional office agenda minutes

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[Agenda Minute containing summary of discussion and analysis by Regional Office staff of relevant information disclosed by investigation is exempt by the deliberative process priviledge of exemption 5 as is a copy of the Agenda Minute with some handwritten revisions]

2550-9900 Miscellaneous documents generated during processing of case

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[draft of mailgram enlisting further cooperation from a witness not exempt from disclosure under 7(B) of FOIA, since Bd has not shown that disclosure of mailgram would deprive an individual of a fair trial or impartial adjudication; however, ct ordered redaction of witness' name and address]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[upon reconsideration, ct concluded that *casehandling chronology, and two documents containing log of contacts,* which contain discussions regarding preliminary decisions and recommendations made as to disposition of instant case fall w/i deliberative process (Exemption 3), since they contain preliminary recommendations made as part of agency's deliberative process]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[letter from agency Ee to counsel for charging party explaining agency's inability to contact witness and setting deadline for completion of investigation *not* protected from disclosure by exemption 5, since information in letter does not reflect deliberations made as part of agency's decision making process]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[transmittal from Bd examiner to RD with Agenda Outline and summary report attached in which examiner summarizes relevant information gathered during investigation and recommends course of action are exempt by the deliberative process priviledge of exemption 5]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[Agenda Minute containing summary of discussion and analysis by Regional Office staff of relevant information disclosed by investigation is exempt by the deliberative process priviledge of exemption 5 as is a copy of the Agenda Minute with some handwritten revisions]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[transmittal from Bd examiner to RD containing a recommended course of action is exempt by the deliberative process priviledge of exemption 5]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[Bd examiner's handwritten list of questions to be posed to specific witness not exempt from disclosure]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[notes by Bd supervisor and examiner that contain analysis of evidence and recommended disposition of case exempt under exemption 5]

2567 SCOPE OF EXEMPTIONS

2567-5000 Exemption 5

Van Bourg, Allen, Weinberg & Roger v. N.L.R.B. — 751 F.2d 982 (C.A. 9, Jan. 1985)

(exemption 5 by its terms applies only to internal agency documents or documents prepared by outsiders who have formal relationship with agency: It has no application to witnesses affidavits)

United Technologies Corp. v. N.L.R.B. — 632 F.Supp. 776 (DC CT, Mar. 1985)

[Bd agent's notes to file containing the names of persons cooperating in investigation who had supplied to Bd agent copies of E's pre-trial work product memoranda and which contained names of Bd's potential witnesses, held wholly exempt from disclosure as work product of Bd agent; further, E's contention that work product privilege should not be used to shield unethical or criminal activity, rejected, since, although it might be unethical for Bd to take advantage of apparent theft of those documents, it is not unethical for Bd not to reveal names of Ees involved in light of likely consequences to those individuals]

United Technologies Corp. v. N.L.R.B. — 632 F.Supp. 776 (DC CT, Mar. 1985)

[Bd did not waive any FOIA privileges when it disclosed names of Ees, who supplied Bd agent copies of E's pre-trial work product memoranda, to charging party U, since Bd and charging party shared common interests and were aligned as E's adversaries in prosecuting ULP case; further, privilege against disclosure can be waived only by person to whom confidentiality was promised and instant Ees had not done so]

Robert W. Kilroy, et al. v. N.L.R.B., et al. — 633 F.Supp. 136 (DC S.D. OH, Dec. 1985)

[Ee affidavits, statements given to Bd agents and U position statements not protected from disclosure by Exemption 5 since Exemption 5 applies only to internal agency documents or documents prepared by outsiders who have a formal relationship with Bd; further, such documents not covered by executive and work product privileges, since almost all documents contained purely factual matter, were products of closed cases and no further decision making or litigation would result]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[*witness's statements* do not come w/i exemption 5 (work product), even if they are considered to be *memorandums or letters* since Bd had not shown that these are other than objective reporting of facts, and thus do not reflect atto.ney's theory of the case and his litigation strategy, nor would disclosure under this exemption reveal internal deliberative processes of agency; however, redaction of all identifying information permitted]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[upon reconsideration, ct concluded that *casehandling chronology, and two documents containing log of contacts,* which contain discussions regarding preliminary decisions and recommendations made as to disposition of instant case fall w/i deliberative process (Exemption 3), since they contain preliminary recommendations made as part of agency's deliberative process]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[letter from agency Ee to counsel for charging party explaining agency's inability to contact witness and setting deadline for completion of investigation *not* protected from disclosure by exemption 5, since information in letter does not reflect deliberations made as part of agency's decision making process]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[transmittal from Bd examiner to RD with Agenda Outline and summary report attached in which examiner summarizes relevant information gathered during investigation and recommends course of action are exempt by the deliberative process priviledge of exemption 5]

R. Eddie Wayland v. N.L.R.B. — 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[Agenda Minute containing summary of discussion and analysis by Regional Office staff of relevant information disclosed by investigation is exempt by the deliberative process priviledge of exemption 5 as is a copy of the Agenda Minute with some handwritten revisions]

2567-5000—Cont.

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[transmittal from Bd examiner to RD containing a recommended course of action is exempt by the deliberative process privilege of exemption 5]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[Bd examiner's handwritten list of questions to be posed to specific witness not exempt from disclosure]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[notes by Bd supervisor and examiner that contain analysis of evidence and recommended disposition of case exempt under exemption 5]

2567-6700 Exemption 6

Robert W. Kilroy, et al. v. N.L.R.B., et al. 633 F.Supp. 136 (DC S.D. OH, Dec. 1985)

[an invasion of privacy occurs when disclosure would subject a person to embarrassment, harassment, physical danger, disgrace, or loss of employment or friends]

2567-8300 Exemption 7

2567-8367 1974 Amendment

2567-8367-0100 Generally

American Commercial Barge Lines Company v. N.L.R.B 758 F.2d 1109 (C.A. 6, Apr. 1985)

(agency disclosure of document requested under FOIA does not logically give rise to inference that agency does not consider document exempt from disclosure. FOIA does not prohibit disclosure of documents covered by exemptions. Exemptions are only permissive and mark outer limits of information that may be withheld where agency makes specific determination that public interest and specific circumstances presented dictate that information should be withheld)

2567-8367-1400 Exemption 7(A)

American Commercial Barge Lines Company v. N.L.R.B 758 F.2d 1109 (C.A. 6, Apr. 1985)

(agency disclosure of document requested under FOIA does not logically give rise to inference that agency does not consider document exempt from disclosure. FOIA does not prohibit disclosure of documents covered by exemptions. Exemptions are only permissive and mark outer limits of information that may be withheld where agency makes specific determination that public interest and specific circumstances presented dictate that information should be withheld)

Van Borg, Allen, Weinberg & Roger v. N.L.R.B. 751 F.2d 982 (C.A. 9, Jan. 1985)

(ct held that exemption 7(A) could not protect any of witnesses' affidavits describing U practices, officials and members, from disclosure where there were no pending or contemplated proceedings regarding plaintiff law firm's client or subject of affidavits)

Robert W. Kilroy, et al. v. N.L.R.B., et al. 633 F.Supp. 136 (DC S.D. OH, Dec. 1985)

[Ee affidavits, statements given to Bd agents and U position statements were not protected from disclosure by Exemption 7(A) since all the documents related to closed cases and thus did not qualify for the Exemption]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[*witness statements in closed cases not exempt under 7(A) of FOIA since Bd has not shown that disclosure of these statements would interfere with a specific proceeding that is currently pending*; therefore, no risk that witness can be intimidated]

2567-8367-2800 Exemption 7(B)

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[draft of mailgram enlisting further cooperation from a witness not exempt from disclosure under 7(B) of FOIA, since Bd has not shown that disclosure of mailgram would deprive an individual of a fair trial or impartial adjudication; however, ct ordered redaction of witness' name and address]

2567-8367-4200 Exemption 7(C)

Van Borg, Allen, Weinberg & Roger v. N.L.R.B. 751 F.2d 982 (C.A. 9, Jan. 1985)

(witnesses affidavits which described in detail the personalities, activities, biases and proclivities of Es, U members and officials held exempt from disclosure under exemption 7(c) where ct had concern about *substantial risk of embarrassment for, and reprisals against, the authors and subjects of the documents*)

Van Borg, Allen, Weinberg & Roger v. N.L.R.B. 751 F.2d 982 (C.A. 9, Jan. 1985)

(documents discussing legitimate U and management activities w/o any of intimate or personal details which raised privacy concerns as to other documents, held not exempt from release under exemption 7(c))

Robert W. Kilroy, et al. v. N.L.R.B., et al. 633 F.Supp. 136 (DC S.D. OH, Dec. 1985)

[an invasion of privacy occurs when disclosure would subject a person to embarrassment, harassment, physical danger, disgrace, or loss of employment or friends]

Robert W. Kilroy, et al. v. N.L.R.B., et al. 633 F.Supp. 136 (DC S.D. OH, Dec. 1985)

[disclosure of Ee affidavits, statements given to Bd agents and U position statements, held not an unwarranted invasion of privacy, since a charging party may expect that certain facts about his life relevant to the filing of a charge will be exposed and is at liberty to tailor his affidavit or statement to minimize disclosure of private information; however, all documents disclosed should have deleted from them all names, addresses, telephone numbers and social security numbers to protect individual privacy interests]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[highly personal data normally found in Ee's personnel file that would *constitute an unwarranted invasion of personal privacy* is nondisclosable under 7(C) of FOIA. In determining whether disclosure is unwarranted ct must balance individual's privacy interest against public interest in disclosure]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[information concerning Ee wage rates, job performance and personnel action that would typically be found in a personnel file exempt under 7(C) as Ees have legitimate privacy interest in this type of information. Such information is not disclosable, since plaintiff has asserted no countervailing public interest in disclosure of this information. Ct directs Bd to *redact the portions of withheld documents concerning above mentioned information*]

2567-8367-5600 Exemption 7(D)

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[a source is considered *confidential* under Exemption 7(D) if he or she provides information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred]

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[two internal Bd memoranda written by Bd agent who at pre-hearing meeting received from Ee of E charged with ULPs unauthorized pre-trial documents of E held memoranda constituting investigatory records for law enforcement purposes; memoranda were not merely post-investigatory reports or wrap-ups of events at meeting; rather, both memoranda primarily contained information obtained as part of investigatory phase and pre-hearing strategy of Bd's proceedings against E, satisfying threshold criteria for Exemption 7]

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[whether circumstances show an implied assurance of confidentiality that would exempt from disclosure documents containing identity of confidential sources is ordinarily question of fact; and Ee-informant's fear of E retaliation can give rise to justified expectation of confidentiality]

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[district ct properly held that, in view of protracted and bitter struggle between E and U, pro-U Ees, one of whom gave Bd agent unauthorized pre-trial documents of E charged with ULPs, had reason to believe that Bd would keep their identities and their statements about E confidential; also, Bd agent's action in returning to Ee unauthorized documents and explaining seriousness of situation underscored confidential nature of meeting with Bd agent]

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[*potential witness rule* that Ee-informant at pre-hearing investigation of his E may not be considered *confidential source* if Ee-informant is potential witness for investigating agency held not to defeat Bd's claim that E's Ees were confidential sources under Exemption 7(D); term *confidential source* includes informant who is promised or reasonably expects confidentiality unless and until agency needs to call him as witness at trial; Exemption 7(D) is particularly important to Bd which must depend on information provided by charging party and its witnesses]

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[ct rejected under any circumstances *potential witness rule* that Ee-informant at pre-hearing investigation of his E charged with ULPs may not be considered *confidential source* if Ee-informant is potential witness; regardless of whether underlying enforcement proceeding has been dismissed before hear-

2567-8367-5600—Cont.

ing, is pending, or has been completed, person who is otherwise confidential source should not lose that status simply because he *could have* been called or *might yet* be called as witness]

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[E held not entitled to disclosure of Ee's identity, who was confidential source under Exemption 7(D), contained in internal Bd memoranda of Bd agent concerning pre-hearing meeting at which Bd agent received from Ee unauthorized pre-trial documents of E charged with ULPs]

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[E held not entitled to disclosure of identity of Bd agent contained in internal Bd memoranda concerning pre-hearing meeting at which Bd agent received from Ee unauthorized pre-trial documents of E charged with ULPs; Ee involved was found confidential source and E's possible reason for seeking disclosure of Bd agent's identity was that it would facilitate discovery of Ee's identity, and E should not be permitted to obtain through indirect means what Exemption 7(D) does not entitle it to obtain directly]

United Technologies Corp. v. N.L.R.B. 777 F.2d 90 (C.A. 2, Nov. 1985)

[Bd did not waive protection of Exemption 7(D) by disclosing to U counsel identities of people at Bd pre-hearing meeting with Bd agent at which agent received from Ee unauthorized pre-trial documents of E charged with ULPs; under Exemption 7(D), agency's ability to withhold information, if it so chooses, derives from grant of confidentiality to source of information; such privilege belongs to beneficiary of promise of continues until he or she waives it]

Van Borg, Allen, Weinberg & Roger v. N.L.R.B. 751 F.2d 982 (C.A. 9, Jan. 1985)

(witnesses' affidavits held not exempt under exemption 7(D) where there was no finding that there was any express or implied assurance of confidentiality; Bd's contention that witnesses who submit affidavits are confidential sources under exemption 7(D), rejected because persons submitting affidavits to agency have no reasonable expectation of confidentiality and should expect their names and testimony to be revealed if investigation results in formal hearing)

United Technologies Corp. v. N.L.R.B. 632 F.Supp. 776 (DC CT, Mar. 1985)

[Bd agent's notes to file containing the names of persons cooperating in investigation who had supplied to Bd agent copies of E's pre-trial work product memoranda and which contained names of Bd's potential witnesses, held exempt from disclosure under 7(D), notwithstanding ULP charges had been withdrawn, since Ees participating in investigation could reasonably fear retaliation from E in light of bitter dispute instant E had with U; further, Ees had reason to believe Bd would keep identities confidential even if they overstepped bounds of allowable conduct during a labor dispute]

United Technologies Corp. v. N.L.R.B. 632 F.Supp. 776 (DC CT, Mar. 1985)

[Bd did not waive any FOIA privileges when it disclosed names of Ees, who supplied Bd agent copies of E's pre-trial work product memoranda, to charging party U, since Bd and charging party shared common interests and were aligned as E's adversaries in prosecuting ULP case; further, privilege against disclosure can be waived only by person to whom confidentiality was promised and instant Ees had not done so]

Robert W. Kilroy, et al. v. N.L.R.B., et al. 633 F.Supp. 136 (DC S.D. OH, Dec. 1985)

[Ee affidavits, statements given to Bd agents and U position statements were not protected from disclosure by Exemption 7(D) since identity of individuals was a matter of public record where they were charging parties and Bd's guarantee of confidentiality applies only while case is still open and in instant case, all cases were closed]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[in order to establish individual who provides information to an agency is confidential source, agency must show that the information was given either *under an express promise of confidentiality or in circumstances under which such an assurance could be reasonably inferred*]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[witness statements contained in Bd's closed case files given under grant of *confidentiality* may remain protected even after investigative file has been closed; *Akron Standard v. Donovan* No. 84-3650 (6th Cir., filed January 8, 1986). Accordingly, in instant case, ct concludes that *identity* of those individuals who provided witness statements under grant of confidentiality fall w/i exemption 7(D) and rejects *potential witness* doctrine]

2583 SUITS TO ENFORCE OBLIGATION

2583-0200 Withholding of agency records

American Commercial Barge Lines Company v. N.L.R.B 758 F.2d 1109 (C.A. 6, Apr. 1985)

(prevailing party in FOIA action not entitled to attorney fees, since reasonable basis in law for NLRB's initial withholding of position statement of U in closed ULP proceeding, where party sought information to prepare its defense in related open proceeding; fact document subsequently disclosed w/ i time covered by NLRB's guidelines to establish reasonable basis for withholding did not give rise to inference that agency did not consider document exempt, nor need agencies' grounds for withholding document ultimately be vindicated; further, penalizing agency for disclosure at any stage not in spirit of FOIA)

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[ct holds that none of information contained in withheld documents will be disclosed based on plantiff's incorporation argument (that withheld documents contain information incorporated into final agency decision, since agency's decision to approve withdrawal of charge in instant case *did not* incorporate information contained in withheld documents, but was instead based on charging parties' request made after disputes had been settled]

2583-0500 Court jurisdiction

R. Eddie Wayland v. N.L.R.B. 627——— F.Supp.————1473 (DC M.D. TN, Feb. 1986)

[FOIA provides for *de novo* judicial review of agency's determination to withhold requested material]

2583-3000 In camera inspection of requested records

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[*in camera* inspection of documents withheld, in instant case, unnecessary because affidavit filed by defendants pursuant to ct's previous order was sufficiently detailed to enable plaintiff to challenge, and ct to resolve, applicability of claimed exemption. Plaintiff has not shown either existence of strong public interest in issues presented or of actual agency bad faith in claiming relevant exemptions]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

[ct will require requesting party for *in camera* review to file brief accompanying request which addresses factors set forth in *Ingle v. Dept. of Justice*, 698 F.2d 259, 267 (6th Cir., 1983), for evaluating appropriateness of *in camera* review]

2583-4000 Injunctive or Declaratory Relief

American Commercial Barge Line Company v. N.L.R.B. ——— F.Supp. ——— (DC S.D. IN, April 1986)

[argument that ct should issue inj and declaratory relief because of defendant's possible repetition of violation, rejected, since ct had no further duty where plaintiff had received all existing information required, and case was moot and should be dismissed]

2583-8000 Attorney's fees and costs

American Commercial Barge Line Company v. N.L.R.B. ——— F.Supp. ——— (DC S.D. IN, April 1986)

[release of requested information for purpose of making report to Congress concerning Bd's abuse in investigation and prosecution of ULP charges, although of benefit to plaintiff to extent it felt discriminated against by Bd, would be of primary benefit to public by holding Bd accountable to its congressional mandate and vindicating FOIA and thus justified award of attorney's fees where plaintiff substantially prevailed by obtaining requested information]

American Commercial Barge Line Company v. N.L.R.B. ——— F.Supp. ——— (DC S.D. IN, April 1986)

[although plaintiff must substantially prevail in order to be awarded attorney's fees, ct must also consider whether result benefitted the public, whether plaintiff received any commercial benefit, nature of plaintiff's interest in information sought, and whether Government had reasonable basis in law for withholding information]

American Commercial Barge Line Company v. N.L.R.B. ——— F.Supp. ——— (DC S.D. IN, April 1986)

[defense to request for attorney's fees that plaintiff inadequately described information requested, rejected where defendants offered no affidavits or other supporting evidence and failed to explain delay in answering request thereby unnecessarily hindering policy of encouraging public access to government information]

2583-8000—Cont.

American Commercial Barge Line Company v. N.L.R.B.
——— F.Supp. ———
(DC S.D. IN, April 1986)
[plaintiff entitled only to attorney's fees connected with initial litigation up to date it received information requested under FOIA, since after that case was moot]

R. Eddie Wayland v. N.L.R.B. 627 F.Supp. 1473 (DC M.D. TN, Feb. 1986)

5000 SUNSHINE ACT

7500 FEDERAL TORT CLAIMS ACT

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